



TO: The Honorable Members of the Board of Regents

FROM: William P. Murphy *William P. Murphy*
Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Amendment of Section 3.29 of the Rules of the Board of Regents Relating to the Use of the Term University

DATE: February 1, 2024

AUTHORIZATION(S): *Don McG* *Bellotti*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt amendments to section 3.29 of the Rules of the Board of Regents relating to the use of the term university?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the February 2024 Regents meeting. A copy of the proposed rule (Attachment A) is attached.

Procedural History

The proposed amendment was presented to a joint meeting of the Higher Education and Professional Practice Committees for discussion at the October 2023 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on November 1, 2023, for a 60-day public comment period.

Following publication in the State Register, the Department received comments on the proposed amendment. An Assessment of Public Comment (Attachment B) is attached. No changes to the proposed amendment are recommended at this time. A Notice of Adoption will be published in the State Register on February 28, 2024. Supporting materials for the proposed amendments are available upon request from the Secretary to the Board of Regents.

Background Information

Use of the Term “University” by Private Postsecondary Schools:

Subdivision (c) of section 3.29 of the Rules of the Board of Regents prescribes the circumstances under which the Commissioner may consent, pursuant to Education Law §216, to the amendment of a certificate of incorporation of a corporation formed under the Business Corporation Law (BCL), whose purposes include the operation of a program or programs of postsecondary education, to include the term “college” in their corporate name, where such entity meets the requirements prescribed in such provision.

Currently, this provision does not allow entities such as private, for-profit colleges to seek the Commissioner’s consent to use the term “university.” However, the widely used Carnegie classification system for degree-granting institutions does not distinguish between “college” and “university” based on sector. Additionally, all New York State degree-granting institutions are held to the same standards for the registration of their academic programs, regardless of sector (SUNY, CUNY, independent, proprietary, etc.). Furthermore, in January 2022, the Board of Regents voted to broaden the definition of the term “university” as defined in the Commissioner’s regulations, making a wider range of institutions eligible to use the term.¹

Therefore, the Department proposes to amend this provision to allow the Commissioner to also consent to the use of the term “university” by BCL entities where they meet the current requirements for the use of the term “college” as well as the definition of “university.”

The proposed amendment also updates such subdivision to reflect current law and terminology, specifically by: (1) including references to the Limited Liability Company Law (LLCL) and the Not-for-Profit Corporation Law (NPCL); (2) including references to articles of organization which is the document used to establish an LLC; and (3) to change references to the term “corporation” to the more broad term “entity” to cover both “corporations” created under the BCL and NPCL as well as “companies” created under LLCL.

Use of the Term “University” by a Teaching Hospital or Academic Medical Center:

Section 3.29 of the Regents Rules does not expressly permit teaching hospitals and academic medical centers to seek the consent of the Commissioner to include the term “university” in their name. However, many of these entities have a strong commitment to graduate medical education, and consent to use the term “university” by such entities has occasionally been issued. Moreover, the use of the term “university” has been expanded as indicated above. Therefore, the Department has determined that it would be appropriate to permit teaching hospitals/academic medical centers that demonstrate their commitment to graduate medical education to include the word “university” in their name.

¹ The Commissioner’s regulations define the term “*university*” as “a higher educational institution offering a range of registered undergraduate and graduate curricula in the liberal arts and sciences, including graduate programs registered in at least three of the following discipline areas: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences, and social sciences” (8 NYCRR 50.1(l)).

As such, the Department proposes to add a new subdivision (d) to section 3.29 to allow the Commissioner to consent to the amendment of a certificate of incorporation or articles of organization of a teaching hospital or academic medical center formed under the BCL, LLCL, or NPCL to include the word “university” in the entity’s name, provided that:

- the entity has at least two residency programs accredited by the Accreditation Council on Graduate Medical Education (ACGME) (or an equivalent accrediting agency acceptable to the Department), or which are part of such a program through affiliation(s) approved by the ACGME (or an equivalent agency acceptable to the Department);
- the entity employs professional teaching staff with academic appointment or title from a New York State registered medical school for medical education of students from such medical school who are accountable to the dean of such medical school;
- the entity otherwise demonstrates a commitment to graduate medical education satisfactory to the Department; and
- the proposed amendment of the certificate of incorporation or articles of organization specifically states that within 30 days after receipt by the entity of an order by the Board of Regents directing such action, the holders of the majority of all the outstanding shares of the entity entitled to vote upon an amendment of the certificate of incorporation or articles of organization will cause to be filed with the Secretary of State a certificate of amendment to the certificate of incorporation or articles of organization changing the entity’s name to delete therefrom the word “university.” Such an order of the Board of Regents shall be made upon a finding that the entity does not comply with one or more of the requirements listed above.

