



TO: The Honorable the Members of the Board of Regents

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

SUBJECT: Proposed Amendment to Section 3.12 and Subpart 4-1 of the Rules of the Board of Regents Relating to Institutional Accreditation for Title IV Purposes

DATE: June 10, 2013

AUTHORIZATION(S):

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SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend Section 3.12 and 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 amendment is before the full Board for adoption as a permanent rule in June 2013. A Notice of Proposed Rule Making was published in the State Register on February 13, 2013 and a Notice of Revised Rule Making was published in the State Register on April 17, 2013. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

At its January 2012 meeting, the Board of Regents affirmed that it would seek to continue its accreditation function. Institutional accreditation is distinct from Regents authority to authorize colleges and register programs of study. Institutional accreditation assess a college or university's compliance with quality standards

defined by the U.S. Department of Education (USDE) to ensure the sound investment of financial aid funds. The process requires a thorough self-examination by the institution and an on-site peer review.

All accrediting agencies must be recognized by USDE and must re-apply periodically to renew their recognition. In 2012, the Board of Regents and the Commissioner were required to reapply to USDE to continue the agency's accreditation function.

USDE Review of Regents Accreditation Process

On December 12, 2012, a delegation representing the Board of Regents, including Regent Bendit and Commissioner King, appeared before the National Advisory Committee on Institutional Quality and Integrity (NACIQI) in Washington, D.C. NACIQI advises the U.S. Department of Education on whether a given agency should be recognized as an accrediting agency. In its final analysis of the Department's application to continue as an accrediting agency, USDE identified items on which it could not confirm technical compliance. Most of the findings can be addressed by incorporating specific federal references in Regents Rules and policies. The findings cluster in the following areas: appeals procedure; conflict-of-interest and recusal training; processes for handling substantive changes and distance education; notifications of actions demonstrating compliance with accreditation standards; and demonstration of the Regents role in the decision-making process.

Following discussions with the Board's delegation, NACIQI made the following recommendation to the Secretary:

...move that the NACIQI recommend that...recognition [of the Board of Regents and Commissioner of Education] be continued to permit the agency an opportunity to within a 12 month period bring itself into compliance with the Criteria cited in the staff report and that it submit for review within 30 days thereafter, a compliance report demonstrating compliance with the cited criteria and their effective application. Such continuation shall be effective until the Department reaches a final decision.

This has become the standard recommendation for an agency that is not in complete compliance with the Secretary's standards. In a letter dated February 11, 2013, USDE accepted NACIQI's recommendation as stated. Subsequent guidance from USDE staff clarified that the follow-up compliance report will be due March 11, 2014. That report will be considered at the fall 2014 NACIQI meeting. At that point, the Board's accrediting authority may be extended for up to an additional three years.

Updates to Regents Rules

The appended changes to Regents Rules address many of the USDE’ s findings. These changes are summarized in the table that follows. Updates to current practices will be made to the Handbook of Institutional Accreditation; these policy updates will address the remainder of USDE’ s findings. All of the changes proposed herein have been available for public comment since February 2013. We have not received any comments on this proposed rule change.

Summary of Proposed Changes to Regents Rules	Federal Reference (34 CFR Part 602)
The amendment defines “representative of the public.”	602.3
The amendment establishes the institutional accreditation appeals board—including its composition (academic, administrative and public members) and processes—and removes/updates references to the previously defined appeals process.	602-.15(a)(2) 602-15(a)(3) 602-15(a)(5) 602.25(f)
The amendment further specifies the composition of the Regents advisory council on institutional accreditation to include an academic, administrative and public member, as required by the Federal regulations.	602.15(a)(3) 602.15(a)(5)
The amendment clarifies the basis for the Regents decision-making process and the Board’s responsibilities when notifying institutions of adverse accreditation actions. It also clarifies that the Regents may seek the review of new financial information only once, and that any determination by the Regents on that new information does not provide a basis for appeal	602.17(e) 602.26(b) 602.28(h)(2)
The amendment defines the maximum term of extension (12 months) for corrective action periods.	602.20(b)
The amendment requires Regents prior approval of a substantive change in an institution’s scope of accreditation, as defined in Regents Rules. Appeals of decisions to deny a change in scope would be heard by the institutional accreditation appeals board. Related language on substantive changes is amended to more explicitly reflect the language of Federal standards. This includes references to changes in existing offerings, method of delivery, movement to a new degree level, and additional locations. It also clarifies when a substantive change would become effective and that a substantive change is not retroactive	602.22(a)(1) 602.22(a)(2)
Existing provisions for teach-out plans and agreements are amended to more explicitly reflect the language of Federal standards and guidance. This includes specific citations for the equitable treatment of students and the identification and notification of any additional charges students may incur.	602.24(c)

