



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: John B. King, Jr. *John B. King, Jr.*

SUBJECT: Proposed Amendment to Sections 200.16(c) and 200.20(b) of the Regulations of the Commissioner of Education Relating to Special Education Services and Programs for Preschool Children with Disabilities

DATE: July 2, 2014

AUTHORIZATION(S):

Richard A. Iacono

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt as an emergency rule the proposed amendment of sections 200.16 and 200.20 of the Commissioner's Regulations to conform to Chapter 545 of the Laws of 2013?

Reason(s) for Consideration

Required by Statute (L. 2013, Ch. 545, sections 1 and 2).

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the July 2014 Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

The proposed amendment was adopted as an emergency action at the March 10-11, 2014 Regents meeting, effective April 17, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 26, 2014. The proposed amendment was readopted at the May Regents meeting to ensure that the rule remains continuously in effect until the effective date of its permanent adoption. At the June Regents meeting, the May emergency rule was repealed and a revised proposed amendment was adopted by emergency action, effective June 24, 2014. A Notice of Emergency Adoption and Revised Rule Making will be published in the State Register on July 9, 2014.

The June emergency rule will expire on August 22, 2014. Another emergency action is necessary at the July Regents meeting in order to ensure that the emergency rule remains continuously in effect until it can be adopted as a permanent rule at the September Regents meeting. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 545 of the Laws of 2013 amended Education Law section 4410 to add a requirement that if a Committee on Preschool Special Education (CPSE) recommends that a child be placed in a program that also conducted the child's evaluation, then it must indicate in writing that the placement is appropriate for the child and provide notice to the Commissioner of the recommendation. In addition, a requirement was added stating that a provider of special services must certify in its application for approval that it will take measures to ensure that its executive director/chief executive officer, or person performing the duties of this position, meets the criteria established by the commissioner for this role. If the executive director/chief executive officer is employed and paid as a full-time, full-year employee, then he or she is not permitted to engage in any activity that would interfere with the ability to perform the duties, responsibilities and obligations of this position.

The purpose of the proposed amendment is to conform the Commissioner's Regulations to Education Law section 4410, as amended by Chapter 545 of the Laws of 2013, which was enacted to address certain findings in relation to audits of preschool providers conducted by the Office of the State Comptroller.

The proposed amendment to section 200.16(c) would require the CPSE to submit a written notice to the Commissioner when it places a preschool student with a disability in a program operated by the same provider who evaluated the student. The Department has added such written notice to the "Preschool STAC-1: Request for Commissioner's Approval of Reimbursement for Services for Students with Disabilities." A STAC-1 form currently must be submitted for each preschool student with a disability. Including this notice on the STAC-1 will minimize the administrative burden of school

districts for additional reporting, as well as provide the Department with the ability to verify and run reports on such data using existing technology. No revisions were made to this section in response to public comment.

The proposed amendment to section 200.20(b) was revised in response to public comment to expand the qualifications of individuals who could be hired as an executive director of approved preschool special education programs or assigned executive director responsibilities. The proposed amendment would require that individuals hired or assigned with executive director responsibilities, on or after April 17, 2014, the effective date of Chapter 545, have an education background in a field related to business, administration and/or education and/or hold a New York State certification or license to provide an evaluation of and/or a related service to a student with a disability. The proposed amendment further requires that the each approved program ensure that the executive director has: (a) knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities; (b) knowledge of and the ability to comply with applicable laws and regulations; (c) the ability to maintain or supervise the maintenance of financial and other records; (d) the ability to establish the approved program's policy, program and budget; and (e) the ability to recruit, employ, train, direct and evaluate qualified staff.

