Department of Education

Joel I. Klein
Chancellor

# Amended Public Comment Analysis

Date: October 7, 2010

Topic: Proposed Amendments to Chancellor's Regulation A-190: Significant Changes in School Utilization and Procedures for the Management of School Buildings Housing More Than One School

Date of Panel Vote: October 7, 2010

## Summary of Proposed Amendments

Chancellor's Regulation A-190, Significant Changes in School Utilization and Procedures for the Management of School Buildings Housing More Than One School, updates and supersedes current regulation A-190 dated November 13, 2009. It sets forth the procedures to be followed for school closings or significant changes in school utilization and the procedures for managing co-located schools.

On August 23, 2010, the New York City Department of Education (DOE) published proposed amendments to the regulation to clarify and expand procedures for providing notice and opportunity for input and comment regarding significant changes in school utilization, and to include procedures to be followed in connection with the co-location of one or more schools in an existing public school building. Other changes in the regulation include: the terms "affected community school district," "affected community education council ('CEC')", and "significant change in school utilization" have been clarified; a definition of "capital improvement or facility upgrade" has been added; guides for use in creating Educational Impact Statements (EIS) have been added; EIS filing requirements have been clarified and provide that the EIS must be posted online and filed in hard copy with the PEP, affected Citywide Education Councils, community boards, superintendents, School Leadership Teams (SLT), and certain other bodies, as applicable, with hard copies available at affected schools; templates have been added for Building Usage Plans and Shared Space Plans required for all buildings where a charter school is co-located with a DOE school; Citywide Council on High Schools, Citywide Council on Special Education and D75 Council shall now be invited to participate in joint hearings and to suggest agenda items for the joint public hearings; the role of Building Councils has been set forth including a dispute resolution procedure; "Shared Space Committee" has been defined to consist of the principal or school leader plus parent and teacher representatives from each school for buildings in which a charter school is co-located with a DOE school; any capital improvements or facilities upgrades made to accommodate charter schools in DOE buildings in excess of

$5,000 must now be matched by improvements or upgrades of an equal amount for all DOE schools in the same building; a process by which charter schools must apply for Chancellor's permission to perform capital improvements or facilities upgrades to charter school space in DOE buildings has been established; and the statutory right to appeal charter school co-locations and Building Usage Plans to the Commissioner of Education has been added.

On September 3, 2010, the DOE published a re-formatted version of the proposed amendments to Chancellor's Regulation A-190, which included modified headers and pagination and corrected typographical errors, but did not include any substantive changes to the proposed regulation.

On September 22, 2010, the DOE published a revised draft of the proposed amendments to A-190. The revised draft included substantial and non-substantial revisions to the definitions of "affected students" and "significant change in school utilization"; revisions to the EIS filing procedures; revisions to the procedures for scheduling joint public hearings and the development of the agendas for such hearings; clarification of the procedures required in the event the Chancellor substantially revises an EIS; revisions to the composition of building councils and shared space committees; revisions to the procedures relating to the approval process for capital improvement and facility upgrades; revision of the term "D75 program" to "D75 school organization"; and clarification of the individuals who are to receive notice of proposals, and/or invitations to participate in joint public hearings.

On October 6, 2010, the DOE published a further updated draft of the proposed amendments to A-190. This draft deleted sub-section II(A)(2)(a)(iii)(a) from the regulation, which concerned revisions to BUPs. The remainder of the regulation remains unchanged.

## Summary of Comments Received

Below is a summary of the comments received:

**I. Definitions**

"Affected Students"

1. Commenters suggested that the definition of "affected students" should be revised to include all students enrolled in any of an impacted school's sites.
2. A commenter suggested that the definition of "affected students" should include future students who might be impacted by a proposal.
3. A commenter suggested that, in the case of a phase-out, "affected students" include those who attend schools which might accept transfer students from the phased-out school.

"Impacted Community Education Council"

4. Commenters suggested that the term "impacted Community Education Council" ("CEC") should refer to the Citywide Council for High Schools ("CCHS") in the case of proposals concerning high schools.
5. Commenters suggested that the definition of "impacted CEC" should be revised to include the Citywide Council on Special Education ("CCSE"), the District 75 Council and the Citywide Council on English Language Learners ("CCELL").

"Impacted Community Board"

6. Commenters suggested that the definition of an "impacted community board" should be revised to include all community boards in the borough in which an impacted high school is located.
7. A commenter suggested that the definition should be expanded to include all community boards that overlap with a zoned school's catchment area, or in the case of an unzoned school, that are home to a certain percentage of the school population.

"Capital Improvement or Facility Upgrade"

8. A commenter requested guidelines for the Chancellor's determination of whether a proposed project qualifies as a facility upgrade; another commenter suggested such determination should be open to appeal to the Commissioner or the court.

"Significant Change in School Utilization"

9. Commenters suggested that the term "significant change in school utilization" should not only refer to "currently utilized" school facilities, but also include co-locations in facilities newly constructed or new to the DOE.
10. Commenters suggested that a "significant change in school utilization" should not exclude changes to or re-siting or co-location of school-based programs, including but not limited to Gifted & Talented programs, or should expressly include programs that operate as schools and significant changes to District 75 programs.
11. A commenter suggested that the definition in the regulation was inappropriately vague, and should include factors such as number of students, classrooms, and space utilizations.

Other Definition-Related Comments

12. A commenter suggested including a definition of the term "substantial" revisions that prompt a second Joint Public Hearing.
13. A commenter suggested defining what kind of "emergency basis" does not require all conditions of A-190 to be met.
14. A commenter suggested adding a definition of a "re-siting."
15. A commenter suggested avoiding the use of the terms "old/new," and instead using the terms "current/proposed" or similar, more descriptive and less assumptive words.
16. A commenter suggested using the term "reorganization" as opposed to "phase-out" in the regulation.
17. A commenter suggested defining the term "community."
18. A commenter queried what other programs qualify as "school-based programs" which are not included in the definition of a "significant change in school utilization." The commenter expressed concern that District 75 programs would fall under this exemption.
19. A commenter suggested clarifying the distinction between "affected schools" and "affected buildings."
20. A commenter suggested that the regulation go into more detail regarding the term "the potential disposability of any closed schools."

