



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

**FROM:** Mark Schaming 

**SUBJECT:** Proposed Amendment to Sections 90.2 and 90.16 of the Regulations of the Commissioner of Education to Update and Clarify Terminology Relating to Standards for Registration of Public, Free Association and Indian Libraries and to Implement Education Law §273(7), as amended by Chapter 362 of the Laws of 2013 Relating to the Conservation and Preservation of Library Research Materials

**DATE:** July 3, 2018

**AUTHORIZATION(S):**  

### SUMMARY

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents amend §90.2 and §90.16 of the Commissioner's regulations to update and clarify terminology relating to standards for registration of public, free association and Indian libraries and to implement Education Law §273(7), as amended by Chapter 362 of the Laws of 2013 relating to the conservation and preservation of library research materials?

#### **Reason(s) for Consideration**

Review of policy.

#### **Proposed Handling**

The proposed amendment is being presented to the Board of Regents for adoption at its July 2018 meeting. A Notice of Proposed Rule Making was published in the State Register on April 25, 2018. A copy of the proposed amendment is attached. Following the 60-day public comment period, the Department received one comment on the proposed amendment.

## **Background Information**

The proposed amendments to §90.2 of the Commissioner's regulations, last updated some twenty years ago, are necessary to update and clarify certain terminology related to standards for registration of public, free association and Indian libraries. The amendments include the following major changes:

- Updates language in the standards for registration related to library bylaws, a long-range plan, an annual report, the annual budget, and the periodic evaluation of programs, services and collections. Requires library bylaws and written policies to be reviewed and reapproved by the board at least once every five years or earlier if required by law.
- Adds language to clarify that current information about the library, its governance and its services should be available to the community both in print and online.
- Adds language to the existing standard about maintaining a library facility that addresses community needs, to clarify that the restroom should be a public restroom and further clarifies the need for adequate power and data infrastructure.
- Updates current language in the standard related to providing equipment, technology and internet connectivity to address community needs, to include the need for a circulation system that facilitates access to the local library collection and other library catalogs.
- Adds three new standards - one related to library programming, one related to annual technology training for library staff appropriate to their position, and one related to establishing and maintaining partnerships with other education, cultural and community organizations.
- Provides for a two-year implementation period to allow libraries sufficient time to obtain additional resources or expertise that may be needed to achieve compliance by January 1, 2021. Libraries may apply for a variance if circumstances prevent them from meeting one or more of these standards.

The proposed amendment also amends §90.16 of the Commissioner's regulations to implement Education Law §273(7), as amended by Chapter 362 of the Laws of 2013 relating to the conservation and preservation of library research materials. The amendments include the following major changes:

- Eliminates outdated language related to a coordinated grant program for the 11 comprehensive research libraries. Chapter 362 of the Laws of 2013 removed the coordinated grant program from the statute effective April 1, 2014.

- Provides a definition of the Office for Coordination of Conservation and/or Preservation of Library Research Materials.
- Eliminates outdated language related to an advisory council for the program.

**Related Regents Items**

None.

**Recommendation**

Department staff recommends that the Board of Regents take the following action:

VOTED: That §90.2 and §90.16 of the Regulations of the Commissioner are amended, effective August 1, 2018.

**Timetable for Implementation**

If adopted at the July meeting, the proposed amendment will become effective as a permanent rule on August 1, 2018.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 208, 215, 253 through 268, 271 through 273, 273-a, and 282 through 285.

1. Section 90.2 of the Regulations of the Commissioner shall be amended, to read as follows:

§90.2 Standards for registration of public, free association and Indian libraries.

(a) Registration standards through December 31, 2020. A public, free association or Indian library registered on or before December 31, 2020 shall meet the following registration standards:

(1) is governed by written bylaws which outline the responsibilities and procedures of library board of trustees;

(2) has a board-approved, written long-range plan of service;

(3) presents an annual report to the community on the library's progress in meeting its goals and objectives;

(4) has board-approved written policies for the operation of the library;

(5) presents annually to appropriate funding agencies a written budget which would enable the library to meet or exceed these standards and to carry out its long-term plan of service;

(6) periodically evaluates the effectiveness of the library's collections and services in meeting community needs;

(7) is open the following scheduled hours:

<b>Population</b>	<b>Minimum Weekly Hours Open</b>
Up to 500	12

500-2,499	20
2,500-4,999	25
5,000-14,999	35
15,000-24,999	40
25,000-99,999	55
100,000 and above	60

(8) maintains a facility to meet community needs, including adequate space, lighting, shelving, seating, and a restroom;

(9) provides equipment and connections to meet community needs including, but not limited to a telephone, photocopier, telefacsimile capability, and microcomputer or terminal with printer, to provide access to other library catalogs and other electronic information;

(10) distributes printed information listing the library's hours open, borrowing rules, services, location and phone number; and

(11) employs a paid director in accordance with the provisions of Section 90.8 of this Part.

