



## Regulation of the Chancellor

Number: A-650

Subject: FLEA MARKETS

Category: STUDENTS

Issued: June 29, 2009

### SUMMARY OF CHANGES

This regulation supersedes Chancellor's Regulation A-650 dated May 1, 1998.

This regulation sets forth the conditions under which flea markets and certain other flea market type programs may be initiated and conducted on New York City Department of Education property for the primary purpose of raising funds to benefit public schools.

Changes:

- Any proposal for a flea market greater than 12 days in duration must be reviewed by OFEA and the respective Superintendent to ensure that it is in the best interest of the school.
- The reporting obligations of a parent association that raises funds through a flea market have been modified.
- If a parent association that raises funds through a flea market does not comply with the financial accountability obligations of this regulation, flea market funds may be directed for deposit in an account managed by the school.
- The cap for limited duration flea markets that do not require a competitive solicitation has been increased from ten (10) per calendar year to twelve (12) per calendar year.
- The availability of an exception to the competitive solicitation process to a corporation composed of the parent associations at the school site in order to receive the award of a contract to operate a flea market at that site has been eliminated. Any flea market that will operate for more than 12 days in any calendar year must be operated in accordance with a contract awarded through the competitive solicitation process.



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### ABSTRACT

The purpose of this regulation is to expand opportunities for public schools to augment their funding. The regulation sets forth the conditions under which flea markets and City markets may be initiated and conducted on New York City Department of Education ("DOE") property for the primary purpose of raising funds to benefit public schools. This regulation applies only to flea markets and City market programs as defined herein. All other school fundraising activities will continue to be governed by applicable Chancellor's Regulations.

### **I. INTRODUCTION**

- A. The purpose of the regulation is to clearly define the process by which Sponsoring Parent Associations may operate or contract to operate flea markets.
- B. The use of DOE property for the purpose of conducting a flea market or City market program will be prohibited unless the flea market or City market program is initiated and conducted in accordance with the applicable provisions of this regulation.
- C. The benefits to private entities, including vendors and flea market operators, conducting flea markets of any duration or any City market programs, must be incidental to the benefit received by New York City public school(s) from such flea markets or City market programs, or the DOE will not issue a permit for the use of the property.
- D. Initially, and prior to any contract renewal period, the Sponsoring Parent Association must provide a proposal to the central division of the DOE's Office for Family Engagement and Advocacy ("OFEA") for approval to conduct a flea market greater than 12 days in duration to ensure that it is in the best interest of the school.

### **II. DEFINITION OF TERMS**

#### **A. Flea Markets**

The term "flea market" is defined as a commercial venture, conducted on DOE property during non-school hours, involving the sale of goods and/or services by private vendors, where the fees charged to the vendors for use of DOE property and/or a portion of the proceeds from vendor sales are given to the Sponsoring Parent Association for donation to New York City public school(s).

**B. City Markets**

Commercial ventures which fall within the definition of “flea market” above, but which also provide additional societal benefits and are operated by agencies established pursuant to a Mayoral Executive Order (such as the greenmarkets operated by the Council on the Environment of New York City), will hereinafter collectively be referred to as “City market programs”.

**C. Sponsoring Parent Association**

The term “Sponsoring Parent Association” means one or more parent associations as set forth in Chancellor’s Regulation A-660, that intend to raise funds for the benefit of New York City Public Schools by: 1) operating a flea market or City market program on DOE property; or 2) contracting with a private vendor to operate a flea market on DOE property. This term has no legal or other application outside this regulation.

**III. PROCEDURES FOR THE OPERATION OF FLEA MARKETS OF ONE TO TWELVE DAYS’ DURATION**

- A. A request to use DOE property for a flea market for a duration of one to twelve (12) days per year must be made according to the following procedures:
1. A Sponsoring Parent Association will not be required to issue a competitive solicitation for these limited duration flea markets.
  2. A Sponsoring Parent Association may utilize either parent volunteers or engage the services of a private entity to operate the flea market.
  3. The operation of the flea market by a private entity is subject to the execution of a contract which is in substantial conformity with the contract requirements set forth in Section IV of this regulation.
  4. A Sponsoring Parent Association must prepare a concise, written statement describing how the funds raised by means of the flea market will be used and submit it for approval to the Principal(s) of the school(s) that will be hosting the flea market and/or sharing in the proceeds. Upon receipt of each Principal’s written approval, the Sponsoring Parent Association must submit the request in writing to the appropriate Superintendent and OFEA.
  5. The Superintendent or OFEA may require additional documentation in order to determine whether the benefit to the vendor(s)/operator(s) is incidental to the benefit to the New York City Public Schools.
  6. All vendors in flea markets must possess the appropriate license and registration.
  7. All monies or royalties received by a Sponsoring Parent Association in connection with the flea market must be budgeted and expended in accordance with the policies and procedures set forth in Chancellor’s Regulation A-660.

