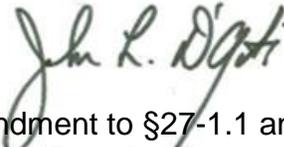
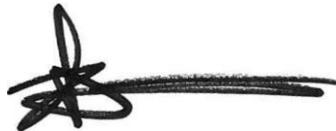




**TO:** The Honorable the Members of the Board of Regents  
**FROM:** John L. D'Agati   
**SUBJECT:** Proposed Amendment to §27-1.1 and Addition of §27-2.6  
of the Rules of the Board of Regents Related to Higher  
Education Opportunity Programs (HEOP)  
**DATE:** March 1, 2018

**AUTHORIZATION(S):**



### **SUMMARY**

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt proposed amendments to §27-1.1 and the addition of a new §27-2.6 of the Rules of the Board of Regents related to Higher Education Opportunity Programs (HEOP)?

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

Review of Policy.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption at its March 2018 Board of Regents meeting (Attachment A is a copy of the proposed amendment).

#### **Procedural History**

A Notice of Proposed Rule Making was published in the State Register on November 29, 2017. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received one comment on the proposed amendment. Attachment B includes a copy of the Assessment of Public Comment.

## **Background Information**

The Department is proposing updates to Subparts 27-1 and 27-2 of the Regents Rules which govern the eligibility requirements for the Higher Education Opportunity Program (HEOP) at private and public institutions of higher education. The updates clarify and modernize the language in the regulations to align with current practice.

### **Proposed Amendments:**

Subpart 27-1 of the Regents Rules governs the eligibility requirements for opportunity programs in the private sector (independent institutions). The proposed amendments include changes to the definition of educationally and economically disadvantaged to ensure that access is targeted towards those students with the greatest need, pursuant to Education Law §6451.

- Section 27-1.1 (Student Eligibility)
  - (a) Educationally disadvantaged – update language to improve access to HEOP for the target population and remove obsolete language. The amendments add “consideration for admission into this program should be given to the most educationally disadvantaged students based on their academic performance” to accomplish this.
  - (b) Economically disadvantaged – revise definition to eliminate outdated tables and replace with 185 percent of federal poverty guidelines, and clarify documentation needed to establish eligibility.

Subpart 27-2 of the Regents Rules governs the eligibility requirements for opportunity programs in the public sector (SUNY and CUNY). The proposed amendments include a new Section 27-2.6 to standardize the eligibility requirements for opportunity programs across all sectors.

- Section 27-2.6 (Student Eligibility)
  - While it has been inferred that public institutions follow the same eligibility requirements as private institutions, this new section is intended to ensure that the eligibility requirements are standardized across public and private opportunity programs.

This is the final phase to update the regulations (changes to Subpart 152-1 of the Commissioner’s Regulations were adopted in September) relating to HEOP. These revisions will clarify and modernize the existing language and provide consistency across sectors. They will also be useful when establishing the framework for the upcoming RFP cycles for the HEOP programs. These updates were developed with input from the field representing all sectors and SED staff.

## **Related Regents Items**

### **[September 2017](#)**

(<http://www.regents.nysed.gov/common/regents/files/917brca3.pdf>)

### **[November 2017](#)**

(<http://www.regents.nysed.gov/common/regents/files/1117hed1.pdf>)

## **Recommendation**

Department staff recommends that the Board take the following action:

VOTED: That §27-1.1 be amended and a new §27-2.6 of the Rules of the Board of Regents be added, as submitted.

## **Timetable for Implementation**

If adopted at the March 2018 meeting, the proposed amendment will become effective on March 28, 2018.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to Education Law sections 101, 207, 305, 6451 and 6452.

1. Section 27-1.1 of the Rules of the Board of Regents is amended to read as follows:

To be eligible for benefits pursuant to the provisions of section 6451 of the Education Law, a student must be both educationally and economically disadvantaged according to the following criteria:

(a) Educationally disadvantaged. Each institution shall establish its own criteria for educationally disadvantaged, which shall include, but not be limited to, the following factors: predicting a student's probability of academic success, and nonadmissibility, by the college's normal admissions standards, to the college at the matriculated status in a degree program. Consideration for admission into this program should be given to the most educationally disadvantaged students based on each institution's established criteria. Recipients of Regents scholarships for academic excellence [won in countywide competitions] are not eligible. Students who previously attended another institution at which they were enrolled in an opportunity program pursuant to Education Law sections 6451 and 6452[, the eligibility criteria of which are substantially similar to the HEOP eligibility criteria of the school at which they matriculate,] may be eligible for the benefits of the HEOP program at the latter institution.

(b) Economically disadvantaged.

(1) [For students first entering college between July 1, 2005 and June 30, 2012.

A student is *economically disadvantaged* if he or she is a member of a household supported by one member thereof with a total annual income which does not exceed the applicable amount set forth in the following tables; or of a household supported solely by one member thereof who is employed by two or more employers at the same time, if the total annual income of such household does not exceed the applicable amount set forth in the following tables for the number of members in the household plus the second job allowance; or of a household supported by more than one worker thereof, or a household in which one worker is the sole support of a one-parent family, if the total annual income of such household does not exceed the applicable amount set forth in the following tables for the number of members in the household plus the employment allowance. For the purposes of this subdivision, the number of members of a household shall be determined by ascertaining the number of individuals living in the student's residence who are economically dependent on the income, as defined in subdivision (c) of this section, supporting the student.

