

## DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES

**Notice of Adoption** 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 adds a new chapter 14 to title 55 of the Rules of the City of New York.

These rules were first published on May 25, 2016, and a public hearing was held on June 27, 2016.

### **Statement of Basis and Purpose of 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 to reimburse qualifying nonpublic schools for the cost of procuring certain security services. By 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. By letter dated March 10, 2016, the Mayor designated the Department of Citywide Administrative Services (“DCAS”) as the Law’s administering agency. Finally, the Law authorizes DCAS to promulgate rules for the administration of the reimbursement program. These rules:

- Set forth the criteria and process governing the selection of qualified providers of security services;
- Define the eligibility criteria applicable to nonpublic schools that seek to participate in the reimbursement program; and
- Establish a process for schools to obtain reimbursement for procuring security guard services.

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.

In response to comments received following the publication of the proposed rules, the following changes were made to the proposed rules, which are reflected in the adopted rules:

- Moved the insurance requirement from section 14-02(b)(7) to section 14-05(c), and added a requirement for Security Guard Companies to obtain worker’s compensation, employer’s liability and disability benefits insurance;
- Added a requirement that Security Guard Companies retain records supporting their payment of prevailing wages and supplements to section 14-02(h);
- Added a definition of pre-kindergarten students to section 14-03(ii);

- Revised the start date for the school’s eligibility to seek reimbursement in section 14-05(a); and
- Clarified that additional training requested by participating schools is not eligible for reimbursement in section 14-06(c).

New material is underlined.

“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.

### **Adopted Rules**

Section 1. Title 55 of the Rules of the City of New York is amended by adding a new chapter 14 to read as follows:

### **CHAPTER 14**

### **SECURITY GUARDS AT NONPUBLIC SCHOOLS**

**§14-01 Definitions.** As used in this chapter, the followings terms have the following meanings. Capitalized terms used in this chapter that are not specifically defined in this section have the same meanings set forth in Administrative Code § 10-172(a).

Commissioner. The term “Commissioner” means the Commissioner of the Department.

Department. The term “Department” means the Department of Citywide Administrative Services.

HHS Accelerator. The term “HHS Accelerator” means the office that facilitates, on behalf of the Department, the application process for nonpublic schools that seek to participate in the Reimbursement Program and the payment process for qualifying nonpublic schools that participate in the Reimbursement Program.

Reasonable Costs. The term “Reasonable Costs” means administrative expenses of a Security Guard Company, including overhead, profit, equipment, supplies and uniform expenses, which are deemed reasonable by the Department. Such reasonable expenses may not exceed twenty-five percent (25%) of the wages earned by the Security Guard Company’s Security Guards at any given school in any given quarter pursuant to the Reimbursement Program.

Reimbursement Program. The term “Reimbursement Program” means the nonpublic school security guard reimbursement program authorized by the Mayor pursuant to Administrative Code § 10-172(b).

School Security Administrator. The term “School Security Administrator” means a person, appointed by the Dean, Principal, Administrator or governing body of a qualifying nonpublic

school that participates in the Reimbursement Program, who provides on-campus supervision to the Security Services provided pursuant to the Reimbursement Program.

**§ 14-02 Security Guard Companies; Application for Inclusion on the Qualified Provider List.**

(a) Application. Pursuant to Administrative Code § 10-172(d), the Department will seek to develop a Qualified Provider List of Security Guard Companies. A Security Guard Company that seeks inclusion on the Qualified Provider List must apply by completing an application on a form prescribed by the Department and must satisfy all provisions of this section. A Security Guard Company must answer all questions set forth in the application.

- (i) The application for inclusion on the Qualified Provider List shall be made continuously available on the Department's website. A Security Guard Company may apply for inclusion on the Qualified Provider List at any time.
- (ii) In addition, the Department will publish invitations to apply for inclusion on the Qualified Provider List periodically in the City Record, but not less than twice per year. Upon each such publication, the Department will publish the invitation in five consecutive editions of the City Record and shall post the invitation on the Department's website.
- (iii) Once created, the Qualified Provider List shall be made continuously available on the Department's website.

(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 14-02(e)(1) of these Rules;
- (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 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.

(c) The Department shall review all applications for compliance with the requirements set forth in these Rules. The Agency Chief Contracting Officer (“ACCO”) shall determine whether the application is responsive. A responsive application is one that complies with all material terms and conditions of the application, including providing required documentation.

(d) If the ACCO determines the application is not responsive, the ACCO will notify the Security Guard Company by electronic mail within 30 days of receipt of the application. If the Security Guard Company fails to respond with all material terms and conditions, including supplying required documentation, within 60 days of receipt of its application, the application may be denied as nonresponsive. A denial for non-responsiveness does not preclude the Security Guard Company from reapplying to the Department.

