



TO: P-12 Education Committee
FROM: Angelica Infante-Green *A. Infante - Green*
SUBJECT: Proposed Amendment of Section 135.4(c)(7) of the Commissioner's Regulations relating to Eligibility for Participation in Interscholastic Sports and Duration of Competition
DATE: October 6, 2016

AUTHORIZATION(S):

SUMMARY

Issue for Discussion

Should the Board of Regents amend Section 135.4(c)(7) of the Commissioner's Regulations relating to Eligibility for Participation in Interscholastic Sports and Duration of Competition?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed rule is being presented to the P-12 Education Committee for discussion at the October 2016 Regents meeting. A copy of the proposed amendment is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on November 9, 2016. Pursuant to the State Administrative Procedure Act, public comment will be received until December 27, 2016. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Commissioner's regulation section 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for students in grades 7 through 12. The underlying spirit of Commissioner's regulations governing interscholastic athletics is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for students in seventh or eighth grade who wish to participate in high school athletics pursuant to the athletic placement process (8 NYCRR §135.4(c)(7)(ii)(a)); as well as students who seek to extend athletic eligibility to a fifth season when they have missed a season of the sport due to accident or injury (8 NYCRR §135.4(c)(ii)(b)); for purposes of mixed competition (8 NYCRR §135.4(c)(ii)(c)); and for students with disabilities who wish to extend eligibility to participate in non-contact sports (8 NYCRR §135.4(c)(7)(ii)(d)).

Athletic Placement Process

In general, interscholastic athletics for students in grades 7 through 12 must be organized for students in like grade groups. However, pursuant to Commissioner's regulation §135.4(c)(7)(ii)(a), a school district may choose to permit certain students to compete at a level of competition deemed appropriate to their physiological maturity, physical fitness, and skill level in relationship to other students at the desired level of competition. The current regulation provides as follows:

A board of education may permit pupils in grades no lower than seventh to compete on any senior high school team, or permit senior high school pupils to compete on any teams in grades no lower than seventh, provided the pupils are placed at levels of competition appropriate to their physiological maturity, physical fitness, and skills in relationship to other pupils on those teams in accordance with standards established the Commissioner.

The standards by which such participation is permitted are commonly referred to as the Athletic Placement Process (APP). The APP, which was last updated in 2015, provides a protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. Such protocol ensures that student athletes are able to participate safely at an appropriate level of competition based upon physical and emotional readiness and athletic ability, rather than age and grade alone. See Athletic Placement Process for Interscholar Athletic programs:

<http://www.p12.nysed.gov/ciai/pe/documents/AthleticPlacementProcess2-11-15Revised.pdf>

Though not required, many school districts throughout the State employ the APP to provide appropriate interscholastic athletic opportunities for exceptional student athletes in grades 7 and 8 to play at the high school level. Existing regulations provide that to be eligible for participation in interscholastic athletic competition at any level during a semester, the student must, among other things, be a bona fide student, enrolled during the first 15 school days of such semester (8 NYCRR

§135.4(c)(7)(ii)(b)(2)). Commissioner's regulation §135.1 defines a bona fide student as "a regularly enrolled student who is taking sufficient subjects to make an aggregate amount of three courses and who satisfies the physical education requirement."

Not all of the State's 728 school districts are traditional K-12 districts. Presently, there are 13 public school districts in the State that operate to serve students in grades K-8 only, and contract for the education of their high school students with other public school districts pursuant to the provisions of Education Law §§2040, 2045 and Commissioner's regulation §174.4. Because of their unique configuration, these 13 public school districts do not have their own "district high school," and as a result, questions have arisen regarding the ability of students who are enrolled in K-8 public school districts to participate in the APP because they are not "enrolled" in a district with its own high school.

