




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents
FROM: Ken Slentz 
SUBJECT: Emergency Adoption of Proposed Section 119.7 of the Regulations of the Commissioner, relating to the Renewal of Charters of Charter Schools Authorized by the Board of Regents

DATE: May 13, 2013

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents readopt, on an emergency basis, the proposed amendment to the Commissioner's Regulations to add a new section 119.7, relating to the renewal of charters of charter schools for which the Board of Regents is the charter entity?

Reason for Consideration

Clarification of Regents Policy

Proposed Handling

This issue will come before the P-12 Education Committee for adoption as an emergency action at the May Regents meeting. A copy of the express terms of the proposed amendment and a statement of the facts and circumstances which necessitate emergency action is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

In November 2012, the Regents approved a Charter Renewal Policy and endorsed the Charter School Performance Framework. The proposed amendment is intended to clarify the charter school renewal process to specify the respective roles of charter schools, the Department and the Board of Regents.

The proposed amendment was discussed and adopted as an emergency rule, effective March 12, 2013, at the regularly scheduled March Board of Regents meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 27, 2013. The emergency rule will expire on June 9, 2013. A second emergency adoption is necessary at the May Regents meeting to ensure that the emergency rule remains continuously in effect until it can be adopted on a permanent basis at the June 17-18, 2013 Regents meeting.

Background Information

In October 2012, staff provided the Board with an update on the work of the Department's Charter School Office and the extensive period of development and review that had been undertaken to construct a Performance Framework that draws from the best of what is available across the country in charter school authorizing practices. The development of the Framework has been an iterative process and Charter School Office staff adhered to the following key guiding principles throughout to ensure that the Performance Framework:

- Focuses on performance over compliance. Each performance standard serves to highlight how a successful school should perform and operate in each key area. The Framework recognizes that compliance is a minimum expectation; and moves further to focus on student performance. Charter schools enter into a performance-based contract with their authorizer, and the Framework must establish expectations for high performance.
- Preserves operational autonomy. Each performance standard focuses on outcomes rather than processes. Charter school authorizers must protect charter school autonomies that allow charter schools the freedom to determine the means by which they achieve the result of student and operational performance, consistent with federal and state law.
- Facilitates transparent feedback to schools. The Department developed the structure of the Framework to ensure that clear and transparent feedback about performance can be conveyed to charter schools in key areas, throughout the charter term. Based on this, and other data, charter schools should be able to make adjustments to their operational and academic programming to improve performance.

- Aligns to the ongoing accountability and effectiveness work for all public schools in New York State. The Department developed the Framework during a period of broader educational reform in New York, guided by the Regents Reform Agenda, New York's successful Race to the Top application, and New York's successful ESEA Flexibility Waiver Request. To the maximum extent possible, the Department aligned the Framework with the overall educator and institutional accountability and school effectiveness work of NYSED, but also incorporated additional performance metrics that capture the unique aspects of charter school autonomy and accountability.
- Balances clear performance standards with Regents' discretion. The Framework clearly outlines performance standards for charter schools, but does not formulaically dictate high-stakes accountability decisions, including new charter award, probation, revocation, and/or renewal decisions. These high-stakes decisions are ultimately made by the Board of Regents based on the totality of evidence presented by the charter school, and the Regents' have the discretion to consider many qualitative and quantitative factors when making these decisions.

In November 2012, the Board of Regents approved a Charter School Renewal Policy and endorsed a Performance Framework, which outlines the performance benchmarks by which charter schools will be evaluated by Department Staff when they apply for renewal. Taken together, these two documents were intended to provide a roadmap for the renewal process for charter schools authorized by the Regents and ensure that all interested and impacted parties are informed at the outset of the process of the benchmarks by which a renewal application will be judged and the policy underpinnings of charter renewal decisions. Consistent with the terms of the Department's \$113 million federal Charter Schools Program (CSP) multi-year grant, improvement in student academic achievement is the most important factor that will be considered by the Regents when determining whether to renew or revoke a school's charter.

The proposed amendment applies to applications for the renewal of a charter pursuant to Education Law section 2851(4) that are submitted by charter schools for which the Board of Regents is the charter entity. Education Law section 2851(4) provides for the renewal of charters for a maximum term of five years in accordance with the provisions for the issuance of charters pursuant to Education Law section 2852. Among other things, these sections of the Education Law cover the required elements of an application for charter renewal; required notification provisions; and required accountability elements such as the means by which the charter school will meet or exceed enrollment and retention targets prescribed by the Board of Regents for students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program.

