

Category: **STUDENTS**

Issued: 8/23/10

Number: **A-190**Subject: SIGNIFICANT CHANGES IN SCHOOL UTILIZATION AND
PROCEDURES FOR THE MANAGEMENT OF SCHOOL
BUILDINGS HOUSING MORE THAN ONE SCHOOL

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SUMMARY OF CHANGES

This regulation supersedes Chancellor's Regulation A-190 dated November 13, 2009.

Changes:

- Clarifies definition of "affected community school district" for purposes of proposed significant changes in school utilization at high schools (p. 1, § I.A).
- Clarifies definition of "affected community education council ("CEC")" (p. 1, § I.D).
- Clarifies definition of "impacted community boards" (p.1, § I.E).
- Ensures that the definition of "parent" used in the regulation accords with the definition set forth in Chancellor's Regulation A-660 (p. 1, § I.F).
- Clarifies that the term "significant change in school utilization" applies neither to changes to the placement or siting of programs such as gifted and talented programs in facilities currently utilized by schools or other programs, nor to the co-location of new schools opening in new construction or other facilities not currently utilized by the DOE. (p. 1, § I.G).
- Adds a definition of the term "capital improvement or facility upgrade" in order to enable the DOE's compliance with the Amended Charter School Act (p. 1, § I.H).
- Adds new appendices setting forth sample guides for use in the creation of Educational Impact Statements ("EIS") and Building Usage Plans (p. 2, § II.A.1 and Attachment No. 1; pp. 2-3 § II.A.2(a)(ii) and Attachment No.2).
- Adds new section specifying the information to be included in EISs involving the co-location of one or more charter schools with one or more non-charter schools (pp. 2-3, § II.A.2).
- Establishes new procedures for filing and disseminating copies of EISs to affected or impacted schools, parents, CECs, school leadership teams, and other appropriate bodies. (pp. 3-4, § II.A.3)
- Establishes processes for scheduling, setting the agenda for, and providing notice of joint public hearings on proposed significant changes in school utilization. (pp. 4-5, § II.B).
- Establishes timeline on which significant changes in school utilization approved by the Panel for Education Policy may take effect (p. 6, § II.C.5).
- Establishes building councils in all public school buildings in which two or more schools are co-located, and establishes minimum meeting schedules and procedures for those building councils (pp. 6-7, § III.A).
- Establishes shared space committees in all public school buildings in which one or more charter schools is/are co-located with one or more non-charter schools, and specifies that DOE parent and teacher representatives on that committee shall be selected by the corresponding constituent member of the SLT at that school (p. 7, § III.B.1).
- Specifies, as required by the Amended Charter School Act, that the Chancellor or his/her designee must first authorize in writing any proposed capital improvement or facility upgrade in excess of five thousand dollars, regardless of the source of funding, made to accommodate the co-location of a charter school within a public school building, and creates process by which co-located charter schools seek such authorization (pp. 7-8, § III.B.2).

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- Further specifies that for any such capital improvements or facility upgrades authorized by the Chancellor, matching capital improvements or facility upgrades shall be made in an amount equal to the expenditure of the charter school for each co-located non-charter public school within the public school building within three months of such improvements or upgrades (p. 7, § III.B.2).
- Updates the name of the contact office designated to receive inquiries regarding this regulation.

ABSTRACT

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. In 2010, the New York State Charter School Act of 1998 was also amended to require additional procedures in connection with the location or co-location of one or more charter schools in an existing public school building (the "Amended Charter School Act"). This revised regulation implements each of these amendments to the law.

