

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Board of Education

RULE IDENTIFIER: ERLID 6775

REGULATION TITLE: Regulations of the Board of Regents for Elementary and Secondary Education – Title A

RULEMAKING ACTION: Direct Final Repeal

Direct Final: If no formal objection is received on or before **August 2, 2018**, the Board of Education will file the repeal without opportunity for public comment.

TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Date of Public Notice: July 2, 2018

End of Public Comment Period: August 2, 2018

SUMMARY OF PROPOSED RULE: Repeal of the Bylaws of the Board of Regents, now the Council on Elementary and Secondary Education.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by August 2, 2018 to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address: RI Department of Elementary and Secondary Education, 255
Westminster Street, Providence, RI 02903

Email Address: angela.teixeira@ride.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address: RI Department of Elementary and Secondary Education, 255
Westminster Street, Providence, RI 02903

FOR FURTHER INFORMATION CONTACT:

ATTN: Angela Teixeira, Liaison to the Board of Education, RI Department of Elementary and Secondary Education, 255 Westminster Street, Providence, RI 02903- 222-8700 or at angela.teixeira@ride.ri.gov

SUPPLEMENTARY INFORMATION:**Regulatory Analysis Summary and Supporting Documentation:**

This regulation is no longer relevant as the now Council on Elementary and Secondary Education has adopted its own bylaws.

Authority for this Rulemaking: R.I. Gen. Laws Chapter 16-97

Regulatory Findings:

In the development of the proposed Repeal, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Repeal:

Board of Education proposes to repeal “Regulations of the Board of Regents for Elementary and Secondary Education – Title A” as follows:

~~STATE OF RHODE ISLAND~~

~~R.I. Department of Elementary and Secondary Education~~

~~Regulations of the Rhode Island Board of Regents~~

~~Title A~~

~~Revised: April 5, 2012~~

~~Effective: May 1, 2012⁺~~

BOARD OF REGENTS FOR ELEMENTARY AND SECONDARY EDUCATION

TITLE A REGULATIONS

CHAPTER 1

BOARD ORGANIZATION AND MEETINGS

SECTION:

~~A 1 1. Number of Officers.~~

~~A 1 2. Chair.~~

~~A 1 3. Vice Chair.~~

~~A 1 4. Secretary.~~

~~A 1 5. Quorum.~~

~~A 1 6. Time and Place of Meetings.~~

~~A 1 7. Special Meetings.~~

~~A 1 8. Notice.~~

~~A 1 9. Waiver of Notice.~~

~~A 1 10. Preparation of Agenda.~~

~~A 1 11. Conduct of Meetings.~~

~~A 1 12. Meetings to be Open.~~

~~A 1 13. Minutes of Meetings.~~

~~A 1 14. Press and Public Relations.~~

~~A 1 15. Indemnification.~~

~~A 1 16. Indemnification Notice~~

~~A 1 17. Indemnification Miscellaneous.~~

~~A 1 18. Additional Committees.~~

~~A 1 19. Appeals Committee.~~

~~A 1 20. Boards of Trustees for State Schools~~

~~A 1 21. Seal.~~

~~A 1 22. Parliamentary Procedure.~~

~~A 1 23. Adoption of Rules, Regulations and Policies.~~

~~A 1 24. Open Records~~

~~A 1 25. Equal Employment Opportunity.~~

A 1 1. Number of Officers.— The officers of the Board shall consist of a Chair, who shall be appointed by the Governor, and a Vice Chair and a Secretary who shall be elected from among members of the Board annually at the first meeting in February following appointment and qualification of members to full three (3) year terms. Additionally, such other officers may from time to time be established with such powers as determined by the Board, and the persons named to such positions shall serve at the pleasure of the Board. All officers shall hold office until their respective successors are elected and qualified. Should a vacancy arise in any office prior to expiration of a term, the Board shall elect a successor.

A 1 2. Chair.— The Chair shall preside at meetings of the Board and shall exercise the powers and perform the duties set forth in these bylaws and such other duties as usually devolve upon the presiding officer of a deliberative body; unless otherwise ordered, the Chair shall appoint all special committees. The Chair shall execute all contracts and documents on behalf of the Board unless otherwise ordered by the Board.