## II. Notice, EIS Content, Joint Public Hearings and Panel Meetings

### *A. Notice*

1. Commenters suggested that the EISs should be distributed directly to families, such as by sending notices to families via e-mail and listservs.
2. A commenter commented that backpacking for high school students is an ineffective way to reach parents.
3. A commenter suggested that the regulation be revised to indicate how superintendents will provide notice to parents.
4. A commenter suggested there be a provision for printing and reproduction of notices on the part of principals and others.
5. A commenter asked how the DOE will ensure that schools distribute notice.
6. Commenters suggested including greater description about the manner, form and timing of giving notice.
7. A commenter stated charter schools should cover expenses related to their proposals (such as printing and distribution of required documentation).
8. Commenters asked why the proposed regulation lists a CEC's administrative assistant as the relevant contact instead of the CEC President/Chair, and the principal as the relevant contact member of the School Leadership Team ("SLT") instead of the SLT President. The commenter suggested that core members of the SLT should all be included, and that the President's Council and Parent Teacher Association should also be notified.
9. Commenters suggested that translations of EISs must be available pursuant to Chancellor's Regulation A-663.
10. A commenter suggested that the DOE should provide notification of an EIS concerning a high school to the borough president of the borough in which the high school is located.
11. A commenter queried whether the DOE would provide advance notification to elected officials regarding schools that will be under consideration for phase-out next year.
12. A commenter suggested that the proposed regulation be amended to reflect the fact that multiple community boards could be impacted by a proposal, since district zones do not match up perfectly with community board lines.
13. A commenter suggested that the regulation be revised to require that EISs and proposals be posted prominently on the DOE website in an easy-to find location, and that EISs identify all schools impacted by a proposal.
14. Commenters suggested that Parent Coordinators should be used to help disseminate information to impacted parents.
15. A commenter suggested that CECs should increase outreach to the people they are serving to keep them informed of these proposals.
16. A commenter expressed satisfaction with the inclusion of CCSE and the District 75 CEC in EIS filing and joint public hearing procedures.
17. Commenters expressed concern about the amount of lead time for engaging school communities on proposals.

18. A commenter suggested that the regulation should require the Chancellor to post EISs in September of the school year prior to the school year in which the proposed change in school utilization would be implemented.
19. A commenter queried whether a revision to a proposal must be made a minimum of 6 months prior to school opening, and, if not, suggested that there should be a limit to such revisions.
20. A commenter suggested that in the event that the Chancellor uses his emergency power to either close, phase out, or co-locate a school, the relevant CEC, SLT, and community board(s) should be notified.
21. A commenter suggested that the proposed regulation improperly gives the Chancellor the authority to schedule the Joint Public Hearing.
22. A commenter suggested that the rezoning of a school should trigger an EIS.
23. A commenter suggested that all Citywide Councils be included in the EIS process.
24. A commenter suggested that EISs and joint public hearing notifications should be distributed by bulk mailings, community postings and television advertisements.

***B. Educational Impact Statements (EIS)***

1. Commenters stated EIS should include a review of the Contract for Excellence and Comprehensive Education Plans of existing schools.
2. A commenter suggested that problems with enrollment projections and budget could mean an EIS might not be entirely accurate.
3. A commenter queried whether the DOE is accepting feedback on the guides as well as the Regulation.
4. A commenter suggested that the phrase "prospective need for such school building" should be clarified.
5. A commenter suggested that utilization rules should be followed by charter schools.
6. A commenter suggested that an EIS should be required for proposed co-locations of schools in any kind of DOE property or facility, including annexes and trailers.
7. A commenter expressed uncertainty regarding how changes to co-locations would be treated.
8. Commenters suggested that the regulation be amended to require "adequate" or "appropriate" (rather than "equitable") usage of shared space by co-located schools.
9. Commenters suggested that all EISs should include:
    a. Accurate current and projected enrollments of all affected schools, how they were reached, including five years of data, broken down by grade and program (including special education).
    b. Enrollment projections for the community district as a whole.
    c. Projected enrollment trends one to five years in the future, building starts in the area, birth rates geocoded by residence, census data and surveys of neighborhood day care centers and Pre-Kindergarten programs (where relevant).
    d. Current and projected building capacity/utilization, including projections for the following five years, by grade and program, with and without implementation of

the proposal, how many students currently attend overutilized schools in the community, and how the proposal will affect these figures.

e. Projected class sizes, for next year and the longer term, and whether they are consistent with the City's Contract for Excellence goals, the UFT contractual limits, and/or the building code.
f. Impact of proposal on availability of dedicated rooms for art, music, science, special education services, including SETTs and guidance counseling, cluster rooms and critical shared spaces such as libraries, gyms, playgrounds and other outdoor spaces, and auditoriums.
g. Projected number of teachers who will be put on Absent Teacher Reserve (ATR) and the associated costs.
h. Number of ELL and special education students and type of services they receive.
i. Impact of proposals on special education and English Language Learner (ELL) populations, including availability of space for mandated services, for next year and the longer term.
j. Students' commuting patterns, particularly for middle schools.
k. A room by room listing of usage.
l. A statement that High Schools must have more than one lab room.
m. The length of time of the proposed process (i.e. time to completion, or expected length of siting for temporary resitings and collocations).
n. The impact of a proposal on all programs, whether those programs are located in District 75 or any District throughout the five boroughs.
o. Information regarding the scheduling of junior high and high school classes, Related Services and therapy sessions, proper equipment (books ,desks, augmentative devices, walkers, etc.), reading, math and science programs, prep periods, student activities, testing accommodations and social interaction.

10. Commenters suggested that phase-out EISs should include:
    a. A summary of significant steps taken by the DOE to improve performance before decision to seek phase-out was reached.
    b. How the culture and climate of a school which will receive an influx of students due to a phase-out will be impacted.
    c. How after school programs, athletic programs, transportation and tutoring will be affected.
    d. Information about the needs of students who would have attended a phase out school.
    e. Information on students in the phase-out school by type of student and eligibility to enroll in new schools in the community.
    f. How students in a phase-out school will be served if they do not graduate on time with the last class and are sent somewhere else.
    g. Alternative school options for students and families, including specific data on those schools (i.e., enrollment data, special education and ELL data, available programs like CTE and other high school programs).

h. How students enrolled in specialized programs can have access to these programs elsewhere.
i. All the schools that will be impacted, not just the aggregate.

11. Commenters suggested that co-location EISs should include:
    a. How after school programs, athletic programs, and tutoring will be affected.
    b. A list of rooms with usage and reallocation by room—particularly arts and sciences classrooms—instead of implementing a Building Utilization Plan (BUP) in the future.
    c. Include how changes will affect Career Technology Education (CTE) programs, and high school admissions.
    d. An explanation of the action to be taken if either of the co-located schools expands beyond its previously agreed upon boundaries.
    e. The number, size and type of rooms lost to the existing school in the building and the current usage for these rooms.
    f. Whether the co-location will require that the students be taught in classrooms that violate the building code.
    g. A description of the periods during which the cafeteria will be utilized for lunch each day and how many periods a week the students in each school will have access to the gym for their physical education class.
    h. The number of seats in the community lost through other co-locations, lapsed leases or school closures.
12. Commenters suggested that re-siting EISs should include:
    a. The number, size and type of rooms lost to the existing school in the building and the current usage for these rooms.
    b. A description of the periods during which the cafeteria will be utilized for lunch each day and how many periods a week the students in each school will have access to the gym for their physical education class.
    c. The number of seats in the community lost through other co-locations, lapsed leases or school closures.
13. Commenters suggested that grade reconfiguration EISs should include:
    a. The number, size and type of rooms lost to the existing school in the building and the current usage for these rooms.
    b. Whether the re-configuration will require that the students be taught in classrooms that violate the building code.
    c. A description of the periods during which the cafeteria will be utilized for lunch each day and how many periods a week the students in each school will have access to the gym for their physical education class.
    d. Information on the number of seats being added through new schools, and lost through lapsed leases, school closures or other changes.
    e. A list of schools similar to the impacted school in the neighborhood of the impacted school.
14. A commenter suggested that no utilization change should be allowed to impact the teaching of art, music, gym, library, science or special education services.