(e) The Qualified Provider List shall be comprised of responsible Security Guard Companies only. A Security Guard Company must affirmatively demonstrate its responsibility.

(i) A responsible Security Guard Company is one which can perform fully the program requirements and also has the business integrity to justify the award of public tax dollars.

(1) Factors affecting a Security Guard Company’s responsibility may include:

- A. financial resources;
- B. technical qualifications;
- C. experience;
- D. a satisfactory record of performance; and
- E. a satisfactory record of business integrity.

(2) Failure of a firm to provide relevant information regarding the Security Guard Company’s responsibility specifically requested by the ACCO may be grounds for a determination of non-responsibility.

(3) A Security Guard Company that has performed unsatisfactorily in the provision of services to the City shall be presumed to be non-responsible, unless the ACCO determines that the circumstances were beyond the company’s control or that the company has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of non-responsibility.

(ii) *Making the Responsibility Determination.*

(1) The ACCO shall use the following sources of information to support determinations of responsibility or non-responsibility:

- A. the VENDEX database of debarred, suspended, and ineligible contractors;
- B. VENDEX and other records of evaluations of performance, as well as verifiable knowledge of contracting and audit personnel;
- C. determinations of violations of employment-related federal, state, or local law or executive order, including but not limited to those relating to equal employment opportunity, prevailing wage, workplace health and safety, employee benefits, and employee wages and hours;
- D. information supplied by the Security Guard Company, including application information, financial data, and personnel information; and
- E. other sources, such as publications, suppliers, subcontractors and customers of the prospective contractor, financial institutions, other government agencies, and business and trade associations.

- (2) The ACCO may notify a Security Guard Company of unfavorable responsibility information and provide the Security Guard Company an opportunity to submit additional information or explain its actions before denying the Security Guard Company inclusion on the Qualified Provider List.

(iii) Determination of Non-Responsibility Required.

- (1) If a Security Guard Company who otherwise would have been placed on the Qualified Provider List is found non-responsible, a determination of non-responsibility setting forth in detail and with specificity the reasons for the finding of non-responsibility shall be prepared by the ACCO.
- (2) A copy of the determination of non-responsibility shall be immediately sent to the Security Guard Company. Notice to the non-responsible Security Guard Company must be mailed no later than two business days after the determination of non-responsibility is made and must inform the Security Guard Company of the right to appeal the determination pursuant to subdivision h of this section. A copy of the determination of non-responsibility shall also be sent to the City Chief Procurement Officer.
- (3) The determination of non-responsibility shall be included in the VENDEX database.

(f) Upon the determination by the ACCO that an application meets the requirements set forth herein, the Department shall notify the applicant of its inclusion on the Qualified Provider List by regular and electronic mail within 90 days of receipt of its application. The Qualified Provider List

will be reviewed periodically to ensure that providers continue to meet the necessary qualifications.

(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. 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.

(h) A Security Guard Company must retain all certified payroll records, which verify that its Security Guards were paid at least the prevailing wages and supplements for unarmed security guards as determined by the Comptroller of the City of New York pursuant to New York State Labor Law § 234.

(i) *Determination of Non-responsibility or Denial or Revocation of Qualification*

- (1) If the Department determines that a Security Guard Company is non-responsible or otherwise not qualified as a provider or the Department revokes such qualification, the Security Guard Company may appeal in writing to the Commissioner or the Commissioner's designee within 10 days of receipt of the Department's determination, denial, or revocation. Receipt of notice by the Security Guard Company shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Commissioner.
- (2) The written appeal by the Security Guard Company must briefly state all the facts or other basis upon which the Security Guard Company contests the Department's determination, denial, or revocation. Supporting documentation must be included.
- (3) The Commissioner or the Commissioner's designee shall consider the Security Guard Company's appeal and shall make a prompt written decision no later than 60 days after receipt with respect to the merits of the Security Guard Company's appeal. The determination of the Commissioner or the Commissioner's designee shall be a final agency determination.

### **§ 14-03 Nonpublic Schools; Qualification for the Reimbursement Program**

(a) *HHS Accelerator.* Any nonpublic school in the City of New York (hereinafter "school") that seeks to participate in the Reimbursement Program must first create an account with HHS Accelerator and complete HHS Accelerator's business and service applications.

(b) *Application.*

- (i) After completing HHS Accelerator's business and service applications, a school may access the application to participate in the Reimbursement Program. The application

will be on a form prescribed by the Department and will be accessed through HHS Accelerator. For the 2016-17 school year, the deadline to submit a completed application is November 1, 2016. For any subsequent school year in which the Reimbursement Program is authorized, the deadline to submit a completed application is October 15. The Department shall use such application to determine whether a school is qualified to participate in the Reimbursement Program.

(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 school’s BEDS enrollment number is considered final for the corresponding school year.

