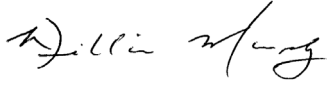





**TO:** Higher Education Committee

**FROM:** William P. Murphy 

**SUBJECT:** Proposed Amendment of section 145-2.1 of the Regulations of the Commissioner of Education Relating to the Eligibility Criteria for New York State Financial Aid

**DATE:** February 7, 2024

**AUTHORIZATION(S):** 

### **SUMMARY**

#### **Issue for Discussion**

Should the Board of Regents amend section 145-2.1 of the Regulations of the Commissioner of Education relating to the eligibility criteria for New York State financial aid?

#### **Reason for Consideration**

Review of Policy.

#### **Proposed Handling**

The proposed amendment is presented to the Higher Education Committee for discussion at the February 2024 Regents meeting. A copy of the proposed rule (Attachment A) is attached.

#### **Procedural History**

A Notice of Proposed Rule Making will be published in the State Register on February 28, 2024, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

#### **Background Information**

Section 661 of the Education Law establishes the eligibility requirements and conditions for all general awards, academic performance awards and student loans<sup>1</sup> including but not limited to, the Tuition Assistance Program (TAP) and contains key

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<sup>1</sup> Other than loans made pursuant to Part V of Article 14 of the Education Law.

provisions governing their administration by the Higher Education Services Corporation (HESC). This section requires that the Commissioner define certain terms. These definitions, in turn, allow the president of HESC to determine a student's eligibility for student aid and loan programs, including full-time study or attendance. Section 145-2.1 of the Commissioner's regulations defines "full-time study" as enrollment in credit-bearing courses applicable to the student's program of study for at least 12 semester hours for a semester<sup>2</sup> or eight semester hours a quarter. This section also provides, in part, that when determining full-time or part-time status, credit-bearing courses must be applicable to the student's program of study as a general education requirement, major requirement, or specified or free elective.

Higher education stakeholders report that the Commissioner's regulations regarding student loan and award eligibility, including tuition assistance program (TAP) eligibility, have resulted in the unanticipated loss of financial aid eligibility for high-achieving students under certain circumstances, typically due to credits earned for college during high school, transfer credits, or extra credits received while a student pursued additional majors.

At its December 2017 meeting, the Board of Regents adopted regulatory amendments to provide greater flexibility to students who have difficulty meeting full-time status in their program of study during their second-to-last semester. These amendments allow a student to meet the full-time study requirement in their second to last semester of eligibility if the student takes at least 6 semester hours needed to meet their graduation requirements and the student enrolls in at least 12 semester hours or its equivalent.

Despite this flexibility, stakeholders from the SED Workgroup on NYS Aid recently described an increase in the number of high-achieving students facing the unanticipated loss of financial aid eligibility under the following circumstances:

1. Students enter an institution of higher education (IHE) with college credits earned while in high school, through participation in programs such as the New York State Pathways in Technology (NYS P-TECH) program or the New York State Smart Scholars Early College High School Program (SS-ECHS), that fulfill all general education requirements and free electives, so the only way they can meet the Commissioner's regulatory requirements on full-time attendance in their program of study is to obtain all 12 credits in their primary major. However, such enrollment is often inadvisable, prohibitive, or inconsistent with the student's academic or career plans, as supported by their college advisor.
2. Students whose programs of study are subject to specific sequencing (e.g., health programs) and are unable to proceed due to requirements of the sequencing.
3. Students who are otherwise unable to register for a required course for reasons beyond the student's control (e.g., course is not being offered during that term or the number of available classes is low and therefore students are locked out of the class).

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<sup>2</sup> A semester is defined as a period of at least 15 weeks or 100 calendar days, inclusive of examination periods.

