



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

TO: The Honorable the Members of the Board of Regents

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

SUBJECT: Proposed Amendments of Subpart 4-1 of the Rules of the Board of Regents Relating to Voluntary Institutional Accreditation for Title IV Purposes

DATE: February 16, 2016

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

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendments of Subpart 4-1 of the Rules of the Board of Regents relating to voluntary institutional accreditation for Title IV purposes?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendments are submitted to the Higher Education Committee for recommendation to the Full Board for adoption as a permanent rule at its February 2016 meeting (see Attachment A - Amendment to the Regents Rules).

Procedural History

A Notice of Proposed Rulemaking was published in the State Register on December 9, 2015. Supporting materials are available upon request to the Secretary to the Board of Regents.

Background Information

Institutional accreditation is distinct from the Regents authority to authorize colleges and register programs of study. All New York degree-granting institutions must be authorized by the Regents to operate as a college or university. The Department also reviews and registers individual credit-bearing programs according to the standards prescribed in the Commissioner's Regulations. Together, the Regents approval to confer degrees and Department program registration make up the State authorization process.

The U.S. Department of Education (USDE) also requires institutions to be accredited to receive Title IV funding. This process was established to ensure that financial aid funds are distributed only to institutions that meet a common set of standards. Institutional accreditation entails a complete review of the entire college or university and its ability to meet standards defined by the U.S. Department of Education to ensure the sound investment of financial aid funds and the quality of the student's education. It requires a thorough self-examination by the institution and a peer review on-site visit that is intended to identify areas where improvement may be needed and support an institution's compliance with accreditation standards.

The ability to serve as an accrediting agency is granted by USDE. The Regents and Commissioner are the only state agency authorized by USDE as an institutional accrediting agency. The Regents have held this authorization since 1952. All accrediting agencies must be recognized by USDE and must re-apply periodically to renew their recognition. The Board of Regents and Commissioner of Education recently underwent a thorough review by USDE and the Secretary of Education continued the Regents authority as a nationally recognized institutional accrediting agency until 2017.

As an accrediting agency, our ongoing responsibilities include periodic review of the standards for accreditation included in Subpart 4-1 of the Rules of the Board of Regents. In conducting that review, the Department identified areas where proposed revisions are needed (most of which are of a technical nature) to provide clarity to institutions accredited by the Regents and Commissioner about the accreditation process.

Summary of Proposed Changes to Regents Rules

- Section 4-1.4 A technical change was made to delete an outdated reference that requires institutions to report statistics on retention and graduation rates in a manner consistent with data reported to the Department through its higher education data system.
- Section 4-1.5 The proposed amendment makes several technical revisions in the procedures for accreditation to clarify steps in the process and make clear the basis upon which accreditation recommendations and determinations are made. It also clarifies details about the appeals process that is available to institutions that receive adverse accreditation actions or probationary accreditation by the Regents, making the appeal process more aligned with what is required by other accrediting bodies, such as Middle States.

Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment.

Recommendation

VOTED: That sections 4-1.4 and 4-1.5 of the Rules of the Board of Regents be amended, as submitted, effective March 9, 2016.

Timetable for Implementation

It is anticipated that the proposed amendments will be submitted to the Board of Regents for adoption at the February 2016 Regents meeting. If adopted at the February Regents meeting, the proposed amendment will become effective on March 9, 2016.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections §§207, 210, 214, 215, 305.

1. Clause (j) of subparagraph (iv) of paragraph (1) of subdivision (i) of section 4-1.4 of the Rules of the Board of Regents shall be amended, effective March 9, 2016, to read as follows:

(j) Student retention and graduation. Information on student retention and graduation rates shall be provided based on a summary of the most recent cohort survival statistics (e.g., percentages of those students enrolled at the end of the spring term, percentages of freshman classes that graduate in four, five and six years) available to the institution for at least full-time undergraduates. [Statistics shall be computed in a manner consistent with data reported to the Department through its higher education data system].

2. Section 4-1.5 of the Rules of the Board of Regents shall be amended, effective March 9, 2016, to read as follows:

(a) Comprehensive review procedures.

