



**Department of
Education**

Dennis M. Walcott, Chancellor

Public Comment Analysis

Date: June 25, 2012

Topic: Proposed Amendments to Chancellor's Regulation D-140

Date of PEP Vote: June 26, 2012

Summary of Proposed Amendments to Chancellor's Regulation D-140

Chancellor's Regulation D-140, Process for the Nomination and Selection of Members of the Community Education Councils Including Filling Vacancies, sets forth the procedures of the NYC Department of Education ("DOE") for the nomination and selection of Community Education Council ("CEC") members. The proposed amendments to the regulation were posted for public comment on May 11, 2012. A further amendment was posted on June 11, 2012. The following amendments have been proposed:

- Candidate eligibility requirements have been updated to provide that CEC nominees must be parents of students in grades K-8 who currently attend a school under the jurisdiction of the community school district in which the nominees wish to serve on the CEC.
- Eligibility is determined as of the date the parent submits an application to run for a position on a CEC.
- The conflicts of interest provision has been expanded to apply to generalized conflict issues (as opposed to just financial conflicts).
- Nominees are permitted to submit applications for more than one CEC or Citywide Education Council.
- Nominees are required to list information on their application regarding each school under the jurisdiction of the community school district where they currently have a child in attendance.
- If nominees wish to be eligible to fill the one seat on the CEC that is reserved by statute for the parent of a child with an individualized education program ("IEP"), they must indicate on their application that they expressly consent to the disclosure of information regarding the fact that they are an IEP parent.

- If nominees wish to be eligible to fill the one seat on the CEC that is reserved by statute for the parent of a child who is an English language learner (“ELL”), they must indicate on their application that they expressly consent to disclosure of information regarding the fact that they are an ELL parent.
- The parent advisory vote has been eliminated from the selection process.
- The procedures for conducting the Nominees’ Forums have been updated to provide for enhanced involvement of the Presidents’ Councils.
- The selection rules have been amended to provide that the seven nominees who received the highest number of votes will be deemed conditionally selected, except that no school may have more than one representative on the CEC.
- The IEP and ELL parents who received the highest number of votes will be deemed conditionally selected, except that the IEP or ELL parent may be removed from consideration if they come from the same school as a conditionally selected parent who received a higher number of votes.
- A nominee who is both an IEP parent and an ELL parent may fill either the seat reserved for an IEP parent or the seat reserved for an ELL parent, but not both.
- The restrictions against selecting multiple candidates from the same school shall not apply where the application of the restrictions would result in fewer than nine parents being selected, or in no IEP parent or ELL parent being seated on the CEC.
- If a runoff is necessary because one or more seats remain unfilled by operation of the restrictions against selecting multiple candidates from the same school, then all nominees who have not been selected already and whose children do not attend a school already represented on the CEC will be eligible to be selected in the runoff.
- If multiple runoffs are necessary, the runoffs will be conducted at the same time but in separate segments, with nominees grouped pursuant to the requirements of this regulation.
- Nominees seeking to serve as a Borough President appointee to a CEC must submit an application to the Borough President’s office.
- Individuals interested in filling vacancies on a CEC must submit an application, which may be obtained from the applicable CEC or from the Division of Family and Community Engagement (FACE).
- If a person is selected to fill a vacancy in a position appointed by the Borough President for a partial term of less than two years, such partial term shall not be deemed to count toward the calculation of term limits for Borough President appointees, except that no person who has previously served as a Borough President appointee for a length of time

equivalent to two full terms shall be eligible to fill a vacancy in a position appointed by the Borough President.

- All references to the Office for Family Engagement and Advocacy (OFEA) have been changed to refer to the Division of Family and Community Engagement (FACE).

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

The DOE received comments from 9 commentators during the public comment period. The comments received are summarized as follows:

- 1) It appears that the regulation may no longer incorporate a “2 year rule,” which allowed a parent to serve on a CEC if their child attended a school under the jurisdiction of the community school district within the preceding two years, but does not currently attend such a school.
- 2) The DOE Ethics Officer should be expressly required to consult with the NYC Conflicts of Interest Board prior to making a determination as to whether a nominee has a conflict of interest under Section I.A.3.c of the regulation. It should be noted that this comment concerns pre-existing language already contained in the regulation, and does not address the proposed revisions.
- 3) Under Section II.A of the regulation, nominees who are running for multiple education councils should be required to publicly disclose how they rank-ordered the councils to which they are applying in order of preference.
- 4) The parent advisory vote should not be eliminated from the selection process, in order to provide the designated selectors with information about the will of the broader parent community.
- 5) The definition of an “English language learner” set forth in Section II.D (FN4) should be amended in order to make it easier to fill vacant CEC seats that are reserved for ELL parents. It should be noted that this comment concerns pre-existing language already contained in the regulation, and does not address the proposed revisions.
- 6) A nominee who has children enrolled in several different schools should be permitted to choose which of the schools the nominee will represent for purposes of the prohibition in Section V.A.4 of the regulation, which provides that no school may have more than one parent representative on the CEC.
- 7) For nominees who have children enrolled in several different schools, the DOE should allow them to be seated on a CEC under Section V.A.4.b of the regulation so long as at least one of the schools that they represent is not otherwise represented on the CEC, even if the other school(s) that they represent are otherwise represented on the CEC.

