

Part 500 of Title 19 NYCRR is amended to read as follows:

PART 500

CAMPUS FIRE SAFETY

10/14/2009

(Statutory authority: Executive Law, §§ 91, 156, 156-e; Education Law, § 807-b)

Sec.

- 500.1 Authority, intent, purpose and scope
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- 500.11 Delegation of inspection authority to local governments

Section 500.1. Authority, intent, purpose and scope.

(a) The Department of State, Office of Fire Prevention and Control (OFPC) has authority to inspect the majority of public and independent college facilities in the State for compliance with the Uniform Fire Prevention and Building Code (UFPBC), other applicable fire safety standards and Education Law, section 807. OFPC also has authority to prepare inspection

reports, issue citations and corrective orders for violations, take appropriate actions to ensure compliance with its orders, and do all other things necessary and appropriate to effectuate the law. This Part establishes procedural and substantive requirements to implement and apply that authority.

(b) This Part is not applicable to the City of New York, which shall continue to conduct inspections of public and independent colleges under its jurisdiction.

#### Section 500.2. Inspections and reports.

(a) The authorities in charge of any public or independent college or university shall permit the interior and exterior of all buildings under their jurisdiction to be inspected at least annually, when in use, for compliance with the UFPBC, other applicable fire safety standards and Education Law, section 807.

(b) Either OFPC or a county, city, town or village to which OFPC has delegated inspection authority under this Part (the "inspecting authority"), shall conduct the inspections. College and university authorities shall provide the inspector with access to all building areas. An employee with knowledge of the physical characteristics of the buildings shall accompany the inspector during each inspection.

(c) Inspections shall consist of the following activities: exterior examination of the buildings in question; interior examination of all areas of the buildings in question; review of any recently completed or planned building alterations, additions, renovations or other building construction and all records related thereto; audit of all inspection, testing and maintenance records of building systems as required by the UFPBC; review of all records pertaining to fire evacuation drills, fire safety training activities and emergency plans; and review of reports of any

fire activity within the building since the last inspection.

(d) All inspections shall be recorded in a format prescribed by OFPC.

(e) OFPC or a local government to which inspection authority has been delegated shall produce a report for each building inspected.

(f) The buildings in which a violation exists may be re-inspected to verify abatement has been accomplished.

(g) The inspecting authority may inspect any college or university building upon report of a real or suspected fire danger made by students, staff, parents, a member of the public, local governments or the college or university authorities, or when in the opinion of the inspecting agency, unsafe or noncompliant conditions may exist as a result of activities within a building. The inspection shall be limited to the building in which the suspected danger was reported.

#### Section 500.3. Report of inspection/notice of violation.

(a) When a violation is determined to exist, it shall be identified by the inspecting authority on a report of inspection/notice of violation. The inspecting authority shall file the report within 90 days of the inspection with the college or university authorities, the Commissioner of Education, and the chief or other comparable officer of any fire department or fire corporation having jurisdiction to fight fires in the building inspected. Where there has been a delegation of inspection authority, the inspecting authority shall also file a copy of the report with OFPC.

(b) The report shall contain the following:

(1) the nature and location of the violation;

(2) reference to applicable sections of the UFPBC, other fire safety standards or Education Law, section 807; and

(3) recommended abatement date.

#### Section 500.4. Order to comply.

(a) Whenever a re-inspection is performed and a violation previously identified on a report of inspection/notice of violation has not been satisfactorily abated as required, the inspecting authority shall serve an order to comply on the college or university.

(b) Whenever a severe or serious violation or the cumulative effect of numerous significant violations, as defined in section 500.5, has been identified during an inspection, OFPC may, at its discretion, issue an order to comply in an effort to ensure that public health and safety is addressed in a timely manner. In this situation, an order to comply may only be issued at the express direction of the State Fire Administrator, Deputy State Fire Administrator, a Bureau Chief or Deputy Bureau Chief of OFPC.

(c) The order to comply shall state:

(1) the location and nature of the violation and the date by which abatement must occur;

(2) the earliest date by which a re-inspection will occur; and

(3) the daily penalties which may be imposed upon failure to comply as required.

(d) The inspecting authority shall serve an order to comply either personally or by certified mail, return receipt requested, on either the president of the college or university or on an individual duly designated to accept such service.

Section 500.5. Penalties.

