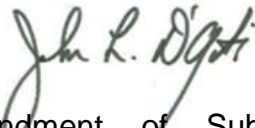






THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents

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

**SUBJECT:** Proposed Amendment of Subpart 152-1 of the Regulations of the Commissioner of Education Relating to Higher Education Opportunity Programs

**DATE:** July 6, 2017

**AUTHORIZATION(S):**  

### SUMMARY

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt, as an emergency action, the proposed amendment to Subpart 152-1 of the Regulations of the Commissioner of Education relating to higher education opportunity programs?

#### **Reason for Consideration**

Required by State statute and review of policy (L. 2016, Ch. 494).

#### **Proposed Handling**

The proposed amendment will be presented to the full Board for adoption as an emergency rule at the July 2017 meeting of the Board of Regents. A copy of the proposed rule is included as Attachment A.

#### **Procedural History**

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 28, 2017. A statement of facts and circumstances justifying the emergency action is included as Attachment B.

## **Background Information**

The Arthur O. Eve Higher Education Opportunity Program (HEOP) grant provides a broad range of services to New York State residents who, because of academic and economic circumstances, do not have access to institutions of higher education. HEOP funding includes services such as structured support services, summer programs, counseling, tutoring, remedial/developmental coursework, and financial assistance.

In November 2016, Chapter 494 of the Laws of 2016 was signed into law by the Governor. This bill expands the types of expense categories that colleges and universities participating in HEOP may spend program funds on to include:

- student travel for academic activities or conferences;
- expenses related to helping students apply for and prepare for graduate or professional school; and
- the hiring of students participating in an Arthur O. Eve opportunity for higher education work-study program.

This statute becomes effective on July 1, 2017.

## **Proposed Regulation**

The proposed amendment implements Chapter 494 of the Laws of 2016 by clarifying for institutions what types of expenses fall within the newly enumerated categories eligible for HEOP funding. In addition, the Department has made technical amendments and updates to the regulatory language to conform with current practice.

## **Summary of Proposed Amendments to the Regulations:**

Section 152-1.1 (Applications):

- Amendments to this section update the language used to describe applications for funding and make it clear that summer programs must begin after July 1 of each year.

Section 152-1.2 (Institutional plan and proposal):

- The amendments to this section clarify for institutions what must be included in their institutional plans and proposals, emphasizing that the program is one with a goal of increasing access to higher education.

Section 152-1.3 (Date of submission):

- The amendments to this section update the language and clarify that, for future application cycles, institutional plans and proposals must be submitted by the date specified in the announcement of funding.

Section 152-1.4 (Final report):

- Amendments to this section update the language and change the title from “Final report” to “Reporting” to clarify that there are interim and final reports as well as a status report for institutions on probation.

Section 152-1.5 (Financial assistance):

- Amendments to this section clarify what moneys made available to institutions through contracts under Education Law §6451 may be used for and implement Chapter 494 of the Laws of 2016 by clarifying that HEOP funds can be used for student travel for academic activities and conferences related to the students’ course of study, preparation materials, guides, classes and fees for graduate and professional exams, travel to and from the test centers, and work-study programs for HEOP students.

Section 152-1.6 (Supplemental financial assistance):

- Amendments to Section 152-1.5 clarify what supplemental financial assistance funds may be used for and provide definitions of “resident” students and “commuter” students for room and board expense purposes. Other amendments in this section make it clear that funds can be used for purposes such as study abroad, textbooks and instructional materials needed in the course of study, meals for commuter students, and an increase in personal expenses from \$250 to \$1,000.

Section 152-1.7 (Student eligibility):

- The amendments to this section clarify the definitions for an approved high school diploma and general equivalency diploma to be consistent with sections 100.5 and 100.7 of the Commissioner’s Regulations.

Section 152-1.8 (Supervision of funds):

- Technical amendments were made to clarify language.

Section 152-1.9 (Tuition assistance):

- Amendments to this section were made to clarify that the amount of funds that institutions may be reimbursed for tuition charged must be related to the student’s program of study.

**Related Regents Items**

June 2017: <https://www.regents.nysed.gov/common/regents/files/617hea4.pdf>

## **Recommendation**

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

VOTED: That Subpart 152-1 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 11, 2017, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to implement Chapter 494 of the Laws of 2016 and to ensure that the clarifying amendments made to the proposed regulation are effective before the 2017-2018 academic year commences and to ensure that the emergency rule adopted at the June 2017 Regents meeting remains continuously in effect until it can be adopted as a permanent rule.

## **Timetable for Implementation**

If adopted at the July 2017 Regents meeting, the emergency action will take effect as a second emergency rule on September 11, 2017. It is anticipated that the proposed amendment will be presented for permanent adoption at the September 2017 Regents meeting and will take effect as a permanent rule on September 27, 2017.