The proposed regulation is therefore designed to clarify the conditions under which K-8 public school districts may employ the APP protocol to allow the opportunity for exceptional student athletes to participate in interscholastic sports at the high school(s) with which the K-8 school district contracts for the education of its high school students, when such students are bona fide students of the K-8 school district. However, in an effort to avoid recruitment or other efforts to entice middle-school students to play for a specific high school, the regulation provides for a year of ineligibility if, following participation on a high school team pursuant to APP, the student chooses to attend a different high school with which the K-8 district contracts for the 9th grade year.

The existing guidance relating to the APP protocol is comprehensive. However, additional revisions will be necessary to provide these few K-8 school districts and the districts with which they contract for the education of their high school students with the necessary guidance to safely and appropriately implement the APP, if they choose.

Duration of Competition

Commissioner's regulation §135.4(c)(7)(ii)(b)(1)(i), relating to the duration of competition, limits the participation of students in high school athletic competition to four consecutive seasons commencing with the student's entry into the ninth grade and prior to graduation. However, the regulation provides that a request for an extension of duration of competition may be granted if sufficient evidence demonstrates that the student's failure to enter competition during one or more seasons was directly caused by illness or accident, and such illness or accident will require the student to attend school for one or more additional semesters to graduate.

Prior to October 2014, this regulation also allowed students to seek an extension of eligibility when the student failed to enter competition for "other circumstances beyond the control of the student." In response to confusion from the field, the Board of Regents amended the regulation to limit the eligibility extension for reasons only related to accident or illness. However, recognizing that extenuating circumstances may exist which do not neatly fit into the categories of accident or illness, but may still be suitable for extending a student's athletic eligibility, the Department seeks to amend the

regulation and provide that the eligibility of a student who has not attained the age of 19 years prior to July 1st may be extended not only based on accident or illness, but also if sufficient evidence is presented that the failure to enter competition was based on “other circumstances beyond the student’s control.” The proposed amendment also provides the Commissioner with the discretion to review a determination to grant or deny an extension of eligibility based on specific criteria. As proposed, the regulation would permit a student’s eligibility to be extended for illness, accident, or other circumstances beyond the control of the pupil if evidence in the record demonstrates that:

- (a) the pupil’s failure to enter competition during one or more seasons of a sport was caused by illness, accident, or other circumstances beyond the control of the pupil;
- (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate;
- (c) the safety of the pupil or others is not at risk; and
- (d) that the pupil will not hold an unfair advantage in the competition.

These proposed amendments are intended to provide greater clarity and to ensure safe and equitable interscholastic athletic competition for all public school students.

Related Regents Items

http://www.regents.nysed.gov/common/regents/files/1014p12a4_2.pdf

Timetable for Implementation

Following the 45-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed rule will be presented for permanent adoption at the February 2017 Regents meeting. If adopted at the February meeting, the proposed amendment will become effective for the next school year, commencing on July 1, 2017.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 803 and 3204.

1. Subclause (4) of clause (a) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended by adding a new item (1), effective July 1, 2017 to read as follows:

(ii) Provisions for interschool athletic activities for pupils in grades 7 through 12. It shall be the duty of the trustees and boards of education to conduct interschool athletic competition for grades 7 through 12 in accordance with the following:

(a) Interschool athletic competition for pupils in junior high school grades seven, eight and nine. Such competition shall be conducted in accordance with the following: Seventh and eighth grade teams may participate only with teams of like grade groups, with the following exceptions:

(1) In junior high school, competition may include grades seven through nine.

(2) In six-year high schools, competition may include grades seven through nine.

(3) In four-year high schools, ninth grade pupils may participate in junior high competition.

(4) (j) A board of education may permit pupils in grades no lower than seventh to compete on any senior high school team, or permit senior high school pupils to compete on any teams in grades no lower than seventh, provided the pupils are placed at levels of competition appropriate to their physiological maturity, physical fitness and skills in relationship to other pupils on those teams in accordance with standards established by the commissioner.