Summary of Proposed Changes to Regents Rules	Federal Reference (34 CFR Part 602)
Existing provisions addressing transfer-of-credit requirements are amended to more explicitly reflect the language of Federal standards. This includes provisions for the public disclosure of transfer of credit processes and criteria.	602.24(e)
Existing provisions addressing the consideration of new financial information are amended to more explicitly reflect the language of Federal standards. This includes a provision that the review of such information may be made only once and that any determination on the new financial information does not provide a basis for appeal.	602.25(h)
The amendment adds detail to Regents processes for responding to adverse actions taken by other recognized state or accrediting agencies.	602.26(d) 602.28(b) 602.28(c)

A Notice of Proposed Rule Making was published in the State Register on February 13, 2013 for a 45-day public comment period. Thereafter, section 4-1.5(d)(8) of the Rules of the Board of Regents was amended to clarify the procedures for a denial of a change in scope of accreditation. The additional change specifies that the Board of Regents makes the final determination on a change in scope of accreditation and that appeals go to the institutional accreditation appeals board rather than the Commissioner. This ensures that there is an independent review, in keeping with federal requirements. A Notice of Revised Rule Making was published in the State Register on April 17, 2013. We received no comments on the proposed amendment.

The proposed changes will help ensure technical alignment with federal requirements for institutional accrediting agencies. In keeping with those requirements, the Department will continue to review its accreditation standards and processes.

Recommendation

VOTED: That subdivisions (d) and (e) of section 3.12 of the Rules of the Board of Regents and sections 4-1.3, 4-1.4 and 4-1.5 of the Rules of the Board of Regents be amended, as submitted, effective July 3, 2013.

Timetable

If adopted at the June Regents meeting, the proposed amendment will become effective on July 3, 2013.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 206, 207, 210, 214, 215 and 305 of the Education Law.

1. Paragraph (2) of subdivision (d) of section 3.12 of the Rules of the Board of Regents shall be amended, effective July 3, 2013, to read as follows:

(2) The council shall consist of a minimum of nine voting members and one nonvoting member, ex officio. The commissioner shall appoint the voting members of the council and shall designate one of the members to be its chair. At least seven voting members shall be educators practicing in New York State [and at least two shall be representatives of the public]. Of this number, at least two shall have experience as senior administrators in degree-granting institutions; at least two shall have experience as full-time faculty members in degree-granting institutions and at least one shall be a full-time faculty member at the time of appointment. At least two other voting members or one-seventh of the total voting members of the council, whichever is greater, shall be representatives of the public. Representatives of the public shall mean a person who is not an employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that is accredited by the commissioner and the Board of Regents or has applied for accreditation; a member of any trade association or membership organization related to, affiliated with, or associated with the commissioner or the Board of Regents; or a spouse, parent, child, or sibling of an individual identified above. The nonvoting member shall be the Deputy Commissioner for Higher Education of the State Education Department, ex officio. Three of the initial voting members shall be appointed for terms not to exceed one year, three shall be appointed to terms of two years and three shall be appointed for three-year terms. Thereafter, all voting members shall be appointed for three-year terms.

2. A new subdivision (e) shall be added to section 3.12 of the Rules of the Board of Regents, effective July 3, 2013, to read as follows:

(e) Institutional accreditation appeals board.

(1) The purpose of the institutional accreditation appeals board is to review and decide appeals from an institution(s) of an adverse accreditation action(s) or probationary accreditation decision(s) of the Board of Regents pursuant the procedures outlined in section 4-1.5 of this Title.

(2) The Commissioner shall appoint a minimum of five voting members to the appeals board and shall designate one member to be its chair. Of this number, at least one shall have experience as a senior administrator in a degree-granting institution; at least two shall have experience as a full-time faculty member in a degree-granting institution and at least one shall be a full-time faculty member at the time of appointment. At least one other voting member or one-seventh of the total voting members of the board, whichever is greater, shall be a representative(s) of the public. Representatives of the public shall mean a person who is not an employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that is accredited by the commissioner and the Board of Regents or has applied for accreditation; a member of any trade association or membership organization related to, affiliated with, or associated with the commissioner or the Board of Regents; or a spouse, parent, child, or sibling of an individual identified above. The commissioner, members of the Board of Regents and members of the Regents advisory council on institutional accreditation may not serve as members of the institutional accreditation appeals board. Three of the initial voting members shall be appointed for terms not to exceed one year and two shall be appointed to terms of two years. Thereafter, all voting members shall be appointed for three-year terms. Members of the

institutional accreditation appeals board shall be subject to the conflict of interest policies set forth in section 74 of the Public Officers Law.