(b) [(1) Any public, free association or Indian library registered by the department at the time this section takes effect shall be required to meet the standards for registration in subdivision (a) of this section on the following schedule:

(1) meet the standards of paragraphs (1) through (5) and (10) of subdivision (a) of this section on or before January 1, 1995.

(2) meet the standards of paragraph (6) of subdivision (a) of this section on or before January 1, 1997.

(3) meet the standards of paragraphs (7), (8), (9) and (11) of subdivision (a) of this section on or before January 1, 1999].

Registration standards on or after January 1, 2021. A public, free association or Indian library seeking to register with the Department on or after January 1, 2021 shall be registered with the Department if it meets the registration standards set forth in this subdivision in a manner satisfactory to the Commissioner. Any public, free association or Indian library that was registered by the Department on or before December 31, 2020, shall meet the following registration requirements by January 1, 2021 to continue to be registered by the Department:

(1) is governed by written bylaws which define the structure and governing functions of the library board of trustees, and which shall be reviewed and re-approved by the board of trustees at least once every five years or earlier if required by law;

(2) has a community-based, board-approved, written long-range plan of service developed by the library board of trustees and staff;

(3) provides a board-approved written annual report to the community on the library's progress in meeting its mission, goals and objectives, as outlined in the library's long-range plan of service;

(4) has board-approved written policies for the operation of the library, which shall be reviewed and updated at least once every five years or earlier if required by law;

(5) annually prepares and publishes a board-approved, written budget, which enables the library to address the community's needs, as outlined in the library's long-range plan of service;

(6) periodically evaluates the effectiveness of the library's programs, services and collections to address community needs, as outlined in the library's long-range plan of service;

(7) is open the following scheduled hours:

<u>Population</u>	<u>Minimum Weekly Hours Open</u>
<u>Up to 500</u>	<u>12</u>
<u>500-2,499</u>	<u>20</u>
<u>2,500-4,999</u>	<u>25</u>
<u>5,000-14,999</u>	<u>35</u>
<u>15,000-24,999</u>	<u>40</u>
<u>25,000-99,999</u>	<u>55</u>
<u>100,000 and above</u>	<u>60</u>

(8) maintains a facility that addresses community needs, as outlined in the library's long-range plan of service, including adequate space, lighting, shelving, seating, power and data infrastructure, and a public restroom;

(9) provides programming to address community needs, as outlined in the library's long-range plan of service;

(10) provides a circulation system that facilitates access to the local library collection and other library catalogs; and provides equipment, technology, and internet connectivity to address community needs and facilitate access to information;

(11) provides access to current library information in print and online, facilitating the understanding of library services, operations and governance; information provided online shall include the standards referenced in paragraphs one through five of this subdivision;

(12) employs a paid director in accordance with the provisions of Section 90.8 of this Part;

(13) provides library staff with annual technology training, appropriate to their position, to address community needs, as outlined in the library's long-range plan of service; and

(14) establishes and maintains partnerships with other educational, cultural or community organizations which enable the library to address the community's needs, as outlined in the library's long-range plan of service.

(c) **Variances.** If circumstances over which any public, free association or Indian library has no control prevent it from meeting one or more of the standards of service set forward in subdivision (a) or subdivision (b) of this section, such library may apply for a variance for such standard(s). The application for such variance shall be submitted for such library by the public library system of which such library is a member, in a form prescribed by the commissioner. No variance granted pursuant to this subdivision shall be deemed to relieve a public, free association or Indian library of any obligation imposed by any other provision of federal or state law.

2. Section 90.16 of the Regulations of the Commissioner of Education shall be amended, to read as follows:

§90.16 [Grants for conservation] Conservation and/or preservation of library research materials.

(a) Definitions. As used in this section and in Education Law, section 273(7):

(1) . . .

(2) *Agencies and libraries*, as used in Education Law section 273(7)[(d)] (c), means libraries chartered by the Regents or in institutions chartered by the Regents, other than comprehensive research libraries, and other agencies collecting, organizing,



maintaining and making available to the people of the State, library research materials as defined in paragraph [(6)] (4) of this subdivision.

(3) ...

[(4)] *A cooperative program* means a program for the conservation and/or preservation of materials operated by a comprehensive research library for the benefit of two or more comprehensive research libraries that involves collective decision making on priorities, avoidance of duplicate effort, use of a national data base to make known decisions on items being preserved, and the dissemination of information resulting from the program.

(5) *A cooperative facility for conservation and/or preservation* means a comprehensive research library which develops a capacity for serving the conservation and/or preservation needs of one or more of the comprehensive research libraries beyond the immediate needs of the sponsoring institution, including, but not limited to:

(i) reformatting, including microfilming and copying disks to tape;

(ii) major conservation treatment, such as surface cleaning, deacidification, leather repair, and conservation rebinding;

(iii) the hiring of consultants to provide guidance to any or all of the comprehensive research libraries for the development of specific aspects of their conservation and/or preservation programs or for the overall development of their programs; and

(iv) training and education in conservation and/or preservation, including staff training and patron awareness programs.]

