



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

TO: P-12 Education Committee

FROM: Ken Slentz

SUBJECT: Proposed Amendment of Section 119.5 of the Regulations of the Commissioner, relating to Random Selection Process for Charter School Student Applicants

DATE: December 2, 2011

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Regents adopt the proposed amendment of section 119.5 of the Commissioner's Regulations, to establish procedures for the conduct of the random selection process for charter school admissions, as required under Education Law Section 2854(2), as amended by Chapter 101 of the Laws of 2010.

Reason for Consideration

To implement State statute.

Proposed Handling

This item will be presented to the P-12 Education Committee for recommendation and to the Full Board for action at the December Regents meeting. A copy of the express terms of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

The Regents reviewed the proposed amendment at their September 2011 meeting in conjunction with the Charter School Office Update that was provided for that meeting. A Notice of Proposed Rule Making was published in the State Register on October 19, 2011. The public comment period runs until December 5, 2011. To date, the only public comment received was from the New York City Charter School Center

which indicated strong support for the proposed amendment. If any additional public comment is received by December 5, 2011, Department staff will present an Assessment of Public Comment providing a summary of those comments and the Department's response to the comments at the December Regents meeting. Should any public comment received necessitate substantial revisions to the proposed amendment as presented in this item, the item will be removed from the December Regents agenda and presented for action at a future Regents meeting, after publication of a Notice of Revised Rule Making and expiration of the 30-day public comment period required under the State Administrative Procedure Act.

Background Information

The proposed rule is necessary to establish procedures for the conduct of the random selection process for charter school admissions required under Education Law section 2854(2), as amended by Chapter 101 of the Laws of 2010, and to ensure that the process is performed in a transparent and equitable manner, consistent with the requirements of the statute.

Consistent with Education Law section 2854(2), the proposed rule:

1. requires charter schools to provide an enrollment preference to: (i) pupils returning to the charter school in the second or any subsequent year of operation; (ii) pupils residing in the school district in which the charter school is located or, in the case of the City School District of the City of New York, pupils residing in the community school district in which the charter school is located; and (iii) siblings of pupils already enrolled in the charter school. A charter school may also establish a single-sex charter school and/or establish enrollment preferences for students at-risk of academic failure, students with disabilities and English language learners;
2. requires charter schools to provide public notice of the date, time and place of the lottery, consistent with Public Officers Law section 104;
3. requires that:
 - person(s) conducting the selection of lottery applicants or acting as an impartial observer of such selection shall not be a board member or employee of the school, or a parent, person in parental relationship, grandparent, sibling, aunt, uncle or first cousin of any applicant to the school or of any pupil enrolled in the school;
 - the lottery be held in a space that is open and accessible to the public and capable of accommodating the anticipated number of attendees. If anticipated attendance exceeds capacity, separate grade level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law section 104;

4. permits a charter school to structure the actual lottery process in any manner consistent with its approved admissions policy and proposed section 119.5; and

5. permits the random process used in the lottery to be generated by any traditional lottery ball system, technology-based software, paper ticket process or other methodology which generates random results.

Recommendation

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

VOTED: that section 119.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 4, 2012.

Timetable for Implementation

If adopted at the December Regents meeting, the proposed amendment will become effective date on January 4, 2012.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 206, 207, 305 and 2854 and Chapter 101 of the Laws of 2010

Section 119.5 of the Regulations of the Commissioner of Education is added, effective January 4, 2012, as follows:

§119.5 Random Selection Process for Charter School Student Applicants. If the number of timely submitted applications of eligible students for admission to a charter school exceeds the capacity of the grade level of a charter school (or building if the school does not distinguish between grades), students shall be accepted for admission from among such applicants by a random selection process (lottery) pursuant to the requirements of this section.

(a) Preferences. (1) Notwithstanding the provisions of this section, a charter school shall provide an enrollment preference to:

(i) pupils returning to the charter school in the second or any subsequent year of operation;

(ii) pupils residing in the school district in which the charter school is located, or in the case of the City School District of the City of New York, pupils residing in the community school district in which the charter school is located; and

(iii) siblings of pupils already enrolled in the charter school.

(2) Establishment of specific school design. Consistent with the requirements of federal law and with the school design described in the school's charter, a charter school may also establish a single-sex charter school and/or establish enrollment

preferences for students at-risk of academic failure, students with disabilities and English language learners.

(b) Notice. The charter school shall provide public notice of the date, time and place of the lottery, consistent with Public Officers Law section 104.

(c) Procedures for conducting lottery.

(1) The person(s) conducting the selection of lottery applicants or acting as an impartial observer of the selection of lottery applicants shall not be a board member or employee of the school, or a parent, person in parental relationship, grandparent, sibling, aunt, uncle or first cousin of any applicant to the school or of any pupil enrolled in the school.

(2) The lottery shall be held in a space that is open and accessible to the public and capable of accommodating the anticipated number of attendees. If anticipated attendance exceeds capacity, separate grade level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law section 104. Nothing herein shall be construed to require or exclude attendance at the lottery by parents, persons in parental relationships, guardians and/or students participating in the admissions process.

(3) A charter school may structure the actual lottery process in any manner consistent with its approved admissions policy and this section.

(4) The random process used in the lottery may be generated by any traditional lottery ball system, technology-based software, paper ticket process or other methodology which generates random results.

(d) Records. The charter school shall document the lottery process, and make such records available to the Department and/or the charter authorizing entity upon request. Records shall be sufficiently detailed to enable the reviewer to identify the process used, compare the process used to the lottery procedures contained in the charter school's charter, and determine that the procedures used were consistent with those set forth in the charter.