

## DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** Pursuant to Local Law 2 of 2016, the Department of Citywide Administrative Services (“DCAS”) is proposing to amend rules implementing a reimbursement program for qualifying nonpublic schools that procure certain security services.

**When and where is the hearing?** DCAS will hold a public hearing on the proposed rules. The public hearing will take place at 10:00 am on October 4, 2019. The hearing will be in the Auditorium - 2<sup>nd</sup> Floor at 125 Worth Street, New York, New York 10013.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCAS through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [contactdcas@dcas.nyc.gov](mailto:contactdcas@dcas.nyc.gov).
- **Mail.** You can mail comments to The Department of Citywide Administrative Services, c/o NPS Reimbursement Program, 1 Centre Street-17<sup>th</sup> Floor, New York, New York 10007.
- **Fax.** You can fax comments to The Department of Citywide Administrative Services, at (646) 500-7142-Attn: NPS Reimbursement Program
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 386-0040. You can also sign up in the hearing room before the hearing begins on October 4, 2019. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit written comments by September 25, 2019.

**Do you need assistance to participate in the hearing?** You must tell DCAS by September 25, 2019 if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 386-0040. You must tell us by September 25, 2019.

**Can I review the comments made on the proposed rules?** You can review the comments submitted online by visiting <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rules will be available to the public at The Office of the DCAS General Counsel at 1 Centre Street-19<sup>th</sup> Floor North, New York, New York 10007.

**What authorizes DCAS to make this rule?** Section 1043 of the New York City Charter (“City Charter”) and sections 10-172(c) and 10-172(m) of the Administrative Code of the City of New York (“Administrative Code”) authorize DCAS to make these proposed rules. These proposed rules were included in DCAS’s regulatory agenda for this Fiscal Year.

**Where can I find DCAS’s rules?** DCAS’s rules are in title 55 of the Rules of the City of New York.

**What rules govern the rulemaking process?** DCAS must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

**Notice of Proposed Amendment** of Rules related to the implementation of a reimbursement program for qualifying nonpublic schools that procure certain security services.

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN** the Commissioner of The Department of Citywide Administrative Services by Section 811 of the New York City Charter and sections 10-172(c) and 10-172(m) of the Administrative Code of the City of New York and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department of Citywide Administrative Services hereby amends chapter 14 to title 55 of the Rules of the City of New York.

### **Statement of Basis and Purpose of Proposed Amendment to The Rules**

On January 5, 2016, Local Law 2 of 2016 (“the Law”) was enacted. The Law empowers the Mayor of the City of New York (“the Mayor”) to authorize a program that will reimburse qualifying nonpublic schools for the cost of purchasing certain security services. In a letter dated March 30, 2016, the Mayor authorized this reimbursement program for the 2016-17 school year. The Law also authorizes the Mayor to designate an agency or agencies to administer the reimbursement program. In a letter dated March 10, 2016, the Mayor designated the Department of Citywide Administrative Services (“DCAS”) to administer the Law. Finally, the Law authorizes DCAS to promulgate rules for the administration of the reimbursement program.

The amendment to the rules:

- Requires that a Security Guard Company perform a criminal history check as part of its background investigation for its Security Guards;
- Adds a requirement for Security Guard companies to immediately submit changed information to DCAS;
- Clarifies the time frame that DCAS shall respond to each school following the submissions of their application;
- Revises the training and communication equipment requirements that applies to security guards;

- Establishes the requirement that the security guard company enroll in PASSPort.

DCAS's authority for these rules is found in sections 811 and 1043 of the New York City Charter and sections 10-172(c) and 10-172(m) of the Administrative Code of the City of New York.

New text is underlined.

Deleted text is [bracketed].

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department unless otherwise specified or unless the context clearly indicates otherwise.