Related Regents Items

October 2023: [Proposed Amendment of Section 3.29 of the Rules of the Board of Regents Relating to the Use of the Term University](https://www.regents.nysed.gov/sites/regents/files/1023heppcd1.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/1023heppcd1.pdf>)

January 2022: [Proposed Amendment to Section 50.1\(l\) of the Regulations of the Commissioner of Education Relating to the Definition of “University”](https://www.regents.nysed.gov/sites/regents/files/122brca4_0.pdf)
(https://www.regents.nysed.gov/sites/regents/files/122brca4_0.pdf)

Recommendation

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

VOTED: That section 3.29 of the Rules of the Board of Regents be amended, as submitted, effective February 28, 2024.

Timetable for Implementation

If adopted at the February meeting, the proposed amendment will become effective on February 28, 2024.

AMENDMENT OF THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 207 and 216 of the Education Law.

Subdivision (c) of section 3.29 of the Rules of the Board of Regents is amended and a new subdivision (d) is added to read as follows:

(c) The commissioner, pursuant to Education Law, section 216, may consent to the amendment of the certificate of incorporation or articles of organization of [a corporation] an entity formed under the Business Corporation Law, Limited Liability Company Law, or Not-for-Profit Corporation Law, whose purposes include the operation of a program or programs of postsecondary education, to include the word “college” or “university” in the corporate name, provided that:

(1) such [corporation] entity has been authorized by the Board of Regents to issue one or more academic degrees;

(2) the program or programs leading to such authorized degree or degrees have been registered by the department;

(3) such [corporation] entity possesses full and current accreditation from an institutional accrediting agency recognized for this purpose by the United States Department of Education;

(4) the [corporation] entity and any school or educational program which it may conduct shall be subject to and comply with all of the statutory provisions, rules of the Regents, and regulations of the commissioner which would be applicable to a corporation created by the Regents pursuant to section 216 of the Education Law for the same purpose or purposes; [and]

(5) for the use of the term “university”, the entity shall meet the definition of “university” defined in subdivision (l) of section 50.1 of this Title; and

[(5)] (6) the proposed amendment of the certificate of incorporation or articles of organization specifically states that within thirty days after receipt by the [corporation] entity of an order by the Board of Regents directing such action, the holders of the majority of all the outstanding shares of the [corporation] entity entitled to vote upon an amendment of [this]the certificate of incorporation or articles of organization will cause to be filed with the Secretary of State a certificate of amendment to the certificate of incorporation or articles of organization changing the [corporate] entity's name to delete therefrom the word ["college."] "college" or "university." Such an order of the Board of Regents shall be made upon a finding that the [corporation] entity does not comply with one or more of the requirements of paragraphs (1) through [(4)] (5) of this subdivision.

(d) The commissioner, pursuant to Education Law, section 216, may consent to the amendment of the certificate of incorporation or articles of organization of a teaching hospital or academic medical center formed under the Business Corporation Law, Limited Liability Company Law, or the Not-for-Profit Corporation Law to include the word "university" in the entity's name, provided that:

(1) such entity has at least two residency programs accredited by the Accreditation Council on Graduate Medical Education, or an equivalent accrediting agency acceptable to the department, or which are part of such a program through affiliation(s) approved by the Accreditation Council on Graduate Medical Education, or an equivalent agency acceptable to the department;

(2) such entity employs professional teaching staff with academic appointment or title from a New York State registered medical school for medical education of students from such medical school who are accountable to the dean of such medical school;

(3) such entity otherwise demonstrates a commitment to graduate medical education satisfactory to the department; and

(4) the proposed amendment of the certificate of incorporation or articles of organization specifically states that within thirty days after receipt by the entity of an order by the Board of Regents directing such action, the holders of the majority of all the outstanding shares of the entity entitled to vote upon an amendment of the certificate of incorporation or articles of organization will cause to be filed with the Secretary of State a certificate of amendment to the certificate of incorporation or articles of organization changing the entity's name to delete therefrom the word "university." Such an order of the Board of Regents shall be made upon a finding that the entity does not comply with one or more of the requirements of paragraphs (1) through (3) of this subdivision.

ASSESSMENT OF PUBLIC COMMENT

Since publication of the Notice of Proposed Rule Making in the State Register on November 1, 2023, the State Education Department (Department) received the following comment on the proposed amendment:

1. COMMENT: A commenter strongly supports the proposed regulatory amendments, particularly the provision that would allow proprietary colleges who meet the definition of “university” as set forth in 8 NYCRR 50.1(1) to use such term in their corporate name. The commenter supports fair regulations that are evenly applied to all colleges and universities and notes that proprietary degree-granting institutions are subject to the same rigorous permissions and approvals as other degree-granting institutions. The commenter further states that allowing proprietary colleges that meet the definition of university to use the term in their corporate names aligns with the policy that all degree-granting institutions must adhere to the same regulatory and oversight requirements thereby ensuring a standardization of terminology and practices across sectors.

DEPARTMENT RESPONSE: The comment is supportive of the proposed rule; therefore, no changes are necessary.

2. COMMENT: A commenter strongly supports the proposed regulatory amendments and states that the proposed amendment aligns with New York’s regulatory stance of applying a uniform set of standards to all institutions, regardless of control type, which assures all students are equally served well and that all institutions are held to the same benchmarks.

DEPARTMENT RESPONSE: The comment is supportive of the proposed rule; therefore, no changes are necessary.