



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: Richard J. Trautwein

SUBJECT: Amendment of §276.11 of the Regulations of the Commissioner, relating to appeals to the Commissioner under Education Law §§310 and 2853(3)(e)

DATE: July 2, 2014

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt as a permanent rule the amendment of §276.11 of the Regulations of the Commissioner of Education to establish procedures for expedited appeals to the Commissioner of Education under Education Law §§310 and 2853(3)(e)?

Reason for Consideration

To implement statutory requirements (L. 2014, Ch.56, Part BB, §5)

Proposed Handling

The proposed amendment will be presented to the Full Board at the July Regents meeting for adoption as a permanent rule. In addition, a second emergency adoption is necessary to ensure the emergency rule adopted at the April Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule. 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 April 2014 Regents meeting, effective April 29, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 14, 2014. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

In December 2010, the Board of Regents adopted regulations, including a new section 276.11, to implement §15 of Chapter 101 of the Laws of 2010, which amended Education Law section 2853(3) to, among other things, establish requirements for the location or co-location of a charter school in a public school building. Consistent with the statute, section 276.11 provides for an expedited Education Law §310 appeal to the Commissioner of:

- determinations by the New York City School District to locate or co-locate a charter school within a public school building;
- implementation of and compliance with the building usage plan developed pursuant to Education Law §2853(a-3), that has been approved by the board of education pursuant to Education Law §2590-g(1)(h) after satisfying the requirements of Education Law §2590-h(2-a); and
- revision of a building usage plan approved by the board of education consistent with the requirements pursuant to Education Law §2590-g(7), that is appealed on the grounds that the revision fails to meet the standards set forth in Education Law §2853(3)(a-3)(2)(B).

On March 31, 2014, Governor Cuomo signed Chapter 56 of the Laws of 2014. Section 5 of Part BB of Chapter 56, which became effective on April 1, 2014, added a new paragraph (e) to Education Law §2853(3) to provide, among other things, for an expedited Education Law §310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site or space in a privately owned or other publicly owned facility upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved

by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to §276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§310 and 2853(3)(e).

Since publication of the Notice of Emergency Adoption and Proposed Rule Making, a nonsubstantial revision has been made to clarify, consistent with Education Law §2853(3)(e), the amendment's applicability to appeals from the New York City School District's offer or failure to offer a co-location site "or space in a privately owned or other publicly owned facility."

Recommendation

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

VOTED: Paragraph (1) of subdivision (b) of section 276.11 of the Regulations of the Commissioner of Education, be amended, as submitted, effective July 30, 2014; and it is further

VOTED: Paragraph (1) of subdivision (b) of section 276.11 of the Regulations of the Commissioner of Education, be amended, as submitted, effective July 28, 2014, 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 April 28-29, 2014 Regents meeting remains continuously in effect until the effective date of the rule's permanent adoption.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the April 28-29, 2014 Regents meeting, effective April 29, 2014 and will expire on July 27, 2014. If adopted at the July Regents meeting, the permanent rule will take effect on July 30, 2014 and the emergency rule will take effect on July 28, 2014.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 310, 311 and 2853 and section 5 of Part BB of Chapter 56 of the Laws of 2014.

Paragraph (1) of subdivision (b) of section 276.11 of the Regulations of the Commissioner of Education is amended, effective July 30, 2011, as follows:

(1) The procedures set forth in this section shall apply to:

(i) appeals pursuant to Education Law section 2853(3)(a-5) from:

[(i)] (a) final determinations of the board of education to locate or co-locate a charter school within a public school building;

[(ii)] (b) the implementation of, and compliance with, the building usage plan developed pursuant to Education Law section 2853(3)(a-3); and/or

[(iii)] (c) revisions of such a building usage plan, relating to a proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools, on the grounds that such revision fails to meet the equitable access standard set forth in Education Law section 2853(3)(a-3)(2)(B); or

(ii) appeals pursuant to Education Law section 2853(3)(e) from the city school district's offer or failure to offer a co-location site or space in a privately owned or other publicly owned facility upon a written request for co-location made by:

(a) charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; or

(b) charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their

charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

8 NYCRR §276.11

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

On March 31, 2014, Governor Cuomo signed Chapter 56 of the Laws of 2014. Section 5 of Part BB of Chapter 56, which became effective April 1, 2014, added a new paragraph (e) to Education Law §2853(3) to provide, among other things, for an expedited Education Law §310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to §276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§310 and 2853(3)(e).

The proposed amendment was adopted as an emergency action at the April 28-29, 2014 Regents meeting, effective April 29, 2014, and has now been adopted as a permanent rule at the July 8-9, 2014 Regents meeting. Pursuant to SAPA §203(1), the earliest effective date of the permanent rule is July 30, 2014, the date a Notice of

Adoption will be published in the State Register. However, the April emergency rule will expire on July 27, 2014, 90 days from its filing with the Department of State on April 29, 2014. A lapse in the rule's effective date could disrupt determinations of expedited appeals relating to New York City charter school co-locations brought pursuant to Education Law §§310 and 2853(3)(e) as added by §5 of Part BB of Chapter 56 of the Laws of 2014. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the April 2014 Regents meeting, and adopted as a permanent rule at the July 2014 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 310, 311 and 2853 and section 5 of Part BB of Chapter 56 of the Laws of 2014.

Paragraph (1) of subdivision (b) of section 276.11 of the Regulations of the Commissioner of Education is amended, effective July 28, 2011, as follows:

(2) The procedures set forth in this section shall apply to:

(i) appeals pursuant to Education Law section 2853(3)(a-5) from:

[(i)] (a) final determinations of the board of education to locate or co-locate a charter school within a public school building;

[(ii)] (b) the implementation of, and compliance with, the building usage plan developed pursuant to Education Law section 2853(3)(a-3); and/or

[(iii)] (c) revisions of such a building usage plan, relating to a proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools, on the grounds that such revision fails to meet the equitable access standard set forth in Education Law section 2853(3)(a-3)(2)(B); or

(ii) appeals pursuant to Education Law section 2853(3)(e) from the city school district's offer or failure to offer a co-location site or space in a privately owned or other publicly owned facility upon a written request for co-location made by:

(a) charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; or

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charter entity pursuant to Article 56 of the Education Law for those grades newly provided.