15. A commenter suggested that charters should not be granted without a specific location for the school disclosed, and that an EIS regarding such proposed location should be issued prior to the granting of the charter.
16. A commenter suggested that charter renewals that involve a grade expansion should trigger the EIS process before the renewal is approved.

### *C. Joint Public Hearings and Panel Meetings*

1. Commenters suggested that charter authorizers should participate in Joint Public Hearing.
2. A commenter suggested that the regulation should provide more specificity about the timeframe for SLT, principals and DOE to schedule joint school-based hearings.
3. Commenters suggested that the agenda for Joint Public Hearing needs to be improved and more explicit, requires more collaboration on structure, and should include a Q&A session.
4. Commenters asked that the regulation include a protocol for documenting the school-based hearings and summarizing and responding to the feedback gained there.
5. A commenter queried whether joint public hearings should be scheduled a certain amount of time in advance of the PEP vote.
6. A commenter noted that that a revision to the EIS must be made at least 15 days in advance of any PEP vote on the proposal, when other Chancellor's Regulations require a ten day advance notice to convene a Parents Association meeting. The commenter expressed concern that this timeframe does not allow the parent body of a school newly impacted by a revised EIS to meet to discuss or respond.
7. Commenters suggested that a significant revision to an EIS should require a new joint public hearing, no sooner than 15 days before the Panel vote.
8. A commenter suggested that there be two public comment deadlines posted—one for comments that might be incorporated into a revision and one for comments that will be posted but are received too late to impact the EIS.
9. A commenter suggested that the Citywide Council for English Language Learners should be included in the EIS process in the same manner as the Citywide Council on High Schools.
10. A commenter suggested that Citywide Council on High Schools be able to appoint subcommittee members to attend joint public hearings.
11. A commenter requested that the DOE post public comment analysis for proposals earlier.
12. A commenter asked why there was no separate speaker sign-up for elected officials at PEP meetings.
13. A commenter suggested that PEP members should have to speak briefly about why they are voting the way they are.
14. A commenter suggested that a Panel vote be final.
15. Commenters suggested that the DOE should be more consistent about posting transcripts of Panel for Educational Panel meetings on the DOE's website and suggested that the DOE provide webcasts of PEP meetings and school-based joint public hearings.

16. Commenters felt that the regulation should provide for more opportunities for conversations about the proposals, exclusive of the hearings and PEP votes, and that there should be more opportunities for community-based organizations to be involved in public hearings or pre-engagement.
17. A commenter suggested holding a parent information session, a Joint Public Hearing and a Panel Meeting separately to spread out attendance.
18. A commenter asked for clarification of the "city district representative" who can be contacted for information on specific proposals.
19. Commenters suggested further defining the "emergency basis" which does not require all conditions of A-190 to be met.
20. A commenter suggested that the section on appeals be revised to indicate that approved proposals to close, locate or co-locate a charter school within a public school building and/or the accompanying building usage plan may be appealed to the Commissioner of Education or to the courts.

## III. Shared Space

### *A. Building Usage Plans (BUP)*

1. Commenters suggested that the definition of "revised building usage plan" should be modified to account for the space needs of District 75 students, and should ensure that D75 schools are not negatively impacted if they lose space that is technically in excess of the Footprint allocation.
2. A commenter suggested revising the regulation to require the procedures described in Section II.A.2 regarding building usage plans to apply to co-locations of non-charter schools.
3. A commenter suggested that the procedures described in Section II.A.2 regarding building usage plans should apply to any proposal to locate or co-locate a charter school in an existing public school building, an annex or a trailer.
4. A commenter suggested that a BUP should include the current usage of rooms which are to be re-allocated, and ensure adequate conditions for both schools.
5. A commenter suggested that any proposed change to the building usage plan which results in less access to common shared spaces allocated pursuant to the Footprint amount to a "revision" to the BUP.
6. A commenter suggested revising the regulation to refine the definition of a "co-location."
7. A commenter suggested incorporating the governance regarding BUP into the regulation.
8. A commenter suggested clarifying when the revision of a BUP leads to a new EIS.
9. A commenter suggested that the regulation should provide information about the formula for the Footprint and revision of BUPs.
10. A commenter suggested that the regulation should clarify the role of building councils in developing BUPs.
11. Commenters suggested that there should be a cap for how large a charter can grow.

12. A commenter suggested revising the regulation to state that if the BUP is not being followed or does not appear to allow for equitable access and adequate conditions as time goes forward, any member of the shared space committee can bring a complaint to the Chancellor and appeal his decision to the Commissioner.
13. A commenter suggested that the DOE should encourage greater participation by the Citywide Council on English Language Learners in all building decisions.
14. A commenter suggested that charters shouldn't be making changes that affect the BUP over the summer**.**
15. A commenter queried whether there is a timeline for changes to shared space plans between a charter and district similar to the six-month deadline for proposing changes to a school.
16. A commenter suggested that the DOE should ensure that there are sufficient time slots available for the gym for each section of the co-located schools.
17. A commenter expressed concern that charter schools should not be placed in already over-crowded public schools.

***B. Building Councils and Shared Space Committees***

1. Commenters suggested that representatives of D75 schools should be included on building councils and shared space committees regardless of how many classrooms the D75 school has in the building.
2. A commenter suggested that Building Councils should include the PTA President or SLT chair and the UFT chapter leader.
3. A commenter suggested that the shared space committee should include a UFT chapter leader or his or her designee, and that the PTA president should serve as the parent representative of the committee.
4. A commenter suggested that the shared space committee meetings should be open to the public and publicized to parents at least two weeks before the meeting. The commenter also suggested that minutes should be taken at the meeting and made available to any member of the public upon request, and that the campus audit documents should be available to the public upon request.
5. Commenters noted that the standard for shared space is described in the Regulation as being "equitable," whereas the courts have established that the obligation must be "adequate."

***C. Charter School Capital Improvements and Facility Upgrades***

1. A commenter requested that the DOE post all the capital improvement requests eligible for matching funds online as the DOE receives them, or on some kind of regularly reoccurring schedule.
2. A commenter suggested that all capital improvements and facility upgrades to co-located charter schools should be communicated to the Shared Space Committees.

