



TO: The Honorable Members of the Board of Regents

FROM: William P. Murphy *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: May 30, 2024

AUTHORIZATION(S): *Dom N. J. Bellotti*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the 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?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the June 2024 Regents meeting. A copy of the proposed rule (Attachment A) is attached.

Procedural History

The proposed amendment was presented to the Higher Education Committee for discussion at the February 2024 meeting of the Board of Regents. A Notice of Proposed Rule Making was published in the State Register on February 28, 2024, for a 60-day public comment period. Following publication in the State Register, the Department received one comment on the proposed amendment. An Assessment of Public Comment (Attachment B) is attached. No changes to the proposed amendment are recommended at this time. If adopted at the June meeting, a Notice of Adoption will be published in the State Register on June 26, 2024. 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 loans¹ including but not limited to, the Tuition Assistance Program (TAP) which contains key 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 semester² 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 apply 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.

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

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

3. Students who are otherwise unable to register for a required course for reasons beyond the student's control (e.g., the 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).

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

February 2024: [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](https://www.regents.nysed.gov/sites/regents/files/224hed1revised.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/224hed1revised.pdf>)

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)

(<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)

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Recommendation

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

VOTED: That section 145-2.1 of the Regulations of the Commissioner of Education be amended, as submitted, effective June 26, 2024.

Timetable for Implementation

If adopted at the June 2024 meeting, the proposed amendment will become effective as a permanent rule 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 apply 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.

ASSESSMENT OF PUBLIC COMMENT

Following the publication of a Notice of Proposed Rulemaking in the State Register on February 28, 2024, the State Education Department (Department) received the following public comment on the proposed rule:

1. COMMENT: An institution of higher education (IHE) stated that they support reducing barriers for high-achieving, low-income students. The IHE notes that they appreciate the current proposal which allows students to apply for a waiver to take courses outside of their degree program in order to meet the definition of full-time study and preserve their state financial aid. However, the IHE notes that the process to secure a waiver presents obstacles and details the various steps a student must take in order to maintain their needed NYS funds. It explains that the waiver process is challenging for the student and also increases the burden on academic advisors. The IHE suggests streamlining the waiver process to ensure that students receive the full benefit of State funds, opining that this would greatly reduce the burden on students and financial aid offices with already limited resources.

RESPONSE: The Department has considered this comment. The proposed amendment does not require that a student's waiver application include an extensive justification, nor does it require academic advisors to perform duties beyond their scope of expertise. Institutions shall develop the criteria and procedures to consider and grant waivers, consistent with the provisions of the amended regulation. Such criteria and procedures must be made available to students and the public and must include 1) documentation of the reason(s) for the waiver application; and 2) a graduation plan prescribing full-time study status, including courses outside the approved program of study if needed. If granted, the institution must affirm that the waiver is in the student's

best interest. The Department intends to provide further guidance to address some of the issues raised by the commenter. Therefore, no changes to the proposed rule are necessary.