- 8) Nominees who seek to serve as the IEP or ELL parent on a CEC should not be considered a representative of any particular school under Sections II.B or V.A.4.b of the regulation.
- 9) A school should be permitted to have more than one parent representative under Section V.A.4.b of the regulation, so long as at least seven, distinct schools are ultimately represented on the CEC.
- 10) Under Section II.B of the regulation, nominees who, at the time of application, have children enrolled in grades 5 thru 8 should not be considered a representative of their child's current school if their child will be departing that school the following year.
- 11) Section V.A.2 of the regulation should not require selectors to "attempt to ensure" that "membership reflects a representative cross-section of the community and the diversity of the student population," or that "the enrollment figures in the district and the potential disparity of such enrollment from school to school are considered." Selectors cannot ensure that these goals will be attained if they are only able to cast two votes during the initial selection round to fill the nine open seats on a CEC. It should be noted that this comment concerns pre-existing language already contained in the regulation, and does not address the proposed revisions.
- 12) Designated selectors should be permitted to vote for nine nominees under Section V.A.1 of the regulation, instead of being limited to two votes. It should be noted that this comment concerns pre-existing language already contained in the regulation, and does not address the proposed revisions.
- 13) Nominees who do not receive any votes in the initial selection process should not be permitted to participate in runoff elections under Section V.A.5 of the regulation.
- 14) With respect to Section V.A.5.f of the regulation, if a runoff fails to result in all seats being filled on the CEC, vacancies should be declared in all cases, and the winner should not be determined by lot under any circumstances.
- 15) The DOE should not authorize runoffs to take place unless four or more seats remain unfilled on a CEC following the initial selection process. If less than four seats remain unfilled following the initial selection process, vacancies should be declared and filled in accordance with Section IX.A of the regulation.
- 16) Under Section IX.A.1 of the regulation, a CEC should not be required to declare that a member has vacated their seat if the member incurs three, unexcused absences. It should be noted that this comment concerns pre-existing language already contained in the regulation, and does not address the proposed revisions.
- 17) Under Section IX.A of the regulation, the Presidents' Council should be empowered to temporarily fill a vacancy on a CEC until a permanent candidate is selected to serve the

remainder of the unexpired term. It should be noted that this comment concerns pre-existing language already contained in the regulation, and does not address the proposed revisions.

18) The term limits set forth in Section V.B of the regulation should be clarified in order to establish that a Borough President appointee who fills a vacancy mid-term may be permitted to serve up to an additional two terms.

19) The regulation should define the process for conducting CEC officer elections following the CEC selection process. It should be noted that this comment concerns pre-existing language already contained in the regulation, and does not address the proposed revisions.

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

On June 11, 2012, the DOE accepted one change and included it in the revised regulation. This change was:

- With regard to comment 18, while it is not a substantial revision, the DOE has added the following language to the regulation: “If a person is selected to fill a vacancy in a position appointed by the Borough President for a partial term of less than two years pursuant to Section IX.A.4 of this regulation, such partial term shall not be deemed to count toward the calculation of term limits for Borough President appointees, except that no person who has previously served as a Borough President appointee for a length of time equivalent to two full terms shall be eligible to fill a vacancy in a position appointed by the Borough President.”

The DOE declined to incorporate other suggestions into the revised regulation for the reasons explained below:

- 1.) With regard to comment 1, the regulation continues to embody a “2 year rule” in accordance with State law. Section I.A.1 of the regulation states, in pertinent part: “A parent who is eligible at the time of application shall, if duly elected, be permitted to serve a full two-year term on the CEC, even if their child graduates from the eighth grade and/or ceases to attend a school under the jurisdiction of the community school district during the parent’s term.” This comports with Section 2590-c(1)(a) of the State Education Law, which limits the ability to serve on a CEC to parent members “whose children are attending a school under the jurisdiction of the community district, or have attended a school under the jurisdiction of the community district within the preceding two years” (emphasis added). However, during the application phase of the selection

process, the regulation requires that a nominee must be the parent of a student who is currently enrolled in grades K-8 at a community district school, in order to minimize the risk that a selected nominee will have to be unseated during their term because they no longer satisfy statutory criteria regarding eligibility (e.g. – if their child becomes more than two years removed from a community district school before their term expires).