(a) Monetary Penalties. OFPC may assess monetary penalties of up to \$500 per calendar day commencing on the first day following the abatement date specified in an Order, and continuing until the violation has been abated. Abatement of violations shall be verified by OFPC. Calculation of monetary penalties shall be governed by the following standards which will be used to determine the gravity of the violation:

(1) Fire probability and loss severity.

(i) Fire probability is OFPC's assessment of the likelihood that a fire will occur. At a minimum, the following factors shall be considered: contents, processes, arrangement of contents, occupancies, operations conducted in the area, construction class and hours of operation. Based upon these factors, OFPC will assign one of the following fire probability values from the table appearing in paragraph (2) of this subdivision:

- (a) Likely to occur immediately or within a short period of time (fire probability A).
- (b) Probably will occur in time (fire probability B).
- (c) Possible to occur in time (fire probability C).
- (d) Unlikely to occur (fire probability D).

(ii) Loss severity is OFPC's assessment of the expected loss should a fire occur. At a minimum, the following factors shall be considered: contents, processes, occupancies, construction, installed fire protection features and impact of the deficiency during a fire. Based upon these factors, OFPC will assign one of the following loss severity values from the table appearing in paragraph (2) of this subdivision:

- (a) Loss of life, major monetary loss

(>\$5,000,000 (loss severity 1).

(b) Permanent disability, possible death, severe monetary loss  
(\$1,000,000 - \$5,000,000) (loss severity 2).

(c) Possible injury, moderate monetary loss  
(\$100,000 - \$999,999) (loss severity 3).

(d) Injury unlikely, slight monetary loss  
(<\$100,000) (loss severity 4).

(2) A determination of the fire safety deficiency code (FSD) will be made from the table below based on the fire probability value and the loss severity value.

LOSS SEVERITY	FIRE PROBABILITY			
	A	B	C	D
1	I	I	II	III
2	I	II	III	IV
3	II	III	IV	V
4	III	IV	V	V

(3) Fine amounts and abatement periods. Once the FSD Codes for each violation are determined, a hazard class, predetermined daily fines and maximum abatement period shall be established according to the following table:

<b>FSD Code</b>	<b>Violation Class</b>	<b>Definition</b>	<b>Daily Fine</b>	<b>Maximum Abatement Period</b>
I	Severe	A severe violation that would result in high loss of life or catastrophic loss of the facility or contents	\$500	1 day
II	Serious	A serious violation that has a high probability of loss of life or major impact on the facility or contents	\$400	3 days
III	Significant	A violation that may constitute a significant risk to life or property	\$200	7 days
IV	Moderate	A violation that may contribute to minor property damage or slight risk to people	\$100	15 days
V	Minimal	A violation that has little impact on property or people	\$50	30 days

(4) Fines will be paid within 30 days of assessment.

(5) The State Fire Administrator shall have the discretion to compromise or settle fines where there is written demonstration that the public interest in fire safety would so warrant.

(i) No compromise or settlement shall occur while the violation for which the fine was imposed continues unabated. A college or university may request a compromise no later than 60 days after OFPC's verification of violation abatement.

(ii) Any compromise monies granted by the State Fire Administrator shall be used by the college or university to increase or improve fire and life safety activities or equipment on the campus.

500.6 Methods of Abatement.

Violations are considered abated when correction of the condition or behavior that is in violation of the UFPBC, other applicable fire safety standards or Education Law, section 807 has been made.

#### 500.7 Compliance Plans.

(a) A college or university may submit a written compliance plan to memorialize a commitment to undertake corrective action to abate each violation. The plan shall contain, but not be limited to, procedural and/or policy changes, specification of the necessary training, work, personnel, materials, expected costs, time lines, and procurement and financial commitments which are necessary to achieve abatement.

(b) For the purposes of this section, an approved compliance plan shall provide a temporary time extension for permanent corrective action to be undertaken. A compliance plan suspends the accrual of any monetary penalties for the approved time period. If upon expiration of a compliance plan, the violation(s) previously identified in an order to comply has not been abated, penalties shall be assessed back to the date contained in the original order to comply.

#### 500.8 Certificate of compliance.

(a) Where inspection of a building reveals that it is in full compliance with the UFPBC, other applicable fire safety standards and/or Education Law, section 807, OFPC or its designee shall issue a certificate of compliance in a format prescribed by OFPC.