3. A commenter suggested that the Chancellor should also notify the Citywide Education Council, the City Councilmember and State legislators and the Borough President who represent the area of his or her decision to grant or deny approval for a charter school's requested capital improvement or facility upgrade.
4. A commenter suggested that for capital improvements, "equitable" spending on charters and district schools is not enough, as stated by CFE—it needs to also be "adequate."
5. A commenter suggested re-organizing the order of the sections regarding the approval process for a charter school's request for a capital improvement or facility upgrade.

**IV. Miscellaneous**

1. A commenter suggested that there should not be co-locations if an existing school already has expansion plan in progress.
2. Commenters noted that PA/PTAs are not mentioned in Regulation.
3. A commenter requested that the original version of the proposed amendments to the regulation be re-posted on the DOE's website.
4. A commenter suggested that A-190 should mention parent representation on the District Planning Teams ("DPT"), and that the District Leadership Team should select parent members to the DPT.
5. A commenter suggested that there need to be more opportunities for conversations about the proposals, exclusive of the hearings and PEP votes.
6. A commenter suggested that there need to be more opportunities for CBOs to be involved in public hearings or engagement before an EIS is posted.
7. A commenter suggested deleting the reference to the right to appeal approved BUPs and EISs to the Commissioner of the New York State Education Department.
8. Several commenters stated that they felt the proposed amendments to the regulation addressed many of the complaints from Citywide Education Councils and the broader community, and that the DOE has taken positive steps toward transparency.
9. A commenter suggested that the procedures for emergency school closings and significant changes in school utilization should be more closely defined.
10. A commenter suggested that those students staying in a phase-out school should be provided with an individual graduation plan to ensure they can graduate without resorting to credit recovery options.
11. A commenter suggested that prior to any notices being sent out, the affected school community including the therapists, students and parents be included in the decision making process so that the affected school community approves the change in advance.
12. A commenter suggested that the regulation require that the PEP is provided with all documentation, transcripts, reports, and recordings relating to a given proposal.
13. A commenter suggested that the DOE extend the comment period for the proposed regulation and hold additional community meetings regarding the regulation.

**The DOE received a number of comments which do not directly relate to A-190. Those comments are summarized below.**

1. A commenter suggested that the DOE should study the impact of co-locations.
2. A commenter posed questions regarding the standards for environments in which IEP-mandated services will be provided.
3. A commenter posed questions regarding the revised Citywide Instructional Footprint, and expressed concern that the Footprint is not subject to the public comment process.
4. A commenter queried whether everything above the baseline allocation of the Footprint is considered excess space.
5. In regard to the Footprint, a commenter expressed concern about the difference between current usage and the entitled usage in the building, and how lack of clarity on this point could result in inappropriate changes in the calculated capacity of the building when overcrowding leads to use of non-instructional rooms as classrooms.
6. A commenter expressed concern that co-located schools can receive fewer than the baseline number of rooms allocated pursuant to the Footprint, and suggested that it should require additional justification, a specific plan for addressing the space issue, and follow-up to ensure it does not affect student performance.
7. A commenter suggested that SLTs should have the opportunity to ask for programs and services and have a decisive voice in all decision-making, including school construction.
8. A commenter suggested that changes should be driven from the Citywide Education Councils up.
9. A commenter suggested that DPCs should include a parent representative, and until this is so, "everything" should be subject to the public involvement process outlined in A-190.
10. A commenter stated that ARIS is hard to access. Not everyone can get online to view Progress Reports. The commenter suggested that the DOE should communicate with hard copies when possible.
11. A commenter stated that Parent Progress Reports contain last year's data and should be distributed through parent coordinators.
12. A commenter stated that there were a number of scheduling conflicts with the A-190 community meeting; people don't know about it. The commenter suggested that the PEP vote should be delayed.
13. A commenter queried whether Parent Progress Reports and other phase-out related information are available to members of the community.
14. A commenter stated that he or she was a parent who had a great experience with a co-location at the Evander campus. The commenter felt that smaller schools led to better discipline.
15. A commenter opined that the DOE is not helping district schools thrive like the charters.

16. A commenter queried whether there has there been any research done on the impact on students in phase-out schools. The commenter referred to low teacher morale and principals leaving.
17. A commenter stated that there was a need for a citywide plan for school improvement. The commenter further stated that leadership and quality determine growth. The commenter queried why the DOE does not change more principals.
18. A commenter expressed concern that the DOE has changed the formal language for a school's space allocation to "minimum" -- rather than a "baseline."
19. A commenter raised concerns about whether capital improvements are incorporated into the Capital Plan, whether all such capital improvements are considered miscellaneous, how the funding is reflected in the Capital Plan, and how the combination of private and public funding would work.
20. A commenter posited that the utilization formula and the instructional footprint are not in alignment with each other.
21. A commenter asked if, in light of the footprint's reference to science labs as "shared space," they will be subtracted from the floor plan when counting available rooms and calculating utilization.
22. A commenter suggested that there must be a neutral authority, such as the District Council, who handles building council disputes.
23. A commenter suggested that special education students receive a full classroom allotment regardless of their class size.
24. A commenter stated that they could not support implementation of flexible models of service deliveries until such models have been proven and agreed to by the parents of the effected children who are receiving the mandated services.
25. A commenter suggested that the DOE subject the Instructional Footprint to additional public review.
26. A commenter stated that she was unhappy with the current co-location of P.S. 153 with a charter school.

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

### I. Definitions

"Affected Students"

Comment 1 was incorporated into the regulation; the definition of "affected students" includes students enrolled in any of an impacted school's sites.

With respect to comment 2, the expanded definition proposed is not feasible because the regulation requires that notice be provided to all students identified as "affected," and it is impossible to identify all the students who may have chosen to attend a school, in the future. However, the EIS guides do call for a discussion of the impact on future students, where appropriate.

With respect to comment 3, it should be noted that the EIS guide for phase-outs addresses the impact on other schools which may receive students from a school which is proposed for phase-out.

"Impacted Community Education Council"

The revised definition proposed in comment 4 is inconsistent with Education Law §2590-h(2-a)(c). However, several measures have been included in the regulation to address comments 4 and 5 to the extent they seek to expand the groups who participate in the public comment and joint public hearing process. To ensure that the CCHS, CCELL, CCSE and D75 Council receive copies of EISs, as appropriate, and have a meaningful opportunity to participate in the joint hearing and public comment process, the regulation provides that the CCSE and CCELL will receive a copy of all EISs, and the CCHS and D75 Council will receive copies of the EISs for proposals that pertain to high schools or District 75 schools, respectively. Additionally, the CCSE and the CCELL will be invited to participate in all joint public hearings, and the CCHS and D75 Council will be invited to participate in hearings when a proposal concerns a high school, or affects students enrolled in a D75 school. Moreover, these groups will have an opportunity to have input into the agenda of the hearings, as described in the regulation.