A 1 3. Vice Chair.— In the absence of the Chair, the Vice Chair shall perform the duties of the Chair. In the absence of both the Chair and the Vice Chair, a Chair pro tempore shall be elected from among members of the Board.

A 1 4. Secretary.— The records of all business transacted at each meeting shall be kept under the direction and supervision of the Secretary. The Secretary shall also, when so requested, issue notices of meetings of the Board and transmit to each member of the Board and to such other persons as the Board shall direct copies of the minutes of the meetings of the Board.

A 1 5. Quorum.— Five members of the Board shall constitute a quorum, but less than a quorum may adjourn any meeting.

~~**A-1-6. Time and Place of Regular Meetings.** Regular meetings shall be held at least twice in each quarter of each calendar year at the call of the Chair, at the same time and place within the State of Rhode Island specified in the notice of the meeting. The Board shall also convene those meetings required by R.I.G.L.16-60-5 (b). 2~~

A-1-7. Special Meetings.— Special meetings of the Board may be called by the Chair and shall be called by the Chair upon the written request of three (3) members of the Board.

A-1-8. Notice.— (a) In addition to the notice of meetings as required by law, written notice of regular meetings and the agenda thereof, or in lieu of an agenda a written statement of the substance of the business to be transacted, shall be sent to each member of the Board at least one (1) week prior to the date of the meeting, except for emergency meetings convened as permitted by the Rhode Island Open Meetings Act.

(b) Notice of special meetings shall specify the date and place where such meetings are to be held within the State of Rhode Island and the substance of the business to be transacted at such meeting, and shall be given by written notice mailed to each member not less than three (3) days prior to such meetings or by an appropriate means of electronic communication addressed to each member not less than twenty four (24) hours prior to such meeting, or, in lieu of such letter or electronic communication, by personal notice given to and actually received by each member of the Board not less than twelve (12) hours prior to such meeting. No special meetings shall be held without such notice unless waived as hereinafter provided, nor shall any business be transacted at any special meeting except that specified in such notice. Nothing herein shall be construed to prevent the Board of Regents from convening an emergency meeting as permitted by the Rhode Island Open Meetings Act.

A-1-9. Waiver of notice.— Any member may waive notice of any regular or special meeting by instrument in writing signed by him or her prior to or after such meeting, and the presence of a member at a meeting shall in any event constitute a waiver of notice as to that member.

A-1-10. Preparation of Agenda.— The preparation of the agenda for each regular meeting of the Board shall be the responsibility of the Commissioner with the approval of the Chair, provided, however, that there shall be included in the agenda any matter that the Board has at a prior meeting voted to include in such agenda. Any item requested by any four (4) members of the Board in writing delivered to the Commissioner or the Chair not less than seven (7) days prior to the date of a meeting may be placed upon the agenda of such meeting at the discretion of the Chair. No matter that is not on the agenda of a meeting may be considered if there is objection of two (2) members present. Agendas may include a consent agenda which will consist of correspondence, reports, and routine items that require Board action but that do not necessitate debate. These items will be listed together on the agenda and will require a single motion to approve, provided, however, that, any member may move a consent item to the regular agenda by request at the beginning of consideration of the consent agenda. The individual vote on the motion to approve shall be recorded.

A-1-11 Conduct of Meetings.— (a) The affirmative vote of a majority of members present and voting, provided there is a quorum, shall be required for the adoption of any resolution. The presiding officer shall have the right, as other members present, to offer resolutions, discuss questions, and vote. A roll call vote shall be taken. When a Commissioner of Education is to be appointed, the affirmative vote of a majority of all of the members of the Board, including the Governor, shall be required.