3. Paragraph (2) of subdivision (d) of section 4-1.3 of the Rules of the Board of Regents shall be amended, effective July 3, 2013, to read as follows:

(2) The corrective action period may be extended for a maximum period of 12 months at the discretion of the commissioner and the Board of Regents upon good cause shown, including but not limited to, an adequate showing by the institution that it has a reasonable explanation for not meeting the standard during the corrective action period and that it has a plan acceptable to the department to meet the standard within a reasonable time period.

4. Paragraph (1) of subdivision (f) of section 4-1.3 of the Rules of the Board of Regents shall be amended, effective July 3, 2013, to read as follows:

(1) [Unless prior approval by the department is otherwise required by this Title, the] An institution shall notify and obtain the [department] Commissioner and the Board of Regents' approval of any substantive change, as defined in section 4-1.5(d) of this Subpart[, in its operation within 72 hours after such change] before the department will include the substantive change in the scope of accreditation it previously granted to the institution.

5. Paragraph (3) of subdivision (f) of section 4-1.3 of the Rules of the Board of Regents is repealed, effective July 3, 2013.

6. Subdivision (g) of section 4-1.3 of the Rules of the Board of Regents is repealed and a new subdivision (g) shall be added, effective July 3, 2013, to read as follows:

(g) Adverse action by a State agency or a nationally recognized accrediting agency. Except as otherwise provided in subdivision (h) of this section, the

commissioner and the Board of Regents shall not grant initial or a renewal of accreditation to an institution, or a program offered by an institution, if the Commissioner and the Board of Regents knows, or has reasonable cause to know, that the institution is the subject of:

(1) a pending or final action against the institution or a program at such institution by a State agency to suspend, revoke, withdraw, or terminate the institution's legal authority to provide postsecondary education in the State;

(2) a decision by a nationally recognized accrediting agency to deny accreditation or preaccreditation;

(3) a pending or final action brought by a nationally recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution's accreditation or preaccreditation; or

(4) probation or an equivalent status imposed by a recognized agency.

7. A new subdivision (h) shall be added to section 4-1.3 of the Rules of the Board of Regents, effective July 3, 2013, to read as follows:

(h) If the Commissioner and the Board of Regents learn that an accredited institution, or an institution that offers a program it accredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the commissioner and the Board of Regents shall promptly review its accreditation through the compliance review procedure in section 4-1.5 of this Subpart to determine if it should also take adverse action or place the institution on probation. The commissioner and the Board of Regents shall only grant accreditation or a renewal of accreditation to an institution described in subdivision (g) of this section if the institution satisfactorily meets the standards of the compliance review procedure described in section 4-1.5 of this

Subpart. If the commissioner and the Board of Regents grant accreditation or a renewal of accreditation after a compliance review, the commissioner and the Board of Regents shall provide to the U.S. Secretary of Education, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the grant of accreditation or renewal of accreditation.

8. Clause (g) 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 July 3, 2013, to read as follows:

(g) Transfer of credit. The process and criteria for accepting transfer of credit from other institutions shall be [published] publicly disclosed and include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education and a list of the institutions with which the institution has established articulation agreements.

9. Paragraph (2) of subdivision (l) of section 4-1.4 of the Rules of the Board of Regents shall be renumbered to paragraph (3) of subdivision (l) of section 4-1.4 of the Rules of the Board of Regents and a new paragraph (2) shall be added to subdivision (l) of section 4-1.4 of the Rules of the Board of Regents, effective July 3, 2013, to read as follows:

(2) An institution's teach-out plan must ensure that it provides for the equitable treatment of students pursuant to criteria established by the Commissioner and the Board of Regents and that the plan specifies additional charges, if any, and provides for notification to the students of any additional charges.

10. Subparagraph (iv) of paragraph (9) of subdivision (a) of section 4-1.5 of the Rules of the Board of Regents is amended, effective July 3, 2013, to read as follows:

(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. 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, 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 commissioner may affirm, reverse, remand or modify the findings and recommendations of the advisory council. Such determination shall constitute a recommendation regarding accreditation action to the Board of Regents.

11. Paragraphs (10) and (11) of subdivision (a) of section 4-1.5 of the Rules of the Board of Regents are amended, effective July 3, 2013, to read as follows:

(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. 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. If the Board of Regents decision 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.

(11) Appeal of a determination of adverse accreditation action or probationary accreditation [through Regents reconsideration] to the institutional accreditation appeals board.

