



TO: The Honorable Members of the Board of Regents

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: February 29, 2024

AUTHORIZATION(S): *Don McGreevey* *Betty Maloney*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment 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 proposed amendment is presented to the Full Board for adoption as a permanent rule at the March 2024 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, recommended a revision to the proposed amendment at the December Regents meeting. A Notice of Revised Rule Making was published in the State Register on December 27, 2023, for an additional 45-day public comment period.

Following publication of the revised proposed rule 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. If adopted by the Board of Regents at the March 2024 Regents Meeting, a Notice of Adoption will be published in the State Register on March 27, 2024. 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

At the December 2023 Regents meeting, Department staff recommended 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

December 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/1223p12d1.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/1223p12d1.pdf>)

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

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

VOTED: That section 3.16 of the Rules of the Board of Regents be amended, as submitted, effective March 27, 2024.

Timetable for Implementation

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.

ASSESSMENT OF PUBLIC COMMENT

Since publication of the Notice of Proposed Rule Making in the State Register on November 29, 2023, and subsequent Notice of Revised Rule Making in the State Register on December 27, 2023, the Department received the following comments on the proposed rule:

1. COMMENT: The Department received supportive comments from two charter school leaders, who indicated that they believed the proposed amendments to the regulations would allow for greater efficiency and flexibility with respect to meeting the needs of charter schools and their students.

RESPONSE: The Department appreciates these supportive comments. No changes to the proposed amendments are necessary based on these comments.

2. COMMENT: The Department received a supportive comment from the New York Charter Schools Association. The Association believes that the proposed amendments will significantly decrease administrative burden for schools while simultaneously maintaining the Department's rigorous review process.

RESPONSE: The Department appreciates these supportive comments. No changes to the proposed amendments are necessary based on these comments.

3. COMMENT: The Department received a comment from the New York State School Boards Association which opposed the proposed amendment. The Association believes the proposed amendments eliminate the opportunity for impacted communities and school districts to comment on possible charter revisions before they become effective. As an example, the Association believes the proposed amendments would allow for an enrollment increase at a charter school up to 15 percent without affording the school district of location or community any opportunity to provide comment on the

impact of such a revision. In sum, the Association believes that the proposed amendments would result in the removal of the opportunity to comment on proposed charter revisions, which would be inconsistent with the law. The Association requests that the proposed amendments be revised to reflect the requirements of Education Law § 2857 that the community and school district of location be afforded the opportunity to comment on all proposed charter revisions before such proposed revisions are approved and become effective.

RESPONSE: The Department has considered these comments and determined no change is necessary. The proposed amendments allow for greater flexibility for charter schools regarding their daily operations, granting them the autonomy contemplated by Article 56 of the Education Law, while retaining oversight on their operations by the Department and the Board of Regents. While the Department appreciates the Association's comments, the great majority of charter schools in New York State are approved by other authorizers which offer far greater enrollment flexibility than the instant proposal.