(b) Any member desiring to speak shall address the Chair and after the member's right to speak has been recognized, the member shall confine his or her remarks to the question under debate. Member of the public shall be allowed to address the Board in accordance with the parameters set herein. The Regents welcome and appreciate the presence and participation of members of the community during the Public Comment Period at meetings of the Board, and the Regents expect courtesy and cooperation from each recognized speaker. So as to ensure that the Public Comment Period is useful to the community and to the Regents, the Board of Regents has established these guidelines: 3

~~1. The Regents shall designate a period for public comment on the agenda of each regularly scheduled meeting of the Board. The Regents intend to limit the time designated for the public comment to a total of twenty (20) minutes; however, the Chair may extend or shorten the allotted time for public comment. The Chair may also reposition the public comment period on the agenda.~~

~~2. All those desiring to speak during the Public Comment Period shall have been invited by the Chair prior to the meeting or shall have filed a written request with the Office of the Commissioner at least twenty four (24) hours prior to the time of the meeting or shall, if the Chair does so allow, prior to the meeting, enter their names and agenda items on a sign up sheet that the Board may provide.~~

~~3. All those desiring to speak during Public Comment Period shall identify the agenda item or items on which they intend to speak.~~

~~4. The Chair will determine the length of time allotted to each individual speaker, taking into consideration the number of requests received, the number of items on the agenda, and whether the Board has held or scheduled public hearings or public comment periods on the agenda items identified for public comment.~~

~~5. The Chair may establish time limits for speakers and for the length of the Public Comment Period based on the number of registered speakers. Unless the Chair states otherwise, each speaker shall be allotted three (3) minutes in which to speak.~~

~~6. Speakers shall limit the length of their remarks to the established time limit.~~

~~7. Speakers will be called in the order in which they registered unless the Chair decides otherwise; however, in order to allow more individuals an opportunity for public comment, the Chair may call persons who have not spoken regularly during previous public comment periods earlier than the order in which they registered.~~

~~8. Each speaker shall state his or her name for the record prior to beginning comment.~~

~~9. Speakers shall address all comments to the Chair.~~

~~10. Groups may designate a representative speaker (or, in the case of a very large group, more than one [1] speaker) so as to economize on time and to avoid repetition.~~

~~11. The Chair reserves the right to limit repetitive remarks and comments and comments not germane to the identified topic.~~

~~12. Anyone disrupting a meeting of the Board of Regents will forfeit the right to speak at the meeting and may be asked and required to leave the meeting. Disruption of a public meeting is prohibited by Rhode Island law. R.I.G.L. 11-11-1.~~

~~13. The Chair may announce that the Board will accept written comment of any length on identified topics.~~

~~14. The Chair may declare that public comment is closed for any agenda item where public comment has been received either at a public hearing, at a Regents meeting or both.~~

A-1-12. Meetings to be Open.— All meetings of the Board shall be open to the public, provided that executive sessions may be held as provided by law.

A-1-13. Minutes of Meetings.— Minutes of open meetings shall be deemed public records. Minutes of executive sessions shall be confidential, but final action taken in executive session shall be reported by the Chair either in a return to the regular meeting or no later than the next regular meeting of the Board, and these minutes shall be recorded as part of the minutes of such open meeting, provided, however, that a vote taken in an executive session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation, or investigation as specified in R.I.G.L. 42-46-5.

A-1-14. Media and Public Relations.— The Chair shall be the chief spokesperson for the Board, and the members shall, to the extent possible and consistent with the proper discharge of their individual responsibilities, refer all inquiries that concern interpretation of Board action and policy to the Chair.

A-1-15. Indemnification.— Any Regent who at any time is threatened to be or is made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Board) by reason of the fact that he or she is, or was, a member of the Board shall be indemnified against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with any such action, suit, or proceeding if the Board determines that he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Board and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that no indemnification shall be made in respect to any criminal action or proceeding as to which such person shall have been adjudged to be guilty, unless and only to the extent that the court in which such action or proceeding was brought shall determine upon application that, despite the adjudication of guilt, in view of all the circumstances of the case, such person is entitled to indemnity for such expenses or fines that the court shall deem proper. Determination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that a person did not act in good faith in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Board and with respect to any criminal action or proceeding had reasonable cause to believe that his or her conduct was unlawful.

