





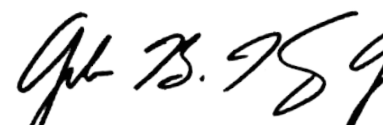
THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Ken Slentz 

SUBJECT: Amendment of Section 200.18 of the Regulations of the Commissioner, relating to Municipal Audits of Education Law section 4410 Preschool Special Education Programs and Services

DATE: July 15, 2013

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt as a second emergency action the proposed amendment of section 200.18 of the Regulations of the Commissioner, relating to municipal audits of Education Law section 4410 preschool special education programs and services?

Reason(s) for Consideration

Required by statute (L. 2013, Ch.57, §24)

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at its July meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

The proposed amendment was adopted as an emergency rule at the May Regents meeting, effective May 28, 2013. A Notice of Emergency Adoption and

Proposed Rule Making was published in the State Register on June 12, 2013. The May emergency rule will expire on August 25, 2013. A second emergency action is necessary at the July Regents meeting in order to ensure that the emergency rule remains continuously in effect until it can be adopted as a permanent rule. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Section 24 of Chapter 57 of the Laws of 2013 amended subparagraphs (i) and (ii) of paragraph (c) of subdivision (11) of Education Law section 4410 to direct the Department to provide guidelines on standards and procedures to municipalities and the board of education in a city with a population of one million or more, that choose to perform fiscal audits of services or programs offered by preschool special education providers pursuant to that section; and directs the Commissioner to promulgate rules and regulations necessary to implement the statute within sixty days of the date the statutory amendments took effect (or within sixty days of March 29, 2013).

Existing Regulations of the Commissioner, section 200.18, require municipalities and the board of education of the city school district of the city of New York to submit to the Department a detailed audit plan and audit program for audits that they choose to conduct of preschool special education services and programs. The proposed amendment implements section 24 of the Chapter 57 of the Laws of 2013 by requiring that, for audits commenced on or after May 28, 2013, the audit plan and audit program must be consistent with guidelines on audit standards and procedures issued by the Department on or after such date.

The proposed amendment also specifies that Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval; that municipalities or the board need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the Commissioner; but that modifications to the approved audit plan and audit program shall be submitted to the Department for review and approval and new approval must be obtained once the five year approval period has concluded.

The proposed amendment further provides that in order to be approved by the Commissioner as a State audit for the purposes of establishing the tuition rate based on audit, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the Department.

Recommendation

Staff recommends that the Board of Regents take the following action:

VOTED: that subdivision (b) of section 200.18 of the Regulations of the Commissioner of Education be amended, as submitted, effective August 26, 2013, as

an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the May Regents meeting remains continuously in effect until the effective date of its adoption as an emergency rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the May Regents meeting, effective May 28, 2013, and will expire on August 25, 2013. If adopted at the July Regents meeting, the second emergency action will take effect on August 26, 2013. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September Regents meeting, after expiration of the 45-day public comment period for proposed rule makings.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 4401, 4402, 4403 and 4410 and section 24 of Chapter 57 of the Laws of 2013

Subdivision (b) of section 200.18 of the Regulations of the Commissioner of Education is amended, effective August 26, 2013, as follows:

(b) Fiscal audits of approved preschool programs and services approved under section 4410 of the Education Law performed by the municipality and accepted by the commissioner.

(1) Each municipality, or, in addition, in the case of a city having a population of one million or more, the board of education of the city school district of such city, may perform fiscal audits of approved preschool programs and services for which it bears fiscal responsibility. Access to all records, property and personnel related to approved programs shall be provided during an audit. Access shall also apply to program costs allocated to approved programs. Such cost allocations to related programs are also subject to audit.

(2) Prior to conducting an audit of an approved preschool program, a municipality shall ascertain that neither the state nor any other municipality has performed a fiscal audit of the same services or programs within the current fiscal year for such program. If it is determined that no such audit has been performed, the municipality shall inquire with the department to determine which other municipalities, if any, bear financial responsibility for the services or programs to be audited and shall afford such other municipalities an opportunity to recommend issues to be examined through the audit. Municipalities

completing such audits shall provide copies to the department, the provider of the services and programs and all other municipalities previously determined to bear financial responsibility for the audited services and programs. No other municipality may conduct an additional fiscal audit of the same services or programs during such current fiscal year for such program. Municipalities shall submit to the department for approval a detailed audit plan and audit program for the proposed audit; provided that for any audit commenced on or after May 28, 2013, municipalities shall submit to the department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the department on or after such date.

(3) Upon approval of the audit program and audit plan by the commissioner, the municipality may conduct audits in conformance with generally accepted auditing standards. Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval. Municipalities need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the commissioner. However, modifications to the approved audit plan and audit program shall be submitted to the department for review and approval and new approval must be obtained once the five year approval period has concluded.

(4) Once the audit is completed, a draft of the audit report shall be submitted to the commissioner for review and/or resolution. In order to be approved by the commissioner, the draft audit shall be consistent with guidelines on audit standards and

procedures issued by the department. Upon approval, the audit shall be considered a State audit for the purposes of establishing the tuition rate based on audit.

(5) . . .

(6) . . .

PROPOSED AMENDMENT OF SECTION 200.18 OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 207, 4401, 4403 AND 4410 OF THE EDUCATION LAW AND SECTION 24 OF CHAPTER 57 OF THE LAWS OF 2013, RELATING TO FISCAL AUDITS OF PRESCHOOL SPECIAL EDUCATION SERVICES BY MUNICIPALITIES

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education of the city school district of the city of New York, that choose to perform fiscal audits of preschool special education programs and services pursuant to Education Law section 4410.

The proposed amendment was adopted as an emergency rule at the May 20, 2013 Regents meeting, effective May 28, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 12, 2013.

Because the Board of Regents meets at fixed intervals, and does not meet during the month of August, the earliest the proposed amendment can be presented for permanent adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 16-17, 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 2, 2013, the date a Notice of Adoption would be published in the State Register. However, the May emergency rule will expire on

August 25, 2013, 90 days from its filing with the Department of State on May 28, 2013.

A lapse in the effective date of the rule may disrupt the process for the conduct of audits of preschool special education programs and services by municipalities and the Board of Education of the City School District of the City of New York pursuant to Education Law section 4410(11)(i) and (ii).

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the May 20, 2013 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption on a permanent basis at the September 16-17, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA.