



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Proposed Amendment to the Regulations of the Commissioner of Education Relating to Waivers from Corporate Practice Restrictions for Special Education Schools and Early Intervention Agencies to Provide Services under Section 6503-b of the Education Law

DATE: March 12, 2012

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents add a new section 59.15 to the Regulations of the Commissioner of Education and amend section 29.18 to the Rules of the Regents to implement Chapter 581 of the Laws of 2011, relating to waivers from corporate practice restrictions for special education schools and early intervention agencies to provide certain professional services?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed amendment will come before the Professional Practice Committee for approval and will then be presented to the Full Board for action at its March 2012 meeting.

Procedural History

The proposed amendments were discussed at the January 2012 meeting of the Professional Practice Committee. A Notice of Proposed Rule Making was published in

the State Register on January 11, 2012. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 581 of the Laws of 2011 added, among other things, a new section 6503-b to the Education Law authorizing the Department to issue waivers to special education schools (“schools”) and early intervention agencies (“agencies”) to enable them to employ licensed professionals or contract with licensees or professional business entities to provide certain professional services to children in need of their services. Absent such a waiver, employment or contracting for professional services in most licensed professions would conflict with restrictions on corporate practice under Title VIII of the Education Law.

The new law allows schools approved by the State Education Department and agencies approved by the Department of Health that are currently providing professional services to continue to do so until July 1, 2013. In order to continue to provide services after that date, schools or agencies must submit a waiver application to the Department within 120 days of the posting of the applications on the Office of the Professions website (www.op.nysed.gov). Once a school or agency applies, it will be able to continue to provide services until the application is approved or denied. These provisions avoid a disruption in professional services provided to children receiving early intervention or preschool services. However, if an application is denied by the Department, the entity must cease providing professional services in New York.

The purpose of Chapter 581 of the Laws of 2011 is to reconcile the provisions of Title VIII of the Education Law that prohibit corporate practice of certain licensed professions with the provisions of section 4410 of the Education Law and Title 2-A of Article 25 of the Public Health Law that contemplate that special education schools and early intervention agencies be able to provide multi-disciplinary evaluations, related services, and early intervention services recommended for a student.

Section 6503-b of the Education Law defines eligible entities and the professional services that may be offered by such entities, and provides for oversight by the Board of Regents. This section also requires, as part of the application process, that the entity provide attestations by each officer, director, and trustee of the entity that he or she is of good moral character. The fee for an initial waiver is \$345, although an entity that simultaneously applies for waivers as both a special education school and an early intervention agency only has to pay the \$345 fee once. An entity that receives a waiver under the law must apply for a renewal every three years and pay the triennial registration fee of \$260, or a pro-rated amount as determined by the Department. An approved entity must request a waiver certificate for each site at which professional services are provided and notify the Department in a timely manner if there are changes in the services provided or the location of the administrative office or sites operated by the entity.

The proposed regulations implement the provisions of law by setting forth the requirements to be met by a qualified entity in order to receive a waiver. These include, but are not limited to, verification from the appropriate regulatory agency that the entity

is a qualified special education school or early intervention provider. Since these entities are already approved by the Education Department or the Department of Health, there is a known population of entities that will apply for, and require, a waiver under 6503-b, which facilitates the implementation of this law. Although the granting of a waiver resolves the issue of the authority of the entity to provide professional services, only licensed or authorized persons may provide services, and the entity is responsible for verifying the licensure of providers and the appropriate supervision of interns or permit holders who are only authorized to practice under supervision. This will ensure that preschool students receive appropriate services from competent and qualified individuals who are accountable under the Education Law.

The proposed amendment of section 29.18 of the Rules of the Board of Regents implements the Board of Regents disciplinary authority over entities receiving waivers under Education Law section 6503-b. The amendment clarifies that the entity is subject to the same professional misconduct provisions as a licensed professional or professional business entity, including the same due process rights.

The Department received comments on the proposed amendment following a 45-day public comment period. None of the comments warrant a regulatory change. Attached is an assessment of public comment.

Recommendation

VOTED: That section 59.15 of the Regulations of the Commissioner of Education is added and section 29.18 of the Rules of the Board of Regents is amended as submitted, effective April 11, 2012.

Timetable for Implementation

If adopted at the March 2012 Regents meeting, the proposed amendment will become effective as a permanent rule on April 11, 2012.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6501, 6503, 6503-b, 6504, 6506, 6507, 6508, 6509, 6510, and 6511 of the Education Law.

1. A new section 59.15 of the Regulations of the Commissioner of Education is added, effective April 11, 2012, to read as follows:

§59.15 Waiver for certain special education schools and early intervention agencies providing certain professional services.

(a) Applicability.

(1) Section 6503-b(2)(a) of the Education Law authorizes the Department to issue a waiver for special education schools, as defined in section 6503-b(1)(a) of the Education Law, to provide the following services:

(i) conduct components of a multi-disciplinary evaluation as defined in section 6503-b(1)(d) of the Education Law; and

(ii) related services, as defined in section 6503-b(1)(f) of the Education Law.

(2) Section 6503-b(2)(b) of the Education Law authorizes the Department to issue a waiver for early intervention agencies defined in section 6503-b(1)(b), to provide the following services:

(i) early intervention program services, as defined in section 6503-b(1)(c) of the Education Law,

(ii) multi-disciplinary evaluations for purposes of an early intervention program, as defined in section 6503-b(1)(e) of the Education Law; and

(iii) service coordination services.

(b) Eligible entities. (1) To be eligible for a waiver under this section, an entity must be either:

(i) a special education school, as defined in section 6503-b(1)(a) of the Education Law, if seeking to provide the services set forth in paragraph (1) of subdivision (a) of this section; or

(ii) an early intervention agency, as defined in section 6503-b(1)(b) of the Education Law, if seeking to provide the services set forth in paragraph (2) of subdivision (a) of this section.

(2) Entities that do not require a waiver. In accordance with section 6503-b of the Education Law, the following entities do not require a waiver under this section:

(i) a school district, board of cooperative educational services, municipality, state agency, or other public entity;

(ii) a child care institution that conducts multi-disciplinary evaluations or provides related services through an approved private nonresidential school operated by such child care institution, provided that such school obtains a waiver pursuant to this section; and

(iii) a special education school or an early intervention agency that is otherwise authorized by law to provide the applicable professional services.

(c) Application for a waiver.

(1) To be approved to provide the services described in subdivision (a) of this section, without having to demonstrate the need for the entity's services, an eligible entity shall have obtained a waiver from the Department no later than July 1, 2013. The Department may, however, issue a waiver to a qualified entity after July 1, 2013, regardless of the date on which the entity was created, upon a demonstration of need for the entity's services satisfactory to the Department (e.g., the entity provides services to an underserved population or in a shortage area).

(2) Within 120 days after the posting of the application form on the Department's website, any entity described in subdivision (b) of this section providing services described in subdivision (a) of this section, shall submit an application for a waiver on forms prescribed by the Commissioner. Upon submission of an application for a waiver under this section, the entity may continue to operate and provide services until the Department either denies or approves the entity's application.

(3) An application for a waiver under this section shall be accompanied by the application fee of \$345, provided that where the applicant simultaneously applies for a waiver as a special education school and a waiver as an early intervention agency, the total waiver fee shall be \$345. The application shall include:

(i) the name of the special education school or early intervention agency;

(ii) evidence acceptable to the Department that the entity is either:

(a) a "special education school" as defined in section 6503-b(1)(a) of the Education Law; or

(b) an "early intervention agency" as defined in section 6503-b(1)(b) of the Education Law;

(iii) the primary address, phone number, website and email address for the entity;

(iv) contact information for the individual responsible for submitting the application for a waiver, including phone number and email address;

(v) the names and contact information of the directors, trustees and officers of the entity;

(vi) a listing of other jurisdictions in which the entity may provide the services described in subdivision (a) of this section;

(vii) an attestation by an officer authorized by the entity to make such attestation that:

(a) identifies the scope of services to be provided by the entity;

(b) includes a list of professions under Title VIII of the Education Law in which professional services will be provided by such entity;

(c) includes a statement that individuals authorized to provide professional services only under supervision will receive the required supervision;

(d) includes a description of how the services will be provided, including a description of whether the services will be provided by licensed or authorized individuals employed by the entity or provided through a contract with licensed professionals, individuals otherwise authorized to practice or a professional entity, as set forth in Education Law section 6503-b(6);

(e) includes a statement that only a licensed professional, a person otherwise authorized to provide such services, or a professional services entity authorized by law to provide such services shall provide such professional services as are authorized under this section;

(f) includes a statement that the entity will verify the licensure, limited permit or other authorization of individuals and professional entities providing services described in this section, as employees of or on behalf of the entity; and

(g) includes a statement that, unless otherwise authorized by law, the entity shall only provide services authorized under section 6503-b of the Education Law;

(h) the entity will comply with section 18 of the Public Health Law relating to patient access to records;

(i) the entity will comply with all applicable laws and regulations relating to privacy and access to records of any student, client or business record.

(j) the entity will make available any and all information requested by the Department relating to the entity's eligibility for a waiver and the entity's compliance with the requirements of this section and section 6503-b of the Education Law;

(k) the entity has adequate fiscal and financial resources to provide such services; and

(l) the statements on the application are true and accurate.

(d) Attestation of moral character.

(1) Each officer, director, and trustee of the entity shall submit, on forms prescribed by the Commissioner, an attestation regarding whether:

(i) the individual has been found guilty after trial, or pleaded guilty, no contest or *nolo contendere* to a crime (felony or misdemeanor) in any court;

(ii) the individual has criminal charges (felony or misdemeanor) pending in any court;

(iii) any licensing or disciplinary authority has refused to issue a license or has ever revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, or refused to renew a professional license or certificate held by the individual now or previously, or has ever fined, censured, reprimanded or otherwise disciplined the individual;

(iv) there are any pending charges against the individual in any jurisdiction for any sort of professional misconduct; or

(v) a hospital or licensed facility has restricted or terminated the individual's professional training, employment or privileges, or whether the individual has ever voluntarily resigned or withdrawn from such association to avoid imposition of such measure.

(2) Any information included in the application that indicates that a director or officer of the entity has committed an act which raises a reasonable question as to the individual's moral character shall be referred to the Director of the Office of Professional Discipline or his or her designee. The determination of whether an officer, director or trustee of the entity is of good moral character shall be made in accordance with the procedures specified in Subpart 28-1 of the Rules of the Board of Regents.

(e) Provision of professional services.

(1) Notwithstanding any other provision of the law to the contrary, a special education school or early intervention agency operating under a waiver pursuant to section 6503-b of the Education Law may employ individuals licensed or otherwise authorized to practice a profession as defined under Title VIII of the Education Law, to the extent the services are authorized by the waiver.

(2) Unless otherwise authorized by law, an entity that holds a waiver under this section shall not provide services in any profession other than those authorized pursuant to section 6503-b of the Education Law and included on the application for a waiver.

(f) Review of waiver applications. The application shall not be deemed acceptable if the entity has not submitted information identified in subdivisions (c) and (d) of this section. The Department may deny an application based on the failure of the applicant to submit the required information within a reasonable period of time, as determined by the Department. When, in the determination of the Department, all necessary information has been received, a decision to approve or deny the waiver application shall be made within 90 days of such determination. If the waiver application is denied, then the entity shall cease the provision of professional services as defined in

section 6503-b of the Education Law. The determination of the Department shall be final, and a copy thereof shall be forwarded to the applicant.

(g) Waiver certificates.

(1) An entity that has been issued a waiver under this section shall apply for a waiver certificate for each setting at which the entity provides professional services in New York.

(2) The application for additional certificates may be made as part of the initial application for a waiver or after the Department has approved the entity for a waiver under section 6503-b of the Education Law.

(3) Each waiver certificate shall display the name of the entity and the address of the site.

(4) Any entity that willfully fails to obtain a certificate of waiver for each site and/or to display the waiver certificate at each site shall be subject to the penalties set forth in section 6511 of the Education Law.

(5) An entity with an approved waiver may apply, on a form prescribed by the Commissioner, to amend the waiver to add additional professional services.

(h) Notification of changes.

(1) In the event that a change in the location of the chief administrative offices of a special education school or early intervention agency is contemplated, the owner shall notify the Department at least 30 days prior to relocation.

(2) An entity that is issued a waiver pursuant to section 6503-b of the Education Law shall notify the Department within 60 days of other changes in the information supplied to the Department, including but not limited to a change in the:

(i) name and terms of officers or directors;

(ii) site(s) at which professional services are provided;

(iii) person responsible for filing the waiver application on behalf of the entity or the contact information for such person; and/or

(iv) a transfer or assignment of interest as set forth in subdivision (i) of this section, provided that the entity shall notify the Department immediately of such change. Notification shall be made in a form prescribed by the Department.

(i) Transfer or assignment of waiver. A waiver issued by the Department pursuant to section 6503-b of the Education Law shall not be transferable or assignable. For purposes of this section, a transfer or assignment shall mean the conveyance of a waiver under this section from one entity to another entity by any means, including but not limited to a merger, consolidation, or a change in control of the entity.

(j) Triennial application. A waiver issued pursuant to this section shall be valid for three years. An entity that is issued a waiver pursuant to this section shall submit to the Department for review an application for renewal of the waiver every three years with the triennial registration fee of \$260, or a prorated portion thereof, as determined by the Department.

(k) Notwithstanding any other provision of law to the contrary, upon revocation or other termination by the commissioner of approval of the special education school pursuant to Article 89 of the Education Law and the provisions of this Title implementing such article or termination of the early intervention agency pursuant to Title 2-A of Article 25 of the Public Health Law and implementing regulations by the commissioner pursuant to section 4403(18) of the Education Law, the school's or early intervention agency's waiver pursuant to this section shall be deemed revoked and annulled.

2. Section 29.18 of the Rules of the Regents is amended, effective April 11, 2012, to read as follows:

§29.18 Unprofessional conduct in waived entities.

(a) An entity that is issued a waiver pursuant to section 6503-a or 6503-b of the Education Law [and section 59.14 of this Title] shall be under the supervision of the Board of Regents and subject to the disciplinary procedures and penalties set forth in subarticle 3 of article 130 of the Education Law. Any such waiver shall be subject to suspension, revocation or annulment for cause, and any entity holding such a waiver shall be subject to disciplinary proceedings and penalties in the same manner, to the same extent, and for the same reasons as individuals and professional entities practicing the same profession, as provided in title VIII of the Education Law and this Part. For purposes of this subdivision, a certificate of waiver shall be considered the same as a license to practice a profession.

(b) Failure to disclose information. It shall be unprofessional conduct for an entity issued a waiver pursuant to [section] sections 59.14 or 59.15 of this Title to have failed to disclose all information required by the department in order to make an accurate determination of the entity's waiver application. This shall include the failure to notify the department that a director or officer of the entity has committed an act which raises a reasonable question as to moral character.

(c) [Penalties for professional misconduct. The Board of Regents may impose upon an entity found guilty of unprofessional conduct under this section those penalties and fines authorized in section 6511 of the Education Law.]

Professional services. It shall be unprofessional conduct for an entity operating under a waiver pursuant to section 6503-a or 6503-b of the Education Law to practice any profession licensed pursuant to Title VIII of the Education Law or to hold itself out to the public as authorized to provide professional services, except as authorized by section 6503-a or 6503-b of the Education Law or otherwise authorized by law.

(d) In accordance with section 6503-b(7) of the Education Law, a special education school or early intervention agency granted a waiver under section 59.15 of this Title that conducts or contracts for a component of a multi-disciplinary evaluation that involves the practice of medicine by an individual subject to disciplinary proceedings in accordance with sections 230 and/or 230-b of the Public Health Law shall be subject to the pre-hearing procedures and hearing procedures as are provided with respect to individual licensees in Title 2-A of Article 2 of the Public Health Law.

(e) Penalties for professional misconduct. The Board of Regents may impose upon an entity found guilty of unprofessional conduct under this section those penalties and fines authorized in section 6511 of the Education Law.

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on January 11, 2012, the State Education Department received the following comments.

COMMENT: A commenter asked for clarification whether the waiver “travels with the entity,” in the case of a change to the ownership of an entity holding a waiver or a merger with another entity. The commenter noted that section 59.15(i) speaks to the “Transfer or Assignment of Waiver” and suggested that the regulation should make clear that the entity itself has propriety over the waiver, even if the ownership situation or personages of the entity change.

RESPONSE: The commenter is correct that the entity retains the waiver if a change of ownership should occur, unless the change constitutes a change in control of the entity, in which case it may constitute a prohibited transfer.

COMMENT: A commenter asked if some of the information provided with an application waiver under section 6503-a of the Education Law , may be transferable to comply with similar requirements for a waiver under section 6503-b.

RESPONSE: The Department will work with an entity seeking a waiver under 6503-b to consider and review as part of that application any information that was submitted as part of an application for a waiver under 6503-a.

COMMENT: The commenter asked whether an approved private school for the education of students with disabilities is exempt from the waiver requirement, as the schools are currently under the supervision of the Education Department.

RESPONSE: The school should obtain a waiver, unless it has a clear exemption from corporate practice restrictions, such as a school that is also a health facility licensed under Article 28 of the Public Health Law. Since all such approved schools are

not the same, each should make the decision to apply based on the specific circumstances.

COMMENT: A commenter indicated that the \$345 application fee and the \$260 triennial registration fee established in law are excessive, given that the rates for approved private schools remain at the 2008 level.

RESPONSE: As noted by the commenter, the fee is established in law and cannot be changed by regulation. The fee provides funding for the new responsibilities given to the New York State Education Department (NYSED), including the review, approval and issuance of waivers and the disciplinary process.

COMMENT: A commenter asked if the waiver will apply to a professional services entity that is authorized to provide certain services, but wants to provide additional early intervention services beyond those that the entity is otherwise authorized to provide.

RESPONSE: No, a professional services entity can only provide those early intervention services that it is lawfully authorized to provide.

COMMENT: Please clarify if the exemption from a waiver, as defined in section 59.15(b)(2), applies only to the provision of special education services.

RESPONSE: If an entity is exempt from the waiver under this section, it may provide the services specified in 6503-b(2)(a) and (b), provided that the entity is legally authorized to provide services.

COMMENT: Please clarify if the exemption from a waiver, as defined in section 59.15(b)(2) for a child care institution, extends to early intervention services.

RESPONSE: A child care institution that provides early intervention services may be required to obtain a waiver if such services are provided directly by the child care institution.

COMMENT: Section 59.15(c)(1) indicates that an entity applying for a waiver after July 1, 2013 must demonstrate a need for the entity's services. The New York State Department of Health (NYSDOH) suggests that, at a minimum, the Education Department consult with and/or obtain from NYSDOH a recommendation in determining the need for early intervention agencies.

RESPONSE: The law and regulations imply a collaboration between NYSED and NYSDOH, and we look forward to working with our colleagues to determine the need for agencies and services.

COMMENT: Section 59.15(c)(3)(ii)(b) states the application must include evidence that the entity is an approved agency, as defined in the Education Law. Does this process require that the entity already be an approved early intervention agency? Does the process allow an applicant for a waiver to be in the process of receiving a NYSDOH approval as a new agency?

RESPONSE: When the Education Department establishes the process for review and approval of waiver applicants, it will allow an entity that is approved, or has an application pending with NYSED or NYSDOH, to apply for a waiver. The issuance of a waiver may be dependent on approval by the agency, or the approval of the agency may be dependent on the issuance of a waiver, depending upon the procedures that will be developed.

COMMENT: Section 59.15(c)(3)(vi) of the regulation requires an entity to include a list of jurisdictions in which the entity may provide services. Please clarify the definition of "jurisdiction" and would this restrict an approved EI agency from providing a home and community based service in jurisdictions that were not listed in the application?

RESPONSE: The definition of jurisdiction would include other states, territories or the District of Columbia. The Department asks for this information in the event it is necessary to review any disciplinary action against an entity in another U.S. jurisdiction.

COMMENT: Section 59.15(c)(3)(vii)(h) states the entity will comply with section 18 of the Public Health Law relating to patient access to records. Access to early intervention records is governed by the Family Educational Rights and Privacy Act (FERPA) and perhaps this regulation is intended to address the records maintained by physicians involved in multi-disciplinary evaluations. Please clarify?

RESPONSE: A licensed professional or entity is required to comply with all state or federal laws or regulations relating to privacy and access to records. In the event that FERPA is applicable, those rules for access to records would apply.

COMMENT: Under section 59.15(d)(2) the application must include an attestation of moral character from each director, officer or trustee of the entity seeking a waiver, and questions will be referred to the Office of Professional Discipline and the determination made in accordance with Subpart 28-1 of the Rules of the Board of Regents. Does this process allow for an interagency exchange of information since the continued approval as an EI agency should also be re-assessed should there be a discovery related to moral character?

RESPONSE: Education Law section 6510(8) states that investigation files related to the moral fitness of an applicant are confidential, but allows the NYSED to share information with other duly authorized public agencies responsible for professional regulation or criminal prosecution. Therefore, the Department may consult with NYSDOH or other agency, as appropriate, in the review of a question of an applicant's moral character.

