



**Date:** November 11, 2009

**Topic:** Proposed Chancellor's Regulation A-190

**Date of PEP Vote:** November 12, 2009

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### **Summary of Proposed Regulation**

In 2009, the New York Education Law was amended to require a public review and comment process on all proposals by the Chancellor to close a school or make a significant change in school utilization. The law was also amended to give the New York City Board of Education (hereinafter referred to as the Panel for Educational Policy (PEP)) authority to approve all proposals by the Chancellor to close a school or make a significant change in school utilization. This proposed regulation implements these amendments to the law. The proposed regulation was posted on September 25, 2009 and amended on October 28, 2009.

### **Summary of Issues Raised and Significant Alternatives Suggested**

The public comments received are summarized as follows: (1) all schools co-located in a building with a school that is the subject of a proposed significant utilization change should be considered 'affected' or 'impacted'; (2) the siting/placement of Gifted and Talented (G & T) programs should be included in the definition of 'significant change in school utilization'; (3) educational impact statements should include information on overcrowding, loss of cluster rooms, access to specialty spaces, and increases in class size in the impacted school, and whether the proposal will prevent any impacted school from meeting class size targets set forth in the DOE's Contracts for Excellence Plan; (4) educational impact statements should predict the schools that any students displaced by a closure or change in utilization will likely enroll; (5) educational impact statements on re-sitings should include a description of alternative sites that were considered for the school and why such alternatives were rejected; (6) if a proposal involves siting a school in leased space, the educational impact statement should include a comparative analysis of why a building was not purchased or built to house the school; (7) the regulation should specify that the joint public hearings must have a quorum of the impacted CEC and SLT members and that the CEC president or designee and a core member of the SLT must share in the chairing of the hearing; (8) the CEC and SLT should each provide a statement on the proposal; (9) a transcript of all comments made at the hearing should be posted on the DOE website at least three days prior to the Panel for Educational Policy's vote; and (10) each educational impact statement should include the same information that is included in the required public notice, specifically how the public can comment on the proposal, the location and time of

the meeting at which the Panel for Educational Policy will vote, and how to find out whether the proposal was approved.

One commenter also made a number of substantive comments concerning limitations on when and how such closings and changes can occur, which are summarized as follows: (1) no school siting, closing, or grade reconfiguration can occur if it will put a building over-capacity; (2) no school should be closed or phased-out until attempts are made to improve the school; (3) no students displaced by a school closing or phase-out should be sent to a school in a building that is over-capacity or on the state's SURR or SINI list; (4) no school placed in a building, including charter schools, should be permitted to cap class size and/or enrollment at a lower level than those schools already located in the building; and (5) a school's siting must be limited to the time period set forth in the impact statement.

Read together, the comments above will be considered significant alternatives.

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

The DOE accepted the suggestion of expanding the definition of "affected school" and "impacted school." This change was included in the amended proposal for Chancellor's Regulation A-190 posted on October 28, 2009. The terms "impacted school" and "affected school" are now defined as "the individual instructional organization identified for direct action in the proposal and any school subject to a new co-location as a result of the proposed action. In the case of a proposal to expand the grade configuration of a school, the term shall also mean any schools co-located with the school being expanded." The DOE chose not to accept the proposed inclusion of the siting/placement of G & T programs in the definition of "significant change in school utilization." Under the relevant amendments to the Education Law, only proposals for school closure and significant changes in school utilization are subject to public review and approval by the PEP. The siting of a G & T program does not constitute a significant change in school utilization because the size of G & T programs require relatively little new physical space in a building and do not impinge upon the instructional footprint of existing schools and programs.

As for the comments suggesting additional and more specific procedural requirements that should be included in the regulation, the DOE declined to incorporate these suggestions into the proposed regulation. The proposed regulation as posted is intended to implement the recent amendments to the Education Law concerning school closing and significant changes in school utilization and sets forth the procedural requirements as they are written in the law. Greater specificity in the Chancellor's Regulation is unnecessary. Moreover, the comments suggest that the DOE incorporate into the regulation a number of procedural requirements that are not mandated by law, including that the joint public hearings have a quorum of CEC and SLT members, that the CEC and SLT provide statements on proposals prior to the vote by the Panel for Educational Policy, that a transcript of comments made at the joint public hearing be posted on the DOE's website, and that every educational impact statement include the same information that is already included in the required public notice.

Finally, the DOE declined to incorporate any of the substantive comments suggesting limitations on when and how such closings and changes can be implemented. The proposed regulation is intended to clarify only the procedures that must be followed when the Chancellor proposes to close a school or make a significant change in utilization. It is not intended to govern the substantive aspects of such proposals. The suggestions offered by the commenter reflect factors and concerns that the Panel for Educational Policy members may consider when deciding whether to approve a school closing or significant change in school utilization as proposed by the Chancellor rather than procedural requirements that must be followed before such proposals can be implemented.

Accordingly, the DOE will present the proposed regulation to the PEP as it is currently posted.

A copy of the proposed regulation can be obtained [here](#) or at <http://schools.nyc.gov/NR/rdonlyres/02182640-D03A-436A-A1CF-BDEF97FF81F4/70281/AmendedA1901028093.pdf>

**Prepared by  
Department of Education**