



**TO:** The P-12 Education Committee

**FROM:** Angelique Johnson-Dingle *Angelique Johnson-Dingle*

**SUBJECT:** Proposed Amendment of Section 3.16 of the Rules of the Board of Regents Relating to Updates to Delegation of Authority Regarding Charter Revisions

**DATE:** November 30, 2023

**AUTHORIZATION(S):** *Tom M. G. Bellizzi*

### **SUMMARY**

#### **Issue for Discussion**

Should the Board of Regents adopt the proposed amendments of section 3.16 of the Rules of the Board of Regents relating to updates to delegation of authority regarding charter revisions?

#### **Reason for Consideration**

Review of policy.

#### **Proposed Handling**

The revised proposed amendment is presented to the P-12 Education Committee for discussion at the December 2023 Regents meeting. A copy of the proposed amendment (Attachment A) is attached.

#### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for discussion at the November 2023 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on November 29, 2023, for a 60-day public comment period. Following publication, Department staff, after further consideration, recommends a revision to the proposed amendment. A Notice of Revised Rule Making will be published in the State Register on December 27, 2023, for an additional 46-day public comment period. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

Section 3.16 of the Rules of the Board of Regents provides that the Board may delegate certain authority to the Commissioner with respect to charter schools. Subdivision (c) provides that the Board delegates the Commissioner the authority to approve, on behalf of the Board of Regents, proposed revisions of a charter pursuant to Education Law §2852(7), except for proposed revisions relating to (1) educational philosophy, mission or vision; (2) governance or leadership structure; (3) the curriculum model or school design changes that are inconsistent with that approved in the current charter; (4) hiring or termination of a management company; (5) school name; (6) location, if such revision results in relocation to another school district; (7) maximum enrollment, as set forth in the current charter; and/or (8) grades served, as set forth in the current charter.

Since these regulations were last amended nearly 15 years ago, the policies and practices of the Board of Regents and Department have evolved. The purposes of the proposed amendments are to: (1) conform additional provisions in section 3.16 to current best practices; (2) ensure that the Board of Regents is not burdened with approving minor, inconsequential charter school revisions; and (3) ensure timely monitoring and oversight of charter schools by allowing the Commissioner, on behalf of the Board of Regents, to make minor necessary charter revisions.

Requiring the Board of Regents to consider certain minor applications—such as changes to organizational charts, the hiring or termination of a management company, and changes to mission statements—is not an efficient use of resources given the Regents' broad policymaking mission, the limited number of times that the Regents meet during the year, and individual Regents' time demands. This practice results in the Regents spending a considerable amount of time throughout the year on charter school matters. Delegating the authority to approve minor charter revisions to the Commissioner, with certain specified exceptions, will provide for the most efficient and expeditious means to consider and issue charter revisions.

The Board of Regents will continue to approve major charter school items, such as (1) new school and renewal applications; (2) requests to change key design programmatic elements of a school's charter; (3) changes in location, if such revision results in relocation to another school district (or, in New York City, a new borough); (4) changes in maximum enrollment that result in a total increase of more than 15% above currently authorized enrollment or that result in the addition of 200 or more seats to the currently authorized enrollment, whichever is lesser, as set forth in the current charter during the charter term; and (5) grades served, as set forth in the current charter.

## **Revision to the Proposed Rule**

Since publication of the proposed rule in the State Register on November 29, 2023, Department staff recommend revising the proposed rule in two respects. First, to also delegate to the Commissioner the authority to approve, on behalf of the Board of Regents, proposed revisions of a charter pursuant to Education Law §2852(7), where such revisions involve enrollment decrease of the charter school during the charter term. Enrollment decreases are thus no longer listed as revisions to be brought before the Regents. Second, the Department also revised the proposed rule to cap enrollment increases from both a percentage and whole number standpoint. The Department has determined that such

revisions are minor and to delegate such to the Commissioner will again provide for the most efficient and expeditious means to consider and issue charter revisions.

### **Related Regents Items**

November 2023: [Proposed Amendment of Section 3.16 of the Rules of the Board of Regents Relating to Updates to Delegation of Authority Regarding Charter Revisions](https://www.regents.nysed.gov/sites/regents/files/1123p12d3.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/1123p12d3.pdf>)

June 2010: [Proposed Amendment of Section 3.16 of the Rules of the Board of Regents, Relating to Delegation of Authority to the Commissioner to Approve Charter School Revisions](https://www.regents.nysed.gov/sites/regents/files/documents/meetings/2010Meetings/June2010/0610emscd3.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/documents/meetings/2010Meetings/June2010/0610emscd3.pdf>)

### **Recommendation**

Not applicable.

### **Timetable for Implementation**

It is anticipated that the revised proposed rule will be presented for permanent adoption at the March 2024 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act for revised rulemakings. If adopted at the March 2024 meeting, the revised proposed amendment will become effective on March 27, 2024.

AMENDMENT OF THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 206, 207, 305, and 2852 of the Education Law.

Subdivision (c) of section 3.16 of the Rules of the Board of Regents is amended to read as follows:

(c) Charter revisions.

(1) The Board of Regents delegates the Commissioner of Education the authority to approve, on behalf of the Board of Regents, proposed revisions of a charter pursuant to Education Law section 2852(7), except for proposed revisions relating to:

(i) [educational philosophy, mission, or vision;

(ii) governance or leadership structure;

(iii) the curriculum model or] key school design changes that are inconsistent with that approved in the current charter;

[(iv) hiring or termination of a management company;

(v) school name;

(vi)] (ii) location, if such revision results in relocation to another school district, or in the case of the city school district of the city of New York, if such revision results in relocation to another borough;

[(vii)] (iii) changes in maximum enrollment that result in a total increase of more than 15% above the currently authorized enrollment or that result in the addition of 200 or more seats to the currently authorized enrollment, whichever is lesser, as set forth in the current charter during the charter term; and/or

[(viii)] (iv) grades served, as set forth in the current charter.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, revisions relating to subparagraphs (1)(i) through (iii) of this subdivision that are determined by

the commissioner not to be significant may be approved by the commissioner pursuant to this delegation of authority.