




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents  
**FROM:** Ken Wagner   
**SUBJECT:** Proposed Amendment of Section 135.4 of the Regulations of the Commissioner of Education, relating to clarification of the Duration of Competition rule

**DATE:** January 5, 2015

**AUTHORIZATION(S):**





### SUMMARY

#### Issue for Decision (Consent Agenda)

Should the Board of Regents amend section 135.4 of the Regulations of the Commissioner of Education to clarify when a student's eligibility for senior high school athletic competition may be extended due to an illness or accident?

#### Reason(s) for Consideration

The New York State Public High School Athletic Association has expressed a need for a consistent interpretation of the Duration of Competition rule as set forth in Commissioner's Regulation section 135.4. The proposed amendment will clarify that a student's eligibility for senior high school athletic competition may be extended due to an illness or accident.

#### Proposed Handling

The proposed amendment is being presented to the Full Board for adoption as a permanent rule at the January 2015 Board of Regents meeting. In addition, a second emergency adoption is also necessary to ensure that the emergency rule remains continuously in effect until the effect date of its adoption as a permanent rule. A statement of the facts and circumstances which necessitate emergency action is attached.

## **Procedural History**

The proposed amendment was adopted at the October 2014 Regents meeting as an emergency rule, effective October 21, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on November 5, 2014. A copy of the proposed rule is attached. 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)(b)(1), establishes the parameters for participation in senior high school interschool athletic competition. The duration of competition rule limits the participation of pupils in high school athletic competition to four consecutive seasons commencing with the pupil's entry into the ninth grade and prior to graduation. A request for an extension of duration of competition for a pupil's failure to enter competition during one or more seasons may be granted, only if sufficient evidence demonstrates that the pupil's failure to enter competition during one or more seasons was directly caused by illness, accident, or similar circumstances beyond his or her control.

Department guidance indicates that the existing language providing for an extension upon evidence that the student's participation was impacted by "similar circumstances beyond the control of the student" is limited to circumstances related to such illness or accident. However, confusion continues to exist among school districts, students and parents. This regulatory amendment is necessary to provide clarity to the field regarding the circumstances under which a duration of competition extension may be granted. The proposed amendment provides that an extension may be granted if sufficient evidence is presented to show that the pupil's failure to enter competition during one or more seasons of a sport was caused illness or accident. Such clarification is intended to ensure safe and equitable competition.

## **Recommendation**

Staff recommends that the Regents take the following action:

VOTED: That subclause (1) of clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education be amended as submitted, effective January 28, 2015; and it is further

VOTED: That subclause (1) of clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education be amended as submitted, effective January 19, 2015, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the October 2014

Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

**Timetable for Implementation**

The proposed amendment was adopted at the October 2014 Regents meeting as an emergency rule, effective October 21, 2014, and will expire on January 18, 2015. If adopted at the January 2015 Regents meeting, the emergency rule will take effect on January 19, 2015 and the permanent rule will take effect on January 28, 2015.

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Subclause (1) of clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective January 28, 2015, as follows:

(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 similar circumstances beyond the control of the student], 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 [or other circumstance beyond the control of the student], the pupil will be required to attend school for one or more additional semesters in order to graduate.

(ii) . . .

## **8 NYCRR §135.4**

### **STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION**

The proposed amendment is necessary to clarify when a student's eligibility for senior high school athletic competition may be extended because of illness or accident, as set forth in Commissioner's Regulations §135.4(c)(7)(ii)(b)(1)(i). The proposed amendment provides that an extension may be granted for a student's illness or accident.

The proposed amendment was adopted at the October 20-21, 2014 Regents meeting as an emergency rule, effective October 21, 2014, and has now been adopted as a permanent rule at the January 12-13, 2015 Regents meeting. Pursuant to SAPA section 203(1), the earliest effective date of the permanent rule is January 28, 2015, the date a Notice of Adoption is published in the State Register. However, the emergency rule adopted at the October 2014 Regents meeting will expire on January 18, 2015. A lapse in the rule's effect date may disrupt extensions of high school athletic competition caused by illness, accident. Therefore, emergency action is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the October 2014 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

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