A-1-16. Indemnification Notice.— This indemnification shall be conditioned on due written notice of any such claims being given to the Board and the Board shall be entitled to be represented at all hearings, proceedings, and negotiations relative to such claims.

A-1-17. Indemnification Miscellaneous.— The provisions of this article shall in no way be exclusive of any other rights of indemnification to which such person shall be entitled; shall continue as to a person who has ceased to be a member, officer, employee, or agent of the Board; and shall inure to the benefit of the heirs, executors, and administrators of such a person.

A-1-18. Additional Committees.— Such committees, standing or special, may be appointed by the Chair from time to time as deemed necessary to carry on the work of the Board. The Chair shall be an ex-officio member of all committees. 5

A-1-19. Appeals Committee.—An Appeals Committee composed of three members and one alternate member shall be appointed by the Chair. Members shall be appointed annually by the Chair at the first meeting of the Board in each year. The Chair shall designate the Appeals Committee Chair. It shall be the duty of the Appeals Committee to consider appeals to the Board from decisions of the Commissioner, to submit its recommendations for decisions on appeals to the Board, and to exercise such other functions as are assigned to it in the Procedural Rules for Approvals from Decisions of the Commissioner.

A-1-20. Boards of Trustees for State Schools.—In accordance with Rhode Island General Laws, the Regents shall appoint members and designate the chairpersons to the Boards of Trustees for the Central Falls School District; the William M. Davies, Jr. Career and Technical High School; The Metropolitan Career and Technical School; and Rhode Island School for the Deaf from nominations made by the Commissioner. Unless otherwise stated in the General Laws, the Regents will determine the number of trustees for each board. The appointments shall be made for terms of three (3) years, and at the expiration of their terms members shall remain and continue in their official capacity until a new member is appointed. Any vacancy among the members of each board shall be filled by the Regents for the remainder of the unexpired term. The members of each board shall not be appointed for more than three (3) successive three (3) year terms each. These terms shall be staggered among the members of each board for three year periods, and the Regents have the right to appoint a member to a term of less than three years.

A-1-21. Seal.—The seal of the Board of Regents shall be in the form of a circle with the words “Board of Regents for Elementary and Secondary Education for the State of Rhode Island and Providence Plantations—1981.” The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

A-1-22. Parliamentary Procedure.—Robert’s Rules of Order Newly Revised shall govern on all parliamentary matters not covered by the laws of the State of Rhode Island and these bylaws.

A-1-23. Adoption of Rules, Regulations and Policies.—The rules, regulations and policies of the Board shall be adopted in accordance with the Rhode Island Administrative Procedures Act.

A-1-24. Open Records.—(a) The Board of Regents shall establish procedures regarding access to public records and assure that these procedures are accessible to the public.

A-1-25. Equal Employment Opportunity.—(a) The Board of Regents will comply with all federal and state laws and regulations to actively promote equal employment opportunity.

CHAPTER 2

PROCEDURES FOR APPEALS TO AND HEARINGS BEFORE THE COMMISSIONER OF EDUCATION

SECTION

A-4-1. How to File an Appeal.

A-4-2. Appeal Schedule.

A-4-3. Decisions of the Commissioner.

A-4-1. How to File an Appeal.—Appeals must be sent to the Commissioner of Education by mail or by fax. The person filing the appeal must provide the following information:

A. Name, telephone number, and address of the person filing the appeal.

- B. A brief statement of the facts describing the nature of the appeal.
- C. A statement of the relief being requested.

A-4-2. Appeal Schedule.—The Commissioner shall schedule hearings as promptly as possible. For good cause shown an expedited hearing may be requested. Interim Order Hearings shall be scheduled as required by law.

A-4-3. Decisions of the Commissioner.—It is the policy of the Commissioner that decisions will be promptly rendered. Consistent with that policy, all hearing officers appointed to hear and recommend decisions on appeals under R.I.G.L. 16-39 shall complete and transmit to the Commissioner their written recommended decisions no later than forty-five (45) working days following the completion of the appeal record. An appeal record shall be deemed to be complete when the hearing officer has in his or her possession the official transcript of the hearing and written legal briefs (when applicable) from the parties to the dispute. The Commissioner may grant an extension when both parties to the appeal request an extension or for other reasons he/or she deems appropriate.

