



**Revised Public Notice**  
September 22, 2010

**Joel I. Klein**  
*Chancellor*

## **REGULATION OF THE CHANCELLOR**

Number: A-190

Title: SIGNIFICANT CHANGES IN SCHOOL UTILIZATION AND PROCEDURES FOR THE MANAGEMENT OF SCHOOL BUILDINGS HOUSING MORE THAN ONE SCHOOL

### **I. Description of the subject and purpose of the proposed item under consideration.**

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.

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 location or co-location of one or more charter 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 CECs, community boards, superintendents, SLTs, 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; CCHS, CCSE and D75 Councils 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 Building Council plus parent and teacher representative 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.

The DOE now proposes certain revisions to the regulation in response to comments received since the initial posting of the proposed amendments.

## **II. Identification of all revisions, including substantial revisions, to the item.**

- 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.

## **III. Summary of all public comments received to date.**

Since the DOE's initial August 23, 2010 public notice, questions and comments regarding the proposed amendments to the regulation have been received from the public, from meetings conducted by the DOE with various elected officials and advocacy groups and from two community conversations held by the DOE with parents and community members. These questions and comments may be summarized as follows:

#### Definitions

- Commenters suggested that the definition of "affected students" should be revised to mean all students enrolled in any of an impacted school's sites and should include future students who might be impacted by a proposal;
- A commenter suggested that the definition of "impacted CEC" should be revised to include the Citywide Council on Special Education, the District 75 Council and the Citywide Council on English Language Learners;
- Commenters suggested that the term "impacted Community Education Council" should include CCHS.
- 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, or 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.
- Commenters suggested that the definition of "significant change in school utilization" should be revised to expressly include significant changes to District 75 programs;
- A commenter felt that certain of the changes which are excluded from the definition of a "significant change in school utilization" were vague.
- A commenter expressed concern that the placement and siting of gifted and talented programs are not included in the definition of a "significant change in school utilization."
- A commenter suggested that the term "significant change in school utilization" should not only refer to "currently utilized" school facilities, should not exclude G&T programs, and should include co-locations in facilities newly constructed or new to the DOE.
- A commenter suggested that the definition of a "significant change in school utilization" should not exclude the co-location of new schools in new construction.
- A commenter suggested that the definition of a "capital improvement or a facility upgrade" include whiteboards and other technological additions.
- A commenter suggested that the Chancellor's determination of whether a proposed project qualifies as a facility upgrade should be open to appeal to the Commissioner or the court.
- A commenter suggested adding a definition of a "re-siting."

- 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.
- A commenter suggested using the term “reorganization” as opposed to “phase-out” in the regulation.

Notice, EIS Content, Joint Public Hearings and Panel Meetings

*Notice*

- A commenter suggested that the regulation 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.
- Commenters suggested that the EISs should be distributed directly to families, such as by sending notices to families via e-mail;
- 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;
- A commenter suggested that the regulation be revised to address the accessibility of translations of EISs;
- A commenter suggested that the regulation be revised to indicate how superintendents will provide notice to parents;
- A commenter suggested that the regulation should specify that principals are encouraged to distribute EISs via existing list-serves and via backpack mail.
- A commenter suggested that the notice of the EIS be distributed to parents via backpack mail at least two weeks prior to the joint public hearing.
- 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.
- A commenter expressed satisfaction with the inclusion of CCSE and the District 75 Council in EIS filing and joint public hearing procedures.
- A commenter expressed concern about the amount of lead time for engaging school communities on proposals.
- A commenter suggested including a description about the manner, form and timing of giving notice.
- 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.
- A commenter suggested that charter schools should cover expenses related to their proposals (such as printing and distribution of required documentation).

- A commenter suggested that parent coordinators should be used to help disseminate information.
- A commenter queried why the CEC's administrative assistant is listed as the contact for receiving a copy of the EIS instead of the President/Chair. The commenter also queried why the principal is included as the member of the SLT instead of the SLT President. The commenter suggested that core members of the SLT should all be included in EIS notification procedures and that the DOE should also notify the President's Council and PTA.
- A commenter suggested that CECs should conduct better outreach to the people they're serving to keep them informed of these proposals.
- A commenter suggested that the DOE should be more aware of when multiple community boards are impacted by a proposal since district zones do not mesh up perfectly.
- A commenter stated that backpacking for high school students is an ineffective way to reach parents.
- A commenter suggested that notice of EISs be circulated to relevant city council members, state legislators, and borough presidents.

