



Date: February 23, 2010

Topic: Proposed Amendment to Chancellor's Regulation A-812

Date of PEP Vote: February 24, 2010

Summary of Proposed Regulation

On June 29, 2009 Chancellor's Regulation A-812 was updated and revised to conform to the DOE's initiatives to improve the quality and nutritional value of foods and beverages that are available for students. The proposed revision to the regulation sets forth rules for student, school, and PTA fundraising activities that involve the sale of food items. Modifications have been made to reflect that students can sell any approved food items at any time during the school day, but not in the cafeteria. In addition, PTAs can hold a monthly fundraiser with non-approved foods during the day as long as it occurs outside of the cafeteria and complies with Chancellor's Regulation A-610 and Chancellor's Regulation A-660. Finally, the regulation establishes that the Chancellor reserves the right to waive any provision of the regulation if he determines it to be in the best interests of the school system. The proposed revised regulation was posted on January 8, 2010.

Summary of Issues Raised and Significant Alternatives Suggested

The public comments received are summarized as follows:

First, some comments expressed concern about the requirement that both student and PTA fundraising sales be held outside of the cafeteria and the potential negative impacts of this on the use of available space at the schools, the amount of money the fundraising sales will be able to raise and the cleanliness of schools. There was a suggestion that the location of the sales in schools should be at the discretion of the Principal or Superintendent.

Second, several comments raised concerns about the effect of the regulation on the ability of students to fundraise and the negative impact on the overall school experience of students. It was suggested that fundraising with homemade baked goods (e.g. cakes, cookies and pretzels) be permitted in schools. One comment suggested that the sale of non-approved items be allowed during the school day on a monthly basis and on a weekly basis after dismissal. One comment suggested that students be permitted to sell whatever they want but only ten times per school year. Some comments stated that it is the parent's decision and not the DOE's decision as to whether students should be allowed to purchase homemade baked goods in schools.

Third, some comments stated that the regulation will benefit the vendors at the expense of students. Parents raised concerns about the impact on PTA fundraising and urged continued dialogue on this issue. Some comments suggested that a once per week sale by the PTA of healthier snacks be

permitted after dismissal, and one comment suggested a PTA sale of non-approved items in the cafeteria during the end of the lunch hour.

Fourth, several comments from parents supported the regulation and the DOE's initiatives and some other comments, citing concerns about the nutritional value of the approved items, thought that it did not go far enough. One comment suggested adding nutritional labels on non-approved items sold by the PTA. Another comment sought to prohibit the once a month PTA fundraisers from selling non-approved food items and restrict the ability of students to sell approved items throughout the school day as these sales compete with healthy school meals. One comment suggested that the regulation should go further and restrict the ice cream trucks from selling to students off school premises. Another comment questioned how the schools would regulate consumption of the approved snacks by the students.

Fifth, one comment suggested that the Chancellor not have the power to waive any provisions of the regulation if he determines it to be in the best interests of the school system. No significant alternatives were proposed.

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

The DOE did not accept the suggestion indicating that the location of the sales in schools at the discretion of Principals or Superintendents. As managers of their school, the principal (and Superintendents upon consultation with the Principal) will have the discretion to select the location of the sales as long as it takes place outside of the cafeteria. Alternative options include the school entryway or outside of the auditorium. The goal is for students to eat balanced school meals during lunch. Allowing the sale of foods in the cafeteria that compete with healthy school meals makes it more difficult to achieve this goal.

The DOE did not accept the suggestions to permit the sale of homemade baked goods or other non-approved items for student fundraising purposes or the suggestion that sales be permitted once per week after dismissal. The list of foods that meet the nutritional guidelines includes items that have been screened by the Office of SchoolFood and meet the nutritional standards set by the Health Department. Calorie counts and nutritional information, such as amount of fat, sugar and sodium, cannot be easily ascertained for homemade goods or other non-approved items. Moreover, it is difficult to limit and monitor portion sizes for homemade goods or other non-approved items. With recent findings showing that almost forty percent (40%) of City students in grades K-8 are either overweight or obese, it is crucial that we teach our students to lead healthy lifestyles from an early age. This policy seeks to set nutritional standards for snacks sold in school including those sold after school and during the school day. Allowing students to sell non-approved items weakens this policy even if only once a month or once a week. As a result, homemade goods will not be considered as part of the approved list and only approved items may be sold in student fundraisers. However, the Office of SchoolFood is able to review new products that students or schools would like to add to this list. This can be done by emailing schoolfoodpolicy@schools.nyc.gov with the product information such as manufacturer, product name and package weight. Regarding concerns about DOE's authority to restrict the sale of homemade goods to students, pursuant to the Education Law of New York, the DOE has authority to determine what items are sold to students on school premises.

Similarly, for the same reasons concerning student health expressed above with respect to student fundraising, the DOE did not accept the suggestions for the once a week sale by the PTA after dismissal or PTA sales at the end of the lunch hour. There are a great number of alternatives to food fundraising such as selling school t-shirts, walk-a-thons, etc. that we want to encourage and not limit. To further support fundraising efforts and community building, the Department of Health and Department of Education developed a resource for alternative fundraising programs such as walk-a-thons. The fundraising guide can be found at: <http://www.nyc.gov/html/doh/downloads/pdf/dpho/dpho-fundraiser-guide.pdf>. We are eager to raise awareness of healthy eating and setting nutritional standards for food sold in schools will help accomplish this goal.

The DOE did not accept the suggestion to prohibit PTA fundraisers from selling any foods not meeting the nutritional guidelines and that would prohibit the sale of approved items throughout the school day for student fundraisers. Given the challenging economic times, the DOE wants to provide flexibility for both student and PTA fundraising. PTA fundraisers may sell non-approved items once a month and, while students can have food sales at any time during the school day, the items must be approved and meet the nutritional standards set by the Health Department. We did not accept the suggestion that these non-approved items be labeled so as not to create any additional burden on the PTA to have a fundraiser. The DOE does not have authority to prohibit the sale of any items that occur off of school premises.

Finally, the DOE did not accept the proposed repeal of the provision that allows the Chancellor to waive any provisions of the regulation if he determines it to be in the best interests of the school system. This provision is important in order to allow the Chancellor to make decisions he believes are in the best interests of the students or the school system. DOE will present the proposed regulation to the PEP as it is currently posted.

A copy of the proposed regulation can be obtained at:
http://schools.nyc.gov/NR/ronlyres/6E82FD60-F37A-4DBF-9497-AC7D7B1E55D0/77725/A812Updated_2_22_10.pdf