CHAPTER 3

PROCEDURAL RULES

FOR APPEALS FROM DECISIONS OF THE COMMISSIONER

SECTION

A-5-1. Who May Appeal.

A-5-2. Time and Manner of Taking an Appeal.

A-5-3. Record on Appeal

A-5-4. Briefs

A-5-5. Oral Argument.

A-5-6. Determination by the Board.

A-5-7. Decision.

A-5-1. Who May Appeal.—Any party aggrieved by a final decision of the Commissioner of Education made pursuant to the provisions of the General Laws of Rhode Island, 1956, as amended (1973 Reenactment) Sections 16-60-6(h) and 16-13-4, may appeal to the Board of Regents, which shall decide, and determine said appeal. Additionally, said Board of Regents may in its discretion decide and determine such other matters as it shall deem appropriate.

A-5-2. Time and Manner of Taking an Appeal.—Appeal to the Board shall be instituted by filing a Notice of Appeal with the Board within (30) thirty days after the Commissioner mails notice of the decision. The Notice of Appeal shall specify the party taking the appeal and shall designate the decision or part thereof appealed from. Copies of said Notice of Appeal shall be mailed by the aggrieved party to the Commissioner and to all other parties of record (or, if these parties are represented by counsel, to their attorneys) at their last known address.

A-5-3. Record on Appeal to the Board.—The record compiled by the Commissioner and generated during the appeal process shall constitute the record on appeal in all cases, and it shall be transmitted to the Board by the Commissioner, upon written notice to the parties of record or their attorneys, seven (7) days after the filing of the Notice of Appeal unless the time is extended by the Commissioner for good cause. The record shall include those items required by the Rhode Island Administrative Procedures Act (R.I.G.L. 45-32-1, et seq.) The Appeal shall be decided upon the basis of the record transmitted to the Board and the briefs filed as hereinafter provided. 7

A-5-4. Briefs.— Within twenty (20) days after the date on which the record is transmitted to the Board, the aggrieved party shall file with the Board a printed or typewritten brief signed by counsel or the aggrieved party. The brief shall contain:

- (1) a brief and concise statement of the case;
- (2) the specific questions raised, duly numbered;
- (3) the points made together with any authorities relied on in support thereof; and
- (4) if relying on evidence in the record, a reference to where said evidence may be found.

Within ten (10) days after the briefs of the aggrieved party have been filed, the adverse party shall file, in the Board offices, a brief in like form except that no statement of the case need be made beyond what may be deemed necessary to correct any inaccuracy or omission in the statement of the other party. The aggrieved party may file reply briefs within five (5) days after filing of the briefs of the adverse party. A copy of any brief filed pursuant to these rules shall be delivered to the opposing party or his or her attorney either by delivering a copy to him or her or by mailing it to him or her at his or her last known address. A certificate of compliance with this paragraph signed by either the party or his or her attorney shall accompany the briefs filed with the Board.

The Chair of the Appeals Committee may extend the time for the filing of any brief due by up to thirty (30) days. Any further extension of time shall be granted only on a showing of good cause. The denial or the granting of an extension of time may be appealed to the Appeals Committee for a decision.

A-5-5. Oral Argument.— The Appeals Committee shall consider the Appeal and submit its recommendation for decision on the Appeal to the Board based upon the briefs and record submitted to the Board. Each appeal shall be assigned for oral argument before the Committee at a time and place to be determined by the Committee. Said oral argument shall be undertaken to emphasize and clarify the written argument appearing in the briefs heretofore filed. The aggrieved party may waive the opportunity for oral argument, and must do so in writing to the Committee. The aggrieved party shall be entitled to open the arguments. Arguments shall be limited to twenty (20) minutes on each side.

A-5-6. Determination by the Board.— The Board shall decide and determine the Appeal, or remand back to the Committee, based upon the briefs and record submitted to the Board and the recommendation of the Committee.

A-5-7. Decision.— The Board may affirm, modify, reverse, or remand the decision of the Commissioner