



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents

**FROM:** Kevin G. Smith

**SUBJECT:** Amendment of Section 126.14 of the Regulations of the Commissioner of Education relating to interest penalties for late annual assessment fees paid by licensed private career schools

**DATE:** June 6, 2016

**AUTHORIZATION(S):**

#### **SUMMARY**

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents amend section 126.14 of the Regulations of the Commissioner of Education to repeal subdivision (c), relating to methods used to calculate interest penalties for late annual assessment fees paid by licensed private career schools to the annual supervision fund and tuition reimbursement account.

#### **Reason for Consideration**

Implementation of Policy

#### **Proposed Handling**

The proposed amendment will be presented to the Full Board for adoption as a permanent rule at the June 2016 Regents meeting. In addition, a second emergency adoption is necessary at the June meeting to ensure that the emergency rule adopted at the March 2016 Regents meeting remains continuously in effect until the effect date of the permanent rule. A copy of the statement of the facts and circumstances that necessitate emergency action is attached.

## **Procedural History**

The proposed amendment was adopted as an emergency action at the March 2016 Regents meeting, effective March 22, 2016. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 6, 2016.

A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

Education Law §5001 sets forth the requirements for licensure of private career schools. Pursuant to Education Law §5001(9), the Commissioner is directed to annually assess each school a total percentage of the school's gross tuition based upon the previous year ("annual assessment fee"), which shall be payable in equal quarterly installments due on June 1<sup>st</sup>, September 1<sup>st</sup>, December 1<sup>st</sup> and March 1<sup>st</sup>. The statute provides that any annual assessment fees submitted by the schools after the due date shall be subject to interest at one percent above the prevailing prime rate. Annual assessment fees and interest penalties are used to fund the Department's supervision and regulation of licensed private schools (Annual Supervision Fund). Payments of such fees and interest penalties are deemed to be a condition of a school's licensure, and the statute authorizes the Commissioner to suspend licensure for late payments.

Commissioner's Regulations §126.14(c) provides that the interest penalty shall be calculated as follows:

- (1) For payments received within the first 30 days after the due date the interest penalty shall be the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.
- (2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.
- (3) Interest penalties not paid within 15 days of notification of the amount of the penalty shall be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

The interest penalties in the current regulation are outside the scope of the plain language in Education Law §5001(9) ("one percent above the prevailing prime rate") and produce exorbitant penalty fees which most proprietary schools are unable to pay. As a result, the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears

by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute the regulations is meant to implement.

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That subdivision (c) of section 126.14 of the Regulations of the Commissioner of Education is amended, as submitted, effective June 29, 2016; and it is further

VOTED: That subdivision (c) of section 126.14 of the Regulations of the Commissioner of Education is amended, as submitted, effective June 20, 2016, as an emergency action upon a finding of the Board of Regents that such action is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the March 2016 Regents meeting remains continuously in effect until the effective date of the permanent rule.

### **Timetable for Implementation**

The proposed amendment was adopted as an emergency action at the March 2016 Regents meeting, effective March 22, 2016. The March emergency rule will expire on June 19, 2016. If adopted at the June 2016 Regents meeting, the second emergency action will take effect on June 20, 2016 and the permanent rule will take effect on June 29, 2016.

## **8 NYCRR §100.8**

### STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to implement Regents policy and to properly implement Education Law §5001(9)(d) by amending subdivision (c) of §126.14 of the Commissioner's Regulations to reflect current practice relating to interest penalties for late payments of annual assessment fees by licensed private career schools. Section 126.14(c) allows the Department to subject annual assessment fees to interest penalties in the following magnitude:

- (1) For payments received within the first 30 days after the due date the interest penalty shall be the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.
- (2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.
- (3) Interest penalties not paid within 15 days of notification of the amount of the penalty shall be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

The interest penalties in the current regulation are outside the scope of the plain language of Education Law §5001(9), which provides for the payment of interest at one percent above the prevailing prime rate, and produce exorbitant penalty fees which

most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

At the March 2016 Regents meeting, the proposed amendment was adopted as an emergency action, effective March 22, 2016. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 6, 2016.

The proposed amendment has now been adopted as a permanent rule at the June 13-14, 2016 Regents meeting. Pursuant to SAPA §203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be June 29, 2016, the date a Notice of Adoption will be published in the State Register. However, the March emergency rule will expire on June 19, 2016, ninety days after filing the Notice of Emergency Adoption and Proposed Rule Making with the Department of State on March 22, 2016. A lapse in the rule would disrupt the process of calculating and imposing interest penalties for late payments of annual assessment fees by licensed private career schools, pursuant to Education Law §5001(9).

Emergency action is therefore necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the March 2016 Regents meeting remains continuously in effect until the effective date of the rule's permanent adoption.

## AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education law sections 101, 207, 305 and 5001

Subdivision (c) of section 126.14 of the regulations of the Commissioner of Education is amended, effective June 20, 2016, as follows:

(c) Pursuant to section 5001(9) of the Education Law, any annual assessment fees submitted by the schools to the department after the due date shall be subject to an interest penalty. The commissioner shall calculate the amount of the interest penalty as follows:

(1) [For payments received] For each due date, payments made within [the first] 30 days [after the] following such due date [the interest penalty] shall be [the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner] subject to an interest penalty of one percent above the prevailing prime rate.

[(2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.]

[(3)] (2) Interest penalties not paid within 15 days of notification of the amount of the penalty [shall] may be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

## ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on March 22, 2016, the State Education Department received a couple of comments.

### 1. COMMENT:

The commenters supported the regulation.

### DEPARTMENT RESPONSE:

Because the comments are supportive in nature, no response is required.