



**TO:** P-12 Education Committee

**FROM:** Angélica Infante-Green *h. Infante - Green*

**SUBJECT:** Proposed Amendment of Section 135.4(c)(7)(ii) of the Commissioner's Regulations relating to Eligibility for Participation in Interscholastic Athletics

**DATE:** March 2, 2017

**AUTHORIZATION(S):**

 *Margaret Elin*

## **SUMMARY**

### **Issue for Discussion**

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

### **Reason(s) for Consideration**

Review of Policy.

### **Proposed Handling**

A revised proposed amendment is being presented to the P-12 Education Committee for discussion at the March 2017 Regents meeting. A copy of the revised proposed amendment is attached. A Notice of Revised Rule Making will be published in the State Register on March 29, 2017. Supporting materials are available upon request to the Board of Regents.

### **Procedural History**

At its October 2016 Regents meeting, the Board of Regents discussed the proposed amendment. A Notice of Proposed Rule Making was published in the State Register on November 9, 2016. Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received approximately 35 individual comments, and an Assessment of Public Comment is included as Attachment B. After further review of the proposed regulation and in an effort to

address the feedback received during the public comment period, additional revisions are being proposed. A Notice of Revised Rule Making will be published in the State Register on March 29, 2017. In accordance with the State Administrative Procedure Act, there is a 30-day public comment period which will expire on April 28, 2017. 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 for purposes of mixed competition (8 NYCRR §135.4(c)(7)(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 Interscholastic 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 9<sup>th</sup> 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, recent events have highlighted need for even greater clarity. 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 proposes additional revisions to specify two additional situations which may warrant extension of eligibility.

Following the public comment period, the Department proposes the following revisions to the proposed amendment which are intended to provide greater clarity and to ensure safe and equitable interscholastic athletic competition for all public school students.

#### Commissioner’s Regulation §135.4(c)(7)(ii)(b)(1)(i) Duration of Competition

- 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 documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil such pupil's eligibility shall be extended accordingly in that sport...
  - This additional language seeks to further clarify the circumstances under which an eligibility extension may be granted. The Department received feedback that the initial proposed language, which simply included “other circumstances beyond the control of the pupil,” was too vague and may cause confusion in the field.
- 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, documented social/emotional condition or documented social/emotional 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; and (c) such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport. However, nothing herein shall be construed to extend a student’s eligibility beyond the age of 19, except as provided in clause (d) of this subparagraph.
  - The Department received feedback that the initial proposed language would be burdensome for superintendents and athletic association officials in making determinations that a student’s participation would not place the safety of the pupil or others at risk; and that the pupil will not hold an unfair advantage in the competition. However, because determinations regarding whether participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport are presently made in the context of male and female

pupils in interscholastic athletic teams, the Department has revised the amendment to mirror such language.

- Additional language relating the appeal procedures was also removed from the proposed amendments as duplicative and unnecessary.

### **Related Regents Items**

[http://www.regents.nysed.gov/common/regents/files/1014p12a4\\_2.pdf](http://www.regents.nysed.gov/common/regents/files/1014p12a4_2.pdf)

<http://www.regents.nysed.gov/common/regents/files/1016p12d3.pdf>

<http://www.regents.nysed.gov/common/regents/files/1016p12d3.pdf>

### **Timetable for Implementation**

Following the 30-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 June 2017 Regents meeting. If adopted at the June meeting, the proposed amendment will become effective for the next school year, commencing on July 1, 2017.

**8 NYCRR §135.4(c)(7)(ii)**

**ASSESSMENT OF PUBLIC COMMENT**

Since publication of a Notice of Proposed Rule Making in the State Register on November 9, 2016, the State Education Department received the following comments:

**Athletic Placement Process- §135.4(c)(7)(ii)(a)**

**1. COMMENT:**

Commenter enthusiastically supports the amendment stating that seventh and eighth grade students who attend a K-8 school district should be afforded the same opportunity for the athletic placement process. The current regulation is ambiguous and adversely affects gifted athletes seeking levels of safe training and competition commensurate with their outstanding physiological maturity and performance ability. The proposed amendment is in the best interest of exceptional student athletes who attend seventh or eighth grade in a K-8 school district.