*Content of EISs*

- A commenter suggested that EISs include the current and projected enrollments of all affected schools, and include projections for the following five years, and specify the data sources, which should include current enrollment trends, buildings starts in the area, birth rates geocoded by residence, census data and surveys of neighborhood day care centers and pre-Ks. The commenter also suggested that the DOE coordinate with the SCA in these efforts.
- A commenter suggested that the phrase "prospective need for such school building" should be clarified.
- A commenter suggested that the impact of a proposal on affected students should include projected class sizes, and indicate whether these class sizes are consistent with the city's C4E goals, the UFT contractual limits, and/or the building code.
- A commenter suggested that the EIS should also analyze the impact of any change in school utilization on availability of dedicated rooms for art, music, science, special education services, including SETTs and guidance counseling, and critical shared spaces, such as libraries, gyms, playgrounds and other outdoor spaces, and auditoriums.
- A commenter suggested that EISs should include a projection of how many teachers will be put on ATR and the costs of this.
- A commenter suggested that EISs should include enrollment projections for the community district as a whole.
- A commenter suggested that EISs include information regarding the impact of a proposed change on special education and English Language Learner populations;

- A commenter suggested that EISs address the impact of a proposal on gifted and talented programs.
- A commenter suggested clarifying the phrase “ramifications of such school closing or significant change in utilization upon the community,” and noted that this phrase should include athletics, transportation, other schools, etc.
- A commenter suggested that EISs should include review of C4E and CEP of existing schools.
- A commenter stated that problems with enrollment projections and budget mean that an EIS is not entirely accurate.
- A commenter stated that utilization rules are not followed for charter schools.
- A commenter felt that the impact on students in the EIS is vague. The commenter suggested including details on class size, available dedicated space for electives, special education services, shared spaces such as libraries and gyms.
- A commenter posed questions about how students in a phase-out school will be served if they don’t graduate on time with the last class and are sent somewhere else.
- A commenter suggested that co-locations should not just be for “school buildings,” but any kind of property or facility, including trailers.
- A commenter queried whether the DOE is accepting feedback on the guides as well as the Regulation.
- A commenter suggested clarifying what constitutes a significant revision to an EIS.
- A commenter expressed uncertainty regarding how changes to co-locations would be treated.
- A commenter suggested using the term “appropriate” rather than “equitable” in reference to charter co-location language.
- Commenters suggested that the EISs concerning proposed phase-outs of schools should:
  - Provide more information about actions that have already been taken to support the schools;
  - Address the needs of students who would have attended a phase out school;
  - Address how the culture and climate of a school which will receive an influx of students due to a phase-out will be impacted;
  - State how after school programs, athletic programs, and tutoring will be affected in closures and co-locations;

- List alternative school options for students and families, and provide specific data on those schools (i.e., enrollment data, special ed. and ELL data, available programs like CTE and other high school programs); and
- List all the schools that will be impacted, not just the aggregate.
- Commenters suggested that EISs concerning co-locations should:
  - Clarify what will happen to each and every classroom – particularly arts & sciences classrooms;
  - Include the specific allocation of rooms;
  - Include a list of rooms with usage and reallocation by room;
  - Include any loss of or change in services;
  - Include how changes will affect Career Technology Education (CTE) programs, and high school admissions;
  - Include language on Adequacy vs. Equity; and
  - Note exactly how many SPED students are being impacted and what changes, if any, will occur to their services.

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

- A commenter suggested that the regulation be revised to indicate that when the Chancellor substantially revises an EIS, there must be a joint public hearing no sooner than 15 days after the filing of the revised EIS;
- Some 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.
- A commenter requested that the DOE post public comment analysis for proposals earlier.
- A commenter suggested that the CCELL should be included in the EIS process in the same manner as the CCHS.
- A commenter suggested that the DOE should be more consistent about posting transcripts of PEP meetings on the DOE's website.
- A commenter suggested that the DOE provide webcasts of PEP meetings and school-based joint public hearings.
- A commenter suggested that CCHS be able to appoint subcommittee members to attend joint public hearings.

- A commenter suggested that the regulation explicitly reference the requirements for public hearings.
- A commenter queried whether joint public hearings should be scheduled a certain amount of time in advance of the PEP vote.
- A commenter suggested that the regulation should provide more specificity about the timeframe for SLT, principals and DOE to schedule joint school-based hearings.
- A commenter suggested that the regulation should specify how the DOE will provide feedback to parents from comments received at school-based hearings.
- A commenter suggested that charter authorizers should participate in Joint Public Hearings.
- A commenter suggested holding a parent information session, a Joint Public Hearing and a Panel Meeting to spread out attendance. The commenter also noted that attendees did not receive answers.
- A commenter suggested that the agendas for Joint Public Hearings need to be improved and require more collaboration on structure, including a Q&A session.
- A commenter suggested defining “substantial” revisions that prompt a second Joint Public Hearing.
- A commenter suggested defining what kind of “emergency basis” does not require all conditions of A-190 to be met.
- A commenter stated that there was no separate speaker sign-up for electeds at Panel votes.
- A commenter suggested that a Panel vote needs to be final.
- A commenter suggested that PEP members should have to speak briefly about why they’re voting the way they are.
- A commenter suggested that the section on appeals should 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.

### Shared Space

#### *Building Usage Plans*

- A commenter suggested that the definition of “revised building usage plan” (BUP) should be modified to account for the space needs of District 75 students;
- 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.