"Impacted Community Board"

With respect to comments 6 and 7, which propose expanding the definition of "impacted community board," the regulation has been revised such that, in the case of proposals concerning high schools, all community boards in the borough in which the impacted high school is located will receive a copy of the EIS by e-mail. Furthermore, all community boards whose geographic boundaries fall within an affected school district shall receive a copy of the EIS.

"Capital Improvement or Facility Upgrade"

With respect to comment 8, the regulation's definition of "capital improvement or facility upgrade" adequately outlines what types of projects fall within the scope of this term, and provides several examples by way of illustration. Moreover, the regulation does not limit the ability to challenge the Chancellor's determination of what projects are capital improvements or facility upgrades by appealing to the Commissioner or pursuing other legal remedies.

"Significant Change in School Utilization"

With respect to comment 9, locating or co-locating new schools in newly constructed facilities does not constitute a "significant change in school utilization" as contemplated by the statute because no existing educational environment will be changed or impacted.

With respect to comment 10, the Education Law does not contemplate that changes to school-based programs, including Gifted & Talented programs, will trigger the EIS, public review and panel approval process. However, it should be noted that an EIS will disclose a proposal's impact on High School Admissions programs, CTE Pathways, Middle School Choice programs and special education and English Language Learner programs available to current students, and any other significant programmatic changes at the school. Moreover,

the revised regulation posted on September 22, 2010 clarifies that significant changes to District 75 schools are subject to the A-190 process.

With respect to comment 11, the DOE believes that the definition, as clarified in the September 22, 2010 revised proposed regulation, provides sufficient clarity. Moreover, the EIS guides as posted demonstrate that the DOE is considering the listed factors as part of its analysis.

Other Definition-Related Comments

With respect to comment 12, the Education Law does not provide any further definition of "substantial revision." The DOE believes that the terms "significant" or "substantial" revisions provide sufficient clarity. Attempts to impose a more specific definition risk inappropriately including or excluding relevant revisions.

With respect to comment 13, the Education Law provides that the Chancellor may adopt an "emergency" action when it is immediately necessary to preserve student health, safety or general welfare. The Education Law does not provide a further definition of this term.

With respect to comment 14, the DOE believes that the term re-siting provides sufficient clarity.

With respect to comment 15, the EIS guides properly use the words "current" and "proposed"; however, the terms "old" and "new" may also be used as appropriate.

With respect to comment 16, the proposed term "reorganization" does not adequately serve as a substitute for "phase-out."

With respect to comment 17, the term "community" is not defined by the Education Law. Furthermore, the term may be interpreted differently depending on the particular facts and circumstances of a proposal, and the DOE should have the flexibility to engage the appropriate stakeholders for a given proposal.

With respect to comment 18, the regulation has been clarified to indicate that significant changes to District 75 schools are subject to the A-190 process. The determination of which, if any, programs, other than gifted and talented programs, fall within the category of "school-based programs" will be made on a case by case basis.

With respect to comment 19, the Education Law uses the term "affected schools" and the regulation has been drafted to track the statutory language. It should also be noted that the regulation does not refer to "affected buildings."

With respect to comment 20, the Education Law uses the term "potential disposability of any closed school" and the regulation has been drafted to track the statutory language.

## II. Notice, EIS Content, Joint Public Hearings and Panel Meetings

*A. Notice*

With respect to comments 1, and 2, the regulation does not specify a method because the best method of delivery may vary from school to school, and the DOE does not want to take away the Superintendent's ability to choose the best method. The DOE anticipates that notice will often be given via backpacking, which the DOE has found to be an effective way of providing parents with notice of proposals. However, Superintendents are also free to encourage the use of e-mail listservs or other appropriate means of delivery.

With respect to comments 3 and 6, the manner of providing public notice, is addressed in the revised proposed regulation in detail in section II.A.3.

With respect to comments 4 and 7, at present there is no funding allocated for the printing and reproduction of notifications that principals will distribute, thus the regulation does not require distribution of hard copies of the full EIS to all parents. However, copies will be available on-line and at the school. The DOE has no authority to require public charter schools to bear a different financial burden in this process.

With respect to comment 5, the Division of Portfolio Planning will follow up to help ensure that the appropriate notifications have been provided to families.

With respect to comment 8, the administrative assistant for the CEC has traditionally served as the contact for DOE communications. The Division of Portfolio Planning will instruct principals to share all relevant information with all members of the SLT, and to ensure the distribution of notices to all parents.

With respect to comment 9, Chancellor's Regulation A-663 already provides for the translation of documents such as EISs.

With respect to comments 10, 11 and 17, it is the DOE's current practice to provide notification of an EIS by e-mail to elected officials and borough presidents. Efforts are being made to engage all stakeholders about phase-outs and other potential proposals as early as possible.

With respect to comment 12, the revised version of the proposed regulation posted on September 22, 2010 clarified that for proposals involving high schools, all community boards in the borough where the school is located are to receive e-mail notification of an EIS.

With respect to comment 13, the Division of Portfolio Planning is working to improve its website and make EISs easier to find online. All EISs will identify all schools directly impacted by a proposal.

With respect to comments 14, not every school has a Parent Coordinator. As a result, the regulation does not mandate a role for them in the EIS process.

With respect to comment 15, CEC members are not DOE employees, thus the regulation cannot require CEC members to perform outreach.

Comment 16 does not require a response.

With respect to comments 18 and 19, timing of the publication of EISs and revised EISs is governed by the sections 2590-h(2-a)(c) and (d-1) of the Education Law. The proposed regulation adheres to the statutory publishing schedule. Moreover, publishing all proposed EIS in September would be inefficient and make it difficult to effectively engage with the relevant community on those proposals.

With respect to comment 20, the proposed regulation is consistent with the Chancellor's emergency powers under the Education Law. However, the DOE will make efforts to provide impacted parties with notice about the exercise of those powers.

With respect to comment 21, the proposed regulation states that the Chancellor will set the date only if the CEC and SLT cannot first reach agreement on the date for the hearing. The DOE will work with all parties to attempt to identify a mutually agreeable date consistent with the statutory requirements.

With respect to comment 22, the Education Law sets forth a separate process for the approval of proposed rezonings.

With respect to comment 23, the DOE deems the CCSE, CCHS and D75 Council to be the appropriate entities to be involved in the EIS process as outlined in the regulation. Nothing in the regulation prevents other citywide councils from submitting public comments or attending the joint public hearings for a particular proposal.

With respect to comment 24, the DOE believes that the procedures for the dissemination of notice of EISs set forth in the regulation are appropriate to ensure that the relevant community stakeholders are alerted of proposals.

