



**Department of
Education**

Dennis M. Walcott, Chancellor

Public Comment Analysis

Date: June 25, 2012

Topic: Proposed Chancellor's Regulation D-125

Date of Panel Vote: June 26, 2012

Summary of Chancellor's Regulation D-125

Chancellor's Regulation D-125 is a new regulation. The regulation sets forth an ethics code for all voting members and nominees of the Citywide Council on Special Education, the Citywide Council on High Schools, the Citywide Council on English Language Learners, and the District 75 Council, collectively referred to as the citywide councils. The regulation prescribes conflicts of interest rules regarding the conduct and outside activities of citywide council members and nominees for citywide councils. Waivers of particular provisions of the regulation may be granted by the Department of Education ("DOE") Ethics Officer under special circumstances.

Summary of Issues Raised in Written and Oral Comments and Significant Alternatives Suggested

Comments received are summarized as follows:

- 1) Regulation D-125 I.K should be revised to state: "Citywide council members may not be paid to act as lawyers or advocates for a private interest or as experts against the DOE's interest in any lawsuit or administrative hearing, except on behalf of their own children." (proposed language underlined). The regulation should permit Community Education Council ("CEC") members to make unpaid appearances at the DOE in the following scenarios: a CEC member is subpoenaed; a CEC member is a material witness; and a CEC member wants to help a family member or friend on a DOE lawsuit or at a DOE hearing. The regulation also does not address situations where a CEC member's livelihood includes education-related legal work. Further, provision I.K limits who parents can bring to DOE hearings to help them.
- 2) Does D-125 I.K effectively ban CEC members who are lawyers or law students from doing pro-bono work in educational advocacy, such as representing students in suspension hearings?
- 3) Would non-profit organizations such as Advocates for Children be considered "private interests" under D-125 I.K?

**Analysis of Issues Raised, Significant Alternatives Proposed and
Changes Made to the Proposal**

The DOE made no changes to Chancellor's Regulation D-125 for the reasons explained below. The regulation will be presented to the Panel as posted.

Comment 1 does not take into account that D-125 applies to citywide council members, and not to CEC members. CEC members are considered part-time public servants by the New York City Conflicts of Interest Board ("COIB") and are bound by the New York City Conflicts of Interest Laws and Chancellor's Regulation C-110 on conflicts of interest. CEC members are already prohibited from appearing before the DOE as lawyers or advocates, paid or unpaid, pursuant to the City's conflicts of interest laws. The DOE submits waiver requests to COIB in special circumstances, and COIB decides whether to grant the waivers. Section I.K seeks to prohibit situations where council members are in a position to misuse their council position and/or title at a hearing for a family member, friend, or business associate, and/or where their activities are in conflict with their council duties and the purposes and interests of the council. D-125 I.K proposes to apply the same rules that CEC members follow regarding appearances before the DOE to citywide council members, and the DOE Ethics Officer may grant waivers in special circumstances.

If a citywide council member is subpoenaed or is a material witness and needs to appear before the DOE, he/she is not acting as a lawyer or advocate, so provision I.K does not apply, and the council member may honor the subpoena or appear as a witness.

With respect to citywide council members who may work in the legal educational field, depending on the facts, it may or may not be a conflict of interest for them to serve on a citywide council. The DOE Ethics Officer may grant waivers in special circumstances, and there may or may not be restrictions on interaction with the DOE.

With respect to parents' rights to be accompanied to hearings, parents may be accompanied to hearings, subject to all applicable laws, rules, and regulations.

Comment 2 on Section I.K also does not take into account that the proposed regulation applies to citywide council members. CEC members seeking to do pro-bono work in educational advocacy against the DOE are already prohibited from doing so, unless they obtain a waiver. D-125 I.K proposes to apply the same rules that CEC members follow regarding appearances before the DOE to citywide council members. (See also response to Comment 1).

The answer to the question posed in Comment 3 is yes. Non-profit organizations such as Advocates for Children are considered private interests under D-125 I.K.

A copy of the proposed Regulation can be obtained at:
<http://schools.nyc.gov/AboutUs/leadership/PEP/publicnotice/2011-2012/June2012PEPRegulations>

