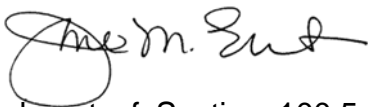






THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** P-12 Education Committee

**FROM:** Jhone M. Ebert 

**SUBJECT:** Proposed Amendment of Section 100.5 and Addition of Section 100.20 to the Regulations of the Commissioner of Education to Implement the Interstate Compact on Educational Opportunity for Military Children and Provisions Relating to Transfer Credits and Diploma Requirements for Physical Education

**DATE:** June 7, 2017

**AUTHORIZATION(S):**  

## SUMMARY

### Issue for Discussion

Should the Board of Regents amend section 100.5 and add section 100.20 to the Commissioner's Regulations to implement the Interstate Compact on Educational Opportunity for Military Children and other provisions relating to exemptions from the assessment requirements for transfer students and diploma requirements for physical education?

### Reason(s) for Consideration

Required by State statute (Chapter 328 of the Laws of 2014) and Review of Policy.

### Proposed Handling

This proposed rule is being presented to the P-12 Education Committee for discussion at the June 2017 Regents meeting. A copy of the proposed amendment is attached.

## **Procedural History**

A Notice of Proposed Rule Making will be published in the State Register on June 29, 2017. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

In 2014, the Governor signed into law Chapter 328 of the Laws of 2014 entitled the Interstate Compact on Educational Opportunity for Military Children. The purpose of the law is to remove barriers to educational success faced by children of military families because of frequent moves and deployment of their parents. The law provides for the establishment of a State Commission to facilitate the transition of students who transfer in and out of New York State schools as a result of such status. The Commission is comprised of appointees from the Governor's office, the Senate and Assembly, the State Education Department, various military representatives, a District Superintendent and a local superintendent from a region that serves a large number of military students. (See attachment 1 Commission Representatives).

After several meetings, the Commission has identified certain areas of the Commissioner's Regulations which must be amended or added to conform with the new law (see below):

### **Educational Records, Enrollment, and Immunizations**

Education Law §3304, as added by Chapter 328 of the Laws of 2014, provides that if official education records cannot be released to the parents for purposes of transferring to another school, the custodian of the records in the sending state shall prepare and furnish to the parent a set of unofficial records. Upon receipt of the unofficial records by the school in the receiving state, the student must be enrolled and placement decisions must be made in accordance with the information on unofficial records and then later validated. It also requires that states that enter into the interstate compact, including New York State, give families 30 days from the date of enrollment to obtain any immunizations required by the receiving state.

### **Placement decisions**

Education Law §3305, as added by Chapter 328 of the Laws of 2014, requires that when a student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered and there is space available as determined by the local educational agency. It also requires the receiving school to initially honor placement of the student in programs based on current educational assessments conducted in the sending school state or participation/placement in like programs in the sending state, including but not limited to gifted and talented programs and English as a second language. It further provides school districts with flexibility to waive course or program prerequisites, or other preconditions for placement in courses or programs offered under the jurisdiction of the school district.

## Residency Determinations

Education Law §3306, as added by Chapter 328 of the Laws of 2014, requires that a properly executed special power of attorney (in New York, a special designation of person in parental relation pursuant to General Obligations Law), shall be considered sufficient for the sole purpose of establishing residency of a transferring student into a public school district and for all other actions in the school district requiring parental participation and consent. A transitioning child placed in the care of such a person may continue to attend the school in New York within which he or she was enrolled while residing with the custodial parent until the child completes the highest grade level in such school.

## Graduation Requirements

Education Law §3307, as added by Chapter 328 of the Laws of 2014, requires local educational agencies (LEA) to waive specific courses required for graduation if similar coursework has been satisfactorily completed in another LEA or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the LEA shall provide an alternative means of acquiring required coursework so that graduation may occur on time. Section 3307(2) of Education Law also requires states to accept (a) exit or end of course exams required for graduation from the sending state; (b) national norm referenced achievement tests; and (c) alternative testing, in lieu of testing requirements for graduation in the receiving state.