### *B. Educational Impact Statements*

With respect to comment 1, the EIS guides are meant to disclose an impacted school's relevant programs and performance history. Requiring discussion of Contract for Excellence and/or Comprehensive Education Plans where not relevant to the proposed change in school utilization would unnecessarily lengthen and complicate some EIS, making them less useful to the public.

With respect to comment 2, EISs will use the most accurate information available to the DOE consistent with the EIS publishing schedule set forth in the Education Law.

With respect to comment 3, comments on the EIS guides were accepted, and are analyzed below.

With respect to comment 4, the regulation's use of the term "prospective need for [a] school building" is consistent with the Education Law's terminology.

With respect to comment 5, going forward, the Building Utilization Plan will set forth the utilization for co-located DOE and charter schools.

With respect to comment 6, the regulation specifies that the EIS process will be triggered for all proposals concerning the co-location of one or more schools.

With respect to comment 7, changes to co-locations which constitute a significant change in school utilization will trigger the EIS process, including public comments and Panel approval, as set forth in the proposed regulation.

With respect to comment 8, the Education Law requires that the BUP ensure that co-located DOE and charter schools have "equitable" access to shared facilities.

With respect to comments 9a, 9b and 9c, the EIS guides as posted call for the provision of current projected enrollment data. Requiring the use of specific data sources runs the risk of unnecessarily limiting the information that can be utilized to make accurate projections, or preventing the DOE from making such projections.

With respect to comment 9d, the EIS guides as posted call for discussion of building capacity and current utilization where appropriate. The DOE declines to require capacity and utilization projections five years into the future, because accurate projections may not always be available.

With respect to comment 9e, the class size goals set forth by Contracts for Excellence, the UFT contract and the building goals are unaffected by the proposed regulation.

With respect to comments 9f and 9k, the EIS guides as posted call for discussion of changes in usage of special rooms or shared space, and significant programmatic changes which will occur as a result of a proposed significant change in school utilization. For charter co-locations, the BUP provides additional information on room allocations. However, final room allocation decisions are made by individual principals and/or Building Councils at the time of the co-location, and thus cannot be included in an EIS published at a time consistent with the requirements of the Education Law.

With respect to comment 9g, the anticipated number of teachers that would be added to the ATR is extremely difficult to predict in an EIS published at a time consistent with the requirements of the Education Law. Staffing decisions are made at the school level and are dependent upon a number of factors, including actual enrollment.

With respect to comments 9h and 9i, the EIS guides as posted call for discussion of the impact of a proposal on special education and ELL students and the provision of demographic data, which will include the number of students in each of those categories in the impacted school.

With respect to comment 9j, the EIS guides as posted require discussion (where appropriate) of the student transportation effects of a proposal.

With respect to comments 9k and 9l, neither the proposed regulation nor the EIS guides are designed to govern the minimum number of specialty rooms a high school should have. The regulation and guides are intended to govern only certain changes in school utilization and certain aspects of building management in buildings with multiple schools.

With respect to comment 9m, the EIS will indicate if the proposed siting is temporary or permanent, and if temporary, will provide information about the duration of the temporary re-siting.

With respect to comment 9n, it should be noted that the EIS guides as posted call for the disclosure of a proposal's impact on High School Admissions programs, CTE Pathways, Middle School Choice programs and special education and English Language Learner programs available to current students, and any other significant programmatic changes at the school.

With respect to comment 9o, the DOE deems the EIS guides as posted consistent with the Education Law's requirements and provide the appropriate amount of information regarding a proposal's impact.

With respect to comment 10a, the EIS guides as posted call for the provision of the requested information where possible.

With respect to comment 10b, the EIS guides as posted call for a discussion of the impact of a phase-out on other schools in the community. The DOE declines to require discussion of the "cultur[al]" impact of a phase-out because the term is too vague.

With respect to comments 10c-10h, the impact of a proposed phase-out on both students who would have attended a phase-out school and who currently attend the phase-out school is included in the phase-out EIS guide as posted. In addition, the EIS guide as posted call for discussion of the impact of a proposed phase-out on special education and ELL students, available programs, enrollment, eligibility and transfer options, and details on alternative options for prospective students. Options for students who fall behind and do not graduate with their class as the school is being phased out will be handled on a case-by-case basis.

With respect to comment 10i, the phase-out EIS guide as posted call for the inclusion of information regarding the schools which would be alternative options available for students who would have attended the phased-out school. That information includes, among other things, school-specific data such as enrollment and building capacity.

With respect to comment 11a, the EIS guide as posted calls for discussion the impact of a proposal on High School Admissions programs, CTE Pathways and Middle School Choice programs (where applicable), along with significant programmatic changes which will occur as a result of a proposed significant change in school utilization.

With respect to comment 11b, the Education Law requires the creation of a BUP (to be approved by the PEP) for new charter co-locations. Any room-by-room allocation list preceding the statutorily mandated BUP would thus be subject to reversal in the BUP, making such a list potentially misleading. In addition, room-by-room allocations are done by the principal of a school, or through the relevant Building Council. Such room-by-room allocations thus are not properly part of an EIS.

With respect to comment 11c, the EIS guides as posted call for the provision of information regarding changes to CTE programs and high school admissions processes.

With respect to comment 11d, the Education Law does not require a separate EIS process for the expansion of co-located schools, unless that expansion independently constitutes a significant change in school utilization under the Education Law.

With respect to comments 11e and 11g, the EIS guide as posted calls for discussion of the allocation of instructional and specialty space. However, room-by-room allocations are done by the principal of a school, or through the relevant Building Council. Such room-by-room allocations are thus not properly part of an EIS.

With respect to comment 11f, neither the proposed regulation nor the proposed EIS guides alter any other applicable standards governing school buildings. As a result, those standards are not properly addressed by comments on the proposed regulation.

With respect to comment 11h, the EIS guide as posted already calls for discussion of the alternative options available to students in phase-out schools and the impact of a proposal on surrounding schools.

With respect to comments 12a and 13a, the EIS guide as posted already calls for discussion of the allocation of instructional and specialty space. However, room-by-room allocations are done by the principal of a school, or through the relevant Building Council. Such room-by-room allocations are thus not properly part of an EIS.

With respect to comments 12b and 13c, the EIS guide as posted calls for a description of the impact of a proposed re-siting on spaces such as the gymnasium, cafeteria, library, and playground, where applicable, and for a proposal of how such space might be shared between or among the proposed co-located schools. This is consistent with the requirements set forth in the Education Law.

With respect to comments 12c and 13d, the EIS guide as posted calls for discussion of the aggregate impact of the proposal on the surrounding community, including discussion of aggregate enrollment trends and capacity.

With respect to comment 13e, the EIS guide as posted calls for discussion of such schools.

With respect to comment 14, as reflected in the regulation, the impact on specialty rooms and shared spaces, as well as the provision of special education services will be considered in forming a proposal for a significant change in school utilization, and will be disclosed in the EIS for such proposal.