**Table I**

**For students first entering college between July 1, 2010 and June 30, 2012**

<b>Number of members in household (including head of household)</b>	<b>Total annual income in preceding calendar year</b>
1	\$16,060
2	21,630
3	27,210
4	32,790
5	38,360
6	43,960
7 or more	49,500 plus \$5,570 for each family member in excess of 7
Second Job Allowance	2,790
Employment Allowance	5,570

The income figures in Table I of this paragraph apply to the student applicant's income only when he or she is an independent student. For purposes of this Part, an *independent student* means a student who:

(i) is 24 years of age or older by December 31st of the program year; or

(ii) is an orphan or ward of the court. (A student is considered independent if he or she is a ward of the court or was a ward of the court until the individual reached the age of 18); or

(iii) is a veteran of the Armed Forces of the United States who has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard and was released under a condition other than dishonorable; or

(iv) is a married individual; or

(v) has legal dependents other than a spouse; or

(vi) is a student for whom an opportunity program and financial aid administrator has made a satisfactory documented determination of independence by reason of other extraordinary circumstances.

(2) For students first entering college on or after July 1, 2012, a student is economically disadvantaged if he or she is a member of a household where the total annual income of such household is equal to or less than 185 percent of the amount under the annual United States Department of Health and Human Services poverty guidelines for the applicant's family size. Federal poverty guidelines are published annually by the Department of Health and Human Services in the *Federal Register*. The income guidelines in this paragraph apply to the student applicant's income only when he or she is an independent student. For purposes of this Part, an *independent student* means a student who:

(i) is 24 years of age or older by December 31st of the program year; or

(ii) is an orphan or ward of the court. (A student is considered independent if he or she is a ward of the court or was a ward of the court until the individual reached the age of 18.); or

(iii) is a veteran of the U.S. Armed Forces; or

(iv) is currently an emancipated minor as determined by a court; or

(v) is currently in legal guardianship as determined by a court; or

(vi) is a married individual; or

(vii) has legal dependents other than a spouse; or

(viii) is a student for whom an opportunity program and financial aid administrator has made a satisfactory documented determination of independence by reason of other extraordinary circumstances.] A student is economically disadvantaged if he or she is a member of a household where the total annual income of such household is equal to or less than 185 percent of the amount under the annual United States Department of Health and Human Services poverty guidelines for the applicant's family size for the applicable year. Federal poverty guidelines are published annually by the Department of Health and Human Services in the *Federal Register*. Moreover, the opportunity programs defined by Education Law sections 6451 and 6452 (HEOP, EOP, SEEK/CD) are expected to give priority to the recruitment and enrollment of applicants whose life patterns are characterized by historical economic and educational disadvantage.

(i) Indicators of historical economic and educational disadvantage may include evidence that the student or the student's family has endured long-term economic deprivation, membership in a group underrepresented in higher education, a history of high unemployment rates, a record of poor academic performance, and/or little or no accumulation of assets. Other indicators may include that the applicant or the applicant's family are unable to provide for more than the basic needs of family members and may be dependent on public assistance.

(ii) Loss of employment, or the separation, divorce or death of a wage earner in the calendar year prior to the academic year for which eligibility is being established and a resulting decrease in family income below income guidelines is not, in itself, sufficient to establish historical economic disadvantage. Such cases must be reviewed carefully in order to determine longer term past patterns of economic disadvantage.

[(3)] (2) A maximum of 15 percent of the total number of HEOP students [admitted to a HEOP program] enrolled by an institution at any given time may come from households whose income exceeds [the household scale listed in the applicable table in paragraph (1) of this subdivision, provided that] 185 percent of the amount under the annual United States Department of Health and Human Services poverty guidelines for the applicant's family size for the applicable year, provided such institution has established to the satisfaction of the commissioner or his/her designee that unusual and extenuating circumstances as defined in this paragraph, exist for each such student. [Prior to admitting any such student, the institution shall submit to the commissioner such documentation of unusual and extenuating circumstances as the commissioner may require. Such documentation] Documentation shall be kept on file by the institution at which such students were enrolled, and shall be corroborated by a disinterested, reliable party. For purposes of this paragraph, unusual and extenuating circumstances shall be limited to the following:

(i) serious mismanagement of the household income with little accruing to the interest of the student; or

(ii) a one-time fluctuation in household income where there is a history of low income. Satisfactory evidence that a household's income in the calendar year prior to the calendar year used for determining the student's economic eligibility fell within the limits of the applicable household income scale shall be sufficient to establish the existence of a one-time fluctuation in household income, [provided that] if there is satisfactory proof of a history of low income; or

(iii) households with substantial long-term nonreimbursed medical obligations; or

(iv) families which must maintain two households [in order] to maintain employment, [one for a wage earner and one for dependents] if there is satisfactory documentation of a history of low income.

