



TO: The Honorable the Members of the Board of Regents
FROM: Angelica Infante-Green *A. 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: June 1, 2017

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the amendments to 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

The proposed rule is being presented to the Full Board for adoption as a permanent rule at the June 2017 Regents meeting. Supporting materials are available upon request from the Secretary 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. After further review of the proposed regulation and in an effort to address the feedback received during the public comment period, additional revisions were proposed to the Board at its March 2017 meeting. A Notice of Revised Rule

Making was published in the State Register on March 29, 2017. Following the 30-day public comment period required under the State Administrative Procedure Act, the Department received feedback from several commenters. An Assessment of Public Comment is included as Attachment B. The Department does not believe that any further changes to the regulation are warranted based on such comments.

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 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, 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.

As described above, following the initial public comment period, the Department proposed 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. The additional language seeks to further clarify the circumstances under which an eligibility extension may be granted, as summarized below.

- 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 revised the amendment to mirror such language.

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

As explained in the Assessment of Public Comment (Attachment B), the Department does not believe that any further changes to the regulation are warranted based on the public comments received regarding the revised proposed amen

Related Regents Items

<https://www.regents.nysed.gov/common/regents/files/317p12d1.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>

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 135.4(c)(7)(ii) of the Commissioner's Regulations be amended, as submitted, effective July 1, 2017.

Timetable for Implementation

If adopted at the June 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 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.

(ii) 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.

8 NYCRR §135.4(c)(7)(ii)

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Revised Rule Making in the State Register on March 29, 2017, the State Education Department received the following comments:

1.COMMENT:

Commenters continue to believe the proposed changes will result in confusion, establish a precedent which would be extremely challenging to maintain, and could subject school districts and Section Athletic Councils to increased litigation.

Commenters expressed support for the existing regulatory language and do not recommend any changes at this time.

DEPARTMENT RESPONSE:

See Responses to Comments #18 and 21 in the Assessment of Public Comment(APC) published on March 29, 2017. 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 these regulations is to provide for the safety and equal opportunity for participation for public school students. After further review of the proposed regulation and in an effort to address the feedback received during the initial public comment period, the Department proposed additional revisions. The Department does not believe additional revisions are necessary at this time. However, the Department anticipates issuing guidance to assist with the continued implementation of the Commissioner's regulations governing interscholastic athletics.

2:COMMENT:

· Several commenters opposed the further clarification of the circumstances under which a student could seek an extension of eligibility to include documented social/emotional condition or documented social/emotional circumstances beyond the control of the student. Commenters specifically maintain that because current regulation allows for an eligibility extension when the failure to enter competition was the result of illness, which could include mental illness, no amendments are needed. Commenters seek additional explanation and examples of what might constitute a “documented emotional/ social condition” sufficient to grant an eligibility extension.

DEPARTMENT RESPONSE:

The proposed amendments to Commissioner’s regulation §135.4(c)(7)(ii)(b) initially expanded the circumstances under which a student could seek an extension of athletic eligibility to include “other circumstances beyond the control of the pupil.” The Department received several comments which directly sought clarification on what other categories of circumstances this might encompass (See Response to Comment #22 in the APC published on March 29, 2017). As a result, the Department revised the proposed amendment to further clarify that such exemption would be permissible when “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.” This clarification recognizes that there may be certain circumstances which, when properly documented, may warrant an extension of

eligibility. However, the Department anticipates updating existing guidance to assist with the continued implementation of the Commissioner's regulations governing interscholastic athletics.

3.COMMENT:

· Several commenters again expressed concern that the amendments might create inequities with respect to the students who are deemed eligible and those who are not granted an extension of eligibility. The proposed changes seem to allow a student who is not a talented player an extension of eligibility, however would not permit a student an extension of eligibility who is bigger and more skilled the same opportunity, as a result of having a "significant adverse effect."

DEPARTMENT RESPONSE:

See Responses to Comments #18 and 19 in the APC published on March 29, 2017. 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 feedback received during the initial public comment period, the Department revised the amendment to further guide the circumstances under which an eligibility extension may be granted.

4.COMMENT:

Commenters contend that the proposed amendments would place an undue burden on superintendents. Commenters expressed that the adverse effect standard required within the context of mixed competition has been problematic for schools for many years. NYSPHSAA receives numerous requests for clarification as to what

constitutes a significant adverse effect. The SED Guidelines to the Mixed Competition Rule do not set forth any guidance with respect to what actually constitutes the definition or parameters of what would rise to the level of a “significant adverse effect.”

DEPARTMENT RESPONSE:

See Response to Comment #18 in the APC published on March 29, 2017. The Department notes that the Commissioner has also provided guidance on the interpretation of the term “significant adverse effect” in the mixed-competition context through several decisions issued pursuant to Education Law §310 (see e.g., Appeal of Berheide, 34 Ed Dept Rep 332, Decision No. 13,330; Appeal of Heinz, 31 id. 326, Decision No. 12,655; Appeal of Wilson, 30 id. 60, Decision No. 12,392; Appeal of DePold, 26 id. 460, Decision No. 11,821).