Without an opportunity to make case-by-case exceptions, the Commissioner's definition of full-time study has increasingly resulted in challenging financial aid eligibility scenarios for high-achieving, low-income students, in the circumstances listed above. In addition, some stakeholders believe students may increasingly face course sequencing requirement obstacles as some institutions may have to offer certain courses more infrequently, due to budgetary concerns or program closures. This amendment will give stakeholders greater flexibility by having advisors work closely with students and develop a detailed path toward degree completion while maintaining students' full-time study status toward the approved program of study. These students are, at times, unable to meet the definition of full-time study and have, thus, been ineligible to receive state financial aid for a semester or more.

### **Proposed Amendment**

To address this obstacle, the Department recommends amending section 145-2.1(a)(1) of the Commissioner's regulations to provide that students may apply for a waiver to allow them to take courses outside of their program of study requirements to meet the full-time status requirement for state financial aid, subject to institutional approval, provided they enroll in at least 12 credits for that term.

To be granted a waiver by their institution, a student must submit an application that demonstrates that their inability to meet such requirements is due to circumstances beyond the student's control, such as the student having earned advanced placement or other college credits in high school, having transferred into the institution, encountering obstacles posed by course sequence requirements, or changing majors. The application must also include an individual academic graduation plan, developed with the student's advisor, that prescribes how the student will fulfill degree coursework if granted the waiver. This plan must document a detailed path toward degree completion while maintaining the minimum number of credit hours required for full-time study status toward the approved program of study. Where an institution grants a waiver application, the institution must certify, and maintain documentation, that such waiver is in the best interest of the student.

Institutions must develop criteria and procedures to consider and grant such waivers and make this information available to students and the public in writing or on their websites. The Commissioner may review such criteria and procedures and require an institution to revise any that are not aligned with the proposed amendment.

### **Related Regents Items**

December 2017: [Proposed Amendment to Section 145-2.1 of the Regulations of the Commissioner of Education Relating to the Eligibility Criteria for the Tuition Assistance Program](#)

(<https://www.regents.nysed.gov/sites/regents/files/1217brca6.pdf>)

February 2012: [Proposed Amendments to the Regulations of the Commissioner of Education Relating to the Eligibility Criteria for the Tuition Assistance Program](#)

(<https://www.regents.nysed.gov/sites/regents/files/documents/meetings/2012Meetings/February2012/212hea1.pdf>)

## **Recommendation**

Not applicable.

## **Timetable for Implementation**

It is anticipated that the proposed amendment will be presented for permanent adoption at the June 2024 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the June meeting, the proposed amendment will become effective on June 26, 2024.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207 and 661 of the Education Law.

Subparagraph (iv) of paragraph (1) of subdivision (a) of section 145-2.1 of the Regulations of the Commissioner of Education is amended and a new subparagraph (v) is added to read as follows:

(iv) Except as otherwise provided in subdivision (e) of this section and subparagraph (v) of this paragraph, when determining full-time or part-time status, credit-bearing courses must be applicable to the student's program of study as a general education requirement, major requirement, or specified or free elective. Credit-bearing courses not applicable to the student's program of study cannot be included as part of the minimum full-time or part-time study requirement.

(v) (a) An institution may grant a waiver of the requirements of subparagraph (iv) of this paragraph for purposes of determining full-time status, where the institution certifies, and maintains documentation, that such waiver is in the best interest of the student, and where the student submits an application for such waiver that:

(1) demonstrates that their inability to meet such requirements is due to circumstances beyond the student's control, such as the student having earned advanced placement or other college credits earned in high school, having transferred into the institution, encountering obstacles posed by course sequence requirements, or changing majors;

(2) includes an individual academic graduation plan, developed with the student's advisor at such institution, that prescribes how the student will fulfill degree coursework if granted the waiver. Such plan must document a detailed path toward degree

completion while maintaining the minimum number of credit hours required for full-time study status toward the approved program of study.

(b) Institutions shall develop criteria and procedures to consider and grant waivers, consistent with the provisions of this subparagraph. Prior approval by the commissioner of such criteria and procedures shall not be required; however, the institution shall make such criteria and procedures available to students and the public, either in writing or on its website. The commissioner may review such criteria and procedures and require an institution to revise those found to be not aligned with the provisions of this subparagraph.