




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

TO: P-12 Education Committee

FROM: Ken Wagner 

SUBJECT: Proposed Amendment of Section 135.4 of the Regulations of the Commissioner of Education, relating to clarification of the Duration of Competition rule.

DATE: October 10, 2014

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents amend section 135.4 of the Regulations of the Commissioner of Education to clarify when a student's eligibility for senior high school athletic competition may be extended due to an illness or accident, as set forth in Commissioner's Regulation section 135.4?

Reason(s) for Consideration

The New York State Public High School Athletic Association has expressed a need for a consistent interpretation of the Duration of Competition rule as set forth in Commissioner's Regulation section 135.4. The proposed amendment will clarify that a student's eligibility for senior high school athletic competition may be extended due to an illness or accident.

Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for discussion and to the Full Board for adoption as an emergency action at the October 2014 Board of Regents meeting. A copy of the proposed rule and a Statement of the

Facts and Circumstances Which Necessitate Emergency Action are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on November 5, 2014.

Background Information

Commissioner's Regulation section 135.4(c)(7)(ii)(b)(1), establishes the parameters for participation in senior high school interschool athletic competition. The duration of competition rule limits the participation of pupils in high school athletic competition to four consecutive seasons commencing with the pupil's entry into the ninth grade and prior to graduation. A request for an extension of duration of competition for a pupil's failure to enter competition during one or more seasons may be granted, only if sufficient evidence demonstrates that the pupil's failure to enter competition during one or more seasons was directly caused by illness, accident, or similar circumstances beyond his or her control.

Department guidance indicates that the existing language providing for an extension upon evidence that the student's participation was impacted by "similar circumstances beyond the control of the student" is limited to circumstances related to such illness or accident. However, confusion continues to exist among school districts, students and parents. This regulatory amendment is necessary to provide clarity to the field regarding the circumstances under which a duration of competition extension may be granted. The proposed amendment provides that an extension may be granted if sufficient evidence is presented to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness or accident. Such clarification is intended to ensure safe and equitable competition.

Recommendation

Staff recommends that the Regents take the following action:

VOTED: That subclause (1) of clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education be amended as submitted, effective October 21, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately adopt the proposed amendment to clarify when a student's eligibility for senior high school athletic competition may be extended because of illness or accident, so that school districts may determine the eligibility of affected students and allow for participation of eligible students in senior high school athletic competition during the Fall season of the 2014-2015 school year.

Timetable for Implementation

If adopted at the October Regents meeting, the emergency rule will take effect on October 21, 2014 for a ninety day period. It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the January 12-13, 2015 Regents meeting, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act. If adopted at the January meeting, the permanent rule will take effect on January 28, 2015.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 803 and 3204 of the Education Law.

Subclause (1) of clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective October 21, 2014, as follows:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause, or except as authorized by a waiver granted under clause (d) of this subparagraph to a student with a disability. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) or clause (d) of this subparagraph, or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances.

(i) If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness[,] or accident [, or similar circumstances beyond the control of the student], such pupil's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must include documentation showing that as a direct result of the illness[,] or accident [or other circumstance beyond the control of the student], the pupil will be required to attend school for one or more additional semesters in order to graduate.

(ii) . . .

8 NYCRR §135.4

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to clarify when a student's eligibility for senior high school athletic competition may be extended because of illness or accident, as set forth in Commissioner's Regulations §135.4(c)(7)(ii)(b)(1)(i). The proposed amendment provides that an extension may be granted for a student's illness or accident.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the January 12-13, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the January meeting, would be January 28, 2015, the date a Notice of Adoption would be published in the State Register. However, schools and affected students need to know now the criteria for granting an extension for illness or accident so that eligible students may participate in senior high school athletic competition during the Fall season of the 2014-2015 school year.

Emergency action is therefore necessary for the preservation of the general welfare to immediately adopt the proposed amendment to clarify when a student's eligibility for senior high school athletic competition may be extended because of illness or accident, so that school districts may determine the eligibility of affected students and

allow for participation of eligible students in senior high school athletic competition during the Fall season of the 2014-2015 school year.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the January 12-13, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.