### **Proposed Rule Amendment**

Section 1. Subdivision (b) of section 14-02 Of chapter 14 of title 55 of the rules of the city of New York is amended to read as follows:

(b) Qualifications. A Security Guard Company that seeks inclusion on the Qualified Provider List must meet the following requirements:

- (i) be fully licensed pursuant to Article 7-A of the New York State General Business Law and rules and regulations promulgated thereunder by the New York Secretary of State;
- (ii) be a responsible company as set forth in 55 RCNY § 14-02(e)(1);
- (iii) demonstrate a minimum of two (2) years prior experience as a Security Guard Company;
- (iv) demonstrate that it has exercised due diligence and has conducted a background investigation, including a criminal history check, to verify the credentials of each Security Guard that it employs, pursuant to the requirements set forth in Article 7-A of the General Business Law;
- (v) ensure that each of its Security Guards holds a valid registration card, which has not expired or been revoked or suspended, pursuant to Article 7-A of the General Business Law; and
- (vi) be incorporated, a limited liability company, a person or firm at the time of its application for inclusion on the Qualified Provider List[.];
- (vii) be enrolled in the Procurement and Sourcing Solutions Portal (“PASSPort”); and
- (viii) the Security Guard Company must demonstrate that each of its guards have undergone training as set forth in section 14-06(a) of the Department Rules.

§ 2. Subdivision (g) of section 14-02 of chapter 14 of title 55 of the rules of the city of New York is amended to read as follows:

(g) At least once every two years, each Security Guard Company on the Qualified Provider List must affirm that there has been no change in the information included in its original application.

[or must supply such changed information] In the event that there has been a change in the information submitted on its application before two years has elapsed, the Security Guard Company must immediately submit such changed information to the Department. Failure to supply such affirmation of no change will result in the Security Guard Company's removal from the Qualified Provider List until the affirmation of no change or the updated information has been supplied to the Department. Any Security Guard Company that is removed from the Qualified Provider List and re-applies must also provide an affirmation of no change or updated information.

§ 3. Paragraph (ii) of subdivision (b) of section 14-03 of chapter 14 of title 55 of the rules of the city of New York is amended to read as follows:

(ii) The application will require the school to provide the number of students enrolled at the school, which may include pre-kindergarten students who will be four years of age on or before December 1, or who will otherwise be eligible to attend kindergarten in the following school year. To participate in the Reimbursement Program a school must be a Qualifying Nonpublic School pursuant to Administrative Code § 10-172(a) and must enroll at least 300 students. The Department will verify all enrollment information with the New York State Education Department as reported by the school on the Basic Educational Data Systems ("BEDS") Nonpublic Schools Report for the school year for which the nonpublic school is seeking reimbursement. A separate application is required from each school instructional site with its own individual BEDS code. Multiple sites shall not be aggregated under one BEDS code. A school's BEDS enrollment number is considered final for the corresponding school year.

§ 4. Subdivision (c) of section 14-03 of chapter 14 of title 55 of the rules of the city of New York is amended to read as follows:

(c) *Response.* The Department will respond, by regular and electronic mail, to each school that submits a[n] complete application within 30 business days of the submission of the application. The response will state whether the school qualifies to participate in the Reimbursement Program. A complete application shall consist of:

- (a) an organizational chart, which identifies the names and roles of the school's administrators and the hierarchy of the School;
- (b) a complete and finalized BEDS form for the current school year, which has been filed with the New York State Education Department (NYSED), or if the school does not have the prior year's BEDS form, the letter from NYSED assigning the school its BEDS number;
- (c) a workscope document, which depicts the daily schedule of the school, as well as school closures;
- (d) proof of the School's non-profit, non-public status in the form of either a School Charter, Board of Regent's Certificate, or Certificate of Incorporation; and
- (e) IRS 501(c)(3) Determination Letter which includes the school's tax identification number.

§ 5. Section 14-04 of chapter 14 of title 55 of the Rules of the City of New York is amended to read as follows:

If the Department notifies a school that it qualifies to participate in the Reimbursement Program, the Department shall also provide a Memorandum of Understanding (“MOU”) regarding the school’s participation in the Reimbursement Program. Each school must enter into a MOU with the City of New York, acting by and through the Department, before the school may receive funds through the Reimbursement Program. The MOU and Budget Task shall be returned by the School to the Department no later than November 15 of the corresponding year. Failure to timely return the MOU and Budget Task to the Department shall result in the forfeiture of the School’s acceptance into the Program for the school year at issue, and the school will need to reapply the following year if it seeks to participate in the Reimbursement Program. Any security expenses incurred by a school from the date of acceptance, but prior to the timely return of the MOU will not be eligible for reimbursement. Upon execution of the MOU, such MOU shall take effect in accordance with applicable law.

