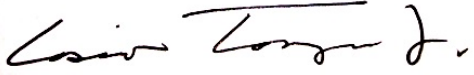



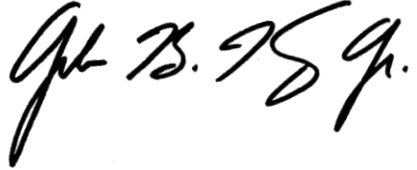


TO: The Honorable the Members of the Board of Regents

FROM: Cosimo Tangorra, 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: September 8, 2014

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt 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 a permanent rule at the September 2014 Regents meeting. A copy of the proposed amendment and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

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 At the June Regents meeting, the May emergency rule was repealed and a revised proposed amendment was adopted by emergency action, effective June 24, 2014.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 was published in the State Register on July 9, 2014. The proposed amendment was readopted at the July 9, 2014 Regents meeting to ensure that the rule remains continuously in effect until the effective date of its permanent adoption.

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 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 October 1, 2014.

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, revised and adopted by emergency action at the June Regents meeting, and readopted at the July Regents meeting. If adopted at the September Regents meeting, the proposed amendment will become effective as a permanent rule on October 1, 2014.

Attachment

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 October 1, 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 October 1, 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.

8 NYCRR §§ 200.16 and 200.20

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on July 9, 2014, the State Education Department (SED) received the following comments on the proposed amendment from a group of special education administrators.

1. COMMENT:

Support the proposed amendment to expand the background requirements of a chief executive officer, or a person assigned to perform the duties of a chief executive officer, to include individuals who hold 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 hold a New York State certification of license to provide an evaluation of and/or related service to a student with a disability; and the proposed amendment that clarifies that a chief executive officer must have knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

2. COMMENT:

The proposed qualifications of chief executive officers are too broad and basically include anyone. It is important that the executive director or persons assigned to perform the duties of a chief executive officer have at least the very same level of education and training as their staff and for them to not only have a thorough

understanding of the CPSE process, but to also be able to interpret the results of preschool evaluations and the implications of the results regarding eligibility for service.

DEPARTMENT RESPONSE:

The proposed rule requires that the executive director have knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities.

3. COMMENT:

Knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities is unnecessary as these credentials are not needed to run a successful program.

DEPARTMENT RESPONSE:

The Department believes it is necessary for the chief executive officer to have a working knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities to ensure the program is operating in compliance with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) and State law and regulations implementing IDEA for preschool students.