



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

**TO:** Full Board

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

**SUBJECT:** Proposed amendment of section 105.3 of the Regulations of the Commissioner of Education, relating to Special Act School Districts

**DATE:** August 26, 2010

**STRATEGIC GOAL:** Goals 1 and 2

**AUTHORIZATION(S):**

### Summary

#### Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment of section 105.3 of the Commissioner's Regulations, relating to the appointment of public members of boards of education of special act school districts?

#### Reason(s) for Consideration

Review of policy.

#### Proposed Handling

The proposed amendment will be presented to the Full Board for action at the September 2010 Regents meeting.

#### Procedural History

The proposed amendment was discussed by the P-12 Education Committee at the July 2010 Regents meeting.

#### Background Information

Commissioner's Regulations §105.3(b) generally provides for uniform, consecutive four-year terms for all public members that commence on the first day of a school year (July 1st) and end on the last day of the fourth school year thereafter (June 30th). However, because of the unavailability of persons willing to serve at the

prescribed times, it is not possible for the Commissioner to appoint public members in accordance with the current language in the regulation. The proposed amendment will provide more flexibility for the appointment of public members based upon their availability to serve.

A Notice of Proposed Rule Making was published in the June 30, 2010 State Register. An Assessment of Public Comment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

#### Recommendation

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

VOTED: That section 105.3 of the Rules of the Board of Regents be amended, as submitted, effective October 6, 2010.

#### Timetable for Implementation

If adopted by the Board of Regents at the September 2010 Regents meeting, the proposed amendment will take effect on October 6, 2010.

Attachment

PROPOSED AMENDMENT OF SECTION 105.3 OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 101, 207, 305, 308 AND 309 AND CHAPTERS 628 AND 629 OF THE LAWS OF 2004, RELATING TO THE COMPOSITION OF BOARDS OF EDUCATION OF SPECIAL ACT SCHOOL DISTRICTS

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on June 30, 2010, the State Education Department received the following comment.

COMMENT: The proposed amendment will provide more flexibility for the appointment of public members of Special Act boards of education based upon their availability to serve. Problems still remain with the appointment and reappointment processes. Candidates have expressed that the appointment process is lengthy and cumbersome which can cause delays in candidates serving on Special Act boards. Concern was expressed that any perceived lack of interest in serving as a public board member may be the result of the process and not reflective of community commitment to Special Act schools. It is recommended that (1) clear deadlines within the appointment process be established to ensure its timeliness; (2) the State Education Department be required to issue a public notice of the availability of a pending open public members position in local papers; and (3) a streamlined process be developed for the reappointment of a public member when no other applications for appointment are received.

DEPARTMENT RESPONSE:

The recommendations are beyond the scope of the proposed amendment, which is intended to replace the current provisions in Commissioner's Regulation §105.3(b)

and (c) providing for uniform, consecutive 4-year terms for all public members that commence on the first day of a school year (July 1st) and end on the last day of the fourth school year thereafter (June 30th), with provisions establishing terms commencing and ending on such dates as determined by the Commissioner, and thereby provide flexibility for the appointment of public members based upon their availability to serve.

The appointment of public members to the boards of education of Special Act school districts is by design a thorough process of review and approval. An internal State Education Department committee reviews all applications to ensure that each candidate meets the minimum qualifications for interview and for possible appointment. Applications that pass the internal review process are forwarded to a local interview team comprising a district superintendent of schools, a duly licensed certified public accountant or public accountant; and individuals recommended by organizations representing superintendents of schools and/or boards of education and teachers. Upon completion of the local interview team process, recommendations for appointment are forwarded to the Department. A team of senior Department staff reviews the recommendations with the district superintendent who managed the local interview process. As a result of this discussion, a recommendation is forwarded to the Commissioner for review and appointment.

Since circumstances may change regarding a person's eligibility in the four years since the original appointment, reappointments to Special Act boards follow the same procedures as the original appointment process with one major exception: the final review by senior Department staff is eliminated. The Department will continue to make every effort to expedite appointments and reappointments of public members without

jeopardizing the integrity of the process.

In certain areas of the state, it has been difficult to get candidates to serve as public members on Special Act boards. Due to fiscal constraints, the Department is not able to advertise openings in local newspapers. However, the Department is involved in other outreach activities, including: placing the application and necessary information prominently on the website of the Office of Elementary, Middle, Secondary and Continuing Education; encouraging district superintendents with Special Act schools in their supervisory districts to help recruit candidates; and, through the district superintendents, enlisting the assistance of local organizations and agencies to advertise Special Act public member vacancies.

**AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION**

Pursuant to Education Law sections 101, 207, 305, 308 and 309 and Chapters 628 and 629 of the Laws of 2004

Section 105.3 of the Regulations of the Commissioner of Education is amended, effective October 6, 2010, as follows:

§ 105.3 Appointment of public members.

(a) . . .

(b) The full term of office of a public member shall be 4 [ school ] years, [ provided that the public members initially appointed in the 2005-06 school year shall be appointed for the balance of the term commencing on July 1, 2005 and ending on June 30, 2009, and provided further that after such initial appointments, ] commencing and ending on such dates as determined by the Commissioner, provided that the term

of public members may be changed in accordance with subdivision 3 of section 2105 of the Education Law upon at least sixty days advance notice to the Commissioner.

(c) In the event a public member vacates his or her office during its term pursuant to section 2112 of the Education Law, the Commissioner may appoint an eligible person in the manner prescribed in this section for the remaining balance of the term of office, or [ may fill such position by appointment ] for a full term [ commencing on July 1 next succeeding the date on which the vacancy occurred ] commencing and ending on such dates as determined by the Commissioner.

(d) . . .