**IV. OPERATION OF FLEA MARKETS OF GREATER THAN TWELVE DAYS' DURATION THROUGH THE COMPETITIVE SOLICITATION PROCESS/REQUEST FOR PROPOSAL ("RFP")**

- A. A Sponsoring Parent Association that wishes to operate a flea market more than twelve (12) days per year must engage the services of a flea market operator (the "operator") using a competitive solicitation process. The Sponsoring Parent Association must first prepare a concise, written statement describing how the funds raised by means of the flea market will be used and submit it for approval to the Principal(s) of the school(s) that will be hosting the flea market and/or sharing in the funds or royalties. Upon receipt of each Principal's written approval, the Sponsoring Parent Association must submit the request in writing to the appropriate Superintendent and OFEA.
- B. The Superintendent or OFEA may require additional documentation in order to determine whether the benefit to the vendor(s)/operator(s) is incidental to the benefit to the New York City Public Schools.
- C. The Sponsoring Parent Association must prepare an RFP which sets forth the criteria for award.
  1. The RFP will specify:
    - a. The flea market operator's responsibilities in the operation of the flea market;
    - b. that proposals must be based either on a flat fee or on a percentage of the operator's gross revenues from the flea market, in which case a proposal will not be considered unless the proposal states the guaranteed minimum amount of dollars that will be given to the Sponsoring Parent Association from those gross revenues;
    - c. that if the proposal involves a percentage of gross revenues, the proposal must fully describe the manner in which records reflecting gross revenues will be created and maintained and be made available to the Sponsoring Parent Association and DOE for review; and
    - d. that the award of contract will be made by the Sponsoring Parent Association to the qualified bidder whose proposal guarantees to provide the largest definite amount of dollars, as a minimum, to the Sponsoring Parent Association from the flea market, except that the award may be made by the Sponsoring Parent Association to another qualified bidder based upon additional criteria specified in the RFP. The Sponsoring Parent Association must state, in writing, the reason(s) for making an award based upon such other criteria.
- D. The DOE's Division of Contracts and Purchasing advertises the RFP in the City Record for ten (10) days.

- E. The DOE's Division of Contracts and Purchasing opens the sealed proposals on a designated proposal opening date.
- F. The Sponsoring Parent Association evaluates the proposals and makes a recommendation to OFEA for an award of contract.
- G. OFEA approves the award of the contract and forwards a Request for Authorization ("RA") to the Chancellor or his/her designee for approval. The RA must specify:
  - 1. the number of proposals received by the Sponsoring Parent Association; and
  - 2. if applicable, the reason for making an award to a bidder other than the qualified bidder guaranteeing the largest definite amount of dollars.
- H. Where a Sponsoring Parent Association has awarded a contract in accordance with the procedures outlined above and where such award has been adopted by the DOE, the Sponsoring Parent Association must enter into a standard agreement provided by the DOE's Office of Legal Services upon request of the Sponsoring Parent Association. The Sponsoring Parent Association's request to the Office of Legal Services must be accompanied by a copy of the RA approving an award of a contract. Execution of the standard agreement is a prerequisite to engaging an operator to conduct a flea market on DOE property.
- I. The term of contracts with operators of flea markets shall be two (2) years, with two (2), one (1) year renewable extensions. Said extensions are exercised solely at the discretion of the Sponsoring Parent Association. All contracts between Sponsoring Parent Associations and operators of flea markets will contain a provision allowing the Sponsoring Parent Association to cancel the contract upon 90 days notice to the operator or earlier, for cause.
- J. Where feasible, the contract period for the start and end of a flea market shall coincide with the DOE's fiscal year. It is understood that a flea market may start mid-year; however, the contract must terminate on June 30th.
- K. The operator's responsibilities include the following:
  - 1. Payment to the Sponsoring Parent Association in accordance with the contract specifications;
  - 2. Maintenance of books and records and all supporting documentation evidencing all revenue received from and expenditures made on behalf of the flea market. If expenditures benefit the operator's enterprises in addition to the flea market, total costs must be documented and made available to the sponsoring Parents Association and DOE, and the methodology for allocating costs must be disclosed;
  - 3. Submission upon demand of all records pertaining to the flea market operation to the Sponsoring Parents Association or DOE;
  - 4. Management and administration of all aspects of the flea market;