(i) Nothing in this subclause shall prohibit a bona fide seventh or eighth grade student, as defined by subdivision (g) of section 135.1, who is regularly enrolled in a public school district organized for pupils in kindergarten through eighth grade that contracts with a neighboring school district or districts on a tuition basis for the education of its high school students pursuant to Education Law sections 2040 and 2045 and section 174.4 of this Title, from seeking to participate in a high school team, in accordance with the standards described in item (j) of this subclause, provided that the boards of education of the sending school district (as such term is defined in section 174.4(a)(1) of this Title) and the receiving school district(s) (as such term is defined in section 174.4(a)(2) of this Title) adopt a resolution to permit such participation. In the case of seventh and eighth grade students attending a public school district organized for pupils in kindergarten through eighth grade that contracts with more than one neighboring school district for the education of its high school students, any such seventh or eighth grade student who participates in high school athletics pursuant to this subclause may select only one high school in which to compete during their seventh and eighth grade participation; if, following participation in a high school team during seventh and/or eighth grade, such student chooses to attend a different high school with which the student's kindergarten through eighth grade school district contracts for the education of its high school students, such student shall be ineligible to participate in any interscholastic athletic contest in a particular sport for a period of one year.

2. Clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education shall be amended, effective July 1, 2017 to read as follows:

(b) Interschool athletic competition for pupils in senior high school grades 9, 10, 11 and 12. Inter-high school athletic competition shall be limited to competition between high school teams, composed of pupils in grades 9 to 12 inclusive, except as otherwise provided in subclause (a)(4) of this subparagraph. Such activities shall be conducted in accordance with the following:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause, or except as authorized by a waiver granted under clause (d) of this subparagraph to a student with a disability. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) or clause (d) of this subparagraph, or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances.

(i) If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, [or] accident or other circumstances beyond the control of the pupil

such pupil's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must [include documentation showing that as a direct result of the illness or accident, the pupil will be required to attend school for one or more additional semesters in order to graduate] demonstrate that, (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, or other circumstances beyond the control of the pupil; (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; (c) the safety of the pupil or others is not at risk; and (d) that the pupil will not hold an unfair advantage in the competition. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except for a student with a disability pursuant to the requirements of clause (d) of subparagraph (ii).

(i) If the chief school officer demonstrates to the satisfaction of the section that the pupil's failure to enter competition during one or more seasons of a sport is caused by such pupil's enrollment in a national or international student exchange program or foreign study program, that as a result of such enrollment the pupil will be required to attend school for one or more additional semesters in order to graduate, and that the pupil did not enter competition in any sport while enrolled in such program, such pupil's eligibility shall be extended accordingly in such sport.

(iii) If the section declines to extend the pupil's eligibility in accordance with this subclause, the section shall provide written notice of such determination to the chief school officer, with a copy to the pupil's parent, guardian or person in parental relation. Such notice shall include, as applicable: information regarding the athletic association's internal appeal process, including the name of the individual and address to which such appeal is to be directed; or a statement that the determination may be appealed to the

Commissioner of Education, in accordance with Education Law section 310, within 30 days of the date of such determination and shall include the name and address of the section official upon whom such appeal shall be served. If the athletic association hears and denies an appeal, written notice of the determination shall be provided to the chief school officer, with a copy to the pupil's parent, guardian or person in parental relation. Such notice shall include a statement that the determination may be appealed to the Commissioner of Education, in accordance with Education Law, section 310, within 30 days of the date of such determination and shall include the name and address of the athletic association official upon whom such appeal shall be served.

(iv) Upon appeal pursuant to Education Law section 310, the commissioner shall review the record de novo and may extend the pupil's eligibility upon a finding based upon documentary evidence in the record that: (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident or circumstances beyond the control of the pupil; (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; (c) the safety of the pupil or others is not at risk; and (d) that the pupil will not hold an unfair advantage in the competition. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except for a student with a disability pursuant to the requirements of clause (d) of subparagraph (ii).