(b) The certificate of compliance shall be prominently posted in a protective frame or case within the building and shall provide the telephone number and address at which OFPC may be contacted.

(c) The certificate of compliance shall be valid for a period of one year from the date of initial inspection unless sooner revoked.

(d) OFPC may revoke any certificate of compliance whenever it finds that a violation of the UFPBC, other applicable fire safety standards or Education Law, section 807 exists.

(e) Immediately upon receiving a revocation notice from OFPC, the college or university authorities shall remove the certificate of compliance from its posted location and replace it with a notice that the certificate of compliance has been revoked, stating the reasons therefor and the telephone number and address at which OFPC may be contacted.

#### 500.9 Imminent threat to public health or safety.

(a) An imminent threat to public health or safety is a condition or practice in a building, facility or on property under the jurisdiction of a college or university that creates a situation which could reasonably be expected to cause death or serious physical harm if abatement is not immediately achieved. OFPC may take the following actions to address an imminent threat to public health or safety:

(b) Where a college or university authority has failed to abide with an order to comply and the subject severe or serious violation(s) or cumulative effect of numerous significant violations remain in such fashion that OFPC determines an imminent threat to public health or safety exists, OFPC may order the closing of a building or parts thereof.

(c) Where a college or university authority has failed to abide with an order to comply and the subject operation(s) constitutes a severe or serious violation(s) that OFPC determines to be an imminent threat to public health or safety, OFPC may issue a Cease and Desist Order.

(d) OFPC's authority to order the closing of a building or parts thereof or to issue a Cease and Desist Order shall only be exercised by the State Fire Administrator, Deputy State Fire Administrator, or a Bureau Chief or Deputy Bureau Chief of OFPC.

#### 500.10 Reporting of fires.

(a) Colleges and universities shall report to OFPC on DOS Form 1660 basic information relating to all fires that occur on property under the jurisdiction of a college or university. This report shall be submitted within 24 hours of the occurrence or discovery of the fire. Reports may be submitted via fax or e-mail as instructed on DOS Form 1660.

(b) Any fire that results in injury or death shall be reported to OFPC within one hour of the occurrence. This initial report shall be made via telephone to OFPC's 24 hour answering point, (518) 474-6746. A completed DOS Form 1660 shall also be submitted in accordance with section 500.10(a) of this Part.

(c) For purposes of this section a fire is any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.

#### 500.11 Delegation of inspection authority to local governments.

(a) Except as provided in paragraph (4) of this subdivision, a county, city, town or village may, by resolution of its legislative body, apply to OFPC for delegation of its inspection authority in relation to independent colleges and universities. The resolution shall specify which local government office shall be responsible for carrying out the duties delegated. The county, city, town or village shall forward such resolution and application to OFPC. Where a delegation

has been made to both a county, and a city, town or village within such county, the authority delegated shall be exercised by the city, town or village to the extent authorized by OFPC.

(1) OFPC may make such delegation upon acceptable demonstration by the applicant of adequate capability, resources and commitment. Such demonstration shall consist of but not be limited to a showing of:

(i) sufficient and properly trained staff;

(ii) adequate funding;

(iii) a proven record of obtaining compliance with the UFPBC and/or Education Law, section 807, as applicable;

(iv) certification of inspectors by the State Fire Administrator; and

(v) a statement in the resolution that no fee shall be charged for inspections performed pursuant to Education Law, section 807-b.

(2) A delegation shall expire three years from the date made in writing by OFPC. OFPC may, however, revoke a delegation or continue it subject to terms and conditions, where OFPC finds that inspections, the prompt filing of reports thereof, or the faithful execution of any other delegated duties are inadequate or ineffective.

(3) An application for renewal of the delegation shall be accompanied by a new resolution of the legislative body at least 90 days prior to the expiration of the previous delegation. If renewal does not occur for any reason, all authority previously delegated shall revert to OFPC.

(4) The authority of OFPC to impose penalties on public and independent colleges and universities for violations of the UFPBC and/or Education Law, section 807, as

applicable, shall not be delegated by OFPC. Instead, the local inspection authority shall promptly refer all cases of violations to OFPC for further action.

(b) The duties, rights and powers conferred upon OFPC by Executive Law, section 156-e and Education Law, section 807-b, with respect to the State University of New York (SUNY) and other public college facilities as identified in Education Law, sections 350 and 352, shall not be delegated.