5. Obtaining and maintaining sufficient comprehensive liability insurance naming the Sponsoring Parent Association, the New York City Department of Education, and the City of New York as additional insured parties. Such insurance coverage must be obtained from an insurance company licensed by the New York State Insurance Department. The amount of insurance coverage required will be determined by the Division of School Facilities in conjunction with the Sponsoring Parent Association;
  6. Safety and security for the flea market site;
  7. Cleanup of the flea market site, as specified by the site custodian;
  8. Obtaining all applicable permits and paying any related fees, including a promoter's permit from the New York State Department of Taxation and Finance;
  9. Ensuring that all individual vendors are properly licensed and registered;
  10. Submission of a security deposit at the signing of the contract equal to one quarter ( $\frac{1}{4}$ ) of the guaranteed annual payment or a performance bond equal to one quarter ( $\frac{1}{4}$ ) of the guaranteed annual payment. In special circumstances, this requirement may be waived upon request. Said security deposit or performance bond shall, in the event of a default by the operator, be deemed liquidated damages;
  11. Payment of all fees for space;
  12. Providing a list of vendor names and contact information to the Sponsoring Parent Association on an annual basis;
  13. All monies or royalties received by a Sponsoring Parent Association in connection with the flea market must be budgeted and expended in conformity with the policies and procedures set forth in the Financial Handbook for Parent Associations and Chancellor's Regulation A-660 and in accordance with the following:
    - preparation of a detailed budget (spending plan) for the current school year. If all estimated flea market proceeds will not be expended during the current school year, the report to parents should include the long-range spending plan; and
    - submission of such budget by the individual parent association to its respective Principal and OFEA for approval; and
    - submission of the approved budget to the parent body at the beginning of each school year.
- L. If any owner, member of the Board of Directors, or full-time employee of a flea market operator that has submitted a proposal in response to the RFP is a near relative of a current or recent student at a school benefiting from the proceeds of the flea market, the parent association(s) involved shall not officially participate in

the RFP evaluation committee. Up to three (3) parent representatives, with no more than one representative per participating school, may join RFP evaluation committee discussions and submit questions as non-voting members of the RFP evaluation committee. "Near relative" means parent, spouse, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, or the spouse or child of any of them. In addition, if a flea market operator is selected through the competitive solicitation process, and Sponsoring Parent Association members had served on the RFP evaluation committee, near relatives of current or recent students at one of the schools benefiting from the flea market may not become owners, members of the Board of Directors, or full-time employees of the selected flea market operator while such entity has a contract to operate the flea market. As used in this paragraph, "recent student" means a student that was in attendance at the school during the RFP selection process but no longer attends the school.

**V. ACCOUNTABILITY, INTERNAL CONTROLS AND OVERSIGHT OF ALL FLEA MARKET OPERATIONS REGARDLESS OF DURATION OR OPERATIONAL STRUCTURE**

- A. Principals of schools whose parent associations are members of a Sponsoring Parent Association must be included in the parent association's discussions and agree to the use of monies or royalties derived from the operation of a flea market.
- B. For purposes of revenue and expenditure reports, certified audits and reviews, the fiscal year begins July 1st and ends June 30th. Revenue and expenditures must be reported on an accrual basis.
- C. The operator of the flea market, whether a Sponsoring Parent Association (for flea markets that operate fewer than twelve days annually) or a private entity, must maintain supporting documentation, including original receipts, for all cash receipts and disbursements.
- D. All money paid to a Sponsoring Parent Association from the operation of a flea market must be deposited into a bank account maintained by the Sponsoring Parent Association and separately recorded in the Sponsoring Parent Association's cash receipts ledger and identified on its financial statements. If flea market funds are not accounted for in accordance with this provision, at the discretion of OFEA, such funds will be deposited for maintenance in the school(s) account in accordance with the following:
  - the operator will draft a check payable to the Sponsoring Parent Association;
  - the operator will deliver the check to the Principal;
  - the Sponsoring Parent Association officers authorized to sign checks will endorse the check over to the school account;
  - the funds may be expended only in consultation with the Sponsoring Parent Association and in conformity with the General School Funds Chapter of the Department's Standard Operating Procedures Manual; and