## Assessment Requirements

The assessment requirements for a Regents or local diploma call for one Regents examination in each discipline (ELA, Math, Science, Social Studies) and one Pathway option. The pathway provisions and the existing waiver of certain exams based upon a student's entrance date (students who transfer in grade 11 are exempt from the Global History and Geography Regents examination; students who transfer in grade 12 are exempt from the Global and Science Regents examinations), do provide some flexibility in meeting the requirements. This provision however, does not apply to students who spend as little as 1 day enrolled in a New York State high school prior to grade 11. The exemption provisions currently in place only cover a student who enters a New York high school for the first time in grade 11. Students of military families often transition in and out of the state multiple times in a four-year period.

In addition, a transfer student may have taken a comparable course in a subject leading to a Regents exam years earlier in their sending school. Upon entry into a New York high school, students often need to schedule review classes or retake courses in order to prepare for an assessment covering instruction they completed earlier in their high school career.

## Proposed Regulatory Amendments

In accordance with Chapter 328 of the Laws of 2014, the Department recommends creating a new section 100.20 of the Commissioner's Regulations to make it clear that notwithstanding any other provision of law or regulation to the contrary, school districts and charter schools shall comply with the provisions of Education Law §§ 3300-3318 relating to educational records, enrollment, placement decisions, excused absences, residency determinations and graduation requirements for military students covered under the new law.

Moreover, the proposed amendment provides that, a public school district or charter school shall accept the following to meet the diploma requirements for such students in New York State:

(1) exit or end of course examinations required for graduation in the sending state, where the principal from the school in the sending state attests in writing to the principal of the school in the receiving state that the student has achieved a satisfactory passing score on such exam(s) and that he/she has met the proficiency standards for the course(s) assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state;

(2) national norm referenced achievement tests, where the principal from the school in the sending state attests in writing that the student has achieved a score equal to or greater than the national grade equivalent corresponding to the grade in which the corresponding Regents examination required for graduation is typically administered; and

(3) where the principal of the school in the sending state has accepted course credit for a course that would typically culminate in an examination required for graduation in New York State, the principal of the school in the receiving state shall accept any corresponding alternative end of course local examination for such course(s), where the principal from the school in the sending state attests in writing that the student has achieved a score on such exam that meets the proficiency standards for the course assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state.

If none of the alternatives outlined above can be accommodated by the principal of the school in the receiving state for a student transferring into such school at the beginning of or during grade 12, then the principal of the school in the receiving state shall provide written notice to the principal of the school in the sending state which shall include notice that the school district in the sending state shall ensure that the student receives a diploma from the school district in the sending state if the student meets the graduation requirements of the school district in the sending state. In the event that the sending state

is not a member of the interstate military compact, the receiving state shall use best efforts to facilitate on-time graduation of the student using the exams described above.

In addition, the proposed amendment would stipulate that all students, including students of military families, who spent three or fewer semesters in a New York State school prior to returning to a New York school in grade 11 or later, would also be subject to the existing assessment exemptions for Global and Science outlined in the current regulation.

### Physical Education Requirements

Currently, the diploma requirements require that a student complete 2 units of credit in Physical Education (PE) and that students participate in PE every semester they are enrolled in school, even if they have met the required 2 credits and remain in school beyond their senior year. According to the 2016 Shape the Nation Report published by the Society of Health and Physical Education, 9 states require  $\frac{1}{2}$  credit in PE, 19 states require 1 credit, 5 states require 1.5 credits and only 4 states require 2 credits in PE.

Students who transfer to New York high schools part way through high school are finding themselves severely under credited in PE because their sending state did not require instruction in PE every semester. This often results in, at best, course selections being impacted due to the necessity to enroll in 2 or 3 PE courses each semester to catch up, or at worst, students not graduating on time.

Therefore, the Department further proposes a revision to section 100.5(d)(5) of Commissioner's Regulations to allow all students (not just students of military families), who transfer into a registered New York state high school from another state, to be exempt from the required two units of credit requirement in physical education to meet the diploma requirements. Instead, such students shall be required to enroll in physical education courses every semester they are in a registered New York State high school, and shall earn  $\frac{1}{4}$  unit of credit for each semester of physical education completed in a registered New York State high school to meet the diploma requirements.

The Department further proposes an amendment to allow students who have earned the required number of credits in physical education to meet the diploma requirements, but may need more than 8 semesters to graduate due to other course or assessment deficiencies, to be permitted to stop enrolling in physical education courses. Often students need to return beyond their senior year to make up a failed course or attend preparatory sessions to pass failed assessments, and the current regulation requires these students to enroll in physical education courses for those semesters as well, even though they have met the required number of diploma credits for graduation. The proposed amendment will eliminate this requirement.

### Recommendation

Not Applicable.

### **Timetable for Implementation**

Following the 45-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the September 2017 Regents meeting. If adopted at the September 2017 meeting, the proposed amendment will become effective on September 27, 2017.

## NYS Interstate Compact Council Members \* 5/1/17

Attachment 1

Name	Title or affiliation if applicable	Appointment: (Governor, NYSED, Senate, Assembly etc.)
<b>Debra Jackson</b>	NYS Compact Commissioner	Governor
<b>MaryEllen Elia</b>	NYSED Commissioner	Commissioner (or a designee named)
<b>Marybeth Casey</b>	NYSED Associate Office of Curriculum and Instruction	Designee for the NYSED Commissioner
<b>James Koch</b>	District Business Manager, Indian River CSD	Governor
<b>PARENT TBD</b>		Governor
<b>Stephen J. Todd</b>	BOCES District Superintendent	NYSED Commissioner
<b>Frank Sheboy</b>	Highland Falls CSD Superintendent	NYSED Commissioner
<b>Salvatore Nicosia</b>	Community Member	President Pro Tem of the Senate
<b>Lisa Beatha</b>	Community Member	President Pro Tem of the Assembly
<b>Major General Anthony P. German</b>	Adjutant General and commissioner of the Division of Military and Naval Affairs	Governor
<b>Robert Conway</b>	Counsel, Division of Military & Naval Affairs	Designee for Major General Anthony P. German
<b>COL Eric Hesse</b>	NYS Director of Veterans' Affairs	Governor
<b>Robert Zayes</b>	NYSPHSAA Executive Director	n/a
<b>Michi Carl</b>	School Liaison Officer (Army)	n/a
<b>Matthew Rogers</b>	School Liaison Officer (Army)	n/a
<b>Lisa Sheehan</b>	School Liaison Officer (Army)	n/a
<b>Wendy Delaney</b>	Child and Youth Programs Director (Navy)	n/a
<b>Jason Gilliland</b>	Coordinator of Veteran and Military Affairs; SUNY New Paltz	n/a
<b>Diana Pasterchick</b>	Coordinator of Veteran and Military Affairs; SUNY Albany	n/a

## AMENDMENT OT THE REGUALTIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 3300-3318 of the Education Law, as amended by Chapter 328 of the Laws of 2014.

1. Paragraph (4) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, to read as follows:

(4)(i) [All] Except as otherwise provided in subparagraph (ii) of this paragraph, all students shall have earned the equivalent of two units of credit in physical education in accordance with the requirements set forth in section 135.4(c)(2)(ii) of this Title. Such units of credit shall not count towards the required units of credit set forth in paragraphs (1) and (2) of this subdivision for those students who enter grade nine before the 2001-2002 school year. Beginning with the 2001-2002 school year and thereafter, such units of credit in physical education shall count toward the required total. A student who has completed the diploma requirements as set forth in paragraphs (1) and (2) of this subdivision in fewer than eight semesters, and who is otherwise eligible to receive a diploma, shall not be required to continue enrollment in high school for the sole purpose of completing the physical education requirements as set forth in this paragraph. Any student who has completed eight semesters in a registered New York State high school or a high school outside the registered New York state high school awarding the credits, and who has accumulated the required units of credit in physical education to meet the diploma requirements, shall not be required to continue enrollment in physical education courses for any additional semesters.

(ii) Students who enter a registered New York State high school and have completed one or more semesters in a high school outside New York State shall be exempt from the required two units of credit requirement in physical education for a diploma. Instead, such students shall be required to enroll in physical education courses every semester they



are in a registered New York State high school, and shall earn ¼ unit of credit in physical education for each semester completed in a registered New York State high school to meet the diploma requirements.

2. Subparagraphs (iii) and (iv) of paragraph (5) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, to read as follows:

(5) Transfer credit. Transfer credit is awarded for work done outside the registered New York State high school awarding the credit.

(i) . . .

(ii) . . .

(iii) (a) . . .

(b) Students who enter a registered New York State high school for the first time in grade 11 in the 2002-2003 school year and thereafter, or who reenter a registered New York State high school in grade 11 after having been enrolled in a registered New York State high school for three or fewer semesters, other than those students who have received home instruction pursuant to section 100.10 of this Part in New York State or who have been enrolled in a registered or non-registered public or nonpublic New York State high school, in order to receive a high school diploma must pass the Regents [Comprehensive Examination ] examination in English Language Arts, a Regents examination in mathematics, a Regents examination in United States history and government, and a Regents examination in science, or approved alternatives. The principal may exempt such student from the requirement for the Regents examination in global history and geography ordinarily taken and passed before the date of the student's entry. Additionally, for such student who first enters grade 11 in a registered New York State high school, or who reenter a registered New York State high school in grade 11 after having been enrolled in a registered New York State high school for three or fewer

semesters, in the 2018-2019 school year and thereafter, the principal may exempt the student from the two units of credit requirement in global history and geography by substituting two units of credit in social studies.

(iv)

(a) . . .

(b) Students who enter a registered New York State high school for the first time in grade 12 in the 2004-2005 school year and thereafter, or who reenter a registered New York State high school in grade 12 after having been enrolled in a registered New York State high school for three or fewer semesters, other than those students who have received home instruction pursuant to section 100.10 of this Part in New York State or who have been enrolled in a registered or non-registered public or nonpublic New York State high school in order to receive a high school diploma must pass the Regents [Comprehensive] [E]xamination in English, a Regents examination in mathematics, and a Regents examination in United States history and government, or approved alternatives. The principal may exempt such student from the requirement for the Regents examination in science and the Regents examination in global history and geography ordinarily taken and passed before the date of the student's entry. Additionally, for such student who first enters grade 12 in a registered New York State high school in the 2019-2020 school year and thereafter, or who reenter a registered New York State high school in grade 12 after having been enrolled in a registered New York State high school for three or fewer semesters, the principal may exempt the student from the two units of credit requirement in global history and geography by substituting two other units of credit in social studies.

3. Section 100.20 of the Regulations of the Commissioner of Education shall be added, to read as follows:

§100.20 Graduation and Diploma Requirements for Students Covered Under the Interstate Compact on Educational Opportunity for Military Children

(a) Notwithstanding any other provision of law or regulation to the contrary, in order to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents, school districts and charter schools that receive public funding and serve students of active duty military families who are formally enrolled in kindergarten through twelfth grade shall comply with the provisions of Education Law §§ 3300-3307 and this section relating to educational records, enrollment, placement decisions, excused absences, residency determinations and graduation requirements.

(b) For purposes of this section:

(1) Military children shall mean those children for which the “interstate compact on educational opportunity for military children” applies as set forth in Education Law §3303;

(2) Receiving state shall mean New York State, the State to which a child of a military family is sent, brought, or caused to be sent or brought; and

(3) Sending state shall mean the state from which a child of a military family is sent, brought, or caused to be sent or brought.

(c) Graduation and diploma requirements. Notwithstanding any other provision of law or regulation to the contrary, in accordance with Education Law §3307(2), a public school district or charter school, shall accept the following to meet the diploma requirements for such students in New York State:

(1) exit or end of course examinations required for graduation in the sending state, where the principal from the school in the sending state attests in writing to the principal of the school in the receiving state that the student has achieved a satisfactory passing score on such exam(s) and that he/she has met the proficiency standards for the course(s) assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state;

(2) national norm referenced achievement tests, where the principal from the school in the sending state attests in writing that the student has achieved a score equal to or greater than the national grade equivalent corresponding to the grade in which the corresponding Regents examination required for graduation is typically administered; and

(3) where the principal of the school in the sending state has accepted course credit for a course that would typically culminate in an examination required for graduation in New York State, the principal of the school in the receiving state shall accept any corresponding alternative end of course local examination for such course(s), where the principal from the school in the sending state attests in writing that the student has achieved a score on such exam that meets the proficiency standards for the course assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state.

(d) If none of the alternatives in subdivision (c) of this section can be accommodated by the principal of the school in the receiving state for a student transferring into such school at the beginning of or during grade 12, then the principal of the school in the receiving state shall provide written notice to the principal of the school

in the sending state which shall include notice that the school district in the sending state shall ensure that the student receives a diploma from the school district in the sending state if the student meets the graduation requirements of the school district in the sending state. In the event that the sending state is not a member of the interstate military compact, the receiving state shall use best efforts to facilitate on-time graduation of the student using the exams described in subdivision (c) of this section.