I. DEFINITIONS

- A. For proposals concerning elementary, intermediate, and middle school grades, "affected community school district" shall refer to the community school district in which the school that is the subject of the proposal is located. For proposals concerning high school grades, the term shall mean the community school district within the geographical boundaries of which the school that is the subject of the proposal is located.
- B. The terms "affected school" and "impacted school" refer only to 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.
- C. The terms "affected students" and "affected parents" refer to those students and parents of those students enrolled in any impacted school at the time a proposal for a school closure or significant change in school utilization is made.
- D. The term "impacted Community Education Council" or "impacted CEC or Council" shall refer to the Community Education Council (CEC) representing the affected community school district.
- E. "Impacted community boards" shall include, for proposals concerning elementary, intermediate, and middle schools, those community boards whose boundaries fall within the geographic confines of the community school district in which the affected school is located. For proposals concerning high schools, the term shall include those community boards that are located within the community school district within the geographical boundaries of which the affected school is located.
- F. Consistent with the definitions in Chancellor's Regulation A-660, a "parent" is defined as the student's parent or guardian, or any person in a parental or custodial relationship to the student. The definition of parent includes: birth or adoptive parent, step-parent, legally appointed guardian, foster parent, and "person in parental relation" to a child currently attending a school
- G. A "significant change in school utilization" shall mean the phase-out, grade reconfiguration, re-siting, or co-location of schools in currently utilized school facilities. A "significant change in school utilization" shall not include changes to school-based programs, changes to zoning lines, or the placement/siting of programs such as gifted and talented programs, in facilities currently utilized by schools or other programs, nor shall the term include the co-location of new schools opening in new construction or other facilities not currently utilized by the DOE.
- H. A "capital improvement or facility upgrade" shall mean an addition or alteration to an existing building, which is permanent and is intended to increase a building's value, beauty,

or utility, or to adapt the building for a new purpose. Such addition or alteration becomes part of the existing building, or is intended to be permanently affixed to the existing building so that removal would cause material damage to the building or article itself. In addition to the foregoing, the following is a non-exhaustive list of additions or alterations that shall constitute facility upgrades: painting; the replacement of floor covering(s); the installation of electrical or computer network wiring; and the addition of window unit air conditioners. The Chancellor retains final authority to determine whether a given proposed project qualifies as a facility upgrade.

II. PROCEDURES FOR PUBLIC REVIEW AND COMMENT ON THE CHANCELLOR'S PROPOSALS FOR SCHOOL CLOSINGS AND CHANGES IN SCHOOL UTILIZATION

A. Educational Impact Statement

1. When the Chancellor proposes to close a school or make any significant change in school utilization (i.e., the phase-out, grade reconfiguration, re-siting, or co-location of schools) he or she shall prepare an educational impact statement ("EIS")¹. Such EIS shall include, where applicable:
 - a. The current and projected student enrollment of the affected school;
 - b. The prospective need for such school building;
 - c. The ramifications of such school closing or significant change in utilization upon the community;
 - d. Initial costs and savings resulting from the school closing or significant change in utilization;
 - e. The potential disposability of any closed school;
 - f. The impact of the proposal on affected students;
 - g. An outline of any proposed or potential use of the school building for other educational programs or administrative services;
 - h. The effect of the school closing or change in utilization on personnel needs, the costs of instruction, administration, transportation, and other support services;
 - i. The type, age, and physical condition of the school building, maintenance, and energy costs, recent or planned improvements to such school building, and such building's special features;
 - j. The ability of other schools in the affected community district to accommodate students following the school closure or change in utilization; and
 - k. Information regarding the school's academic performance, including whether such school has been identified as Persistently Lowest Achieving, a School Under Registration Review, and/or under Differentiated Accountability Status (In Need of Improvement, Corrective Action, or Restructuring).
2. EISs Concerning the Location and/or Co-Location of a Charter School in an Existing Public School Building.
 - a. For any proposal to locate or co-locate a charter school in an existing public school building, an EIS must also include the following:
 - i. The rationale as to why such public school building has been identified for the location or co-location of the charter school; and
 - ii. A building usage plan, which shall include, but need not be limited to, the following information (a suggested guide for a building usage plan is

¹ Suggested guides for such EIS are appended to this regulation at Attachment No. 1. Because each proposal is unique, EISs will include information as appropriate in light of the particular circumstances surrounding a given proposal.

appended to this regulation at Attachment No. 2):