**DEPARTMENT RESPONSE:**

No response necessary as the comment is supportive.

**2. COMMENT:**

Commenter supports the proposed amendment and the limitation on eligibility if following participation on a high school interscholastic team, the student chooses to attend a different high school with which the K-8 district contracts for the education of high school students.

**DEPARTMENT RESPONSE**

No response necessary as the comment is supportive.

**3. COMMENT:**

Commenter seeks additional language to the proposed amendment which would permit seventh and eighth grade students who are bona fide residents of a K-8 school district, but who attend nonpublic schools, to be eligible for the athletic placement process at the high school(s) with which the K-8 district contracts.

**DEPARTMENT RESPONSE:**

The intended scope of this amendment is 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. Therefore, this comment is outside the scope of the proposed amendment and no amendments are necessary.

**4. COMMENT:**

Commenter, an athletic director in a K-8 district, supports the proposed amendment because of the artificial limits placed on exceptional student athletes who are denied the opportunity to play at a challenging and competitive level. In contrast there are no such limits on students who excel academically and wish to attend one of the high schools with which the K-8 district contracts to take calculus or physics. This does not make sense and seems extremely unfair to discriminate against someone who has athletic talents and yet has no opportunity to excel, where is the equity here? Commenter further expressed understanding about the potential for recruitment problems, but has not seen it occur at the eighth grade level now and doesn't foresee a change in that behavior.

**DEPARTMENT RESPONSE:**

No response necessary as the comment is supportive.

5. COMMENT:

All concerns raised by NYSPHSAA in the implementation of the APP for K-8 schools can be addressed through collaboration among partner districts, and policies enacted by the respective boards of education to ensure compliance with the regulations. Furthermore, there are some K-8 districts that already have such policies to govern this very issue.

DEPARTMENT RESPONSE:

The Department appreciates this supportive comment and understands that additional revisions to the comprehensive APP protocol guidance 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.

6. COMMENT:

Commenter supports the amendment because the bona fide students of the K-8 districts are at a disadvantage compared with their peers who are enrolled in the K-12 district and will attend the same high school with which the K-8 district contracts, as they are not afforded the same opportunity for higher level competition.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

7. COMMENT:



A restrictive transfer policy enacted by the board of education who chooses to implement the APP addresses conditions that could lead to recruitment, as students would not be able to move back and forth between programs without penalty.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

8. COMMENT:

Several commenters expressed concern that the proposed amendments would jeopardize student safety and equal opportunity for participation.

DEPARTMENT RESPONSE:

Commissioner's regulation §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 for purposes of mixed competition (8 NYCRR §135.4(c)(7)(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)). The proposed amendments are designed to continue these principles of safety and opportunity for competition for all public school students.

9. COMMENT:

Several commenters expressed concern with the proposed amendments stating that being a member of the “school district” in which the student wishes to participate is an integral and critical aspect of the APP.

DEPARTMENT RESPONSE:

The proposed amendments are 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.

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. The unique configuration of these 13 public school districts without a “district high school,” makes it impossible for these students to be enrolled in the district within which they will attend high school when they are in 7<sup>th</sup> or 8<sup>th</sup> grade. The proposed amendment relates only to enabling bona fide students enrolled in a public K-8 school district to participate in the APP only if the boards of education of the sending school district and the receiving school district(s) adopt a resolution to permit such participation. Therefore, because these student athletes are bona fide students of the public K-8 school district, the Department does not share this concern.

10. COMMENT:

Commenters asserted that some K-8 school districts were permitted by NYSED to allow students to participate in APP on a case by case basis with no rationale or

consistency, which has led to confusion. Commenter asserted that the majority of these “waivers” were provided to K-8 districts that have a contract with a “single” school district making the transition more traditional and like K-12 districts.

**DEPARTMENT RESPONSE:**

Because of their unique configuration, these 13 K-8 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.

Additionally, Education Law §2040 provides that school districts that do not maintain a home high school may contract for the education of its high school students with one or more school districts. Therefore, limiting the proposed amendments as suggested by the commenter would be inconsistent with the authority to contract with one or more school districts provided by the statute. The proposed amendments also ensure that, where a district contracts with more than one neighboring school district, its 7<sup>th</sup> and 8<sup>th</sup> grade students may select only one high school in which to compete during their seventh and eighth grade participation. The proposed amendments also require that, 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 K-8 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.