- 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.
- 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.
- 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.
- A commenter expressed concern that the DOE has changed the formal language for a school's space allocation to “minimum” -- rather than a “baseline.”
- A commenter suggested revising the regulation to refine the definition of a "co-location".
- A commenter suggested incorporating governance regarding BUP into the regulation.
- A commenter suggested clarifying when the revision of a BUP leads to a new EIS.
- A commenter suggested that the regulation should provide information about the formula for the Footprint and revision of BUPs.
- A commenter suggested that the regulation should clarify the role of building councils in developing BUPs.
- A commenter suggested that there should be a cap for how large a charter can grow.
- A commenter suggested revising the regulation to state that if the building usage plan 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.
- A commenter suggested that the DOE should encourage greater participation by the CCELL in all building decisions.
- A commenter suggested that charters shouldn't be making changes that affect the BUP over the summer.

*Building Councils and Shared Space Committees*

- A commenter suggested that the regulation should be revised to include D75 representatives on building councils and shared space committees regardless of how many classrooms the D75 program has in the building.
- A commenter queried why there is a limit on the number of classrooms for a D75 program to qualify to participate on a shared space committee.

- A commenter suggested that for Building Councils, the PTA President or SLT chair should be represented.
- A commenter suggested that the campus audit documents should be available to the public upon request.
- 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.

#### *Charter School Capital Improvements and Facility Upgrades*

- 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.
- A commenter suggested that all capital improvements and facility upgrades to co-located charter schools should be communicated to the Shared Space Committees.
- A commenter queried whether there is a timeline for changes to shared space plans between a charter and district schools similar to the six-month deadline for proposing changes to a school.
- 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.”
- A commenter suggested re-organizing the order of the section regarding the approval process for a charter school’s request for a capital improvement or facility upgrade.
- A commenter suggested that proposed capital improvements and facility upgrades must be submitted in writing to the Division of Operations, or other designated office, at least one month prior to the proposed date of the project’s commencement.
- A commenter suggested that the Chancellor should notify the shared space committee, the CEC, 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.
- A commenter suggested that the Chancellor’s approval of a charter school’s requested capital improvement or facility upgrade should be issued publicly, made available upon request, and provided to the shared space committee, the CEC, the City councilmember and state legislators, and the borough president who represent that community.

#### Miscellaneous

- A commenter suggested that there should not be co-locations if an existing school already has expansion plan in progress.
- A commenter noted that PA/PTAs are not mentioned in Regulation.

- A commenter requested that the original version of the proposed amendments to the regulation be re-posted on the DOE’s website.
- 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.
- 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.
- Several commenters stated that they felt the proposed amendments to the regulation addressed many of the complaints from CECs and the broader community, and that the DOE has taken positive steps toward transparency.
- A commenter suggested that the procedures for emergency school closings and significant changes in school utilization should be more closely defined.

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

- A commenter suggested that the DOE should study the impact of co-locations.
- A commenter posed questions regarding the standards for environments in which IEP-mandated services will be provided.
- A commenter posed questions regarding the revised Citywide Instructional Footprint;
- 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.
- A commenter suggested that changes should be driven from the CECs up.
- 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.
- 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.
- A commenter stated that Parent Progress Reports contain last year’s data and should be distributed through parent coordinators.
- 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.
- A commenter queried whether Parent Progress Reports and other phase-out related information are available to members of the community.

- 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 stated that smaller schools led to better discipline.
- A commenter stated that the DOE is not helping district schools thrive like the charters.
- 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, and suggested that the PEP should know the effect of its vote.
- 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.
- A commenter queried whether everything above the baseline allocation of the Footprint is considered excess space.

An analysis of all oral and written comments submitted to the DOE relating to the proposed amendments to A-190 will be published on the DOE's website on October 6, 2010 prior to the meeting of the Panel of Educational Policy at which this proposed revised regulation will be considered.

**IV. Information regarding where the full text of the proposed item may be obtained.**

The full text of the proposed item can be found on the main page of the PEP website:  
[http://schools.nyc.gov/AboutUs/leadership/PEP/publicnotice/A190Reg\\_Oct2010](http://schools.nyc.gov/AboutUs/leadership/PEP/publicnotice/A190Reg_Oct2010)

**V. The name, office, address, email and telephone number of the city district representative, knowledgeable on the item under consideration, from whom information may be obtained concerning the item and to whom written or oral comments regarding the item under consideration can be submitted.**

Name: Gentian Falstrom  
 Office: Division of Portfolio Planning  
 Address: 52 Chambers Street  
 Email: RegulationA-190@schools.nyc.gov  
 Phone: (212) 374-2471

**IV. Date, time and place of the PEP meeting at which the Board will vote on the proposed item under consideration.**

October 7, 2010  
 6:00 p.m.  
 New World High School  
 921 E. 228<sup>th</sup> Street  
 Bronx, NY