§ 6. Subparagraph 3 of paragraph (v) of subdivision (c) of section 14-05 of chapter 14 of title 55 of the rules of the city of New York is amended to read as follows:

(3) A Security Guard Company shall maintain workers’ compensation insurance, disability benefits insurance and employer’s liability insurance in accordance with the laws of the State of New York on behalf of, or with regard to, all employees providing services to a school, and must produce proof of [such] workers’ compensation insurance and disability benefits insurance coverage within 10 days of its retention by the school, or upon demand by the Department. Satisfactory proof shall mean:

§ 7. Subdivision (e) of section 14-05 of chapter 14 of title 55 of the rules of the city of New York is amended to read as follows:

(e) Requirements of Security Guard Companies. A Security Guard Company that is retained to provide Security Services must:

(i) furnish distinctive, appropriate, and complete uniforms to each Security Guard assigned to such school. All Security Guards must report for duty wearing a complete uniform;

(ii) ensure that each Security Guard assigned to the school has satisfactorily completed training programs in compliance with Section 89-n of Article 7-A of the General Business Law and 55 RCNY § 14-06;

(iii) ensure that each Security Guard assigned to the school has no physical conditions that would hamper the performance of assigned duties;

(iv) ensure that each Security Guard assigned to the school is physically able to wear [all protective equipment, and has been properly trained in the use of such protective equipment] and use any equipment furnished to them to conduct their duties;

(vi) ensure that each Security Guard assigned to the school wears and displays a Company-issued identification card and New York State Guard License prominently while on duty;

(v) ensure that each Security Guard assigned to the school has the ability to understand, speak, write and be understood in English[.]; and

(vii) furnish communication systems and accessories for use at each school. Such systems and accessories must be provided in sufficient quantities to ensure that there is at least one operable, fully charged radio and case, or other Security Guard Company issued communication device, for each guard on each shift. All security personnel assigned to a school must report for duty bearing all assigned equipment. The School Security Administrator must approve all equipment prior to use. Such systems and accessories must:

- (1) permit each guard to communicate with the School Security Administrator and any other guards assigned to the school; and
- (2) be licensed by the Federal Communication Commission on a business or public safety band.

§ 8. Subdivision (a) of section 14-06 of chapter 14 of title 55 of the rules of the city of New York is amended to read as follows:

(a) Security Guard Companies must ensure that all Security Guards receive training pursuant to the Article 7-A, Section 89-n of the General Business Law. Consistent with such requirements, a Security Guard must receive:

- (i) *On-the-Job Training*: A minimum of 16 hours of training generally relating to the security guard's specific duties, the nature of the work place and the requirements of the Security Guard Company.
- (ii) *Refresher Training*: During each year that a Security Guard takes part in the Reimbursement Program, such Security Guard must complete at a minimum an eight hour annual in-service training course.

§ 9. Subdivision (f) of section 14-07 of chapter 14 of title 55 of the rules of the city of New York is amended to read as follows:

(f) *Payments*. The Department shall provide reimbursements on a quarterly basis after receiving satisfactory proof from the school of compliance with the requirements set forth in these Rules. Satisfactory proof must be submitted through HHS Accelerator, and must include, but not be limited to, certified invoices, payroll records, timesheets [, and work assignment data from Security Guard Companies] and, when applicable, an annual report of incidents as required by section 14-05(f) of the Rules. All invoices must be signed by an authorized signatory, or their successor, identified in the application submitted by each school.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Rules Governing Nonpublic School Security Guard Program**

**REFERENCE NUMBER: DCAS-5**

**RULEMAKING AGENCY: Department of Citywide Administrative Services**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Brady Hamed  
Mayor's Office of Operations

May 16, 2019  
Date

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Amendment of Rules Governing Nonpublic School Security Guard Program

**REFERENCE NUMBER:** 2019 RG 025

**RULEMAKING AGENCY:** Department of Citywide Administrative Services

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: 05/14/2019