11. COMMENT:

Commenters expressed concern relating to the practical implementation of APP in K-8 school districts. Particularly, which medical director will be responsible for approving the student for participation? Which school administrator will be responsible for approving the student for participation? Which school district will be responsible for transportation? Which school district will be responsible for any disciplinary action? Which school district will be responsible in the event of an injury?

DEPARTMENT RESPONSE:

See response to Comment #5.

12. COMMENT:

Commenter expressed support for the amendments and that indicated any implementation concerns could be easily resolved through cooperation between the K-8 and the high school districts.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

13. COMMENT:

Although K-8 school districts represent a small portion of districts, commenter expressed fears if K-8 students are granted the ability to go through the APP to participate at a school in which they are not a bona fide student, this will ultimately lead to other students (nonpublic, homeschooled etc.) requesting similar privileges.

DEPARTMENT RESPONSE:

The proposed amendment relates only to enabling bona fide students enrolled in a public K-8 school district to participate in the APP, and then only if the boards of education of the sending school district and the receiving school district(s) adopt a resolution to permit such participation. Therefore, because these student athletes are bona fide students of the public K-8 school district, the Department does not share this concern.

14. COMMENT:

Commenter supports the clear language of the amendments which clearly limit the availability of APP to public school students attending a K-8 district. The purpose is to provide these public school students with the same opportunity currently enjoyed by public school students attending K-12 districts. Commenter expressed that treating these public school students differently simply because of the geographic and historic anomaly of their attendance in a K-8 district does not make sense. The fact that there are relatively few K-8 districts in the State and, thus, relatively few students who will be discriminated against does not justify continuing such an unequitable policy.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

15. COMMENT:

Commenters expressed concern that this could lead to other students requesting similar privileges if their school district does not offer opportunities they wish to receive (i.e. swimming program for a lack of a natatorium, football team for a lack of interest, baseball for a lack of field, etc.).

DEPARTMENT RESPONSE:

The proposed amendment is expressly limited to the APP as presently permitted by Commissioner's regulation §135.4(c)(7)(ii)(a)(4). The proposed amendment merely makes the APP available to bona fide seventh or eighth grade students who are regularly enrolled in a public school district organized for pupils in grades K-8 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 §§2040 and 2045 and Commissioner's regulation §174.4.

16. COMMENT:

Commenters expressed concern surrounding the one year period of ineligibility for a K-8 student who participates at the high school level and then transfers to a different high school with which the K-8 district contracts for 9<sup>th</sup> grade. Because the current regulations do not impose such restrictions in other circumstances, commenters were concerned that this could lead to the Department being asked to implement and interpret other "eligibility" rules pertaining to transfers (change in residency, corresponding and non-corresponding transfers, waivers, exemptions, etc.) established by NYSPHSAA.

DEPARTMENT RESPONSE:

The Department believes this is an important safeguard to protect against concerns raised about improper recruitment activities in connection with the APP process for K-8 school districts, within the applicable statutory authority of the Commissioner to promulgate regulations which govern interscholastic athletics. The Department does not share the concern that this opens the door to the Commissioner's interpretation of other rules of athletic competition.

Duration of Competition §135.4(c)(7)(ii)(b)(1)(i)

17. COMMENT:

Commenter supports the proposed amendments that provides for extended eligibility in limited circumstances with appropriate documentation. Commenter expressed frustration with a student who faced challenging familial circumstances which caused the interruption of his education, yet was denied an extension of eligibility because of the narrowly amended regulation in 2015 which removed “other such circumstances” as a potential qualifying circumstance for extended eligibly.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

18. COMMENT:

Commenters expressed concern that proposed amendments will place an undue burden on superintendents and will require them to make individual assessments to determine whether a fifth year student’s participation will result in an unfair advantage in competition and whether the safety of the pupil or others is not at risk. There is great concern among the membership of NYSPHSAA regarding requiring a superintendent to make a determination that a student who is older, likely bigger and/or more skilled, would not be a potential safety risk or create an unfair advantage.

