



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: Emergency Adoption of Proposed Technical Amendment to section 3.16 of the Rules of the Board of Regents, Relating to the Delegation of Authority with respect to certain Charter School Hearings

DATE: July 2, 2012

AUTHORIZATION(S):



SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt on an emergency basis the proposed technical amendment of section 3.16 of the Rules of the Board of Regents, relating to the delegation to the Commissioner of Education of the Board of Regents' authority to conduct certain charter school public hearings required by Article 56 of the Education Law?

Reason(s) for Consideration

Implementation of Regents Policy.

Proposed Handling

The proposed amendment will be presented to the Board of Regents for adoption as an emergency action at the July 2012 meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

The proposed amendment was discussed and adopted as an emergency action, effective May 22, 2012, at the May Regents meeting. A Notice of Emergency Adoption

and Proposed Rule Making was published in the State Register on June 6, 2012. The proposed rule cannot be adopted until after expiration of a 45-day public comment period, which ends on July 23, 2012. However, the May emergency rule will expire on August 20, 2012. Therefore, a second emergency action is necessary at the July Regents meeting to ensure that the emergency rule remains continuously in effect until it can be presented for adoption at the September Regents meeting. A copy of the proposed emergency rule is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The purpose of the proposed technical amendment is to conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a). Having the Board of Regents personally conduct and hold such hearings is not practical, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members, and having the Commissioner, through Department staff, hold such hearings provides for the most efficient and expeditious means to conduct such hearings.

Recommendation

VOTED: That subdivision (b) of section 3.16 of the Rules of the Board of Regents, be amended, as submitted, effective August 21, 2012, 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 permanent adoption at a subsequent Regents meeting, after expiration of the 45-day public comment period prescribed by the State Administrative Procedure Act.

Timetable for Implementation

The May emergency rule became effective on May 22, 2012 and will expire on August 20, 2012. If adopted at the July Regents meeting, the emergency rule will become effective on August 21, 2012. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September Regents meeting.

Attachment

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 206, 207, 305 and 2857 of the Education Law

Subdivision (b) of section 3.16 of the Rules of the Board of Regents is amended, effective August 21, 2012, as follows:

(b) Hearings. The Board of Regents delegates to the Commissioner of Education the authority to conduct and hold public hearings as required pursuant to Article 56 of the Education Law to solicit comments from the community including, but not limited to, hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

PROPOSED AMENDMENT OF SECTION 3.16 THE RULES OF THE BOARD OF REGENTS PURSUANT TO EDUCATION LAW SECTIONS 101, 206, 207, 305 AND 2857 AND CHAPTER 57 OF THE LAWS OF 2007, RELATING TO THE DELEGATION OF AUTHORITY TO CONDUCT AND HOLD PUBLIC HEARINGS CONCERNING CHARTER SCHOOLS UNDER EDUCATION LAW SECTION 2857(1-a)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The purpose of the proposed technical amendment is to conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a). Having the Board of Regents personally conduct and hold such hearings is not practical, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members, and having the Commissioner, through Department staff, hold such hearings provides for the most efficient and expeditious means to conduct such hearings.

The proposed amendment was adopted as an emergency rule at the May Regents meeting, effective May 22, 2012. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 6, 2012. Because the Board of Regents meets at fixed intervals, and generally does not meet in the month

of August, the earliest the proposed amendment can be presented for permanent adoption, after expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 10-11, 2012 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 3, 2012, the date a Notice of Adoption would be published in the State Register. However, the May emergency action will expire on August 20, 2012, ninety days after its filing with the Department of State on May 22, 2012. A lapse in the effective date of the rule may disrupt the Department's conduct of public hearings in accordance with Article 56 of the Education Law. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the May 2012 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their September 10-11, 2012 meeting, which is the first scheduled meeting after expiration of the 45 day public comment period mandated by the State Administrative Procedure Act.