The proposed amendment, which is consistent with the Performance Framework endorsed by the Regents, makes the charter school renewal process more transparent

by adopting a comprehensive regulation that embodies the guidelines for the renewal process and policies. In addition to clarifying the Board's previous Charter School Renewal Policy, the proposed amendment requires that renewal charters include the performance benchmarks prescribed pursuant to the regulation. The end result is a roadmap for the renewal process for charter schools authorized by the Regents that clearly sets forth the roles, responsibilities and obligations of all the parties in the charter renewal process: the charter school's board of trustees, the Department, and the Board of Regents. The proposed amendment also outlines the possible charter renewal outcomes, and specifies that such outcomes are within the sole discretion of the Board of Regents. Consistent with the proposed amendment and our past practice; the Department will issue guidance documents that provide additional information and details to the field on the charter renewal process and timeline.

Recommendation

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

VOTED: that section 119.7 of the Regulations of the Commissioner of Education be added, as submitted, as an emergency action effective June 10, 2013, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the March 11-12, 2013, Regents meeting remains continuously in effect until the effective date of its permanent adoption, and thereby avoid any potential disruption in the procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the March Regents meeting, effective March 12, 2013, and will expire on June 9, 2013. If adopted at the May 2013 Regents meeting, the emergency action will become effective on June 10, 2013, and will remain in effect for 60 days. It is anticipated that the proposed amendment will be presented for permanent adoption at the June 2013 Regents meeting, after expiration of the 45-day public comment period for State agency rule makings.

Attachments

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 2851, 2852 and 2857 of the Education Law

Section 119.7 of the Regulations of the Commissioner of Education is added, effective June 10, 2013, as follows:

119.7 Renewal of Charters.

(a) Applicability. The provisions of this section shall apply to applications for the renewal of a charter pursuant to Education Law section 2851(4) that are submitted by charter schools for which the Board of Regents is the charter entity.

(b) Charter school obligations.

(1) The board of trustees of the charter school shall submit an application for charter renewal to the Board of Regents in a format and pursuant to a timeline prescribed by the Commissioner, consistent with Education Law section 2851(4).

(2) The board of trustees shall also submit such additional material or information as may be requested by the State Education Department.

(3) Where applicable, the charter school shall comply with the notification and submission requirements in subparagraph (d)(3) of this section.

(c) Department obligations.

(1) Notification of renewal application. Pursuant to Education Law section 2857(1), the State Education Department shall provide notification of receipt of an application for charter renewal and consider comments received concerning such application, consistent with Education Law section 2857(1).

(2) Renewal Site Visit and Report. The Department may, in its discretion, conduct or cause to be conducted a renewal site visit to the charter school for purposes

of obtaining information relevant to the renewal of such school's charter and prepare a renewal site visit report, consistent with guidelines established by the Department.

(3) Renewal Recommendation.

(i) The Department shall prepare and submit to the Board of Regents a renewal recommendation which shall be based upon application of the performance benchmarks pursuant to subdivision (e) of this section. In making this renewal recommendation, the Department shall consider evidence and data gathered about the charter school, including, but not limited to, the following:

(a) information in the renewal application submitted pursuant to paragraph (b)(1) of this section;

(b) any additional material or information submitted by the charter School pursuant to paragraph (b)(2) of this section;

(c) any information relating to the site visit and the site visit report, if any, pursuant to paragraph (c)(2) of this section;

(d) the charter school's annual reporting results including, but not limited to, student academic achievement; and

(e) any other information that the Department, in its discretion, determines is relevant to whether the charter should be renewed, including, but not limited to, information related to whether renewal should be denied to protect the interests of students, families and the public including, but not limited to, instances involving criminal violations, fraud, unsafe environment, organizational stability or other serious or egregious violations of law or of the school's charter.

(ii) Notification of recommendation. The Department shall notify the charter school of the Department's renewal recommendation. In the event that the recommendation is to not renew the charter school's charter, the charter school shall be provided with written notification of such recommendation and the reasons for the recommendation, and shall be given an opportunity to submit, within thirty days of its receipt of such written notification, a written response to such recommendation. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument.

(d) Board of Regents procedures.

(1) Board of Regents determination.