DEPARTMENT RESPONSE:

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 presently 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)); for purposes of mixed competition (8 NYCRR §135.4(c)(7)(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)). The existing regulations governing the above circumstances presently require superintendents to make such determinations and the Department has issued appropriate guidance. The proposed amendments are designed to continue these principles of safety and opportunity for competition. However, in light of the concerns raised by the public comment, the Department has revised the regulation to condition the eligibility extension on the same standard used for mixed competition, a determination that such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool athletic competition in the sport.

19. COMMENT:

Commenter expressed concern that the amendments may create inequities with respect to students who are deemed eligible and those who are not granted an extension. Specifically, commenter was concerned that consideration of safety and opportunity for competition might allow a student who is not a talented player an extension of eligibility but would not allow a student who is bigger and more skilled the same opportunity. It would be helpful if objective criteria were added to the regulation to provide for consistent interpretation.

DEPARTMENT RESPONSE:

See response to Comment #18. Specifically, those determinations are presently made in the context of male and female pupils in interscholastic athletic teams that



balance the need for safety and opportunity for completion for all student athletes. Additionally, in response to public comment the Department has revised the amendment to further guide the circumstances under which an eligibility extension may be granted.

20. COMMENT:

Several commenters oppose the proposed amendments expressing concern that the proposal reverts to wording the Board of Regents amended in 2015 which previously also allowed extension when the student was unable to play because of an accident, illness or “other similar circumstances.”

DEPARTMENT RESPONSE:

The Department continuously reviews the impact of regulations and implementation of policy. As a result of such review, the Department proposed to amend the duration of competition regulation to clarify and further define the circumstances under which extended eligibility may be granted.

21. COMMENT:

Several commenters were concerned that the proposed changes could result in potential litigation against districts that permit a student to participate and another student is injured by that student, or by students who are denied an extension of eligibility challenging the determination in court or before the Commissioner.

DEPARTMENT RESPONSE:

See response to Comment #18. However, to the extent that determinations relating to participation in interscholastic athletics are presently disputed, the proposed

amendment makes no changes to the availability of the avenues for judicial or administrative review.

22. COMMENT:

Commenter suggested amending the proposed amendments to include a clear definition and criteria for which “other circumstances” might warrant an extension of eligibility. This would provide for consistent and uniform interpretation throughout the State.

DEPARTMENT RESPONSE:

In response to public comment, the Department has revised the amendment to clarify and further define the circumstances under which extended eligibility may be granted. Furthermore, the Department anticipates issuing guidance relating to the implementation of the proposed amendments.

23. COMMENT:

Commenters expressed concern surrounding the role of the athletic sections in determining eligibility indicating that each of the eleven Section Athletic Councils takes this responsibility seriously and reviews each application to make determinations within the parameters of the regulation. Commenters expressed that recent amendments to the regulation have helped make eligibility determinations consistent throughout the state and were concerned that these amendments would result in a more subjective and inconsistent process.

DEPARTMENT RESPONSE:

See response to Comment #18. In response to public comment, the Department has revised the amendment to clarify and further define the circumstances under which extended eligibility may be granted. .

#### 24. COMMENT:

Commenters expressed concern about specifying the Commissioner's de novo review of the record in a challenge to an eligibility determination by a section of athletic association. Commenters believe that it conflicts with the legal standard of review used by the Commissioner in §310 appeals. They are concerned that it puts schools, sections and NYSPHSAA in an unfair position of having to follow the Commissioner's regulations only to be overturned by the Commissioner, not because they made the "wrong" decision, but because the Commissioner would decide the case differently.

#### DEPARTMENT RESPONSE:

The Commissioner has always had, and continues to have, the authority to determine that a decision challenged pursuant to Education Law §310 was not reasonable and to substitute his/her judgment (see e.g., Appeal of the Board of Education of the Byron-Bergen Central School District, 25 Ed Dept Rep 404, Decision No. 11,628 (1986); Appeal of Kraft, 24 id. 243, Decision No. 11,566 (1986)). Therefore, the phrase "de novo review" has been eliminated from the proposed amendments as unnecessary.

## **Attachment B**

### 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 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.

(j) 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 (i) 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, documented social/emotional condition, or documented social/emotional 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, documented social/emotional condition or documented social/emotional 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; and (c) such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except as provided in (d) of subparagraph (ii) of this paragraph.

(ii) 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.