
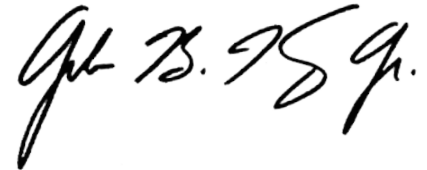




TO: The Honorable the Members of the Board of Regents
FROM: Ken Slentz 
SUBJECT: Emergency Adoption of Proposed Technical Amendment to section 3.16 of the Rules of the Board of Regents, Relating to the Delegation of Authority with respect to certain Charter School Hearings

DATE: May 9, 2012

AUTHORIZATION(S):



SUMMARY

Issue for Decision

Should the Board of Regents adopt on an emergency basis the proposed technical amendment of section 3.16 of the Rules of the Board of Regents, relating to the delegation to the Commissioner of Education of the Board of Regents' authority to conduct certain charter school public hearings required by Article 56 of the Education Law?

Reason(s) for Consideration

Implementation of Regents Policy.

Proposed Handling

This proposed amendment will be presented to the Board of Regents for discussion and adoption as an emergency action at the May 2012 meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Background Information

The purpose of the proposed technical amendment is to conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner,

on behalf of the Board of Regents hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a). Having the Board of Regents personally conduct and hold such hearings is not practical, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members, and having the Commissioner, through Department staff, hold such hearings provides for the most efficient and expeditious means to conduct such hearings.

Recommendation

VOTED: That subdivision (b) of section 3.16 of the Rules of the Board of Regents, be amended, as submitted, effective May 22, 2012, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare, in order to immediately clarify the authority of the Commissioner of Education to conduct, on behalf of the Board of Regents, all public hearings for purposes of soliciting community comments on charter school matters as required pursuant to Article 56 of the Education Law, and thereby ensure that any such public hearings may be timely conducted pursuant to statutory requirements.

Timetable for Implementation

If adopted at the May Regents meeting, the emergency rule will become effective on May 22, 2012 and will remain in effect for 90 days. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September Regents meeting. A second emergency action will be necessary at the July Regents meeting in order to assure that the May emergency rule remains continuously in effect until the effective date of its permanent adoption in September.

Attachment

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 206, 207, 305 and 2857 of the Education Law

Subdivision (b) of section 3.16 of the Rules of the Board of Regents is amended, effective May 22, 2012, as follows:

(b) Hearings. The Board of Regents delegates to the Commissioner of Education the authority to conduct and hold public hearings as required pursuant to Article 56 of the Education Law to solicit comments from the community including, but not limited to, hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

PROPOSED AMENDMENT OF SECTION 3.16 THE RULES OF THE BOARD OF REGENTS PURSUANT TO EDUCATION LAW SECTIONS 101, 206, 207, 305 AND 2857 AND CHAPTER 57 OF THE LAWS OF 2007, RELATING TO THE DELEGATION OF AUTHORITY TO CONDUCT AND HOLD PUBLIC HEARINGS CONCERNING CHARTER SCHOOLS UNDER EDUCATION LAW SECTION 2857(1-a)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The purpose of the proposed technical amendment is to conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a). Having the Board of Regents personally conduct and hold such hearings is not the most appropriate and efficacious practice, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members, and having the Commissioner, through Department staff, hold such hearings provides for the most efficient and expeditious means to conduct such hearings.

Because the Board of Regents meets at fixed intervals, and generally does not meet in the month of August, the earliest the proposed amendment could be presented for regular adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 10-11, 2012 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at

the September meeting, would be October 3, 2012, the date a Notice of Adoption would be published in the State Register. However, it is anticipated that the Department may need to conduct public hearings in accordance with Article 56 of the Education Law as early as the end of May 2012. Emergency action is therefore necessary for the preservation of the general welfare to immediately clarify the authority of the Commissioner of Education to conduct, on behalf of the Board of Regents, all public hearings for purposes of soliciting community comments on charter school matters as required pursuant to Article 56 of the Education Law, and thereby ensure that any such public hearings may be timely conducted pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their September 10-11, 2012 meeting, which is the first scheduled meeting after expiration of the 45 day public comment period mandated by the State Administrative Procedure Act.