



**TO:** The Honorable the Members of the Board of Regents

**FROM:** Richard J. Trautwein

**SUBJECT:** Amendment of §276.11 of the Regulations of the Commissioner, relating to appeals to the Commissioner under Education Law §§310 and 2853(3)(e)

**DATE:** April 21, 2014

**AUTHORIZATION(S):**

**SUMMARY**

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt by emergency action the amendment to §276.11 of the Regulations of the Commissioner of Education to establish procedures for expedited appeals to the Commissioner of Education under Education Law §§310 and 2853(3)(e)?

Reason for Consideration

To implement statutory requirements (L. 2014, Ch.56, Part BB, §5)

Proposed Handling

The proposed amendment will be presented to the Full Board at the April Regents meeting for adoption as an emergency action. A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on May 14, 2014. A copy of the proposed amendment and a statement of the facts and circumstances which necessitate emergency action are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

## Background Information

In December 2010, the Board of Regents adopted regulations, including a new section 276.11, to implement §15 of Chapter 101 of the Laws of 2010, which amended Education Law section 2853(3) to, among other things, establish requirements for the location or co-location of a charter school in a public school building. Consistent with the statute, section 276.11 provides for an expedited Education Law §310 appeal to the Commissioner of:

- determinations by the New York City School District to locate or co-locate a charter school within a public school building;
- implementation of and compliance with the building usage plan developed pursuant to Education Law §2853(a-3), that has been approved by the board of education pursuant to Education Law §2590-g(1)(h) after satisfying the requirements of Education Law §2590-h(2-a); and
- revision of a building usage plan approved by the board of education consistent with the requirements pursuant to Education Law §2590-g(7), that is appealed on the grounds that the revision fails to meet the standards set forth in Education Law §2853(3)(a-3)(2)(B).

On March 31, 2014, Governor Cuomo signed Chapter 56 of the Laws of 2014. Section 5 of Part BB of Chapter 56, which became effective on April 1, 2014, added a new paragraph (e) to Education Law §2853(3) to provide, among other things, for an expedited Education Law §310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to §276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§310 and 2853(3)(e).

## Recommendation

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

VOTED: Paragraph (1) of subdivision (b) of section 276.11 of the Regulations of the Commissioner of Education, be amended, as submitted, effective April 29, 2014, as an emergency action upon a finding of the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that procedures are in place as soon as possible for expedited appeals relating to New York City charter school co-locations brought pursuant to Education Law §§310 and 2853(3)(e) as added by §5 of Part BB of Chapter 56 of the Laws of 2014, so that the parties and their attorneys are on notice of the procedures they must follow, and decisions in such appeals are handled expeditiously pursuant to statutory requirements.

#### Timetable for Implementation

If adopted at the April Regents meeting, the emergency rule will become effective on April 29, 2014. It is anticipated that the proposed amendment will be presented for permanent adoption at the July 2014 Regents meeting.

Attachment

## **8 NYCRR §276.11**

### STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

On March 31, 2014, Governor Cuomo signed Chapter 56 of the Laws of 2014. Section 5 of Part BB of Chapter 56, which became effective April 1, 2014, added a new paragraph (e) to Education Law §2853(3) to provide, among other things, for an expedited Education Law §310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to §276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law §§310 and 2853(3)(e).

Because the Board of Regents meets at scheduled intervals, the July 10-11, 2014 meeting is the earliest the proposed amendment could be presented for adoption, after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014 and expiration of the 45-day public comment period

required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July meeting, would be July 30, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to in order to ensure that procedures are in place as soon as possible for expedited appeals relating to New York City charter school co-locations brought pursuant to Education Law §§310 and 2853(3)(e) as added by §5 of Part BB of Chapter 56 of the Laws of 2014, so that the parties and their attorneys are on notice of the procedures they must follow, and decisions in such appeals are handled expeditiously pursuant to statutory requirements.

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its July 10-11, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 310, 311 and 2853 and section 5 of Part BB of Chapter 56 of the Laws of 2014.

Paragraph (1) of subdivision (b) of section 276.11 of the Regulations of the Commissioner of Education is amended, effective April 29, 2011, as follows:

(1) The procedures set forth in this section shall apply to:

(i) appeals pursuant to Education Law section 2853(3)(a-5) from:

[(i)] (a) final determinations of the board of education to locate or co-locate a charter school within a public school building;

[(ii)] (b) the implementation of, and compliance with, the building usage plan developed pursuant to Education Law section 2853(3)(a-3); and/or

[(iii)] (c) revisions of such a building usage plan, relating to a proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools, on the grounds that such revision fails to meet the equitable access standard set forth in Education Law section 2853(3)(a-3)(2)(B); or

(ii) appeals pursuant to Education Law section 2853(3)(e) from the city school district's offer or failure to offer a co-location site upon a written request for co-location made by:

(a) charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; or

(b) charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their

charter entity pursuant to Article 56 of the Education Law for those grades newly provided.