The proposed amendment also requires that all executive directors or individuals who are assigned executive director duties and responsibilities of preschool programs ensure that the executive director resides within a reasonable geographic distance from the program to ensure appropriate oversight of the day to day activities of the program; and that individuals who are assigned in a full-time role as the executive director are not engaging in activities that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

Recommendation

Staff recommends that the Board of Regents take the following action:

VOTED: That paragraph (3) of subdivision (c) of section 200.16 of the Regulations of the Commissioner of Education be amended, and that a new paragraph (3) of subdivision (b) of section 200.20 be added, as submitted, effective August 23, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment made in response to public comment, and to otherwise ensure that the emergency rule adopted at the March Regents meeting, readopted at the May meeting, and revised and adopted at the June meeting, remains continuously in effect until the effective date of its adoption as a permanent rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the March 2014 Regents meeting, effective April 17, 2014, readopted at the May Regents meeting, and

revised and adopted by emergency action at the June Regents meeting, effective June 24, 2014. The June emergency rule will expire on August 22, 2014. If adopted at the July meeting, the emergency rule will take effect on August 23, 2014. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September Regents meeting, after expiration of the 45-day public comment period for proposed rule makings.

Attachment

8 NYCRR §§200.16 and 200.20

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The purpose of the proposed amendment is to conform the Commissioner's Regulations to Education Law section 4410, as amended by Chapter 545 of the Laws of 2013, which was enacted to address certain findings in relation to audits of preschool providers conducted by the Office of the State Comptroller.

The proposed amendment to section 200.16(c) would require the Committee on Preschool Special Education to submit a written notice to the Commissioner when it places a preschool student with a disability in a program operated by the same provider who evaluated the student.

The proposed amendment to section 200.20(b) would add a requirement that providers ensure that executive directors or individuals assigned with executive director responsibilities have an education background in a field related to business, administration and/or education and have the knowledge and ability to oversee a preschool special education program; ensure that executive directors reside within a reasonable geographic distance from the program to ensure appropriate oversight of the day to day activities of the program; and that individuals who are assigned in a full-time role as the executive director are not engaging in activities that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

The proposed amendment was adopted as an emergency action at the March 10-11, 2014 Regents meeting, effective March 11, 2014 and readopted as an

emergency action at the May Regents meeting to ensure that it remains continuously in effect until the effective date of its permanent adoption. At the June Regents meeting, the May emergency rule was repealed and a revised proposed amendment was adopted by emergency action, effective June 24, 2014.

Because the Board of Regents meets at monthly intervals, the earliest the revised proposed amendment could be adopted by regular action after publication of the Notice of Emergency Adoption and Revised Rule Making in the State Register on July 9, 2014 and expiration of the 30-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the September 15-16, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. However, the June emergency rule will expire on August 22, 2014, 60 days after its filing with the Department of State on June 24, 2014. A lapse in the rule's effective date could disrupt implementation of Chapter 545 of the Laws of 2013 during the 2014-2015 school year.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the March Regents meeting, readopted at the May Regents meeting, and revised and adopted at the June Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September 15-16, 2014 Regents meeting, which is the first scheduled Regents meeting after publication of the revised proposed rule in the State

Register and expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for State agency revised rule makings.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 4401, 4402, 4403, 4410 and Chapter 545 of the Laws of 2013.

1. Paragraph (3) of subdivision (c) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective August 23, 2014, as follows:

(3) Prior to making any recommendation that would place a child in an approved program owned or operated by the same agency which conducted the [initial] evaluation of the child, the committee may exercise its discretion to obtain an evaluation of the child from another approved evaluator. If the committee recommends placing a child in an approved program that also conducted an evaluation of the child, it shall indicate in writing that the placement is appropriate for the child and shall provide written notice to the commissioner of such recommendation on a form prescribed by the commissioner.

2. A new paragraph (3) of subdivision (b) of section 200.20 of the Regulations of the Commissioner of Education is added, effective August 23, 2014, as follows:

(3) Each approved preschool program shall ensure that:

(i) the executive director or person assigned to perform the duties of a chief executive officer hired or assigned on or after April 17, 2014, shall have earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and/or shall hold a New York State certification or license to provide an evaluation of and/or a related service to a student with a disability as such term is defined in section 200.1(qq) of this Part. In addition, the executive director, or person assigned to perform the duties of a chief executive officer, shall, at a minimum, have the following qualifications:

(a) knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities;

(b) knowledge of and ability to comply with applicable laws and regulations;

(c) ability to maintain or supervise the maintenance of financial and other records;

(d) ability to establish the approved program's policy, program and budget; and

(e) ability to recruit, employ, train, direct and evaluate qualified staff.

(ii) the executive director or person assigned to perform the duties of a chief executive officer shall reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and

(iii) if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.