



TO: The Honorable the Members of the Board of Regents

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

SUBJECT: Proposed Addition of a New Subpart 152-3 to the Regulations of the Commissioner of Education to Implement the Foster Youth College Success Initiative as Added by Part X of Chapter 56 of the Laws of 2015

DATE: September 9, 2015

AUTHORIZATION(S): *Richard A. Trentacosta* *Margaret Elin*

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents add a new Subpart 152-3 to the Regulations of the Commissioner of Education to implement the Foster Youth College Success Initiative as added by Part X of Chapter 56 of the Laws of 2015?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed amendment will be presented to the Higher Education Committee for recommendation and to the Full Board for adoption as a permanent rule at the September 2015 meeting of the Board of Regents. In addition, a second emergency adoption is necessary to ensure the emergency rule adopted at the June 2015 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule. A copy of the proposed amendment is attached as Attachment A and a Statement of Facts and Circumstances Justifying the Emergency is attached as Attachment B.

Procedural History

A Notice of Proposed Rule Making and Emergency Action was published in the State Register on July 8, 2015. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 56 of the Laws of 2015 added a new section 6456 to the Education Law requiring the Commissioner to allocate funds, subject to an appropriation, for the purpose of providing support services to assist youth in foster care to apply for, enroll in, and succeed in college. The new law defines foster youth to include students who have qualified as an orphan, foster child or ward of the court for the purposes of federal student financial aid programs authorized by Title IV of the Higher Education Act of 1965, as amended.

1. Funding

The 2015–2016 State budget appropriated \$1.5 million for the Foster Youth College Success Initiative. The law provides for awards to public institutions, including institutions of the State University of New York (SUNY), and The City University of New York (CUNY), and requires the Commissioner to enter into contracts with degree-granting institutions currently funded by the Arthur O. Eve Higher Education Opportunity Program (HEOP) for the purpose of providing additional services and expenses to expand opportunities for foster youth. The new law allocates funding as follows: 52% to SUNY institutions; 30% to CUNY institutions; and 18% percent to currently funded HEOP institutions. It further requires that funds appropriated for this purpose shall be awarded in equal amounts per individual foster youth to each institution that applies for funding and is approved by the Commissioner. It also prohibits funds from being used to support the regular academic programs of any institution participating in this program and/or which are incompatible with the Regents plan for the expansion and development of higher education in New York State.

2. Services for Foster Youth

Pursuant to the new law, funding shall be used for the following purposes:

- a. providing additional services and covering expenses to expand opportunities through existing postsecondary opportunity programs at SUNY, CUNY, and other degree-granting higher education institutions for foster youth, and
- b. providing necessary supplemental financial aid for foster youth, which may include the cost of tuition and fees, books, supplies, transportation, and other expenses approved by the Commissioner for such foster youth to attend college, and

- c. summer college preparation programs to help foster youth transition to college, prepare them to navigate on-campus systems, and provide preparation in reading, writing, and mathematics for foster youth who need it, or
- d. providing advisement, tutoring and other academic assistance for foster youth.

The proposed regulation would allow expenditure of grant funds for costs needed to carry out those purposes, including but not limited to, the costs of outreach to high schools and community based organizations that serve foster youth about this initiative.

3. Implementation

The new law requires eligible institutions to file an application with the Commissioner by October 1st of each year. The application must demonstrate a need for such funding; including how the funds would be used and how many foster youth will be funded.

Following the 45-day public comment period, the Department received comments on the proposed amendment. Attachment C is an Assessment of Public Comment. The Department does not believe that any regulatory amendments are needed.

Recommendation

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

VOTED: That a new Subpart 152-3 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 21, 2015, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that the proposed rule remains continuously in effect until it can be adopted as a permanent rule; and

VOTED: That a new Subpart 152-3 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 7, 2015.

Timetable for Implementation

If adopted at the September 2015 meeting, the emergency rule will become effective on September 21, 2015 and the permanent rule will be effective on October 7, 2015.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 210, 215, 305, 6451, 6456, as added by Chapter 56 of Laws of 2015.

1. Subpart 145-3 of the Regulations of the Commissioner of Education is added, effective September 21, 2015, to read as follows:

Subpart 152-3

§145-3 FOSTER YOUTH COLLEGE SUCCESS INITIATIVE.

§152-3.1 Purpose.

The purpose of the Foster Youth College Success Initiative is to provide funding, subject to an appropriation for such purpose, to support services to assist youth in foster care to apply for, enroll in, and succeed in college.

§145-3.2. Definition.

(a) For purposes of this section, foster youth shall mean students who have qualified as an orphan, foster child, or ward of the court for the purposes of federal student financial aid programs authorized by Title IV of the Higher Education Act of 1965, as amended.

§145-3.3. Applications.

(a) Eligible applicants. Institutions of the State University of New York ("SUNY"), City University of New York ("CUNY"), and degree-granting institutions in New York that are currently funded by the Arthur O. Eve Higher Education Opportunity Program pursuant to section 6451 of the Education Law for the purposes of providing additional

services and expenses to expand opportunities for foster youth may apply for funding pursuant to this Section.

(b) Applications shall be submitted to the Commissioner, on forms prescribed by the Commissioner, for approval by October 1 of each year, and must set forth the need for such funds, including how the funds would be used and the exact number of foster youth that would be assisted with such funds.

(c) Applications from institutions of the State University of New York shall be coordinated through the SUNY System Administration and forwarded to the Department for review and approval by the Commissioner. Applications from institutions in the City University of New York system shall be coordinated through the CUNY Central Administration and forwarded to the Department for review and approval by the Commissioner. Other applications from eligible applicants as set forth in this section shall be submitted directly by the institution to the Department for review and approval by the Commissioner.

§145-3.4. Funding.

(a) Funds appropriated for the purposes of this initiative shall be awarded in equal amounts per foster youth to each institution whose application is approved by the Commissioner; pursuant to the sector distribution described in subdivision (b) of this section.

(b) Funds appropriated for the foster care youth initiative shall be allocated among the sectors as follows:

(1) 52% for institutions in the SUNY system;

(2) 30% for institutions in the CUNY system; and

(3) 18% for other degree-granting institutions in New York with current Arthur O. Eve higher education opportunity programs under this Part.

(c) Funds awarded under this Subpart shall be used for the following purposes to transition eligible students into postsecondary education:

(1) to provide additional services and fund expenses to expand opportunities for Foster Youth through existing postsecondary opportunity programs at the SUNY (Education Opportunity Program), CUNY (Search for Elevation, Education and Knowledge Program and College Discovery Program), and other not-for-profit degree granting higher education institutions which have higher education opportunity programs for foster youth;

(2) to provide necessary supplemental financial aid for foster youth, which may include the cost of tuition and fees, books, supplies, transportation, and other expenses determined by the Commissioner to be necessary for such foster youth to attend college;

(3) to conduct a summer college preparation program for foster youth who will be enrolled and attending as first time full time students at such institution awarded funding in an effort to prepare them to navigate on-campus systems, and provide preparation in reading, writing, and mathematics for foster youth who need it; or;

(4) for advisement, tutoring and other academic assistance for Foster Youth who are or will be enrolled and attending such institution awarded funding.

(d) Funds awarded pursuant to this Subpart shall be used for the allowable costs, as determined by the Commissioner, of activities and services needed to support the purposes prescribed in subdivision (c) of this section, which may include, but shall not be limited to, costs of outreach to high schools and community based organizations

that serve foster youth to advise potential students and provide information on this initiative.

(e) For the 2015 - 2016 academic year only, the amount of funds to be awarded to each institution under this initiative shall be based on the current number of eligible foster youth at such institution plus the number of eligible students recruited for, and enrolled in, an opportunity program at such institution.

(e) For the 2016 – 2017 academic year and thereafter, all funds under this initiative shall be based on the number of eligible foster youth recruited for and enrolled in the opportunity programs of such institutions for the current year of enrollment.

(f) No funds under this Subpart shall be used to support the regular academic programs of any institution participating in this program or, for programs which are incompatible with the Regents plan for the expansion and development of higher education in New York State.

§145-3.5. Reporting

Each institution that receives funds under this Subpart shall file an annual report by August 31 of the calendar year succeeding the year of its successful application for funding using a form prescribed by the Department, and/or within 30 days of any request by the Department, providing any information or documentation as the Commissioner may request relating to this initiative.

8 NYCRR §152-3

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed rule is necessary to implement Education Law section 6456, as added by Part X of Chapter 56 of the Laws of 2015, regarding the foster care youth initiative.

The proposed amendment was adopted by emergency action at the June 15-16, 2015 Regents meeting, effective July 1, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 8, 2015.

The proposed amendment has now been adopted as a permanent rule at the September 16-17, 2015 Regents meeting. Pursuant to SAPA §203(1), the earliest effective date of the permanent rule is October 7, 2015, the date a Notice of Adoption will be published in the State Register. However, the June emergency rule will expire on September 21, 2015, 90 days after its filing with the Department of State on June, 23, 2015. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment adopted by emergency action at the June 2015 Regents meeting and adopted as a permanent rule at the September 2015 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

8 NYCRR §152-3

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on July 8, 2015, the State Education Department (SED) received the following comments:

1. COMMENT:

The definition of foster care youth in section 152-3.2 of the Commissioner's regulations should be amended to include an additional subsection that states as follows: "Eligible foster youth, orphans or wards of the court should apply for services on, or before their 25th birthday".

DEPARTMENT RESPONSE: The regulatory definition of foster care youth is consistent with the definition in Education Law §6456(2). Therefore, the Department believes that no regulatory change is needed.

2. COMMENT:

The commenter requested that section 152-3.4 of the Commissioner's regulations be amended to allow housing to be included in what constitutes necessary supplemental financial aid for foster youth.

DEPARTMENT RESPONSE:

The Department believes and agrees that these funds may be for housing purposes. However, the Department believes that no regulatory change is needed because the regulation already provides that funds may be used for any other expenses determined by the Commissioner to be necessary for such foster youth to attend college, which could include housing expenses.

3. COMMENT:

One commenter has asked that section 152-3.5(a) of the proposed amended to require institutions to include specific enumerated information relating to number of youth who meet federal definition of foster youth, retention rates, comparisons of credit accumulation by cohort and the number of students surveyed to be in need of break and intersession housing.

DEPARTMENT RESPONSE: The proposed amendment is broad and indicates that an institution must provide “any information or documentation as the Commissioner may request relating to this initiative in the annual report”, which may include some of the information the commenter suggests. Therefore, the Department does not believe a regulatory amendment is needed. However, the Department is in the process of determining what information it believes should be required in the annual report and the requirements for the annual report will be posted on the Department’s website.

4. COMMENT:

The commenter also requests clarification in the regulation to require any campus receiving this funding, to the extent possible, to designate a campus liaison who has knowledge about the needs and challenges of foster care youth.

DEPARTMENT RESPONSE:

While the Department agrees that a designated campus liaison that could serve as the point person responsible for guiding and coordinating the initiative across the campus would be helpful, the Department believes that funding on various campuses differs and that no regulatory change is needed. This is a local decision that needs to be made at each campus, based on where it believes resources can be allocated best.