- (a) The actual allocation and sharing of classroom and administrative space between the charter and non-charter school(s). The allocation shall specify the number and type of rooms to be assigned to each school in the building pursuant to the DOE's Instructional Footprint (the "Footprint"). The plan shall also specify the number and type of rooms not allocated pursuant to the Footprint. Any space not allocated pursuant to the Footprint shall be allocated in the plan equitably among the co-located schools. In determining an equitable allocation, the DOE may consider factors such as the relative enrollments of the co-located schools, the instructional and programmatic needs of the co-located schools, the physical location of the excess space within the building;
 - (b) A proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools, including but not limited to, cafeterias, libraries, gymnasiums and recreational spaces, including playgrounds, which assures equitable access to such facilities in a similar manner and at reasonable times to non-charter school students as provided to charter school students;
 - (c) Justification of the feasibility of the proposed allocations and schedules set forth in clauses (a) and (b) of this subparagraph and how such proposed allocations and shared usage would result in an equitable and comparable use of such public school building;
 - (d) Building safety and security;
 - (e) Communication strategies to be used by the co-located schools; and
 - (f) Collaborative decision-making strategies to be used by the co-located schools including the establishment of a shared space committee pursuant to section III.B.1. of this regulation.
- iii. A revision of the building usage plan shall require PEP approval consistent with the requirements pursuant to subdivision seven of §2590-g of the New York Education law.
- (a) For purposes of this regulation, any proposed change to the building usage plan which results in any of the co-located schools receiving fewer than the baseline number of rooms allocated pursuant to the Footprint shall constitute a "revision." To the extent that the proposed alteration or redistribution of space involving rooms other than those allocated pursuant to the Footprint is not agreed upon by the relevant building council after having followed the resolution procedures set forth in the Campus Policy Memo, such change to the building usage plan will also constitute a revision.
3. At least six months in advance of the first day of the school year in which the closure or change in utilization is to take effect, the Chancellor shall publish the EIS on the DOE's official internet website and make available a hard copy of the EIS in the main office(s) of the impacted school(s). The Chancellor shall also file a hard copy of the EIS with the PEP, the impacted Community Education Council (CEC), the impacted community boards, the community superintendent, and the School Leadership Team(s) (SLT) of the impacted school(s). For proposals concerning high schools, the Chancellor shall also file a hard copy of the EIS with the Citywide Council on High schools ("CCHS"), and for proposals concerning affected students who are enrolled in a District 75 ("D75") program, the Chancellor shall also file a copy of the EIS with the Citywide Council on Special Education ("CCSE") and the D75 Council. Proper filing shall consist of mailing a hard copy of the EIS by First Class mail to the Chairperson

of the PEP, the administrative assistant(s) of the impacted CEC(s), the president of the impacted community board(s), the impacted community superintendent(s), and the principal(s) of the impacted school(s) in his or her capacity as a member of the SLT, and, as appropriate, the president of the CCHS, the CCSE and the D75 Council.

4. The community superintendent of the community school district shall provide notice of such proposal and any subsequent revised proposal to all impacted parents, directly or via the affected school's administration. Such notice shall include information as to where a copy of the EIS or revised EIS, if applicable, may be obtained and the date and location of any joint public hearing on the proposal or revised proposal (see Section II.B). In the case of a proposal concerning a high school, such notice to impacted parents shall be jointly provided by the community superintendent of the affected community school district and the High School Superintendent for the high school that is the subject of the proposal. In the case of a proposal concerning affected students enrolled in a D75 program, such notice to impacted parents shall be provided by the superintendent of D75.