## **Attachment A**

### AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 210, 215, 305, 6451, 6452 and 6456 of the Education Law and Chapter 494 of the Laws of 2016.

Section 152-1 of the Regulations of the Commissioner of Education shall be amended to read as follows:

#### §152-1.1 Applications.

(a) Applications for aid under the provisions of section 6451 of the Education Law shall be submitted for [the ensuing academic year on forms provided for such purpose by the State Education Department not later than the 15th day of February preceding the commencement of such year, except in appropriate circumstances the Commissioner of Education, or the person designated by him to perform such function, may permit later submission] each funding cycle in a format and timeframe prescribed by the Commissioner.

(b) Each application should include a summer program that occurs on or after July 1 to prepare the student for the academic year.

(c) For the purposes of this section a summer session shall be deemed to occur [at the beginning of the college year] on or after July 1 to prepare the student for the academic year.

#### 152-1.2 Institutional plan and proposal.

An institution [submitting an application for funds] applying for funds shall include in such application information required by section 6451 as well as such information as

the Commissioner of Education, or [the person designated by him, may require, including:] his/her designee may require, including, but not limited to:

(a) [A] a statement of immediate and long range educational objectives, including an explanation of the recruitment and retention efforts for eligible students as defined in section 27-1.1 of this Title.

(b) [A] a description of program contents including [programs of] mandatory counseling and academic and career advisement, tutoring, remedial[,] and/or developmental[, compensatory] courses and other supportive services which must be offered by the institution as part of the program.

(c) [Procedures] procedures for the evaluation of program effectiveness, including recruitment efforts, access to the higher education institution, retention of students, and graduation rates.

(d) [The] a description of the nature and extent of coordination with other [nonpublic and public] institutions in New York State that offer pre-collegiate or collegiate opportunity programs sponsored by the State (e.g., Liberty Partnership program, Science & Technology entry program, College Discovery Program, Search for Education, Elevation and Knowledge, Educational Opportunity Program) to improve access to higher education through recruitment, admission, and transfer of eligible students.

(e) [The] the criteria for student eligibility for [inclusion] recruitment and admission in the institution's educational opportunity [programs] program must be clearly outlined. The criteria established by each institution shall limit access to the program only to students:

(i) whose prior academic achievement indicates a need for counseling and educational support [in order] to complete their degree programs; and

(ii) who are educationally disadvantaged as defined in section 27-1.1 of this Title and would otherwise not be eligible for admission under the college's admission standards, except the institution has made a determination that the student has demonstrated the potential for successful completion of a college-level program.

152-1.3 Date of submission.

(a) [In 1971 and thereafter, the] The institutional plan and proposal for funds under the provisions of section 6451 shall be transmitted to the Commissioner of Education or [to the person designated by him] his/her designee, [on or before the 15th day of February] by the date specified in the announcement of funding.

(b) The date of submission may be modified by the Commissioner of Education or [the person designated by him] his/her designee.

152-1.4 [Final report] Reporting.

Each institution which has entered into a contract pursuant to section 6451 shall submit to the Commissioner of Education, or [to the person designated by him the] his/her designee, [a report] reports in a form and manner prescribed by the Commissioner of Education or his/her designee, including but not limited to:

(a) [An] an analysis of program operation in terms of the stated objectives and the extent to which the objectives were achieved.

(b) [An] an analysis of the progress of students served by the program with a comparison to other students enrolled by the institution.

(c) [An] an itemization of the institution's support of such program during the contract period including the use of outside (Federal, State and local) funds.

(d) [Plans] plans for program change, expansion and development.

(e) [The] the extent and nature of faculty, staff, student and community involvement and participation in program [planning and] development and implementation to improve retention and graduation rates.

#### §152-1.5 Financial Assistance

Pursuant to 6451 of the Education Law, moneys made available to institutions through contracts shall be spent for the following purposes:

(a) special testing, counseling and guidance services in the course of screening potential enrollees;

(b) remedial courses, developmental or compensatory courses and summer classes for such students;

(c) special tutoring, counseling and guidance services for such enrolled students;

(d) any necessary supplemental financial assistance as described section 152-1.6 of this Subpart;

(e) partial reimbursement for tuition for regular academic courses pursuant to criteria promulgated by the commissioner;



(f) student travel for academic activities and conferences related to the student's course of study.

(g) expenses related to helping students apply for and prepare for graduate or professional school; including preparation materials, guides, classes, fees for exams for graduate and professional schools and for professional licensure, and travel to and from test centers.

(h) the hiring of enrolled students participating in an Arthur O. Eve opportunity for higher education work-study program for HEOP students comprised of peer tutoring, peer counseling, peer mentoring and activities related to HEOP and/or the administration of HEOP at the institution.

