



**TO:** Higher Education Committee

**FROM:** John L. D'Agati *John L. D'Agati*

**SUBJECT:** Proposed Amendment of Section 145-2.2 of the Regulations of the Commissioner of Education to Establish Standards for a Student to Be Reinstated to the Status of Good Academic Standing in Order to Resume Receiving Awards That Were Previously Suspended under the Tuition Assistance Program

**DATE:** May 11, 2015

**AUTHORIZATION(S):** *Elizabeth B Berlin*

## SUMMARY

### Issue for Decision

Should the Board of Regents amend Section 145-2.2 of the Regulations of the Commissioner of Education to establish standards for a student to be reinstated to the status of good academic standing in order to resume receiving awards that were previously suspended under the Tuition Assistance Program?

### Reason(s) for Consideration

Review of Policy.

### Proposed Handling

The proposed amendment is submitted to the Higher Education Committee for permanent adoption at its May 2015 meeting (see Attachment A - Amendment to the Regulations).

## **Procedural History**

The proposed amendment was discussed by the Board of Regents at its January meeting. A Notice of Proposed Rule Making was published in the State Register on February 1, 2015. Following the 45-day public comment period required under the State Administrative Procedure Act, several comments were received on the proposed amendment (see Attachment B - Assessment of Public Comment). The proposed amendment was revised to address these comments. A Notice of Revised Rule Making was then published in the State Register on April 8, 2015. Supporting materials are available upon request to the Board of Regents.

## **Background Information**

### **Eligibility for a Tuition Assistance Program Award**

The New York State Tuition Assistance Program (TAP) provides for an annual award of up to \$5,165, payable over two semesters, to help eligible New York residents pay tuition at approved colleges and universities in New York State.

Education Law §661 sets forth the eligibility requirements and conditions for receiving a TAP award. For a student to continue to receive an award under the TAP, Education Law §665(6) requires that the student maintain good academic standing : (1) by meeting or exceeding minimum cumulative grade point average requirements; and (2) by making satisfactory progress toward the completion of his or her program's academic requirements, measured by credit hour accumulation. This section of the law, which established standards of academic progress, also establishes minimum thresholds for each of these two requirements based on the year the student first receives aid, the length of the student's program and whether the student is a remedial student. However, institutions may establish and apply stricter standards of satisfactory academic progress, provided such standards include the required levels of achievement to be measured at the statutory intervals. If an institution implements stricter criteria for satisfactory academic progress, the criteria must include a minimum number of credit hours to be earned and a minimum cumulative grade point average, and must be measured at set intervals, such as semesters or trimesters. If a student fails to make satisfactory progress toward the completion of the program's academic requirements, or fails to maintain the minimum cumulative GPA, the student will not be in good academic standing and, thus, will become ineligible for awards under the TAP.

### **Regaining Good Academic Standing**

When a student does not meet the good academic standing requirement to continue receiving a TAP award, the TAP award is suspended until the student is reinstated in good standing within a reasonable time set by the Commissioner. Currently, Section 145-2.2(b)(1)(ii) of the Regulations of the Commissioner of Education provides that a student may be restored to good academic standing by:

(a) pursuing the program of study in which he or she is enrolled and making satisfactory progress toward the completion of his or her program's academic requirements; or

(b) establishing, in some other way, to the satisfaction of the Commissioner, evidence of his or her ability to successfully complete an approved program.

Currently, the regulation is silent on whether a TAP award is suspended while the student is restoring his/her status of "good academic standing", and does not establish a minimum length of time a TAP award must be suspended while the student is in the process of regaining good academic standing.

In order to provide clarity to the field, the proposed amendment provides that no student will receive any TAP awards until he/she has been restored to good academic standing.

The current regulation also fails to define what evidence the Commissioner will accept as the students' promise to successfully complete an approved program in order to regain good academic standing under Education Law §665(6); and the regulations do not contemplate the possibility of a student changing academic programs within the same institution to avoid the need to regain good academic standing in the original academic program.

The proposed amendment attempts to provide clarity to the field as to what will be considered satisfactory evidence of restoration of good standing and presents the following options:

(a) a waiver from the required cumulative C average or its equivalent, for a student having completed his or her second academic year, for undue hardship pursuant to Section 661(4)(c) of the Education Law;

(b) a one-time certification by an institution that a waiver from the good standing requirement is in the best interest of the student pursuant to subparagraph (v) of this paragraph;

(c) establishing, to the satisfaction of the Commissioner, evidence of the student's ability to successfully complete an approved program through one of the following options:

(1) demonstrating that the student has made up any deficiencies in his/her program and achieved academic progress and has achieved good academic standing without the benefit of the Tuition Assistance Program, or other State financial aid support;

(2) applying for and being readmitted to the same institution after withdrawing as a student from such institution for at least one academic year; or

(3) transferring to another higher education institution and meeting the new institution's admissions' requirements.

## **Recommendation**

The Department recommends that the Board of Regents take the following action:

VOTED: That subparagraph (ii) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education is repealed and a new subparagraph (ii) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education is added, effective June 3, 2015, as submitted.

## **Timetable for Implementation**

It is anticipated that the proposed amendment will be submitted to the Board of Regents for adoption at the May 2015 Regents meeting. If adopted at the May Regents meeting, the proposed amendment will become effective on June 3, 2015.

## AMENDMENT OT THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 202, 207, 210, 3165, 305, 602, 661 and 665.

Subparagraph (ii) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education is repealed and a new subparagraph (ii) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education is added, effective June 3, 2015, to read as follows:

(ii) Following a determination that the recipient of an award has lost good academic standing, further payments of any award under article 13 or 14 of the Education Law shall be suspended until the student is restored to good academic standing by either:

(a) a waiver from the required cumulative C average or its equivalent, for a student having completed his or her second academic year, for undue hardship pursuant to section 661(4)(c) of the Education Law;

(b) a one-time certification by an institution that a waiver from the good standing requirement is in the best interests of the student pursuant to subparagraph (v) of this paragraph;

(c) establishing, to the satisfaction of the Commissioner, evidence of the student's ability to successfully complete an approved program through one of the following options:

(1) demonstrating that the student has made up any deficiencies in his/her program and achieved academic progress and has achieved good academic standing without the benefit of the tuition assistance program, or other State financial aid support;

(2) applying for and being readmitted to the same institution after withdrawing as a student from such institution for at least one academic year; or

(3) transferring to another higher education institution and meeting the new institution's admissions' requirements.

## 8 NYCRR §§145-2.2

### ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the February 4, 2015, State Register, the State Education Department received the following comments:

1. COMMENT:

One commenter expressed concern regarding the proposed amendment to section 145-2.2(b)(2)(ii) which would suspend awards for a minimum of one semester or its equivalent.

The commenter expressed concern that “semester” is not defined as to length, credits, results or even enrollment and had the following questions: What actions must the student take during this semester of suspended TAP? Can a non-traditional semester (summer, winter or intersession) qualify? a one-credit course? Must the student successfully complete the course? In fact, the proposed change does not state whether students must enroll during the semester of suspended aid. Can a student meet this requirement by merely staying out of school for the semester?

Another commenter indicated that a minimum of one semester or its equivalent - is potentially problematic. If the student has an incomplete course which causes them to fail SAP and finishes it - now they would have to sit out a full term. For schools with rolling start dates or multiple start date opportunities during a term now we would be forced to make the student sit out for at least 15 weeks. Ex. Student has an incomplete the Fall 1 2014 term (sept- dec) which puts them in bad SAP for the Spring 1 term (Jan- May) The student completes the course- passing it and is now in good standing as of the end of January. Empire has a March term (Spring 2 term March- June) but this student would still be "failing" in your interpretation?

## DEPARTMENT RESPONSE:

The issue of the length of ineligibility for loss of good academic standing has resulted in a revision to eliminate the proscribed length of ineligibility in favor of a standard that indicates that the student is ineligible unless they have received a waiver, as allowed by law or regulation, or has taken specific steps to remediate their academic deficiencies without the benefit of state financial aid, or if the student withdrew from the institution and reapplied, or was admitted to another institution. In this way, the student who takes immediate steps to remediate their academic deficiency will not be adversely penalized, and indeed will regain eligibility as soon as they have regained good academic standing. The goal is not to penalize students, but to encourage them to regain in good academic standing, and to regain that status as quickly as possible should they lose that status.

Because the revised proposed regulation no longer carries a specific period of ineligibility, the discussion of semester versus other academic terms are unnecessary as the student may be able to regain good academic standing through the completion of adequate coursework during one or more of these alternative academic periods.

## 2. COMMENT:

The commenter also questioned the language in 145-2.2(b)(2)(ii)(a) and requested clarification in what was meant by pursuing the program of study in which he or she is enrolled and making satisfactory progress toward completion of his or her program's academic requirements. The commenter indicated that words such as "pursuing" and "making" communicate a process – rather than a demonstrated result determined when the student gets grades at the end of the semester.

The commenter also questioned the difference between 145-2.2(b)(2)(ii)(a) and 145-2.2(b)(2)(ii)(b)(1).

The commenter also indicates that the language in section 145-2.2(b)(2)(ii)(b)(4) which states: “providing other evidence satisfactory to the Commissioner that the student will successfully complete the program” is unclear and vague and does not provide clear guidance to schools, students, as to what the Commissioner considers “evidence satisfactory.” It also requested that SED’s requirements for “evidence satisfactory” to the Commissioner be communicated so that all parties viewing the same facts can reach similar determinations. If not, schools will be left to make these determinations as they see fit; and OSC will lack criteria against which to determine compliance. Importantly, the evidence required is of a future event – that the student “will” successfully complete the program. It is a challenge to envision what would constitute satisfactory evidence to demonstrate that a future event will happen.

#### DEPARTMENT RESPONSE:

These comments were extremely helpful and resulted in several revisions to the proposed regulation in an effort to clarify and streamline the issues raised by the commenter. The concerns surrounding what constitutes satisfactory evidence of a student’s ability to successfully complete an approved program have been clarified in regulation to include: (1) demonstration that the student has made up any deficiencies in his/her program and achieved academic progress and has achieved good academic standing without the benefit of the tuition assistance program, or other State financial support; (2) applying for and being readmitted to the same institution after withdrawing as a student from such institution for at least one academic year; or (3) transferring to another higher education institution and meeting the new institution’s admissions’ requirements.

#### 3. COMMENT:

A commenter indicated that the options to regain good academic standing omit mention of use of waivers currently used to regain good academic standing, including:

- a. The C average waiver is in section 661(4)(c) of the Education Law
- b. The one-time TAP waiver provided for in regulations

DEPARTMENT RESPONSE:

The Department agrees with the commenter and has revised the proposed amendment to add these two existing waivers to the list of options to regain good academic standing.

4. COMMENT

One commenter expressed concern that the Regulatory Impact Statement refers to "promise" often - referring to a student's "promise to successfully complete a program".

The role of a "promise" is not provided for in the Proposed Amendment. This needs to be deleted or clarified. It raises questions as to whether a "promise" is sufficient to meet 145-2.2(b)(2)(ii)(b).

The commenter also notes that the costs section in the regulatory impact statement is incorrect, in that the proposed amendment may have costs on State government if students regain TAP eligibility faster.

DEPARTMENT RESPONSE:

This comment is correct and the proposed amendment has been revised to focus specifically on the actions taken by the student to regain good academic standing and not their 'promise' to successfully complete an academic program. Therefore, the word "promise" has also been eliminated from the Regulatory Impact Statement.

The Costs section of the Regulatory Impact Statement has also been revised to clarify that there may be additional costs to State government if more students regain their TAP eligibility.

5. COMMENT

"For Applying to and being readmitted....". Am I interpreting this correctly then that the student who simply "sits out" for a year (doesn't officially withdraw) would not be eligible for state aid then? At non-traditional schools such as ESC or community colleges where the student is not living on campus, students often don't officially withdraw from the school instead they just take time off so would an unofficial leave of absence ("sitting out") be an unacceptable approach?

DEPARTMENT RESPONSE:

A student cannot simply sit out a semester and through this absence from the institution somehow regain good academic standing. The student must engage in an affirmative process of obtaining a waiver, as allowed by law or regulation, complete sufficient academic coursework to regain good academic standing, or withdraw and reapply after a year, or be admitted to a different institution. A student who simply "takes time off" has not met the requirement for regaining good academic standing.