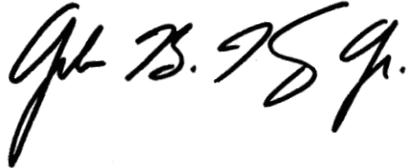




TO: P-12 Education Committee
FROM: Ken Slentz 
SUBJECT: Proposed Amendment to Sections 200.16(c) and 200.20(b) of the Regulations of the Commissioner of Education Relating to Special Education Services and Programs for Preschool Children with Disabilities
DATE: March 6, 2014

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents adopt as an emergency rule the proposed amendment of sections 200.16 and 200.20 of the Commissioner's Regulations relating to special education services and programs for preschool children with disabilities to conform to Chapter 545 of the Laws of 2013?

Reason(s) for Consideration

Required by Statute (L. 2013, Ch. 545, sections 1 and 2).

Proposed Handling

The proposed amendment will be presented to the P-12 Education Committee for recommendation and to the Full Board for emergency action at the March 2014 meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

Chapter 545 of the Laws of 2013 amended Education Law section 4410 to add a requirement that if a Committee on Preschool Special Education (CPSE) recommends that a child be placed in a program that also conducted the child's evaluation, then it must indicate in writing that the placement is appropriate for the child and provide notice

to the Commissioner of the recommendation. In addition, a requirement was added stating that a provider of special services must certify in its application for approval that it will take measures to ensure that its executive director/chief executive officer, or person performing the duties of this position, meets the criteria established by the commissioner for this role. If the executive director/chief executive officer is employed and paid as a full-time, full-year employee, then he or she is not permitted to engage in any activity that would interfere with the ability to perform the duties, responsibilities and obligations of this position.

Background Information

The purpose of the proposed amendment is to conform the Commissioner's Regulations to Education Law section 4410, as amended by Chapter 545 of the Laws of 2013, which was enacted to address certain findings in relation to audits of preschool providers conducted by the Office of the State Comptroller. A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on March 26, 2014. Public comment on the proposed amendment will be accepted for 45 days from the date of publication in the State Register. A copy of the proposed amendment is attached. Supporting materials for the proposed amendment are available upon request.

The proposed amendment to section 200.16(c) would require the Committee on Preschool Special Education to submit a written notice to the Commissioner when it places a preschool student with a disability in a program operated by the same provider who evaluated the student. It is the Department's intention to add such written notice to the "Preschool STAC-1: Request for Commissioner's Approval of Reimbursement for Services for students with Disabilities." A STAC-1 form currently must be submitted for each preschool student with a disability. Including this notice on the STAC-1 would minimize the administrative burden of school districts for additional reporting as well as provide the Department with the ability to verify and run reports on such data using existing technology.

The proposed amendment to section 200.20(b) would add a requirement that providers ensure that executive directors or individuals assigned with executive director responsibilities have an education background in a field related to business, administration and/or education and have the knowledge and ability to oversee a preschool special education program; ensure that executive directors reside within a reasonable geographic distance from the program to ensure appropriate oversight of the day to day activities of the program; and that individuals who are assigned in a full-time role as the executive director are not engaging in activities that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

Recommendation

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

VOTED: That paragraph (3) of subdivision (c) of section 200.16 of the Regulations of the Commissioner of Education be amended, and that a new paragraph

(3) of subdivision (b) of section 200.20 be added, as submitted, effective April 17, 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 the timely implementation of the provisions of Chapter 545 of the Laws of 2013 that: (1) require Committees on Preschool Special Education (CPSE) that recommend placement of a child in an approved program that also conducted an evaluation of the child to indicate in writing that such placement is appropriate and provide notice of such recommendation to the Commissioner; and (2) require a provider of preschool special education services or programs to certify pursuant to regulations promulgated by the Commissioner that it will take measures to ensure its executive director or person performing duties of a chief executive officer meets the criteria established by the Commissioner to be an executive director and, if paid as a full time executive director, that such executive director is employed in a full time, full year position and shall not engage in activity that would interfere or impair such executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

Timetable for Implementation

If adopted at the March Regents meeting, the emergency rule will take effect on April 17, 2014, which is the effective date of Chapter 545 of the Laws of 2013. Following the receipt of public comment, it is anticipated that the proposed amendment will be submitted for adoption as a permanent rule at the June 2014 meeting with a proposed effective date of July 9, 2014.

Attachment

8 NYCRR §§200.16 and 200.20

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The purpose of the proposed amendment is to conform the Commissioner's Regulations to Education Law section 4410, as amended by Chapter 545 of the Laws of 2013, which was enacted to address certain findings in relation to audits of preschool providers conducted by the Office of the State Comptroller. The proposed amendment to section 200.16(c) would require the Committee on Preschool Special Education to submit a written notice to the Commissioner when it places a preschool student with a disability in a program operated by the same provider who evaluated the student. The proposed amendment to section 200.20(b) would add a requirement that providers ensure that executive directors or individuals assigned with executive director responsibilities have an education background in a field related to business, administration and/or education and have the knowledge and ability to oversee a preschool special education program; ensure that executive directors reside within a reasonable geographic distance from the program to ensure appropriate oversight of the day to day activities of the program; and that individuals who are assigned in a full-time role as the executive director are not engaging in activities that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption as a permanent rule, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the June 23-24, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the

proposed amendment, if adopted at the June meeting, would be July 9, 2014, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 545 of the Laws of 2013 become effective on April 17, 2014.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to ensure the timely implementation of the provisions of Chapter 545 of the Laws of 2013 that: (1) require Committees on Preschool Special Education (CPSE) that recommend placement of a child in an approved program that also conducted an evaluation of the child to indicate in writing that such placement is appropriate and provide notice of such recommendation to the Commissioner; and (2) require a provider of preschool special education services or programs to certify pursuant to regulations promulgated by the Commissioner that it will take measures to ensure its executive director or person performing duties of a chief executive officer meets the criteria established by the Commissioner to be an executive director and, if paid as a full time executive director, that such executive director is employed in a full time, full year position and shall not engage in activity that would interfere or impair such executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June 23-24, 2014 Regents meeting, which is the first meeting scheduled after expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5).

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 4401, 4402, 4403, 4410 and Chapter 545 of the Laws of 2013.

1. Paragraph (3) of subdivision (c) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective April 17, 2014, as follows:

(3) Prior to making any recommendation that would place a child in an approved program owned or operated by the same agency which conducted the [initial] evaluation of the child, the committee may exercise its discretion to obtain an evaluation of the child from another approved evaluator. If the committee recommends placing a child in an approved program that also conducted an evaluation of the child, it shall indicate in writing that the placement is appropriate for the child and shall provide written notice to the commissioner of such recommendation on a form prescribed by the commissioner.

2. A new paragraph (3) of subdivision (b) of section 200.20 of the Regulations of the Commissioner of Education is added, effective April 17, 2014, as follows:

(3) Each approved preschool program shall ensure that:

(i) the executive director or person assigned to perform the duties of a chief executive officer hired or assigned on or after April 17, 2014, shall have earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and shall have, but not be limited to, the following qualifications:

(a)..knowledge of the requirements for providing appropriate evaluations and/or special education services and supervision to preschool students with disabilities;

(b) knowledge of and ability to comply with applicable laws and regulations;

(c) ability to maintain or supervise the maintenance of financial and other records;

(d) ability to establish the approved program's policy, program and budget; and

(e) ability to recruit, employ, train, direct and evaluate qualified staff.

(ii) the executive director or person assigned to perform the duties of a chief executive officer shall reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and

(iii) if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.