4.COMMENT:

Commenters again expressed concern with permitting K-8 school districts to employ the Athletic Placement Process (APP) and believe the amendments may jeopardize the safety of students and equal opportunity of participation.

DEPARTMENT RESPONSE:

See Response to Comment #8 in the Assessment of Public Comment published on March 29, 2017.

5.COMMENT:

The school district medical director plays an important role within the implementation of the APP. There are many unanswered questions pertaining to the implementation of this proposed regulation. For example: Which school district medical director would be responsible for providing approval for the student to go through the

APP? Which school district's administration will provide approval for the student to go through the APP? Which school district is responsible for the Physical Fitness Test portion of the APP and the evaluation of the student?

DEPARTMENT RESPONSE:

See Responses to Comments #5 and 11 in the APC published on March 29, 2017. The Department believes that these concerns can, and should, be addressed through collaboration among partner districts, and policies enacted by the respective boards of education to ensure compliance with the regulations. However, the Department 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.

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6.COMMENT:

Commenters again raised the concern that 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 (non-public, etc.) requesting similar privileges.

DEPARTMENT RESPONSE:

See Responses to Comments #9, 13 and 15 in the APC published on March 29, 2017. Again, because these student athletes are bona fide students of the public K-8 school district, the Department does not share this concern and no revisions are necessary.

7.COMMENT:

Commenters repeated their concern that other students might now request similar athletic participation 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:

See Response to Comment #15 in the APC published on March 29, 2017. The proposed amendment is expressly limited to the APP as presently permitted by Commissioner's regulation §135.4(c)(7)(ii)(a)(4). Therefore, the Department does not share this concern and no revisions are necessary.

8. COMMENT:

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

DEPARTMENT RESPONSE:

See Response to Comment #8 in the APC published on March 29, 2017.

9.COMMENT:

Several commenters again 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:

See Response to Comment #9 in the APC published on March 29, 2017.

10.COMMENT:

Commenter raised a concern that the adverse effect determination may actually result in fewer students receiving an extension of eligibility. For example, a student recently did not participate in a sport for season due to chemotherapy and as a result had to repeat a year. Under the current regulation the student met the criteria for an eligibility extension and is now participating in an additional season. However, the student is an excellent athlete who is committed to play at the collegiate level and thus, under the new adverse impact standard, might not have been ruled eligible.

Commenter additionally contends that the proposed amendments will overrule the longstanding legal precedent set forth in a long line of Commissioner's decisions, arguing that the Commissioner has consistently held that a student who is physically able to participate but does not participate is not entitled to an additional year. Appeal of Duane, 35 Ed. Dept. Rep. 277, Decision No. 13,540; Appeal of Bethe, 34 Ed. Dept. Rep. 526, Decision No. 13,402; Appeal of Braemer, 43 Ed. Dept. Rep. 432, Decision No. 15,043; Appeal of Barth, 35 Ed. Dept. Rep. Decision No. 13,558; Matter of Clowe, 21 Ed. Dept. Rep. 192.

DERPARTMENT RESPONSE:

The Department recognizes that the amendments will require an additional component of review when a student athlete seeks an extension of eligibility. However, such review is not inconsistent with the underlying spirit of Commissioner's regulation §135.4(c)(7)(ii) which establishes the parameters for participation in interscholastic athletic competition for students in grades 7 through 12 to provide for the safety and equal opportunity for participation for public school students. Additionally, the Commissioner's decisions cited by the commenter appropriately applied the criteria included in the regulation as written at the time of such appeals. As with the previous categories which may warrant an extension of eligibility, the regulation requires, among

other things, that such social/emotional condition or circumstance prohibited the student from participating in interscholastic athletics during the particular season. Therefore, the Department does not believe any additional amendments are necessary at this time.

11.COMMENT:

Commenter expressed that each of the eleven sections seriously review each and every application for eligibility extensions and make determinations within the parameters of the regulation. Commenter expressed the opinion that the current regulation has helped make the determinations of the sections consistent throughout the state and that the changes would severely hamper the actions of districts and sections due their subjective nature. Commenter believes that the proposed changes are based on specific requests on behalf of students the Commissioner believed should be eligible to participate. We believe that the decision to waive the regulation with respect to these specific circumstances should remain with the province of the Commissioner as was done this last year. Thus, requests for waivers based on emotional/social conditions or circumstances could be made directly to the Commissioner. Commenter asks that the current language remain as it is currently written and continue the practice of allowing the Commissioner to waive the duration of competition rule on a case-by-case basis.

DEPARTMENT RESPONSE:

In response to public comment received after the initial proposed rulemaking, the Department revised the amendment to clarify and further define the circumstances under which extended eligibility may be granted for the purpose of promoting consistency of application. The Department anticipates issuing guidance relating to the

implementation of the proposed amendments. (see, Response to Comment #22 in the APC published on March 29, 2017).

Furthermore, Education Law §310 provides the Commissioner with the authority to hear an appeal from parties who may consider themselves aggrieved by an action taken at a school district meeting or by school authorities for a review of such action. Therefore, because the Commissioner 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, the Department does not believe any further revisions are necessary at this time (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)).