With respect to comment 15, the procedures relating to the issuance of charters are set forth in the Education Law and not properly addressed in this regulation.

With respect to comment 16, charter schools which propose grade expansions will be subject to the EIS process to the same extent as other proposals for grade expansions. The procedures relating to the renewal of charters are set forth in the Education Law and not properly addressed in this regulation.

### *C. Joint Public Hearings and Panel Meetings*

With respect to comment 1, the Education Law specifies the parties who must attend the Joint Public Hearing, and charter authorizers are not among those parties. However, the Education Law does require charter authorizers to conduct their own public hearing in advance of the granting or revision of a charter, and nothing in the regulation prevents a charter authorizer from participating in a Joint Public Hearing relating to an EIS.

With respect to comment 2, the Education Law sets forth the time period during which the Joint Public Hearing must occur. The revised proposed regulation adopts the statutory timeline.

With respect to comment 3, the revised proposed regulation sets forth in detail the process by which stakeholders can set the agenda of the Joint Public Hearing (during which they may request the addition of a Q&A session), as to who will and what will occur if agreement cannot be reached. However, the proposed regulation provides for several avenues by which questions can be answered, including a dedicated DOE official, phone number, and e-mail address.

With respect to comment 4, the regulation specifies that an analysis of all public comment received will be made publicly available prior to the Panel's vote. In addition, the regulation expressly contemplates that the Chancellor may "substantially revise" the EIS based in part on input received during the Joint Public Hearing, which indicates that the DOE will be considering comments received throughout the public comment period. Furthermore, the DOE intends to transcribe joint public hearings, and such transcripts will also be made publicly available.

With respect to comments 5 and 6, the Education Law establishes the timeline in which the Joint Public Hearing must be held. The regulation adopts that timeline.

In response to comment 7, on September 22, 2010 the DOE revised the proposed regulation to clarify that that any substantial revisions should require a new joint public hearing no sooner than 15 days before the Panel vote.

With respect to comment 8, all public comments are taken into consideration and may lead to revisions in the EIS. If those revisions are considered "substantial," a new joint public hearing must be arranged and more time for additional public comment would be made available.

In response to comment 9, on September 22, 2010 the DOE revised the proposed regulation to provide that the CCELL receive copies of all EIS and will be invited to attend and provide input on the agenda of all Joint Public Hearings.

With respect to comment 10, one or more CCHS members may attend a Joint Public Hearing.

With respect to comment 11, the Education Law mandates that the DOE summarize and analyze all public comments received up to 24 hours before the relevant PEP meeting. Thus, the DOE is necessarily unable to post a full summary and analysis more than 24 hours in advance of the relevant PEP meeting.

With respect to comments 12, 13 and 14, the PEP has its own bylaws which govern its meetings. The proposed regulation does not implicate those bylaws, nor could it alter them.

As to comment 15, the DOE will attempt keep the public informed about joint public hearings, and intends wherever possible to provide transcripts of such hearings on its website.

With respect to comments 16, the DOE will attempt to reach out to as many community members as possible to maximize public input regarding proposals.

With respect to comment 17, the timeline for the Joint Public Hearing is set by the Education Law, which limits the DOE's ability to alter the meeting timeline as suggested by the commenter.

With respect to comment 18 as specified in the proposed regulation, the relevant city representative will be identified in the public notice.

With respect to comment 19, the Education Law sets forth the conditions under which the Chancellor may act on an "emergency basis." The proposed regulation does not alter the statutory standard.

With respect to comment 20, nothing in the proposed regulation alters the venues available for appeal of an approved significant change in school utilization or a BUP.

## III. Shared Space

### *A. Building Usage Plans (BUP)*

The change proposed in comment 1 has been made; a District 75 school will be represented on the building council and shared space committee regardless of how many classrooms it occupies in a building.

With respect to comments 2 and 3, the proposed revision is unnecessary because EISs for all co-locations will include much of the information contained in a BUP, including how the proposal will impact the allocation of instructional space; the proposed space allocation for the duration of the co-location; accessibility of specialty classrooms; impact on shared spaces and how such spaces can be shared between or among the co-locating schools; the impact on the building's safety and security plan.

With respect to comment 4, it is unnecessary to further expand the scope of information contained in a BUP because this document already provides the allocation of rooms between the schools, a proposal for the collaborative usage of shared resources and spaces between the two schools, justification of the feasibility of the proposed allocations and schedules, building safety and security, communication strategies to be used by the co-located schools, collaborative decision-making strategies to be used by the co-located schools including the establishment of a shared space committee.

The change proposed in comment 5 has been addressed; any revision to a BUP will require Panel approval prior to implementation.

With regard to comment 6, the term "co-location" is sufficiently defined.

It is unclear what exact change is proposed by comment 7, but it should be noted that a proposal to locate or co-locate a charter school within a public school building and its accompanying building usage plan must be approved by the PEP prior to the implementation of the proposal, and non-compliance with the BUP may be appealed to the Commissioner of Education pursuant to §2853(3)(a-5) of the New York Education Law.

With respect to comments 8 and 9, the regulation now clarifies that any revision to BUP will require Panel approval prior to implementation. The revision of the BUP does not automatically trigger a new EIS process. Furthermore, it should be noted that the Footprint is available at:

http://schools.nyc.gov/NR/rdonlyres/8CF30F41-DE25-4C30-92DE-731949919FC3/87633/NYCDOE_Instructional_Footprint_Final9210TNT.pdf

With respect to comment 10, the regulation adequately addresses the role of building councils in section III.A.

With respect to comment 11, nothing in the Education Law requires the DOE to limit the size to which a charter school may grow. However, if a charter school's enrollment increases to the point where it must seek a revision of its charter to accommodate the increased enrollment, the Education Law states that the charter authorizer must hold a public hearing regarding the proposed charter revision.

With respect to comment 12, nothing in the regulation prohibits any member of a shared space committee from challenging the implementation of a BUP by appealing to the Commissioner of the New York State Education Department or pursuing other legal remedies.

With respect to comment 13, the DOE believes that principals and school leaders should retain the discretion to make determinations about the management of their buildings. Furthermore, the CCELL shall receive copies of all EISs regarding significant changes in school utilization, be invited to participate in all joint public hearings regarding such changes, and have the opportunity to structure the agenda for such hearings.

With respect to comment 14, charter schools cannot unilaterally modify BUPs. Any revisions to the BUP must be approved by the Panel prior to implementation.

With respect to comment 15, consistent with the Education Law §2853(a-3)(4), proposed revisions to BUPs need not be submitted to Panel for approval at least six months prior to the school year in which the change is to be implemented.

With respect to comment 16, consistent with the regulation, the BUP will provide a proposed schedule for each co-located school's use of shared spaces, including the gym. The building council will finalize this schedule, taking into consideration each school's gym needs.