§152-1.6 Supplemental financial assistance.

An institution may apply for and award supplemental financial assistance to students enrolled in higher education opportunity programs under the provisions of section 6451 of the Education Law. Such funds shall be limited to:

(a) [Room] room and board or a portion thereof for on-campus resident students and off-campus resident students. For purposes of this section,

(1) resident student shall mean a student who does not live at home (with parents or guardians) during the academic year;

(2) on-campus resident student shall mean a student who lives in housing facilities owned and/or maintained by the institution; and

(3) off-campus resident student shall mean a student who does not live in institutionally-provided housing.

(b) Travel to and from the student's home, for both residential and commuter students including study abroad as deemed necessary by the academic course of study. For purposes of this subdivision, a commuter student shall mean a student who is not a resident student (e.g., a student living at home with his or her parents or guardians while attending college).

(c) Textbooks and instructional materials as deemed necessary by the program of study.

(d) [Lunches] Meals for commuter students.

(e) Personal expenses, with a limitation of [\$250] \$1,000 per year.

(f) Medical, vision and dental insurance.

[§152-1.6] §152-1.7 Student eligibility.

A student who is a resident of the State of New York shall be eligible to receive benefits pursuant to the provisions of section 6451 of the Education Law, provided that such student meets the following criteria:

(a) The student is educationally and economically disadvantaged, as defined by the provisions of section 27-1.1 of [the rules of the Board of Regents] this Title; and

(b) The student [is a graduate of] has received an approved high school diploma, or has obtained a New York State high school equivalency diploma (general equivalency diploma) or its equivalent. [The equivalent of the general equivalency diploma is defined as being one of the following:

(1) an armed forces equivalency diploma with a minimum score of 35 on each test section and a minimum composite score of 225; or

(2) a level of knowledge and academic ability equal to the level required by the education opportunity program at the institution to which such student seeks admission.]

(1) An approved high school diploma means:

(a) a New York State high school diploma received pursuant to section 100.5 of this Title; or

(b) a recognized high school diploma issued by another state in the United States.

(2) An approved state high school equivalency diploma is a diploma received pursuant to section 100.7 of this Title.

(c) The student has filed [an application for a basic educational opportunity grant with the appropriate agency of the Federal government] a Free Application for Federal Student Aid (FAFSA) with the United States Department of Education or its successor for the academic year in which benefits pursuant to section 6451 of the Education Law are sought [, provided that such student is eligible to receive such grant]. Each institution which has entered into a contract pursuant to section 6451 of the Education Law shall maintain on file a [photocopy] record of [such] each student's completed grant and FAFSA applications and other documents establishing the student's economic eligibility status for the program [or the student eligibility report or a photocopy thereof], by no later than [45] 30 days from the commencement of the academic term.

[§152-1.7] §152-1.8 Supervision of funds.

Payments of funds may be suspended or terminated by the Commissioner of Education or his/her designee if an institution fails to comply with the provisions of section 6451 of the Education Law or any other applicable law, rule, regulation, or fails to comply with the provisions of a contract entered into pursuant to the provisions of such section.

[§152-1.8] §152-1.9 Tuition assistance.

An institution may apply for and award tuition assistance for students enrolled in higher education opportunity programs under the provisions of section 6451 of the Education Law. [Such funds shall be limited to the costs of developmental, remedial, and compensatory courses; and to reimburse the institutions] Institutions shall not be reimbursed for more than 50 percent of the tuition charged for the [regular] academic program related to the student's program of study.

## **8 NYCRR Subpart 152-1**

### STATEMENT OF FACTS AND CIRCUMSTANCES

#### WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to allow institutions receiving funding through the Higher Education Opportunity Program (HEOP) grant to use such funds for the new expense categories enumerated in Chapter 494 of the Laws of 2016, which becomes effective on July 1, 2017. The new law amends Education §6451 to expand the categories of expenses that colleges and universities may be eligible for under the HEOP program to include: student travel for academic activities or conferences; expenses related to helping students apply for and prepare for graduate or professional school; the hiring of students participating in an Arthur O. Eve opportunity for higher education work-study program. In addition, the Department has made technical amendments and updates to the regulatory language to conform with current practice.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the September 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September meeting, would be September 27, 2017, the date a Notice of Adoption would be published in the State Register. Since the emergency rule adopted at the June 2017 Regents meeting will expire on September 10, 2017, a second emergency adoption is necessary to ensure that the emergency rule remains in effect until it can be adopted as a permanent rule to

implement Chapter 494 of the Laws of 2016 and to ensure that the clarifying amendments made to the regulation are effective before the 2017-2018 academic year commences.