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Responsible Office:
[University Counsel](#)

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State Administrative Procedure Act Compliance

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Summary

The New York State Administrative Procedure Act (SAPA) governs the adoption of rules and regulations that affect the public generally. At the campus level, SAPA covers traffic and parking regulations and supplemental rules for maintenance of public order adopted by campus councils. Rules relating to internal management, such as the student conduct and behavior rules adopted by councils, which affect only students and not the general public, are not subject to the requirements of SAPA. SAPA does not apply to the community colleges.

Policy**Policy on Rulemaking**

The SAPA is designed to ensure that the rulemaking, adjudicatory and licensing procedures used by state agencies are uniform and equitable. SAPA does not apply to administrative actions taken by community colleges. For the most part, SAPA affects regulatory agencies dealing with the public at large and exempts rules relating to the internal management of an agency.

SAPA is divided into three substantive parts pertaining to rulemaking, adjudication, and licensing. It appears that the University is not engaged in adjudicatory or licensing procedures within the meaning of SAPA, and the great preponderance of University rulemaking relates to internal matters. At the campus level, the promulgation of traffic regulations and the adoption of supplemental rules for the maintenance of public order appear to fall within the terms of SAPA. Both kinds of rules, of course, are adopted by the campus councils.

Student conduct and behavior rules, adopted by campus councils under the authority of NYS Education Law §356 and Board of Trustee regulations found in 8 NYCRR §500.2, are matters of internal management which affect only students and not the general public. Consequently, such rules need not be adopted, amended, suspended, or repealed in accordance with SAPA and need not be filed with the Secretary of State. However, supplemental rules for the maintenance of public order, adopted pursuant to NYS Education Law §6450 and Board of Trustee regulations found in 8 NYCRR Part 535, may affect students and members of the public as well. Accordingly, these rules are subject to the rulemaking requirements of SAPA.

SAPA §202 describes the procedure required for University rulemaking. This section provides that no rule may be adopted or changed unless the University publishes notice of its proposed action in the State Register at least forty-five days before the action is taken. The section further requires that the public be afforded a means to submit comments about the proposal before its enactment. Provision is also made for emergency adoption of rules. Upon the final adoption, amendment, suspension or repeal of any rules, the University must publish notice of its action in the State Register. The notice of adoption must include a response to the public comments the University receives on the proposed rule. The effective date of a rule is counted from its final publication in the State Register.

Campus councils which plan to adopt or amend supplemental public order or traffic rules should inform the university counsel, who will arrange for publication of the proposed rule or rules in the State Register. Unless another permissible alternative is suggested, the Register will advise that all written public comment should be directed to the campus president for consideration by the council. Final action upon proposed rules must be deferred until forty-five days after notice of the proposal has appeared in the State Register. Those rules eventually adopted by campus councils will be filed with the Secretary of State by the university counsel. The rule or rules become effective on the date of filing.

SAPA §204 provides for an additional procedure which permits any person to petition the University for a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the University. Requests for declaratory rulings shall be addressed to the chancellor pursuant to the procedures established by the Board of Trustees, and published in 8 NYCRR §313.1.

The chancellor may decline to approve the issuance of a declaratory ruling unless appropriate and necessary, based upon a clear and unequivocal petition dealing with an actual exigency which requires clarification in the public interest.

Definitions

Rule - SAPA defines "rule" as (i) the whole or part of each agency statement, regulation or code of general applicability that implements or applies law, or prescribes a fee charged by or paid to any agency or the procedure or practice requirements of any agency, including the amendment, suspension or repeal thereof and (ii) the amendment, suspension, repeal, approval, or prescription for the future of rates, wages, security authorizations, corporate or financial structures or reorganization thereof, prices, facilities, appliances, services or allowances therefore or of valuations, costs or accounting, or practices bearing on any of the foregoing whether of general or particular applicability (SAPA §102(2)(a)). SAPA excludes from the definition of "rule" various items, including the following:

- rules concerning the internal management of the agency which do not directly and significantly affect the rights of or procedures or practices available to the public. (SAPA §102(2)(b)(i));
- rules relating to the use of public works, including streets and highways, when the substance of such rules is indicated to the public by means of signs or signals. (SAPA §102(2)(b)(ii));
- forms and instructions, interpretive statements and statements of general policy which in themselves have no legal effect but are merely explanatory. (SAPA §102(2)(b)(iv));
- rules promulgated to implement agreements pursuant to article fourteen of the civil service law. (SAPA §102(2)(b)(v));
- any fee which is:
 1. set by statute;
 2. less than one hundred dollars;
 3. one hundred dollars or more and can reasonably be expected to result in an annual aggregate collection of not more than one thousand dollars;
 4. established through negotiation, written agreement or competitive bidding, including, but not limited to, contracts, leases, charges, permits for space use, prices, royalties or commissions; or
 5. a charge or assessment levied by an agency upon another agency or by an agency upon another unit of state government (SAPA §102(2)(b)(xi)).

Other Related Information

The following links to FindLaw's [New York State Laws](#) are provided for users' convenience; it is not the official site for the State of New York laws.

[NYS Education Law §313](#) (Unfair educational practices)

[NYS Executive Law §292 \(27\)](#) (Definition of Sexual Orientation)

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of [New York State Consolidated](#).

[Board of Trustees Established Guidelines - Student Conduct \(8 NYCRR Part 500\)](#)

[Board of Trustees Rules - Maintenance of Public Order \(8NYCRR Part 535\)](#)

Procedures

There are no procedures relevant to this policy.

Forms

There are no forms relevant to this policy.

Authority

NY State Administrative Procedure Act:

[§102](#) (Definitions)

[§§202 and 204](#) (Rule Making and Declaratory Rulings by Agencies)

State University of New York Board of Trustees Resolution 88-15, adopted January 27, 1988, amending Trustee Resolution 76-196, adopted August 4, 1976 codified in: [Procedures for Declaratory Rulemaking \(8 NYCRR Part 313\)](#)

History

State University of New York Board of Trustee Resolution 88-15, adopted on January 27, 1988. Amended the University procedure for Declaratory Rulings found in 8 NYCRR §313.1, effective February 17, 1988.

Memorandum to Presidents from the Office of University Counsel, No. 87-12, dated November 30, 1987, discussed the need for this resolution based upon statutory changes.

State University of New York Board of Trustee Resolution 76-196, adopted on August 4, 1976. Created the University Procedure for Declaratory Rulings found in 8 NYCRR §313.1, effective September 1, 1976.

Memorandum to Presidents from the Office of University Counsel, No. 76-21, dated September 20, 1976, discussed this resolution.

Appendices

There are no appendices relevant to this policy.