B. Joint Public Hearing

1. For all proposals to close a school or to make a significant change in school utilization, the Chancellor² shall hold a joint public hearing with the impacted CEC and the SLT at the school that is the subject of the proposal. In the case of proposals concerning high schools, the CCHS shall be invited to participate in the joint public hearing. In the case of proposals concerning affected students who are enrolled in a D75 program, the CCSE and D75 Council shall be invited to participate in the joint public hearing.
2. Scheduling the Joint Public Hearing
 - a. Such joint public hearing shall be held no sooner than thirty (30) days, but no later than forty-five (45) days after the filing of the EIS.
 - b. Prior to the filing of the EIS, a person or office designated by the Chancellor shall propose a date and time for the joint public hearing to the president of the impacted CEC and the principal of the impacted school in his capacity as the member of the SLT. The CEC and the SLT may propose alternative dates. If no agreement on the date of the hearing can be reached prior to the filing of the EIS, the Chancellor or Chancellor's designee shall set the date. In the case of proposals concerning a high school or affected students enrolled in a D75 program, efforts shall be made to include, where feasible, the president of the CCHS, the president of the CCSE and/or the president of the D75 Council, as applicable.
3. Agenda for the Joint Public Hearing
 - a. Prior to the joint public hearing, a person or office designated by the Chancellor shall forward a proposed joint agenda for the joint public hearing to the president of the impacted CEC and the principal(s) of the impacted schools(s) in his or her capacity as a member of the SLT, and the president of the CCHS and/or the CCSE and D75 Council, as applicable. The CEC, SLT, and the CCHS and/or CCSE and D75 Council, as applicable, shall be given an opportunity to comment on the proposed joint agenda and to propose changes to such agenda.
 - b. Such agenda shall include a brief presentation of the proposal by the Chancellor, the Chancellor's designee, and/or, in the case of a school closing proposal, a Deputy Chancellor. Such agenda shall on request include a brief presentation by the impacted CEC, the SLT of the impacted schools(s), and the CCHS and/or CCSE and D75 Council, as applicable. If agreement cannot be

² For proposed school closings, the public hearing shall be held by the Chancellor or Deputy Chancellor and the impacted CEC and SLT. In the case of a proposed significant change in school utilization, the hearing shall be held by the Chancellor or his or her designee and the impacted CEC and SLT.

reached on the content of the agenda, the impacted CEC, the SLT of the impacted school(s) and the CCHS and/or CCSE and D75 Council, as applicable, may utilize their allocation of time as they see fit, after the brief presentation of the proposal by the Chancellor, the Chancellor's designee, and/or, in the case of a school closing proposal, a Deputy Chancellor, and within the time constraints set forth below.

Any presentation by the Chancellor, Chancellor's designee or Deputy Chancellor, the CEC, the SLT, or the CCHS, CCSE or D75 Council, as applicable, shall be limited to a reasonable amount of time and shall not impinge on the public's opportunity to provide comment.

4. The Chancellor shall post notice of the joint public hearing on the DOE's official internet website and provide notice to all affected parents and students. In addition, the Chancellor shall notify the community boards and the elected state and local officials who represent the affected community district. All interested parties shall be given an opportunity to comment on the proposal.
 5. After receiving public input, the Chancellor may exercise his or her authority to substantially revise the proposed school closing or change in utilization, provided the revised proposal does not impact any school other than those schools identified in the initial EIS. In the event the Chancellor decides to revise the proposal significantly, he or she shall prepare a revised EIS in the form set forth in Section II.A.1 of this regulation. The revised EIS shall be published on DOE's official internet website and a copy shall be filed with the impacted CEC, the impacted community boards, the community superintendent, the SLT of the impacted school, and the CCHS and/or CCSE and D75 Council, as applicable, in the manner set forth in Section II.A.3.
- C. Approval by the PEP
1. The Chancellor shall submit all proposals for school closings or significant changes in school utilization to the PEP for approval.
 2. Pursuant to §2590-g(8)(a) of the New York Education Law, before the PEP can approve any proposal for a school closing or significant change in school utilization, the public shall be given an opportunity to submit comments on the proposal. At least forty-five (45) days in advance of the PEP's vote on such proposal, the PEP shall publish a notice of the proposal on the DOE's official internet website and specifically circulate the notice to all community superintendents, CECs, community boards, and SLTs. Such notice shall include:
 - a. A description of the subject, purpose, and substance of the proposal;
 - b. Information as to where the full text of the EIS may be obtained;
 - c. The name, office, address, e-mail address, and telephone number of a city district representative knowledgeable on the item under consideration from whom any information may be obtained concerning such proposal;
 - d. The date, time, and place of any hearing on the proposal;
 - e. The date, time, and place of the PEP meeting at which the PEP will vote on the proposal; and
 - f. Information as to how to submit oral or written comments regarding the proposal.
 3. If the Chancellor's proposal for a school closing or significant change in school utilization is substantially revised at any time following public notice of the proposal by the PEP, the PEP shall issue a revised public notice at least fifteen (15) days in advance of any PEP vote on the proposal. The revised public notice shall include:
 - a. A description of the subject, purpose, and substance of the revised proposal;
 - b. Identification of all substantial revisions to the proposal;