With respect to comment 17, as indicated in the regulation and the attached EIS guide concerning co-location proposals, such proposals will be based on several considerations, including the adequacy of space in the building.

***B. Building Councils and Shared Space Committees***

The change proposed in comment 1 has been made to the regulation; D75 schools will be represented on building councils and shared space committees regardless of the number of rooms the school occupies in the building.

With respect to comments 2 and 3, the DOE believes that the composition of the building council and the shared space committee as described in the regulation includes the appropriate individuals. With respect to the request for parent and teacher participation on the building council, it should be noted these councils are meant to be a forum where principals can make administrative decisions that guide the campus as a whole. Issues of safety, scheduling, fire drills, extended use, maintenance, and custodial services are administrative decisions for which principals are accountable. Furthermore, documents relating to the management of the building, including agendas and minutes of building council meetings, will be available to for review by, among others, SLT members. As to the composition of the shared space committee, the regulation makes clear that, with respect to non-charter schools, the parent and teacher members of the shared space committees will be selected by the corresponding constituent member of the SLT of the school; nothing prevents the relevant SLT member from selecting the PTA president or UFT chapter leader as shared space committee members.

With respect to comment 4, the Education Law does not require that shared space committee meetings be open to the public or publicized in advance. Shared space committees may, however, choose to publicize their meetings in advance and/or invite parents or members of the community to attend. Furthermore, it should be noted that the building council's agendas and meeting minutes, as well as other records relating to the management of the building, are available to the SLT.

With respect to comment 5, the use of the term "equitable" throughout the regulation is consistent with the Education Law.

***C. Charter School Capital Improvements and Facility Upgrades***

With respect to comment 1, charter school applications for approval of capital improvements and facility upgrades are available to the public to the extent permitted under the Freedom of Information Law.

The proposed change in comment 2 has been made; proposed capital improvements and facility upgrades must be submitted in writing to the building council and the shared space committee prior to submission to the Division of Operations.

With respect to comment 3, the regulation makes clear that once the Chancellor has made a determination as to whether approve a proposed capital improvement or facility upgrade, he

or his designee shall notify the charter school's operator and co-located non-charter schools of his decision. To the extent appropriate, the DOE will notify other concerned stakeholders of such determinations.

With respect to comment 4, it should be noted that the term "equitable" is not used in section III(2), which concerns the circumstances under which a charter school's expenditure on a capital improvement or facility upgrade must be matched for co-located non-charter schools.

With respect to comment 5, the DOE deems the order of the sections in part III of the regulation appropriate.

**IV. Miscellaneous**

With respect to comment 1, a school's expansion plans will be taken into consideration when assessing excess space and potentially proposing a co-location in the building.

With respect to comment 2, although PA and PTA groups are not specifically mentioned in the Regulation, all impacted parents will be notified of proposals. Additionally, PA/PTA presidents are members of SLTs, which are referenced throughout the regulation.

With respect to comment 3, the original proposed amendments posted on August 23, 2010 are available on the DOE website.

With respect to comments 4, 5 and 6, a DPC is an internal planning group that works to identify potential areas for action, at which point, DPC members will engage with various stakeholders before making a decision. The DOE does not require parent representation on the DPC, but it seeks public feedback on ideas generated in the DPC through mechanisms as defined in A-190, as well as non-mandated engagement efforts. The Division of Portfolio Planning aims to provide more information and opportunity for feedback from parents, CBOs, and other stakeholders before a proposal regarding a significant change in school utilization is put forth.

With respect to comment 7, the regulation's disclosure of the right to appeal approved BUPs and EISs is consistent with the Education Law. The regulation does not, and could not, alter the ability to pursue other legal remedies to challenge an approved BUP or EIS.

Comment 8 does not require a response.

With respect to comment 9, the regulation's procedures for the emergency implementation of a phase-out or a significant change in school utilization are consistent with Education Law.

With respect to comment 10, providing individualized graduation plans for students who may not succeed in filling graduation requirements with their peers before the school is completely phased out is a significant policy action that does not fall under the rubric of A-190.

With respect to comment 11, the Division of Portfolio Planning intends to reach out to principals, SLTs, parents and other stakeholders to discuss potential proposals prior to the posting of a formal proposal, and the commencement of the EIS process whenever feasible.

With respect to comment 12, PEP members are provided with the notice, EIS, and public comment analysis for all proposals, and may request additional information as they see fit.

With respect to comment 13, the DOE received comments during the public comment period set forth in the Education Law, and adopted several of those comments into the revised proposed regulation posted on September 22, 2010, and the slightly modified draft of the regulation posted on October 6, 2010. Moreover, the DOE went above and beyond its legal requirements by holding two public engagement meetings on the regulation, and is holding many meetings with community groups, advocacy groups and elected officials.

## Changes Made to the Proposal

In response to public feedback, the following changes to the proposed amendments to the regulation were made on September 22, 2010.

- Revised the definition of "affected students" to refer to students attending all of an impacted school's sites. (p. 1, §I.C)
- Revised the definition of "significant change in school utilization" to include significant changes to District 75 school organizations. (p. 1, §I.G)
- Revised the regulation to include requirement that DOE file EISs with the Citywide Council on English Language Learners (CCELL) and the Citywide Council on Special Education (CCSE). (p.3, §II.A.3)
- Revised the regulation to require that the Chancellor e-mail a copy of any EIS concerning a high school to all community boards and CECs in the borough in which the impacted high school is located. (p. 4, §II.A.3)
- Revised the regulation so that proper filing consists of delivery or mailing by First Class Mail of an EIS. (p. 4, §II.A.3)
- Revised the regulation's requirements regarding the scheduling of joint public hearings. (p.4, §II.B.1 &2)
- Revised the regulation to allow CCELL and CCSE to make suggestions to all joint public hearing agenda. (p.4, §II.B.3.a & b)
- Revised the regulation to clarify that a further joint public hearing is required after the Chancellor substantially revises an EIS. (p. 5, §II.B.5)

- Revised the regulation to permit D75 school organizations to participate on building councils and shared space committees regardless of how many rooms they have in a building. (p.6-7, §III.A &B)
- Revised the regulation to require that a charter school's written proposal for a capital improvement or facility upgrade must be submitted to the building's building council and shared space committee prior to submission to the Division of Operations. (p. 8, §III.B.2.b)
- Revised the term "D75 program" to "D75 school organization" throughout the regulation.
- Clarifies which individuals are representatives of organizations are to receive notice of proposals and/or invitations to participate in joint public hearings.

On October 6, 2010, the DOE published a further updated draft of the proposed amendments to A-190. This draft deleted sub-section II(A)(2)(a)(iii)(a) from the regulation, which concerned revisions to BUPs.

The revised proposal will be presented to the Panel for Educational Policy as it is currently posted. A copy of the final proposal is located on the NYC Department of Education's website in the Panel for Educational Policy section under Public Notice.