





THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents

**FROM:** Kevin G. Smith 

**SUBJECT:** Amendment of Section 126.14 of the Regulations of the Commissioner of Education relating to interest penalties for late annual assessment fees paid by licensed private career schools

**DATE:** March 14, 2016

**AUTHORIZATION(S):** 

### Summary

#### Issue for Decision (Consent Agenda)

Should the Board of Regents amend section 126.14 of the Regulations of the Commissioner of Education to repeal subdivision (c), relating to methods used to calculate interest penalties for late annual assessment fees paid by licensed private career schools to the annual supervision fund and tuition reimbursement account.

#### Reason for Consideration

Implementation of Policy

#### Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency action at the March 2016 Regents meeting. A statement of the facts and circumstances that necessitate emergency action is attached.

## Background Information

Education Law §5001 sets forth the requirements for licensure of private career schools. Pursuant to Education Law §5001(9), the Commissioner is directed to annually assess each school a total percentage of the school's gross tuition based upon the previous year ("annual assessment fee"), which shall be payable in equal quarterly installments due on June 1<sup>st</sup>, September 1<sup>st</sup>, December 1<sup>st</sup> and March 1<sup>st</sup>. The statute provides that any annual assessment fees submitted by the schools after the due date shall be subject to interest at one percent above the prevailing prime rate. Annual assessment fees and interest penalties are used to fund the Department's supervision and regulation of licensed private schools (Annual Supervision Fund). Payments of such fees and interest penalties are deemed to be a condition of a school's licensure, and the statute authorizes the Commissioner to suspend licensure for late payments.

Commissioner's Regulations §126.14(c) provides that the interest penalty shall be calculated as follows:

- (1) For payments received within the first 30 days after the due date the interest penalty shall be the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.
- (2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.
- (3) Interest penalties not paid within 15 days of notification of the amount of the penalty shall be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

The interest penalties in the current regulation are outside the scope of the plain language in Education Law §5001(9) ("one percent above the prevailing prime rate") and produce exorbitant penalty fees which most proprietary schools are unable to pay. As a result, the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute the regulations is meant to implement.

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on April 6, 2016. A copy of the proposed rule is attached. Supporting materials are available on request from the Secretary to the Board of Regents.

## Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That subdivision (c) of section 126.14 of the Regulations of the Commissioner of Education is amended, as submitted, effective March 22, 2016, as an emergency action upon a finding of the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Commissioner's Regulations regarding interest penalties for late payments of annual assessment fees by licensed private career schools to reflect current practice in order to prevent exorbitantly high late fees from being calculated, thereby ensuring the State Education Department's Bureau of Proprietary Schools is able to utilize its ability to suspend the licenses of private career schools and private schools to more effectively ensure timely payment of the annual assessment fee.

## Timetable for Implementation

If adopted as an emergency rule at the March 2016 Regents meeting, the proposed amendment will take effect on March 22, 2016. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June 2016 Regents meeting, with an effective date of June 29, 2016, 2016.

## **8 NYCRR §100.8**

### STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to implement Regents policy and to properly implement Education Law §5001(9)(d) by amending subdivision (c) of §126.14 of the Commissioner's Regulations to reflect current practice relating to interest penalties for late payments of annual assessment fees by licensed private career schools. Section 126.14(c) allows the Department to subject annual assessment fees to interest penalties in the following magnitude:

- (1) For payments received within the first 30 days after the due date the interest penalty shall be the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.
- (2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.
- (3) Interest penalties not paid within 15 days of notification of the amount of the penalty shall be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

The interest penalties in the current regulation are outside the scope of the plain language of Education Law §5001(9), which provides for the payment of interest at one percent above the prevailing prime rate, and produce exorbitant penalty fees which

most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

Because the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action, after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) §202, would be the June 13-14, 2016 Regents meeting, and pursuant to SAPA §202, the earliest the amendment could take effect if adopted at the June 2016 Regents meeting is after publication of a Notice of Adoption in the State Register on June 29, 2016.

Emergency action is necessary for the preservation of the general welfare in order to immediately conform the Commissioner's Regulations regarding interest penalties for late payments of annual assessment fees by licensed private career schools to reflect current practice in order to prevent exorbitantly high late fees from being calculated, thereby ensuring the State Education Department's Bureau of Proprietary Schools is able to utilize its ability to suspend the licenses of private career schools and private schools to more effectively ensure timely payment of the annual assessment fee.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the June 13-14, 2016 meeting of the Board

of Regents, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

## AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education law sections 101, 207, 305 and 5001

Subdivision (c) of section 126.14 of the regulations of the Commissioner of Education is amended, effective March 22, 2016, as follows:

(c) Pursuant to section 5001(9) of the Education Law, any annual assessment fees submitted by the schools to the department after the due date shall be subject to an interest penalty. The commissioner shall calculate the amount of the interest penalty as follows:

(1) [For payments received] For each due date, payments made within [the first] 30 days [after the] following such due date [the interest penalty] shall be [the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner] subject to an interest penalty of one percent above the prevailing prime rate.

[(2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.]

[(3)] (2) Interest penalties not paid within 15 days of notification of the amount of the penalty [shall] may be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.