(1) . . .

(2) Application. Institutions seeking initial accreditation shall be required to apply for such accreditation on forms as may be prescribed by the commissioner. Institutions seeking renewal of accreditation shall submit a letter of intent seeking such renewal at least 18 months prior to the end date of the current accreditation period. [Institutions seeking renewal of accreditation following accreditation under the transitional

procedures prescribed in subdivision (a) of this section shall be notified by the department as to the timelines for commencement of the comprehensive review.]

(3) Self-study. Institutions shall be required to conduct an in-depth self-study substantiating compliance with the standards for accreditation set forth in this Subpart and plans for improvements pertinent to such standards and shall submit such self-study to the department. The department shall review the self-study to determine whether the self-study is sufficient in depth and breadth to form a reasonable basis for a site review. [A copy of the institutional assessment plan developed pursuant to section 52.2(e)(3) of this Title shall be submitted together with each self-study submitted on or after July 1, 2003.] The department may require the institution to submit additional information related to the self-study and/or submit additional self-study materials.

(4) Site visit. [The] If the department determines that the self-study is sufficient in depth and breadth to form a reasonable basis for a site review, the department shall conduct a site visit to the institution to assess compliance with the standards for institutional accreditation prescribed in this Subpart.

(6) [Draft Compliance review] Compliance report. The department shall prepare a [draft] compliance [review] report and provide a copy to the institution. The institution shall be given the opportunity to respond in writing to the compliance report within 30 days of the date it was sent by the department.

(7) [Compliance review report] Department's recommendation. The department shall prepare [a compliance review report] its recommendation and provide a copy to the institution. Such [report] recommendation shall address whether the institution has met each of the standards set forth in sections 4-1.3 and 4-1.4 of this Subpart and shall

include [any comments by the institution concerning the draft compliance review report. The report shall include the] a copy of the compliance report and the institution's response to such report.

(8) Advisory council.

(i) The department shall notify the institution by first class mail return receipt requested of the date, time and location of the advisory council meeting at which the council will review the department's [preliminary] recommendation with respect to accreditation action.

(ii) The institution may submit to the department by first class mail, express mail, or personal service, a written [submission by the institution] response to the department's recommendation at least 20 days before the scheduled advisory council meeting.

(iii) The advisory council shall review the department's [preliminary] recommendation with respect to accreditation action. The department shall transmit to the advisory council the written [submission] response by the institution pursuant to subparagraph (ii) of this paragraph, if any, and the record upon which the department made its [preliminary] recommendation, which shall include, but need not be limited to, [a compliance review] the compliance report, the institution's response to the compliance report and the Department's recommendation, the institution's self-study, the institution's application for accreditation and additional documentation submitted by the institution in support of the application[, the department's responses to the institution concerning its application and any other documentation upon which the department's preliminary recommendation was based]. The advisory council shall invite staff of the

department, the institution being reviewed, and at the council's discretion other interested parties to make oral presentations at the meeting. The advisory council shall base its determination [only] upon the record before the department, as described in this subparagraph, and the testimony at the advisory council meeting. A record of the testimony before the advisory council related to the accreditation review shall be maintained, but no stenographic transcript shall be required and a [tape] recording shall be deemed a satisfactory record.

(iv) When it concludes its review, the advisory council shall prepare a recommendation on accreditation action to the commissioner and the Board of Regents, together with a report of the [factual basis and] findings in support of that recommendation based upon the record and testimony considered by the advisory council. The department shall transmit a copy of [this] the advisory council's recommendation [and report] to the institution by first class mail, return receipt requested.

(v) In the event that neither the institution nor the deputy commissioner appeals [the findings and recommendations] the recommendation of the advisory council, as prescribed in paragraph (9) of this subdivision, the commissioner shall adopt said [findings and recommendations] recommendation as the commissioner's [findings and recommendations] recommendation to the Board of Regents.

(9) Appeal of advisory council recommendation.

(i) [Either the] The institution [or] and the deputy commissioner shall have the right to appeal to the commissioner [the findings and] the recommendation of the

advisory council. The institution shall have the right to be represented by counsel during the appeal.

(ii) Within 10 days of the date that the institution receives notification of the [findings and recommendations] recommendation of the advisory council, the institution [and/or the deputy commissioner] shall notify the commissioner in writing, by first class mail, express delivery, or personal service, of their intention to appeal pursuant to clause (iii)(a) of this paragraph or the deputy commissioner shall notify the commissioner in writing, by first class mail, express delivery, or personal service, of [its] their intention to appeal pursuant to clause (iii)(b) of this paragraph.

(iii) Within 25 days of the date that the institution receives notification of the [findings and recommendations] recommendation of the advisory council, the institution may commence an appeal pursuant to clause (a) of this subparagraph or the deputy commissioner may commence an appeal pursuant to clause (b) of this subparagraph.

(a) Appeal by the institution. The institution may commence an appeal of the [findings and recommendations] recommendation of the advisory council by filing an appeal with the commissioner by first class mail, express delivery, or personal service [the original appeal papers], with an affidavit proving the service of a copy thereof upon the deputy commissioner by first class mail, express delivery, or personal service. The deputy commissioner shall transmit to the commissioner the record before the advisory council [and the record of its deliberations] and its [findings and recommendations] recommendation. The deputy commissioner may also file a written response with the commissioner by first class mail, express delivery, or personal service within 30 days of service of such appeal [papers] upon the deputy commissioner, with an affidavit proving

the service of a copy thereof by first class mail, express delivery, or personal service upon the institution.

(b) Appeal by the deputy commissioner. The deputy commissioner may commence an appeal of the [findings and recommendations] recommendation of the advisory council by filing an appeal with the commissioner by first class mail, express delivery, or personal service [the original appeal papers], with an affidavit proving the service upon the institution by first class mail, express delivery, or personal service [the original appeal papers] of a copy thereof. The deputy commissioner shall transmit to the commissioner the record before the advisory council as described in paragraph (8) and the record of its deliberations and its [findings and] recommendations. The institution may file a written response with the commissioner by first class mail, express delivery, or personal service within 30 days of service of such appeal [papers] upon the institution, with an affidavit proving the service of a copy thereof by first class mail, express delivery, or personal service upon the deputy commissioner.

(c) In the event that both the institution and the deputy commissioner commence an appeal to the commissioner within the time period prescribed in this section, such appeals shall be automatically consolidated and each party shall be permitted to file a written response with the commissioner by first class mail, express delivery, or personal service within 30 days of the mailing or the personal service of the other party's appeal [papers] upon the party, with an affidavit proving the service of a copy thereof by first class mail, express delivery, or personal service upon the other part.

(iv) The commissioner shall review any appeal [papers], written responses filed, the record before the advisory council, [the record of its deliberations], and its [findings

and recommendations] recommendation. [The] If the only remaining deficiency noted by the agency is the institution's failure to meet any agency standard pertaining to finances, the commissioner shall also consider any new financial information submitted by the institution as part of its appeal if the information was unavailable to the institution until after the decision subject to the appeal was made[.] and the financial information is significant as determined by the commissioner, and bears materially on the financial deficiencies identified by the agency [and the only remaining deficiency cited by the agency is the institution's failure to meet any agency standard pertaining to finances]. An institution may seek the review of new financial information only once and any determination on the new financial information does not provide a basis for appeal. [Upon such record, the] The commissioner may affirm, reverse, remand or modify the [findings and recommendations] recommendation of the advisory council. Such determination shall constitute a recommendation regarding accreditation action to the Board of Regents.

(10) Regents decision. The Board of Regents shall review [any papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations and any other information considered by the commissioner] all of the materials described in subparagraphs (8) or (9), as applicable. At a regularly scheduled public meeting, the Board of Regents shall consider the [findings and recommendations] recommendation of the commissioner and make the determination of accreditation action. If the Board of Regents [decision] determination includes an adverse accreditation action or probationary accreditation, the Board of Regents shall notify the institution of its right to a hearing before the institutional

accreditation appeals board to appeal the determination of the Board of Regents only in limited circumstances where such determination is arbitrary or capricious or affected by an error of law or facts.

(11) Appeal of a determination of adverse accreditation action or probationary accreditation to the institutional accreditation appeals board.

(i) An institution may appeal a Regents determination of adverse accreditation action or granting probationary accreditation to the institutional accreditation appeals board in accordance with the requirements and procedures of this paragraph. [The institution shall have the right to be represented by counsel during such an appeal.]

The institution shall have the right to be represented by counsel during such an appeal.

(ii) . . .

(iii) Within 20 days of the date of a Regents determination of adverse accreditation action or granting probationary accreditation, the institution may commence an appeal of such determination to the institutional accreditation appeals board by filing an appeal with the Board of Regents by first class mail, express delivery, or personal service [the original appeal papers], with an affidavit proving the service of a copy thereof upon the deputy commissioner by first class mail, express delivery, or personal service.

(iv) The Board of Regents shall transmit the appeal [papers] to the institutional accreditation appeals board within 20 days of [the notice of appeal] receipt of such appeal.

(v) The Board of Regents may file a written response with the institutional accreditation appeals board by first class mail, express delivery, or personal service within 30 days of receipt of the appeal.

[v] (vi) The institutional accreditation appeals board shall provide the institution, the commissioner and the Board of Regents, with at least 10 days' written notice of the time and place of [such hearing] the appeal before the institutional accreditation appeals board.

[a] (vii) Hearing procedures.

[1) Motions. The chair of the institutional accreditation appeals board, at his or her discretion, may entertain and rule upon dispositive motions and shall make evidentiary rulings as may be necessary.

(2) Evidence. Technical rules of evidence followed by a court of law need not be applied. Irrelevant or unduly repetitious evidence and/or cross-examination may be excluded at the discretion the panel chair.

(3)] (a) Burden of proof. The institution shall have the burden of establishing the Board of Regents decision was arbitrary or capricious or affected by an error of law or facts.

[4](b) Conduct of hearing. [Each party shall have the right to present evidence and cross examine witnesses]. The institution shall have the right to come before the institutional accreditation appeals board and present its arguments. The appellate presentation made to and the review by the institutional accreditation appeals board is not an adjudicatory proceeding and the technical rules of evidence do not apply. The parties are not permitted to conduct discovery, present or cross examine witnesses.

The procedural determinations of the chair of the institutional appeals accreditation board shall be final. The chair may establish time limits on presentations by the parties. The decision of the institutional accreditation appeals board is limited to consideration of information in the written appeal submitted by the institution, written responses filed by the Board of Regents, and the entire record upon which the determination of the Board of Regents was based. The institutional accreditation appeals board may also consider any new financial information that was unavailable to the institution or program until after the decision subject to appeal was made if the financial information is significant and bears materially on the financial deficiencies identified by the Board of Regents and the only remaining deficiency cited by the Board of Regents in support of a final adverse action decision is the institution's or program's failure to meet an agency standard pertaining to finances.

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[5] (c) Record of hearing. All testimony given must be recorded verbatim. The chair of the institutional accreditation appeals board may use whatever means he or she deems appropriate, including, but not limited to the use of stenographic transcriptions or recording devices.

[(vi) The Board of Regents may file a written response with the institutional accreditation appeals board by first class mail, express delivery, or personal service within 30 days of service of such appeal papers upon the deputy commissioner by the institution.]

[(vii)](viii) The institutional accreditation appeals board shall hold a due process hearing, wherein the institution shall have the right to come before the institutional

accreditation appeals board and present its arguments. The appeals board shall review any appeal papers, written responses filed, and the entire record upon which the Regents determination was based, which may include but not be limited to: the record before the advisory council, the record of the advisory council's deliberations and its findings and recommendations, any appeal papers and written responses filed for an appeal of the findings and recommendations of the advisory council, the commissioner's recommendation to the Board of Regents regarding accreditation action, and the Regents determination. [Upon such record,] By majority vote, the institutional accreditation appeals board shall affirm, reverse, remand or amend the Board of Regents' determination of adverse accreditation action or granting probationary accreditation and notify the institution in writing of its decision and of its findings within 30 days of its decision. In a decision that is [implemented by or] remanded to the Board of Regents for further consideration, the institutional accreditation appeals board shall identify specific issues that the Board of Regents must address. In a decision that is [implemented by or] remanded to the Board of Regents, the Board of Regents shall act in a manner consistent with the appeals board's decision or instructions.

[viii] (ix) . . .

(b) Compliance review procedures.

(1) ...

(2) . . .

(3) . . .

(4) [Draft compliance review] Compliance report. The department shall prepare a [draft] compliance [review] report and provide a copy to the institution. The institution

shall be given the opportunity to respond in writing to the [draft] compliance [review] report within 30 days of the date it was sent by the department.

(5) [Comprehensive review report] Department recommendation. The department shall prepare a [compliance review report] recommendation and provide a copy to the institution. Such report shall address whether the institution has met each of the standards at issue and shall include any comments by the institution concerning the [draft] compliance [review] report. In the event that the institution has met the standard(s) at issue, the department shall notify the institution in writing of this determination and that accreditation shall continue to its term. In the event that the department determines that the institution has not met one or more standards at issue, the department shall notify the institution and shall transmit a copy of its [preliminary] recommendation with respect to accreditation action to the institution and to the advisory council.

(6) Advisory council. [(i) The department shall notify the institution by first class mail, return receipt requested of the date, time and location of the advisory council meeting at which the council will make an accreditation recommendation pertaining to such institution.

(ii) The institution may submit to the department by first class mail, express mail, or personal service a written submission at least 20 days before the scheduled advisory council meeting.

(iii) The advisory council shall review the department's preliminary recommendation with respect to accreditation action. The department shall transmit the written submission by the institution pursuant to subparagraph (ii) of this paragraph, if

any, and the compliance review report, including its preliminary recommendation, together with other supporting documentation, which shall include but need not be limited to, documentation prepared either by the institution or the department in support of whether a compliance standard at issue was met, and any other documentation upon which the department's preliminary recommendation was based. The advisory council shall invite staff of the department, the institution being reviewed and at the council's discretion other interested parties to make oral presentations at the meeting. A record of testimony before the advisory council related to the compliance review shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record.

(iv) When it concludes its review, the advisory council shall prepare a recommendation on accreditation action to the commissioner and the Board of Regents, together with a report of the factual basis and findings in support of that recommendation. The department shall transmit a copy of this recommendation and report to the institution by first class mail, return receipt requested.] The same procedures prescribed in paragraph (a)(8) of this section shall be applicable.

(7) In the event that neither the institution nor the deputy commissioner appeals the [findings and] recommendation of the advisory council, as prescribed in paragraph (8) of subdivision, the commissioner shall adopt said [findings and recommendations] recommendation as the commissioner's [findings and] recommendation to the Board of Regents.

(8) . . .

(9) Regents decision. [The Board of Regents shall review any papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations and any other information considered by the commissioner. At a regularly scheduled public meeting, the Board of Regents shall consider the findings and recommendations of the commissioner and make the determination of accreditation action.] The procedures prescribed in (a)(10) of this section shall be applicable.

(10) . . .

(c) Procedures for institutions on probationary accreditation.

(1) . . .

(2) . . .

(3) . . .

(4) [Draft probationary] Probationary review report. The department shall prepare a [draft] probationary review report assessing compliance and provide a copy to the institution. The institution shall be given the opportunity to respond in writing to the [draft] probationary review report within 30 days of the date it was transmitted by the department.

(5) [Probationary review report] Department recommendation. The department shall prepare a [probationary review report] recommendation with respect to accreditation status and provide a copy to the institution. Such report shall address whether the institution has met the standards at issue and shall include any comments by the institution concerning the [draft] probationary review report. [The report shall include the department's recommendation with respect to accreditation action.]

(6) Advisory council.

(i) The department shall notify the institution by first class mail, return receipt requested of the date, time and location of the advisory council meeting at which the council will review the department's [preliminary] recommendation with respect to accreditation action.

(ii) . . .

(iii) The advisory council shall review the department's [preliminary] recommendation with respect to accreditation action. The department shall transmit to the advisory council the written submission by the institution pursuant to subparagraph (ii) of this paragraph, if any, and the record upon which the department made its [preliminary] recommendation, which shall include but need not be limited to, the probationary [review] report [and preliminary recommendation, pertinent documentation prepared either by the institution or the department in support of whether the institution should be accredited, and any other documentation upon which the department's preliminary recommendation was made.] and any other documentation upon which the department's recommendation was based. The advisory council shall invite staff of the department, the institution being reviewed and at the council's discretion other interested parties to make oral presentations at the meeting. A record of the testimony before the advisory council related to the accreditation review shall be maintained, but no stenographic transcript shall be required and a recording shall be deemed a satisfactory record.

(iv) [When it concludes its review,] Based upon the record and testimony before the advisory council, the advisory council shall prepare a recommendation on

accreditation action to the commissioner and the Board of Regents, together with a report of the [factual basis and] findings in support of that recommendation. The department shall transmit a copy of this recommendation to the institution by first class mail, return receipt requested.

(7) In the event that neither the institution nor the deputy commissioner appeals the [findings and recommendations] recommendation of the advisory council, as prescribed in paragraph (8) of this subdivision, the commissioner shall adopt said findings and [recommendations] recommendation as the commissioner's [findings and] recommendation to the Board of Regents.

(8) . . .

(9) Regents decision. [The Board of Regents shall review any papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations and any other information considered by the commissioner. At a regularly scheduled public meeting, the Board of Regents shall consider the findings and recommendations of the commissioner and make the determination of accreditation action.] The procedures prescribed in paragraph (a)(10) of this section shall be applicable.

(10) . . .

(d) Procedures for a change in scope of accreditation.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) Special review requirements. In addition to meeting the general review requirements prescribed in paragraph (4) of this subdivision, the special review requirements prescribed in this paragraph shall apply to substantive changes concerning changes of ownership that effect a change in control of the institution, branch campuses, and additional locations.

(i) . . .

(ii) . . .

(iii) . . .

(6) [Draft] Substantive change [review] report. The department shall prepare a [draft] report on the substantive change assessing compliance and provide a copy to the institution. The institution shall be given the opportunity to respond in writing to the [draft] report within 30 days of the date it was transmitted by the department.

(7) [Substantive change review report] Department recommendation. The department shall send to the institution the determination by the deputy commissioner concerning the change in the scope of accreditation, together with the substantive change [review] report. Such determination and report shall address whether the institution has met the standards set forth in this Subpart, and any comments by the institution concerning the [draft] substantive change [review] report.

(8) Procedures on denial of change in scope of accreditation. [Decisions] Determinations to deny a change in the scope of accreditation may be appealed with the following procedures:

(i) Within 15 days of receiving notice of the [decision] determination to deny a change in the scope of accreditation, the institution shall notify the Board of Regents in writing by first class mail, express mail, or personal service, of its intention to appeal.

(ii) Within 60 days of receiving notice of the [decision] determination to deny a change in the scope of accreditation, the institution shall submit its appeal to the Board of Regents by first class mail, express mail, or personal service. The appeal shall take the form of a written statement that presents the institution's position on the determination and the substantive change [review] report and all evidence and information which the institution believes is pertinent to the case. The appeal shall include a statement and explanation of the specific grounds of the appeal. The institution shall have the right to be represented by counsel during the appeal.

(iii) Upon appeal by the institution, the Board of Regents shall submit to the institutional accreditation appeals board the documentation supporting the Board of Regents' decision to deny the change in the scope of accreditation, including but not limited to the institution's application, additional documentation submitted by the institution in support of its application, the substantive change [review] report and any other documentation upon which the Board of Regents' decision was based.

(iv) Within 60 days of receiving the institution's statement of appeal, the institutional accreditation appeals board shall issue a determination on the appeal.