- c. A summary of all public comments received on the proposal following the initial public notice;
 - d. Information as to where the full text of the revised EIS may be obtained;
 - e. The name, office, address, e-mail address, and telephone number of a city district representative knowledgeable on the item under consideration from whom any information may be obtained concerning such proposal;
 - f. The date, time, and place of any hearing on the revised proposal;
 - g. The date, time, and place of the PEP meeting at which the PEP will vote on the revised proposal; and
 - h. Information as to how to submit oral or written comments regarding the revised proposal.
4. After the period for public comment has ended and before the PEP votes on the proposal, the PEP shall publish on the DOE's official internet website an assessment of all public comments concerning the proposal received prior to twenty-four (24) hours before the PEP meeting at which the proposal is subject to a vote. Such assessment shall include:
 - a. A summary and analysis of the issues raised and significant alternatives suggested;
 - b. A statement of the reasons why any significant alternatives were not incorporated into the proposal;
 - c. A description of any changes made to the proposal as a result of public comments received; and
 - d. Information as to where the full text of the EIS or revised EIS may be obtained.
 5. Proposals approved by the PEP pursuant to paragraph (e) of subdivision (2-a) of section 2590-h of the New York Education Law shall not take effect until all applicable provisions of this regulation have been satisfied and the school year in which the PEP granted approval has ended.

III. PROCEDURES FOR THE MANAGEMENT OF PUBLIC SCHOOL BUILDINGS HOUSING MORE THAN ONE SCHOOL OR PROGRAM

A. Building Councils

1. A building council shall be established at each public school building in which two or more schools are co-located, or in which one or more schools is co-located with a D75 program with more than three classrooms in the building. The building council shall be comprised of the principal of each non-charter co-located school or eligible D75 program, and a representative designated by each co-located charter school. They shall meet at least once a month to discuss and resolve issues related to the smooth daily operation of all schools and programs in the building and the safety of the students they serve.

In the event that a building council cannot reach resolution on an issue, the dispute resolution procedures set forth in the Campus Policy Memo and Procedures, available at <http://schools.nyc.gov/community/campusgov>, shall be applicable.

2. The building council will create and maintain agendas and minutes of their meetings, as well as certain other records related to the management of the school building, in the manner set forth in the Campus Policy Memo and Procedures, available at <http://schools.nyc.gov/community/campusgov>.