(i) The decision concerning whether to approve a charter renewal application shall be wholly within the discretion of the Board of Regents, and shall be based on whether the Board can make the relevant findings specified in Education Law section 2852(2) for the approval of such an application.

(ii) The Board of Regents shall consider the following when making a decision concerning whether to approve a charter renewal application:

(a) the information in the renewal application submitted pursuant to paragraph

(b)(1) of this section;

(b) any additional material or information submitted by the charter school pursuant to subparagraph (b)(2) of this section;

(c) comments received pursuant to Education Law section 2857(1), as provided for in paragraph (c)(1) of this section;

(d) any information relating to the site visit and the site visit report, if any, pursuant to paragraph (c)(2) of this section;

(e) the charter school's annual reporting results including, but not limited to, student academic achievement;

(f) the Department's renewal recommendation pursuant to paragraph (c)(3) of this section and the charter school's written response, if any, pursuant to subparagraph (c)(3)(ii) of this section; and

(g) any other information that the Board, in its discretion, may deem relevant to its determination whether the charter should be renewed, including, but not limited to, information related to whether renewal should be denied to protect the interests of students, families and the public including, but not limited to, instances involving criminal violations, fraud, unsafe environment, organizational stability or other serious or egregious violations of law or of the school's charter.

(iii) In making its decision concerning whether to approve a charter renewal application, the Board of Regents shall consider the totality of the evidence presented in each case, and may accept or reject, in whole or in part, the Department's renewal recommendation, provided however that nothing in this subparagraph shall be construed as prohibiting the Board of Regents from weighing any one factor more heavily than another.

(iv) The decision of the Board of Regents with respect to whether to approve a renewal application shall be final.

(2) Renewal outcomes.

(i) The Board of Regents in its sole discretion may:

(a) renew a charter for a maximum term of five years;

(b) renew the charter for a term of less than five years; or

(c) deny renewal of the charter.

(ii) When deciding whether to grant a renewal application and/or for how long to renew a school's charter, the charter school's student academic achievement shall be considered of paramount importance by the Board of Regents. Furthermore, for all renewals subsequent to a first renewal, a charter school's student academic achievement shall be given greater weight than for a first renewal.

(3) In the event that the Department's renewal recommendation recommends that the Regents grant a renewal application, but the Board of Regents decides to reject such recommendation and deny renewal of a charter, the charter school shall be provided with written notification of such decision and the reasons for the decision, and shall be given an opportunity to submit a written response to such decision and request that the Board of Regents reconsider its action. If the charter school chooses to submit a written response, the charter school shall, within five days of receipt of the Department's notification, notify the Department in writing of its intent to submit a written response, and shall submit such written response within thirty days of receipt of the Department's notification. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument. The Department shall submit any such submission to the Board of Regents for reconsideration. Following receipt of such submission, the Board of Regents shall reconsider the charter school's renewal application, provided that nothing in this paragraph shall be construed to require more than one reconsideration.

(e) Performance benchmarks. Each renewal charter for a charter school authorized by the Board of Regents shall include the performance benchmarks set forth in the Charter School Performance Framework, as issued by the Department, as part of the oversight plan in the charter school's charter agreement. For each such renewal charter, the analysis of qualitative and quantitative data and evidence concerning a charter school's performance, for purposes of the Department's renewal recommendation pursuant to paragraph (c)(3) of this section, shall be based on the charter school's achievement in each of the performance benchmarks set forth in the Charter School Performance Framework; provided that the charter school's performance under student academic achievement, as set forth in Benchmark 1: Student Performance shall be paramount when determining to renew a school's charter.

PROPOSED ADDITION OF SECTION 119.7 OF THE REGULATIONS OF THE
COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS
101, 207, 305, 2851, 2852 AND 2857, RELATING TO RENEWALS OF CHARTERS
OF CHARTER SCHOOLS
STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The purpose of the proposed amendment is to clarify procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

The proposed amendment was adopted as an emergency rule at the March Regents meeting, effective March 12, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 27, 2013.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for permanent adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the June 17-18, 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the June meeting, would be July 3, 2013, the date a Notice of Adoption would be published in the State Register. However, the March emergency rule will expire on June 9, 2013, 90 days from its filing with the Department of State on March 12, 2013. A lapse in the effective date of the rule may disrupt procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the March 11-12, 2013 Regents meeting remains continuously in effect until the effective date of its permanent adoption, and thereby avoid any potential disruption in the procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption on a permanent basis at the June 17-18, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA.