



TO: The Honorable the Members of the Board of Regents

FROM: John B. King, Jr.

SUBJECT: Proposed addition of section 100.5(d)(8) of the Regulations of the Commissioner of Education, relating to Making Up Course Credit

DATE: April 5, 2010

STRATEGIC GOAL: Goals 1 and 2

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents add a new section 100.5(d)(8) of the Commissioner's Regulations to prescribe requirements for making up course credit ?

Reason(s) for Consideration

Implementation of Policy

Proposed Handling

The proposed amendment will be submitted to the Full Board for adoption at the April 2010 meeting.

Procedural History

The proposed amendment was discussed by the EMSC Committee at the December 2009 Regents meeting.

Background Information

In April 2009, the EMSC Committee of the Board of Regents reviewed a "Draft Proposed Policy on Making Up Course Credit and Receiving Course Credit for Independent Study." After review and discussion, the Regents directed staff to seek public input on the draft policy on making up course credit. A field survey was posted on the Department's Web site in June and concluded in September. A summary and

analysis of the survey responses was compiled and submitted for review and consideration in October.

At the October 13, 2009 Board of Regents meeting, members reviewed and approved policy relating to making up course credit. Staff was directed to draft regulatory changes to the Commissioner's Regulations to implement the make up course credit policy.

The proposed rule establishes standards for make-up credit programs for school districts, registered nonpublic schools, and charter schools that choose to offer such programs. The rule is intended to insure appropriate levels of rigor and quality for make-up (credit recovery) programs implemented by local schools.

The make-up program must be aligned with the New York State learning standards for that subject, satisfactorily address the student's course completion deficiencies and individual needs, and ensure that the student receives equivalent, intensive instruction in the subject matter area provided under the direction and/or supervision of a teacher. For programs offered by school districts and boards of cooperative educational services, the direction and supervision must be provided by a teacher certified in the subject matter area.

In the case of a school district or registered nonpublic school, a student's participation in the make-up credit program must be approved by a school-based panel consisting of, at a minimum, the principal, a teacher in the subject area for which the student must make up credit, and a guidance director or other administrator.

To receive credit, the student must successfully complete the make-up credit program and demonstrate mastery of the learning outcomes for the subject, including passing the Regents examination in the subject or other assessment required for graduation, if applicable.

A Notice of Proposed Rule Making was published in the State Register on January 27, 2010. A copy of the proposed rule and an Assessment of Public Comment are attached. Supporting materials are available on request from the Secretary to the Board of Regents.

Recommendation

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

VOTED: That paragraph (8) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education be added, as submitted, effective May 12, 2010.

Timetable for Implementation

If adopted at the April Regents meeting, the proposed amendment will take effect on May 12, 2010, with an implementation date of July 1, 2010.

Attachment

PROPOSED AMENDMENT TO SECTION 100.5 OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION, PURSUANT TO SECTIONS 101, 207, 208, 209, 305, 308, 309 AND 3204 OF THE EDUCATION LAW, RELATING TO MAKE-UP CREDIT

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2010, the State Education Department received the following comments.

1. COMMENT: A single teacher member on the school-based panel provided for in proposed Commissioner's Regulations section 100.5(d)(8)(iii) to approve student participation in a make-up credit course, is not consistent with other academic review models already established in regulation. It is recommended that the standing committee established under section 100.5(d)(7)(iii) to address appeals on Regents examination passing scores, should serve as the school-based panel in 100.5(d)(8)(iii).

DEPARTMENT RESPONSE: The Department posted an online survey last summer seeking public comment on the draft make-up course credit policy. In the summary of responses, a number of schools, particularly small rural schools, indicated that providing a more robust school based panel with more than one teacher would be an onerous requirement and put an undue burden and cost upon them. They indicated real limitations with respect to the number of available teachers to fill required panel positions. Based upon this expressed concern, the regulations were drafted to provide the minimum requirements for the school-based panel. Local schools have the flexibility to increase the size and membership of the school based panel if they so desire and their particular circumstances warrant.

2. COMMENT: The proposed regulation does not establish any limit to the number of units of credit that a student could obtain through a make-up course credit

program. The proposed regulation should include a maximum number of course credit units for make-up credit programs.

DEPARTMENT RESPONSE: Under the proposed regulations, schools are not required to offer make-up credit programs. If they choose to offer make-up course credit programs, the number of credits a student may make up is best determined by the local school district based upon the extent of the student's deficiencies, the appropriateness of specific make-up programs and available resources.

3. COMMENT: Proposed section 100.5(d)(iv) provides a list of possible make-up credit programs that would not be limited to the examples on the list. The proposed regulation does not provide for sufficient oversight to determine the appropriateness of the make-up course credit program provided in the school setting. The responsibilities of the school-based panel should be expanded to include approval of the make-up credit program as well as the approval of a student's participation in a make-up credit program. This expansion of duties would ensure the equivalent and rigorous nature of the make-up instruction.

DEPARTMENT RESPONSE: The school-based panel will have the authority to permit or deny student participation in a make-up credit program. As part of the decision making process, the panel needs to consider the student's deficiencies and the suitability of an aligned, make-up credit program. In other words, authority to permit or deny can be based on the appropriateness of the make-up program when making the determination to permit a student's participation in it. Additionally, under section 100.5(d)(8)(ii)(3), the make-up program has to be provided under the direction and/or supervision of a teacher who is certified and knowledgeable in the subject matter in which the student has demonstrated deficiencies. Accordingly, the teacher has some specific authority in determining whether the actual make-up program meets the

regulatory criteria, and there is a shared responsibility at the local district level between the school-based panel and the teacher in determining the student needs and the availability of an appropriately aligned make-up credit program.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 308, 309 and 3204 of the Education Law.

Paragraph (8) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is added, effective May 12, 2010, as follows:

(8) Making Up Incomplete or Failed Course Credit. Commencing July 1, 2010 and thereafter, a school district, registered nonpublic school, or charter school may provide a student, who had the opportunity to complete a unit of study in a given high school subject but who failed to demonstrate mastery of the learning outcomes for such subject, with an opportunity to make up a unit of credit for such subject toward either a Regents or local diploma, pursuant to the following:

(i) To receive credit, the student shall successfully complete a make-up credit program and demonstrate mastery of the learning outcomes for the subject, including passing the Regents examination in the subject or other assessment required for graduation, if applicable.

(ii) The make-up credit program shall:

(1) be aligned with the applicable New York State learning standards for such subject;

(2) satisfactorily address the student's course completion deficiencies and individual needs; and

(3) ensure that the student receives equivalent, intensive instruction in the subject matter area provided, as applicable, under the direction and/or supervision of:

(a) a school district teacher who is certified in the subject matter area; or

(b) a teacher from a board of cooperative educational services (BOCES) that contracts with the school district to provide instruction in the subject matter area pursuant to Education Law §1950, and who is certified in such area; or

(c) a teacher of the subject matter area in the registered nonpublic school or charter school.

(iii) In the case of a school district or registered nonpublic school, the student's participation in the make-up credit program shall be approved by a school-based panel consisting of, at a minimum, the principal, a teacher in the subject area for which the student must make up credit, and a guidance director or other administrator.

(iv) For purposes of this paragraph, a make-up credit program may include, but is not limited to:

(a) repeating an entire course;

(b) taking the course again as part of a summer school program;

(c) receiving intensive instruction in the deficiency areas of the course; or

(d) digital learning (online study) that:

(1) is comparable in scope and quality to regular classroom instruction;

(2) provides for documentation of satisfactory student achievement; and

(3) includes regular and substantive interaction between the student and the teacher providing direction and/or supervision pursuant to clause (3) of subparagraph

(ii) of this paragraph.