COMMENT: NYSDOH suggests that section 59.15(e)(1) be amended to clarify that a special education school or early intervention program operating under a waiver may employ “or contract with” individuals licensed or otherwise authorized to practice a profession.

RESPONSE: The comment has already been addressed in subdivision 59.15(d) which requires the entity, as part of the application, to describe whether the services will be provided by licensed or authorized individuals employed by the entity or provided through a contract with licensed professionals or individuals otherwise authorized to practice or a professional entity, as set forth in Education Law section 6503-b(6). Therefore, a clarification of section 59.15(3)(1) is not required.

COMMENT: Section 59.15(f) states an application may be denied if all necessary information has not been received. We suggest that this process allow for notification to the NYSDOH of the determination to deny an application, with respect to an early intervention agency.

RESPONSE: The Education Department concurs with the suggestion and will provide notification to the NYSDOH if any application is denied. It should be noted that all approved entities will be posted on the Office of the Professions website: www.op.nysed.gov.

COMMENT: Section 59.15(f) states that, if an application is denied, the entity must cease the provision of professional services. Does this allow for a period of time for the transitioning of services to new agencies or must the provision of professional services end immediately upon the NYSED notification of denial?

RESPONSE: Education Law 6503-b(3)(b) states that if the waiver application is denied the school or agency shall cease providing such services in the State of New York. The regulation is consistent with the statute.

COMMENT: Section 59.15(g)(1) states an entity must display a waiver certificate for each setting at which professional services. The commenter asked for clarification about this requirement when the agency provides services in the client's home and there may not be a facility operated by the agency.

RESPONSE: Similar to section 59.8(c) of the Commissioner's Regulations, which requires a licensed professional to display the registration certificate, where practice is carried on in places other than individual offices, the entity shall have a current waiver certificate available for inspection at all times.

COMMENT: Section 59.15(g)(2) states that an application for additional waiver certificates may be made as part of the initial application or after the Department has approved the entity for a waiver. Please clarify if the agency will be required to pay a fee if they apply for additional certificates after submitting the initial waiver application.

RESPONSE: The regulations do not impose any fee for additional waiver certificates, if the entity has paid the initial application fee.

COMMENT: Section 59.15(g)(5) allows an entity to submit an amended application to include additional professional services. In the case of an early intervention program applying for a waiver, would NYSED seek the input of NYSDOH in regard to those entities?

RESPONSE: The Department plans to consult with NYSDOH, as appropriate, throughout its review of applications.

COMMENT: Section 59.15(h)(1) and (2) state that an entity holding a waiver must notify the NYSED within 30 days if there is a change in the location of its executive offices and within 60 days if there are other changes in the information supplied to the Department. The NYSDOH asks for clarification if NYSED plans to approve or deny any planned changes or if the notification can be submitted after the fact.

RESPONSE: The NYSED would expect that notification be made after a planned change of address, phone number, etc., has been made, in order to ensure that NYSED can contact the entity in the future. Whether the Department would approve or deny any planned change would depend on the nature of the change submitted.

COMMENT: Section 59.15(j) states a waiver is valid for three years and an entity must submit an application for renewal. The NYSDOH asks if NYSED contemplates posting information about an entity's waiver status, including expiration date, on the Office of the Professions website. Further, will there be a process by which NYSDOH is notified regarding the decisions of an early intervention agency?

RESPONSE: The Department will post on the Office of the Professions website (www.op.nysed.gov) information about entities, including the date a waiver certificate expires.

COMMENT: Section 29.18 of the Regents Rules indicates that an entity holding a waiver is subject to the same disciplinary procedures and protections as a licensed individual or professional corporation. Will this process allow for the disclosure of information to the NYSDOH regarding the investigation and resulting decision for those entities which are EI agencies?

RESPONSE: As noted in the earlier response, under Education Law section 6510(8) information about pending investigations and disciplinary action is protected, but may be shared with "other duly authorized public agencies responsible for professional regulation or criminal prosecution." All final actions taken by the Board of Regents will be posted on the Department's website, the same as for actions taken against a licensed individual or professional entity.

COMMENT: One commenter expressed strong opinions about the provisions of Chapter 581 of the Laws of 2011 to allow the Department to issue waivers from

corporate practice restrictions to for-profit providers, and urged that the Department oppose the waiver process to ensure public protection.

RESPONSE: The Department is implementing legislation that it supported to ensure that special education schools and early intervention agencies providing services to children are accountable to the Board of Regents, thus providing public protection.