



February X, 2023

District
Superintendent
[Superintendent email](#)

Section 9 of Part A of Chapter 56 of the Laws of 2022 amends Education Law §3602(6)(k) relating to building aid penalties due to delinquent submission of final cost reports by school districts, where such penalty was recouped by the state after July 1, 2013. The law provides the Commissioner the authority to consider these expenses as valid and eligible for aid under certain conditions.

Under this provision, for such expenses to be considered valid the following criteria must be met:

- (a) such school district submitted the late or missing final building cost report to the commissioner;
- (b) such cost report is approved by the commissioner;
- (c) all state funds expended by the school district, as documented in such cost report, were properly expended for such building project in accordance with the terms and conditions for such project as approved by the commissioner; and
- (d) the failure to submit such report in a timely manner was an inadvertent administrative or ministerial oversight by the school district, and there is no evidence of any fraudulent or other improper intent by such district.

We have reviewed our records and uncovered \$XXXXXX in penalties taken for delinquent submission of final cost reports after July 1, 2013. These penalties relate to the following building projects:

- Project XXXX-XXX with Commissioner's approval date of MM/DD/YY;
- Project YYYY-YYY with Commissioner's approval date of MM/DD/YY; and
- Project ZZZZ-ZZZ with Commissioner's approval date of MM/DD/YY.

If you believe this information is in error, or additional penalties taken by the Department over the time prior covered by this provision of law, provide the project number, commissioner's approval date, and penalty amount to buildingforms@nysed.gov.

The Department is in possession of, and has approved, the final cost reports for each project listed above. In order to consider such expenses as valid, the superintendent of each school district must provide a signed letter confirming that: (1) all state funds were properly expended for each building project listed above in accordance with the terms and conditions for such project as approved by the commissioner, and (2) the failure to submit such report in a timely manner was an inadvertent administrative or ministerial oversight by the school district.

These responses must be submitted to buildingforms@nysed.gov. A flat assertion of compliance is not sufficient, each district must diligently review the facts and circumstances of each penalty the district seeks to be considered valid and provide a substantive response explaining the process used to perform such review, the relevant facts uncovered, and the conclusion of the district with regard to this matter. The Department will utilize the information provided, in conjunction with existing information, to determine whether the penalty created by the late filing of the final cost report is a valid expense and eligible for forgiveness under this provision of law.

Responses should include evidence of a specific rationale of an inadvertent administrative or ministerial oversight that led to the late filing. If such evidence or rationale cannot be uncovered, responses should explain district policies and procedures at the time of the filing that serve as internal controls to protect against potential for improper intent. If the Department finds the response is inadequate to meet the criteria in statute, the district will be notified and may re-apply should further information be uncovered. Responses signed by the superintendent must be submitted to buildingforms@nysed.gov.

Penalties considered valid after the last scheduled aid payment in the year in which the penalty was taken will be placed on the prior year claims list, as required by Education Law §3604(5).¹ Funds appropriated for the prior year claims list are provided sequentially, in the order that it has been approved for payment by the commissioner. The 2022-23 enacted state budget was the second year in which no funding was provided to satisfy new or existing claims on this list.

Penalties added to the prior year claims list will be repaid to districts once (1) the state resumes appropriating funds for the list and (2) all claims entered previously are satisfied. The list presently contains 3,841 claims for \$299.8 million in funding, dating back to February of 2012. If the state resumes the appropriation at \$18,664,000 provided most recently in the 2020-21 enacted budget, it will be approximately 16 years before all existing claims are satisfied and new claims can be addressed.

If you have questions about the process, please contact Caylyn Agans at (518) 474-2977 or reach out to buildingforms@nysed.gov.

Thank you,

State Aid Office

¹For more information, see State Aid memo titled “Payment Schedule and Policy Regarding Aid Adjustments occurring after the last scheduled aid payments for a given year” available at: https://stateaid.nysed.gov/payment/htm_docs/payadj99.htm