- 2.) With regard to comment 2, this suggestion concerns pre-existing language already contained in the regulation. The DOE Ethics Officer bases eligibility determinations on the New York City Conflicts of Interest laws. Moreover, the DOE Ethics Officer regularly consults with, and will continue to consult with, the New York City Conflicts of Interest Board when appropriate.
- 3.) With regard to comment 3, it is not necessary to address this issue in the regulation. The DOE will continue to explore the practicality and feasibility of publicly disclosing nominees' council preference rankings as an operational matter.
- 4.) With regard to comment 4, State law does not require or reference a parent advisory vote as a component of the CEC selection process. In analyzing feedback received in the wake of the 2011 selection process, it was determined that the advisory vote results and participation rates failed to provide designated selectors with reliable and/or useful indicators of widespread parent voting preferences. Accordingly, the advisory vote has been eliminated from the selection process.
- 5.) With regard to comment 5, this suggestion concerns pre-existing language already contained in the regulation. The regulation cannot define an ELL student or parent in a manner that conflicts with State law. Section 3204(2-a)(3) of the State Education Law defines an ELL student as “[a] pupil who by reason of foreign birth or ancestry speaks a language other than English, and either understands and speaks little or no English, or who has been identified by any English language assessment instrument approved by the commissioner as a pupil of limited English proficiency;” and who is currently receiving “a program of bilingual education or English as a second language in accordance with standards established by the commissioner.” The DOE is bound by this provision of law.
- 6.) With regard to comments 6 - 10, State Education Law Section 2590-c(8)(c) expressly states that the Chancellor “shall ensure that, to the extent possible, a school may have no more than one parent representative on the community council” (emphasis added). IEP and ELL parents are not exempted from this explicit requirement. In order to give full force and effect to this statutory mandate, and to promote diversity of perspective and minimize the risk that a council may be biased toward a particular school community, all nominees will be regarded as a representative of each school under the jurisdiction of the community school district where they have a child enrolled as of the time that they apply

to serve on a CEC. Given the inherent difficulty of determining and verifying where a student may be enrolled in future academic years, it would not be feasible to designate a nominee as a representative of their child's potential future school as opposed to the child's current school. In situations where adherence to the prohibition against seating nominees from the same school would prevent a CEC from being fully constituted, the regulation allows for an exception in a manner consistent with State law. The regulation thus appropriately balances the goals of promoting diversity and impartiality against feasibility considerations.

- 7.) With regard to comment 11, this suggestion concerns pre-existing language already contained in the regulation. Under Section 2590-c(8)(c) of the State Education Law, the CEC selection process must, among other things, "attempt to ensure membership that reflects a representative cross-section of the communities within the school district and diversity of the student population including those with particular educational needs," and "shall include consideration of the enrollment figures within each community district and the potential disparity of such enrollment from school to school within the district." The regulation appropriately instructs selectors to be cognizant of and sensitive to these State law mandates.
- 8.) With regard to comment 12, this suggestion concerns pre-existing language already contained in the regulation. The existing voting scheme of two votes per selector in the initial CEC selection round was reviewed by the U.S. Department of Justice in advance of the 2009 selection process, and was determined to promote fair representation and a lack of disparate impact. For these reasons, the DOE will continue to allocate two votes per selector for the initial selection round.
- 9.) With regard to comments 13 – 15, it is the obligation of the DOE to fully constitute an education council during the selection process, where possible. The regulation provides for run-offs between nominees in several circumstances, including when open seats remain on a council and eligible, previously unselected candidates are available to fill those seats. This is necessary in order to safeguard and maximize the likelihood that councils will be fully constituted where feasible. The regulation expressly provides that a nominee who does not receive any votes during both the initial selection process and the runoff will not be seated, so there is no risk that a person who failed to garner any support whatsoever from the selectors will be seated on the council. A runoff that results in a tie indicates that the selectors have no clear preference as to which candidate is seated, and determining the winner by lot ensures that at least one of these candidates will be selected to serve on the council – thereby furthering the overarching goal of ensuring that each council is fully constituted where possible. The act of declaring a seat vacant notwithstanding the availability of an eligible candidate would be contrary to the primary intent of the selection process.

- 10.) With regard to comment 16, this suggestion concerns pre-existing language already contained in the regulation. Section 2590-c(6)(a) of the State Education Law provides that “a member of a community district education council who refuses or neglects to attend three meetings of such council of which he or she is duly notified, without rendering in writing a good and valid excuse therefore vacates his or her officer by refusal to serve.” The regulation will continue to give full force and effect to implement this statutory mandate.
- 11.) With regard to comment 17, this suggestion concerns pre-existing language already contained in the regulation. Section 2590-c(6)(b)(1) provides, in pertinent part, as follows: “Vacancies in positions that were not appointed by a borough president shall be filled for an unexpired term by the community district education council after consultation with the presidents’ council or other consultative body representing parents’ associations and other educational groups within the district.” While a Presidents’ Council must be given the opportunity to consult with a CEC before a parent vacancy is filled, the Presidents’ Council cannot usurp the authority of the CEC to fill such a vacancy.
- 12.) With regard to comment 19, this suggestion concerns pre-existing language already contained in the regulation. Education councils have been and will continue to be afforded discretionary authority to define the process for conducting their own officer elections in their bylaws, pursuant to appropriate standards of parliamentary procedure.

Accordingly, the DOE will present the proposed regulation to the PEP with the amended change.

A copy of the proposed regulation can be obtained at:
<http://schools.nyc.gov/NR/rdonlyres/01F22114-943E-4122-A766-C5A9E1FBDBFE/126486/D140RevisedPosting6712.pdf>