(iii) All questions regarding the submission, uploading, or retention of documents in connection with the application must be submitted to HHS Accelerator.

(c) *Response.* The Department will respond, by regular and electronic mail, to each school that submits an 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.

(d) *Denial or Revocation of Qualification.*

(i) If the Department determines that a school is not qualified to participate in the Reimbursement Program or revokes such qualification, the school may appeal in writing to the Commissioner or the Commissioner’s designee within 10 days of receipt of the Department’s denial or revocation. Receipt of notice by the nonpublic school shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Commissioner.

(ii) The written appeal by the school must briefly state all the facts or other basis upon which the school contests the Department’s denial or revocation. Supporting documentation must be included.

(iii) The Commissioner or the Commissioner’s designee shall consider the school’s appeal and shall make a prompt written decision no later than 60 days after receipt with respect to the merits of the appeal. The determination of the Commissioner or the Commissioner’s designee shall be a final agency determination.

#### **§ 14-04 Nonpublic Schools; Memorandum of Understanding**

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. Upon execution of the MOU, such MOU shall take effect in accordance with applicable law.

**§ 14-05 Nonpublic Schools and Security Guard Companies; Program Administration**

(a) *Start Date.* A school may seek reimbursement from the Department for the cost of Security Services beginning on the first day of classes in the school year for which the Reimbursement Program has been authorized or the date the Department determines that the School is qualified to participate in the reimbursement program, whichever is later.

(b) *Qualified Providers.* If the Qualified Provider List contains three (3) or more Security Guard Companies on the date of the execution of the MOU between the Department and a school, the school must retain a Security Guard Company from the Qualified Provider List in order for the cost of its Security Services to be eligible for reimbursement. If the Qualified Provider List contains fewer than three (3) Security Guard Companies at such time, the school may retain any Security Guard Company that is licensed pursuant to Article 7-A of the General Business Law and complies with all applicable labor and employment laws.

(c) *Insurance Requirements.* Upon retention by the school of a Security Guard Company from the Qualified Provider List or a Security Guard Company licensed pursuant to Article 7-A of the General Business Law, the Security Guard Company must maintain throughout the term of its agreement with the school commercial general liability (“CGL”) insurance, which shall:

(i) be issued by a company that may lawfully issue the CGL policy. The company must have an A.M. Best rating of at least A-/VII or a Standard & Poor’s rating of at least A;

(ii) insure the Security Guard Company, the school, and the City of New York and protect them from any claims for injury (including death) or property damage that may arise from or allegedly arise from operations under the agreement with the school

(iii) provide coverage of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate;

(iv) provide coverage at least as broad as that provided in the most recently issued edition of Insurance Services Office (“ISO”) Form CG 00 01 and be “occurrence” based rather than “claims-made”; and

(v) name the school and the City of New York as an Additional Insured with coverage at least as broad as the most recent edition ISO Form CG 2026.

(1) The Security Guard Company shall provide the endorsement(s) naming the school and the City as an Additional Insured and proof of CGL insurance by submission of a certificate of insurance that:

A. satisfies the requirements of this rule;

B. identifies the insurance company that issued such insurance policy, the policy number, limit(s) of insurance, and expiration date; and

C. is accompanied by a sworn statement in a form prescribed by the Department from a licensed insurance broker or agent certifying that the certificate of insurance is accurate in all material respects.

(2) A Security Guard Company must ensure that its policies are current and is required to submit an updated certificate of insurance and certification by broker or agent within five days of the expiration date of the current policy.

(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 coverage within 10 days of its retention by the school, or upon demand by the Department. Satisfactory proof shall mean:

A. C-105.2 Certificate of Workers' Compensation Insurance;

B. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;

C. Request for WC/DB Exemption (Form CE-200);

D. Equivalent or successor forms used by the New York State Workers' Compensation Board; or

E. Other proof of insurance in a form acceptable to the City.

(d) School Security Administrator. The School Security Administrator shall be responsible for the daily administration of Security Services provided at the school, including decisions regarding the selection, retention, and replacement of Security Guards. The School Security Administrator must report the misconduct of a Security Guard to the administration of the school. The School Security Administrator may report any concerns regarding a Security Guard Company to the Department.

(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 section 14-06 of the Rules;
- (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;
- (v) ensure that each Security Guard assigned to the school has the ability to understand, speak, write and be understood in English.
- (vi) ensure that each Security Guard assigned to the school wears and displays an identification card and New York State Guard License prominently while on duty;
- (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 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.

(f) Incident Reporting.

- (i) Each Security Guard assigned to the school must document criminal activity and other significant incidents related to public safety that occur while the Security Guard is on duty. Each school is responsible for maintaining such documentation and for promptly reporting criminal activity to the New York City Police Department and other significant incidents related to public safety to any other government agency, where appropriate.
- (ii) The School Security Administrator must submit an annual report to the Department that summarizes all criminal activity and other significant incidents related to public safety that are documented by its Security Guards.