- B. Charter Schools Co-Located with one or More Non-Charter Schools or Certain D75 Programs
1. Shared Space Committees
 - a. A shared space committee shall be established in each public school building in which one or more charter schools are co-located with one or more non-charter public schools or a D75 program with more than three classrooms in the building. The shared space committee shall be comprised of the principal, a teacher, and a parent from each co-located school or eligible D75 program. With respect to a non-charter school's teacher and parent members, such shared space committee members shall be selected by the corresponding constituent member of the SLT at that school.
 - b. Such committee shall meet at least four times per school year. With respect to charter schools whose location or co-location in a public school building was approved by the PEP after the effective date of the Amended Charter School Act (i.e., May 28, 2010), the shared space committee shall review implementation of the building usage plan developed by the Chancellor and approved by the PEP. With respect to charter schools that were approved to be located or co-located in a public school building prior to the effective date of the Amended Charter School Act, the shared space committee shall review implementation of the current building space plan in place at those buildings.
 2. Capital Improvements and Facility Upgrades
 - a. The Chancellor or his/her designee must first authorize in writing any proposed capital improvement or facility upgrade in excess of five thousand dollars, regardless of the source of funding, made to accommodate the co-location of a charter school within a public school building. The Chancellor or his/her designee may condition such authorization on the receipt from the requesting entity of funding up to the amount necessary to fund the capital improvements or facility upgrades that must be made to each non-charter school within the public school building to meet the requirement of paragraph d of subdivision 3 of section 2853 of the Education Law. The costs of both labor and supplies shall be included in the calculation of the cost of a proposed capital improvement or facility upgrade. All work undertaken and supplies purchased as part of a single project shall be considered in the calculation of the cost of a proposed capital improvement or facility upgrade. For any such improvements or upgrades that have been approved by the Chancellor, capital improvements or facility upgrades shall be made in an amount equal to the expenditure of the charter school for each non-charter school within the public school building. For any capital improvements or facility upgrades in excess of five thousand dollars that have been approved by the Chancellor, regardless of the source of funding, made in a charter school that is already co-located within a public school building, matching capital improvements or facility upgrades shall be made in an amount equal to the expenditure of the charter school for each non-charter public school within the public school building within three months of such improvements or upgrades.
 - b. Approval Process
 - i. All proposed capital improvements and facility upgrades must be submitted in writing to the Division of Operations, or other designated office, at least 15 school days prior to the proposed date of the project's commencement. A charter school's funding for a proposed capital improvement or facility upgrade must be secured at the time of submission.
 - ii. The Division of Operations, or its designee, shall review the charter school's application for approval of its proposed capital improvement or

facility upgrade and make recommendations regarding approval to the Chancellor or his/her designee.

- iii. The Chancellor or his designee shall notify the charter school's operator and the co-located non-charter schools of the decision to grant or deny approval of the proposed capital improvement or facility upgrade.
 - iv. Any changes to the original proposed scope of the charter school's capital improvement or facility upgrade must be approved by the Chancellor or his/her designee in advance of implementing the change in the scope of work.
 - v. Any charter school which proceeds with a capital improvement or facility upgrade that has not been approved by the Chancellor or his/her designee shall be responsible for funding improvements or upgrades to be made in an amount equal to the expenditure of the charter school for each non-charter public school within the public school building within three months of the charter school's improvements or upgrades. The Chancellor may also choose to exercise any other remedy available by law.
- c. Appeals
- i. Once a proposal to locate or co-locate a charter school within a public school building and its accompanying building usage plan have been approved by the PEP, the proposal and/or implementation of and compliance with the building usage plan may be appealed to the Commissioner of Education pursuant to §2853(3)(a-5) of the New York Education Law.

IV. PROCEDURES FOR EMERGENCY SCHOOL CLOSINGS AND SIGNIFICANT CHANGES IN SCHOOL UTILIZATION

- A. The Chancellor may temporarily close a school or adopt a significant change in a school's utilization on an emergency basis if he or she determines such action is immediately necessary to preserve student health, safety, or general welfare.
- B. The Chancellor shall provide a written statement setting forth the reasons for the emergency action and shall publish such statement on the DOE's official internet website.
- C. An emergency closing or change in utilization shall only remain in effect for up to six months, during which time the Chancellor shall comply with the requirements set forth in this regulation. Before an emergency closing or significant change in utilization can extend beyond the six-month period, all requirements of this regulation must be met.

V. EFFECTIVE DATE

This regulation shall take effect on the day following approval by the PEP.

VI. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Telephone:
212-374-5049

Division of Portfolio Planning
N.Y.C. Department of Education
52 Chambers Street – Room 405
New York, NY 10007

Fax:
212-374-5581

Portfolio@schools.nyc.gov