(4) Reference to the household income scale need not be made if the student falls into one of the following categories, and documentation is available:

(i) the student's family is the recipient of family assistance program aid or safety net assistance through the New York State Office of Temporary and Disability Assistance or a county department of social services; or is the recipient of family day-care payments through the New York State Office of Children and Family Services or a county department of social services or their successor offices;

(ii) the student is living with foster parents who do not provide support for college, and no monies are provided from the natural parents; or

(iii) the student is a ward of the State or a county.

(5) The eligibility standards set forth in this section apply only at the time of admission as a first-time freshman to a program. Once admitted, a student [may] will continue to receive supportive services as needed, even if the family income rises above the current eligibility standards. However, a student's economic status shall be reviewed under a recognized needs analysis system each year and appropriate adjustments made in the student's financial aid package.

(6) The following shall be acceptable documentation of paragraphs (1) through (3) of this subdivision:

(i) Documentation of all income, earned dividends and interest: signed copy of appropriate year's tax return (I.R.S. form 1040 or 1040a or 1040EZ, or 4506).

(ii) Documentation of no income: a copy of I.R.S. form [4506] 4506-T which has been filed by the student or family with the Internal Revenue Service or [a copy of I.R.S. Letter 1722] its successor office indicating that the student or parent did not file a return.

(iii) Documentation of pension, annuity or unemployment benefits: letter from the applicable agency showing appropriate year's total award (if not reported on I.R.S. form 1040, 1040a or 1099).

(iv) Documentation of social security, supplemental security income or Veterans Administration noneducational benefits: letter from the applicable agency showing applicable year's total award for each member of the household or I.R.S. form 1099 for each member of the household.

(v) Documentation of social services payments: verification from a branch of the Office of Temporary and Disability Assistance or Office of Children and Family Services or their successor offices, showing year of benefits received and names of recipients.

(vi) Documentation of child support and/or alimony: court order, affidavit, or student's financial aid form (FAF).

(vii) Documentation of additional members in household: birth certificates, marriage certificates, third-party verification, or similar documentation acceptable to the commissioner.

(c) Income.

(1) Except as otherwise provided in paragraph (2) of this subdivision, *income*, as used in this Subpart, means all taxable and nontaxable funds which are received by the household [for general use]. Such funds may be derived from [such] sources [as] including but not limited to wages, dividends, interest, social security, disability pensions, veterans' benefits and unemployment benefits.

(2) The following shall not constitute income:

(i) Monies received specifically for educational purposes from sources such as social security, veteran's cost of education benefits, and education grants from the Office of Vocational Rehabilitation or its successor office.

(ii) Social services or public assistance payments received through the family assistance program, safety net assistance, and the family day-care program, or social security supplemental income.

2. Section 27-2.6 of the Rules of the Board of Regents shall be amended to read as follows:

§27-2.6 Student Eligibility.

To be eligible for benefits pursuant to the provisions of Education Law section 6452, a student enrolled in the City University of New York or State University of New York must be both educationally and economically disadvantaged per the criteria established in section 27-1.1 of this Title.

ASSESSMENT OF PUBLIC COMMENT

Since publication of Proposed Rule Making in the State Register on November 29, 2017, the State Education Department (SED) received one comment:

1. COMMENT:

Commenter raised multiple concerns related to the proposed amendments to Subparts 27-1 and 27-2 of the Rules of the Board of Regents. These concerns include the following:

(a) The first concern, in Section 27-1.1(a), relates to the addition of the phrase “most educationally disadvantaged” in the proposed regulation. The concern is that the addition of this language suggests a “shift” from a comprehensive review of each applicant by the institution of higher education to a “hierarchy” based only on “most disadvantaged.” The commenter is concerned that this would increase the number of students admitted that may fail.

(b) The second concern, in Section 27-1.1(b), relates to the updated language and definition of “economically disadvantaged.” The commenter suggests that the language needs clarity, and that the Department could consider accepting the use of the federal IRS Data Retrieval Tool as a “recognized acceptable alternative” for verifying income of applicants.

(c) The last concern relates to the language in the proposed amendment which refers to HEOP students as “disadvantaged” because it is “negative, critical and stigmatizing.”

DEPARTMENT RESPONSE:

In response to the concerns raised above:

(a) The Department understands the commenter's concern and as a result, has revised the proposed amendment to use the word "should" instead of "shall" to address any concerns that institutions will be forced to take students who are not capable of succeeding, while remaining true to the intent that the students who are accepted include the students that HEOP was meant to aid.

(b) As long as student's meet the income criteria set forth in the proposed amendment, the Department believes the current proposed language, which allows institutions to use the IRS Data Retrieval Tool or other methods as a possible way to establish a student's demonstrated income level, is sufficient.

(c) Lastly, while the Department recognizes the commenter's concern raised with regard to the term "disadvantaged," Education Law §§6451 and 6452 require the Department to define the term "educationally disadvantaged". Therefore, in an effort to avoid confusion in the field and to be consistent with the statutory language, the Department does not recommend any changes to the proposed amendment.