- the school will make available to the Sponsoring Parent Association copies of related bank records and documents in support of expenditures.
- E. Annual Certified Audit/Financial Statement
1. For all flea markets regardless of duration, the operator and Sponsoring Parent Association must obtain a certified audit of their respective financial records for the fiscal year ending on June 30th triennially, unless such requirement is waived by the Office of the Auditor General (OAG) as set forth below. In the intervening years, an independent accountant must perform a review.
  2. The requirement for certified audits may be waived by the OAG at its discretion for flea markets whose annual revenue is less than \$100,000. However, if such requirement is waived, a review performed by an independent accountant will be required in place of the certified audit.
  3. It is the responsibility of the private operator to submit the reports resulting from a certified audit or review to the Sponsoring Parent Association. The Sponsoring Parent Association has the obligation to obtain the reports and submit them to the Superintendent or designee, the parent body, OAG and OFEA no later than four (4) months after the end of the fiscal year (October 31st). All such reports are subject to audit by the Department.
  4. In cases where more than one operator runs the flea market during the reporting period, each must submit a report to cover the period of their operation. The Sponsoring Parent Association must separately identify income from each operator.
  5. If required reports are not submitted, OFEA must direct that flea market funds received by the Sponsoring Parent Association be deposited in a separate bank account maintained by the school in conformity with the General School Funds Chapter of the Department's Standard Operating Procedures, following the procedures outlined in Section V.D, above.
  6. Quarterly Reports
    - a. Quarterly income and expense reports will not be required for flea markets of twelve (12) or fewer days' duration. However, the income and expenses derived from such activities must be identified and reported on interim and annual financial statements of the parent associations that are members of the Sponsoring Parent Association.
    - b. For flea markets of more than twelve (12) days' duration, both the Sponsoring Parent Association and the operator must submit quarterly income and expense reports in a written format provided by OFEA. Revenue and expenditures must be reported on an accrual basis. If no business is conducted within the quarter, that status must be reported on the form. These reports must be submitted to OFEA one month after the end of the quarterly period.

- c. In cases where more than one operator runs the flea market during a quarter, each must submit a report to cover the period of their operation. The Sponsoring Parent Association must separately identify income from each operator.
  - d. If required quarterly income and expense reports are not submitted, OFEA may direct that flea market funds received by the Sponsoring Parent Association be deposited in a separate bank account maintained by the school in conformity with the General School Funds Chapter of the Department's Standard Operating Procedures, following the procedures outlined in Section V.D above.
7. Use of Funds
- A Sponsoring Parent Association conducting a flea market or City market program on the premises of a community school district school may use the funds raised from the market for the benefit of other public schools under the jurisdiction of the same district. A Sponsoring Parent Association conducting a flea market or City market program on the premises of a public high school may use the funds raised from the market for the benefit of other public high schools in the same borough. A Sponsoring Parent Association conducting a flea market or City Market program on the premises of a public Citywide Special Education school may use the funds raised from the market for the benefit of other public Citywide Special Education schools in the same borough.

#### **VI. PROCEDURES FOR TERMINATING PARTICIPATION OF OBJECTIONABLE VENDORS IN FLEA MARKETS OR CITY MARKET PROGRAMS**

- A. A Sponsoring Parent Association has the power and the duty to direct the operator to terminate a vendor's participation in any flea market or City market program, regardless of the market's duration, if the Sponsoring Parent Association determines that the vendor is objectionable because of the behavior or character of the vendor, and/or the nature of the goods and services sold by the vendor.
- B. A Sponsoring Parent Association's directive that an operator shall terminate a vendor's participation in a flea market or City market program shall immediately bar participation of such vendor in that flea market or City market program. However, if the vendor or the goods and services sold by the vendor do not constitute a threat to the safety of persons or property, the Sponsoring Parent Association may allow the vendor to resume participation in the flea market or City market program on the market's next operating day if the objectionable behavior, goods and/or services have been eliminated and the vendor undertakes not to reintroduce those good or services into the flea market or City market program.

- C. A Sponsoring Parent Association's directive terminating a vendor's participation in a flea market or City market program may be appealed by the terminated vendor in accordance with the following procedures:
- If the flea or City market program in which the vendor participated is located on the premises of the community school district school, Citywide Special Education School or High School, the vendor may appeal first to OFEA;
  - If OFEA's decision is adverse to the vendor, the vendor may appeal that decision to the Executive Director of the Division of Contracts and Purchasing;
  - During the pendency of an appeal, the vendor is barred from participating in the flea market or City market program from which he or she was terminated.

**VII. REVOCATION OF PERMIT**

Revocation of permit will be utilized by the Chancellor or his designee to enforce the provisions of this regulation.

**VIII. INQUIRIES**

Inquiries pertaining to this regulation should be addressed to:

Office of Family Engagement and Advocacy

N.Y.C. Department of Education

49 Chambers Street - Room 503

New York, NY 10007

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