[(6)] (4) *Library research materials* means informational materials in print, non-print, manuscript or any other format or medium which are part of the applicant's

collections and are, or will be, made available for reference, on-site examination, and or loan.

[(7)] (5) Unique library research materials means library research materials which are not accessible to the people of the State in any other collection in the State, or identifiable collections of library research materials, some portions of which may be accessible elsewhere in the State, which have research value not duplicated elsewhere in the State.

(6) Office for coordination of conservation and/or preservation of library research materials means an office within the State Education Department responsible for identifying the conservation and/or preservation needs of libraries within the state as defined in paragraphs (1) and (2) of this subdivision, to assess the technology available for such conservation and preservation, and to coordinate the conservation and preservation efforts resulting from Education Law §273(7). This office will be located in the New York state library.

(b) ...

(c) ...

(d) ...

(e) ...

(f) Applications and reports.

(1) ...

[(2) Comprehensive research libraries applying for grants under Education Law section 273 (7)(c) shall submit project proposals in a form prescribed by the department, including, but not limited to, the following elements:

(i) A description of the unique library research materials to be preserved or conserved with grant funds;

(ii) A description of proposed conservation and/or preservation activities, and of the techniques to be employed in such activities;

(iii) A description of staff and/or data about suppliers of contract services which demonstrates appropriate training, experience and expertise for performing the proposed work;

(iv) Evidence of access to appropriate facilities for conservation and/or preservation;

(v) Assurance that bibliographic information in machine readable form will be available on materials preserved;

(vi) Evidence of institutional commitment to development of a coordinated approach to conservation and preservation in the State;

(vii) Institutional contribution to the project in matching funds and staff resources; and

(viii) Provision for use of a national data base to make known to other libraries decisions on items being preserved.]

[(3)] (2) Agencies and libraries applying for grants under Education Law section 273 (7)(d)] (c) shall submit project proposals in a form prescribed by the department, which shall include, but need not be limited to, the following elements [enumerated in paragraph (2) of this subdivision]:

(i) A description of the unique library research materials to be preserved or conserved with grant funds, including the research value of such materials;

(ii) A description of proposed conservation and/or preservation activities, and of the techniques to be employed in such activities in accordance with statewide planning and national standards;

(iii) A description of staff and/or data about suppliers of contract services which demonstrates appropriate training, availability, experience and expertise for performing the proposed work;

(iv) Evidence of institutional capacity for successful completion of the project, including access to appropriate facilities for conservation and/or preservation;

(iv) Assurance that bibliographic information in machine readable form will be available on materials preserved;

(vi) Evidence of institutional commitment to development of a coordinated approach to conservation and preservation in the State;

(vii) Institutional contribution to the project in matching funds and staff resources;

(viii) Provision for use of a national database to make known to other libraries decisions on items being preserved; and

(ix) Data demonstrating the volume of interlibrary lending by the applicant within the State and beyond, and public access to the applicant's holdings.

[(g) Advisory council. The commissioner shall appoint a five-member advisory council to assist in the development and operation of the grant program for conservation and/or preservation of research library materials. Such council shall consist of one member from each of the following;

(1) a comprehensive research library;

(2) an academic library;

(3) a public library;

(4) an historical society, archive, or other repository; and

(5) a person knowledgeable in conservation and/or preservation of library materials.]

**ASSESSMENT OF PUBLIC COMMENT**

Following publication of the proposed amendment in the State Register on April 25, 2018, the Department received the following comments:

COMMENT: We are in compliance with the amended public library minimum standards but we would like to indicate our objection to the new standard related to annual technology training for library staff appropriate to their position. We feel that by requiring this training libraries should be compensated for the required training in some way or have the appropriate NY Library System provide the necessary training with no expense to the local library. Our rural library budget is small as it is and can hardly afford sending the library staff to training that was once provided by Mid-York. All training should be provided by the NY Library Systems and not charged to the library throughout the State of New York.

RESPONSE: Without trained staff, the public's ongoing investment in new library technologies has decreased value. In addition to the ever-growing availability of free technology training via the Internet, New York's 23 public library systems offer a wide range of professional development and training programs for library staff, trustees, friends and the general public in response to the needs of member libraries and neighborhood branches (on average more than 4,600 sessions with some 59,000 participants annually are provided for library staff alone). The public library systems (including Mid York Library System in Utica) are actively engaged in planning training and support and developing resources to assist all of New York's public and association libraries in complying with the updated registration standards before January 1, 2021. This training will include technology training. In addition, library staff have access to

free technology training via Lynda.com, which is offered free of charge by the reference and research library resources systems, including the Central NY Library Resources Council. The New York State Library provides free online courses and webinars statewide, including some technology training, for all New York State library staff, trustees and volunteers via its cooperative partnership with OCLC WebJunction.