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

(ii) Within five days of the date of a Regents determination of adverse accreditation action or granting probationary accreditation, the institution shall notify the [commissioner] Board of Regents in writing, by first class mail, express delivery, or personal service, of its intention to appeal, with an affidavit proving the service of a copy thereof upon the deputy commissioner by first class mail, express delivery, or personal service.

(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 with the [commissioner] 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 [commissioner] Board of Regents shall transmit the appeal papers to [a standing subcommittee on accreditation appeals of the committee on higher education

of the Board of Regents] the institutional accreditation appeals board within 20 days of receipt of the notice of appeal.

(v) 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.

(a) 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 of the panel chair.

(3) 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) Conduct of hearing. Each party shall have the right to present evidence and cross-examine witnesses.

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

[(v)] (vi) The [deputy commissioner] Board of Regents may file a written response with the [subcommittee] 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.

[(vi)] (vii) The [subcommittee] 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. [The subcommittee 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, the 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]. Upon such record, the [subcommittee] institutional accreditation appeals board [may recommend to the Board of Regents that it] shall affirm, reverse, remand or [modify its] 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 decisions or instructions.

[(vii) At a regularly scheduled public meeting, the Board of Regents shall consider the subcommittee's recommendation and shall act to affirm, reverse, or modify its determination of adverse accreditation action or granting probationary accreditation.]

(viii) While a properly filed appeal is pending, the Regents determination of adverse accreditation action or granting probationary accreditation shall be held in abeyance until the [Board of Regents reconsiders] institutional accreditation appeals board makes a determination on the matter and acts to affirm, amend, reverse, or [modify] remand such determination.

12. Paragraphs (9) and (10) of subdivision (b) of section 4-1.5 of the Rules of the Board of Regents shall be amended, effective May 8, 2012, to read as follows:

(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.

(10) An institution may appeal a Regents determination of adverse accreditation action or granting probationary accreditation [through a request for the Regents to reconsider its determination] to the institutional accreditation appeals board in accordance with the requirements and procedures of paragraph (a)(11) of this section. The institution shall have the right to be represented by counsel during the appeal.

13. Paragraphs (9) and (10) of subdivision (c) of section 4-1.5 of the Rules of the Board of Regents shall be amended, effective July 3, 2013, to read as follows:.

(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.

(10) An institution may appeal a Regents determination of adverse accreditation action or granting probationary accreditation [through a request for the Regents to reconsider its determination] to the institutional accreditation appeals board in accordance with the requirements and procedures of paragraph (a)(11) of this section. The institution shall have the right to be represented by counsel during the appeal.

14. Subdivision (d) of section 4-1.5 of the Rules of the Board of Regents shall be amended, effective July 3, 2013, to read as follows:

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

(1) For purposes of this subdivision, substantive change shall mean:

(i) any change in the established mission or objectives of the institution;

(ii) any change in the legal status, form of control, or ownership of the institution;

(iii) the addition of courses or programs that represent a significant departure [in either content or method of delivery,] from the existing offerings of educational programs, or method of delivery, from those that were offered when the department last evaluated the institution for accreditation;

(iv) the addition of courses or programs of study at a degree or credential level [above] different from that which is included in the institution's current accreditation;

(v) a change from clock hours to credit hours;

(vi) a substantial increase in the number of clock hours or credit hours awarded for successful completion of a program;

(vii) the establishment of an additional location or branch campus, as such terms are defined in section 4-1.2 of this Subpart;

(viii) if the accreditation granted to the institution enables the institution to seek eligibility to participate in title IV, HEA programs, the [entrance] entering into a contractual agreement with an entity not certified to participate in title IV, HEA programs, that offers more than 25 percent of one or more of the institution's program of study;

(ix) . . .

(x) . . .

(xi)

(2) . . .

(3) The [department] commissioner and the Board of Regents shall have the authority to make the determination concerning approval or disapproval of the institution's application for a change in the scope of accreditation, based on a substantive change and shall provide the institution with written notification indicating the approval and inclusion of the substantive change in the institution's grant of accreditation. The effective date of any substantive change shall be the date of the commissioner and Board of Regents determination of an approved substantive change, which shall not be retroactive.

(4) . . .

(5) . . .

(6) . . .

(7) . .

(8) Procedures on denial of change in scope of accreditation. Decisions 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 to deny a change in the scope of accreditation, the institution shall notify the [commissioner] 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 to deny a change in the scope of accreditation, the institution shall submit its appeal to the [commissioner] 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 [deputy commissioner] Board of Regents shall submit to the [commissioner] institutional accreditation appeals board the documentation supporting the [deputy commissioner's] 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 [deputy commissioner's] Board of Regents' decision was based.

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