**§ 14-06 Security Guard Companies; Training**

(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 that specifically addresses, but is not limited to, the provision of security services to youths and in school environments; and
- (ii) *Refresher Training:* During each year that a Security Guard takes part in the Reimbursement Program, such Security Guard must complete a minimum of 8 hours of training that specifically addresses the provision of security services to youths and in school environments.

(b) Security Guard Companies must maintain current records for each Security Guard regarding the training that such guard has completed. The school may request a copy of such records at any time.

(c) Nothing contained in this section shall preclude a school from requiring additional training suited to its particular needs. However, such additional training will not be eligible for reimbursement to the schools.

**§ 14-07 Nonpublic Schools; Allowable Costs and Reimbursements**

(a) *Number of Guards.*

- (i) A school that enrolls between 300 and 499 students may be reimbursed for Allowable Costs with regard to one (1) Security Guard; a school that enrolls between 500 and 999 students may be reimbursed for Allowable Costs with regard to two (2) Security Guards; and a school may be reimbursed for Allowable Costs with regard to an additional Security Guard for each additional 500 students enrolled in such school. Reimbursement for the Security Services provided by each Security Guard during

periods of school-related instruction or school-related events may include the cost of different individuals providing Security Services at different times.

(ii) When calculating the number of students enrolled at a school, each school that has been assigned a code by the New York State Education Department will be considered distinct. The number of students at schools with distinct codes, even if such schools are contractually or otherwise related, will not be considered for the purposes of determining the number of guards pursuant to this subdivision.

(iii) The Department will adjust payments, including recoupment, based on verification of the school's enrollment information by the New York State Education Department.

(b) *Wages.* The Department shall reimburse for Security Services only if each Security Guard is paid on an hourly basis no less than the prevailing wage and supplements in the City for unarmed guards as determined by the Comptroller of the City of New York pursuant to New York State Labor Law § 234.

(c) *School-Related Instruction and Events.* The Department shall reimburse for Security Services provided during school-related instruction or school-related events. School-related events shall not include private functions or activities that are not primarily directed to students. Schools are required to maintain records containing a description of school-related events for which reimbursement is requested.

(d) *Overtime.* The Department shall reimburse for overtime costs for Security Services provided during school-related instruction and school-related events that do not exceed fifteen percent of the non-overtime wages of Security Guards reimbursed to the school during any given quarter.

(e) *Reasonable Costs.* Each Security Guard Company may charge Reasonable Costs to each school for administrative expenses. The Department shall reimburse the school for such costs.

(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.

(g) *Budget.* If the Department anticipates that schools will submit reimbursement claims in excess of available funds for a given school year, the Department shall reimburse each school on an equitable basis until such funds are exhausted. The Department will notify each school promptly if such a determination is made.

## **§ 14-08 Nonpublic Schools; Compliance and Auditing**

(a) *Records Retention.* Each school must retain all records supporting its reimbursement claims for seven (7) years. Such records include, but not are not limited to, invoices, payroll records, timesheets, and work assignment data from Security Guard Companies and annual reports of incidents as required by section 14-05(f) of the Rules.

(b) *Submission of Records.* Each school must submit all records supporting its reimbursement claims through HHS Accelerator including, but not limited to, certified payroll records, invoices, and time sheets, which include the name, address, and unique employee identification number of each Security Guard.

(c) *Audit.* Each school must make available all records supporting its reimbursement claims for auditing and inspection by DCAS Internal Audit and Compliance Unit (“IA”) and/or its contractors upon demand with five (5) days prior written notice. The school must produce any and all original books, reports, financial statements, vouchers, records, payroll records, time sheets, and work assignment data pertaining to the reimbursement claims, whether those documents are maintained in hard copy or electronically. Such records must be made available for inspection at the offices of the Department or on the premises of the school. The school must gather any and all documents pertaining to its reimbursement claims, including, but not limited to, documents describing school-related activities at which Security Services were provided.

(d) *Visits to Schools.* IA may visit the school to review records and interview staff, contractors, and subcontractors in furtherance of IA’s audit of the reimbursement claims. The school must cooperate with IA during such visits. These visits may be unannounced.

(e) *Records Review.* IA may review documents on the premises of the school and may make and remove copies of records for auditing purposes.

(f) *Findings.* IA shall report the findings of its audit and recommendations to the Department for any action it deems appropriate. A school’s failure to comply with these Rules may result in disqualification from the Reimbursement Program. The Department may, in its sole discretion, share the findings of the audit with the school or other government entities. Nothing set forth herein shall limit the ability of the Comptroller of the City of New York or the New York City Department of Investigation to obtain and review a school’s records.