



TO: Higher Education Committee

FROM: William P. Murphy *William Murphy*

SUBJECT: Proposed Amendment to Section 50.1(l) of the Regulations of the Commissioner of Education Relating to the Definition of "University"

DATE: October 7, 2021

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SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendment to section 50.1(l) of the Regulations of the Commissioner of Education relating to the definition of "university"?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The revised proposed amendment will be presented to the Higher Education Committee for discussion at its October 2021 meeting. A copy of the proposed amendment is included (Attachment A).

Procedural History

The proposed amendment was presented to the Higher Education Committee for discussion at its February 2021 meeting. A Notice of Proposed Rule Making was published in the State Register on February 24, 2021. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received over 700 comments on the proposed amendment (over 650 of those comments were form letters supporting the comments submitted by one institution). An Assessment of Public Comment is included (Attachment B). Based on the comments received, the Department is now proposing revisions to the proposed amendment. A

Notice of Revised Rule Making will be published in the State Register on November 3, 2021, for a 45-day public comment period. Supporting materials for the proposed regulation are available upon request from the Secretary to the Board of Regents.

Background Information

In 1969, the Board of Regents adopted the current definition of “university” in Section 50.1(l) of the Commissioner’s Regulations:

“University means a higher educational institution offering a range of registered undergraduate and graduate curricula in the liberal arts and sciences, degrees in two or more professional fields, and doctoral programs in at least three academic fields.”

Only institutions of higher education that meet the above definition and those granted specific exemption from the rule, are allowed to use the word “university” in the name of the institution.

Over many years, several New York State colleges have asked that the Board of Regents consider revising the definition of “university” in New York State. Suggestions have ranged from broadening and clarifying which doctoral programs meet the current definition of “doctoral programs in at least three academic fields,” eliminating the requirement for any doctoral programs, and revising the definition to state that any institution that offers at least one master’s degree program can use “university” in its name.

Colleges and their advocates as well as the Commission on Independent Colleges and Universities (CICU) have raised several issues to support their request for a regulatory change:

- New York is the only state requiring the creation and operation of doctoral level programs to be a university. These programs are difficult and expensive to set up and often operate at a deficit, creating additional financial strain on institutions.
- Confusion caused by the word “college” when recruiting international students, and the fact that all other states and jurisdictions have broader definitions of “university” and, in some cases, draw no distinction between “colleges” and “universities.”
- Increasing competition from institutions chartered in other states recruiting students in New York, nationally and internationally, where the term “college” presents a significant marketing challenge. There are institutions chartered in other states offering fewer or no graduate level degree programs than colleges in New York, that are marketed in New York as universities.
- The market for higher educational services and programs has dramatically expanded over the past decade, with the proliferation of on-line higher education degree programs and the rapid growth of several institutions chartered out of

state and doing business in New York as universities. Some of these institutions offer fewer graduate level programs than their New York counterparts that must call themselves colleges because of current regulation.

- The use of the word “university” in the names and marketing of community colleges; i.e., SUNY Schenectady.

At their meeting in November 2020, members of the Board of Regents expressed interest in considering a revision to the regulatory definition of “university” to address the issues raised by some colleges while, at the same time, maintaining high standards for institutions of higher education. Members of the Board of Regents expressed interest in receiving additional input on this matter from New York State institutions of higher education. Members of the Board continued to receive letters, beyond the 60-day public comment period, from several institutions, their representatives and the CICU outlining their interest in revising the current definition. Those letters are available from the Secretary to the Board of Regents.

In developing its recommendation on this matter, the Department balanced the interests of institutions of higher education with the Regents’ interest in maintaining standards and ensuring a breadth and depth of academic offerings by institutions that use the word “university” in their names.

Original Proposed Amendment

At the February 2021 meeting of the Board of Regents, the Department originally recommended that the definition of “university” be amended to read as follows:

“University means a higher educational institution offering a range of registered undergraduate and graduate curricula in the liberal arts and sciences and doctoral programs registered in at least three of the following discipline areas: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences, and social sciences.”

This proposed definition maintained the requirement for a range of undergraduate and graduate programs in the liberal arts and sciences as well as a requirement for doctoral-level programs in at least three of the 10 discipline areas used in the NYS Taxonomy of Academic Programs: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences, and social sciences. In response to requests from institutions, the proposed revised definition clarified that all doctoral degrees (e.g., DPN, EdD, PharmD, etc.) not just the Ph.D., would meet this criterion. Consistent with the intent to broaden the definition, this proposal also eliminated the requirement of offering “degrees in two or more professional fields.”

This proposed definition provided an opportunity for those institutions that offer a broad range of academic programs – determined by both degree-level and discipline

area – to petition the Board of Regents to amend their charters to use the word “university” in their names.

Proposed Revision

In response to the reasonable concerns expressed by commenters and the significant changes in the delivery of higher education across the nation and globally, the Department is now proposing to further revise the definition of “university” in New York State to eliminate the requirement that an institution offer doctoral programs in order to use the word “university” in the name of the institution. Instead, the Department is proposing that the Regents’ interest in ensuring breadth and depth of academic offerings at institutions that use “university” in their names be demonstrated by requiring those institutions have a range of registered undergraduate and graduate programs in the liberal arts and sciences including graduate programs in at least 3 of the 10 discipline areas used in the NYS Taxonomy of Academic Programs: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences and social sciences.

The Department thus recommends that the definition of “university” be amended to read as follows:

“University means a higher educational institution offering a range of registered undergraduate and graduate curricula in the liberal arts and sciences, including graduate programs registered in at least three of the following discipline areas: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences and social sciences.”

This proposed definition provides an opportunity for those institutions that offer a range of academic programs at the undergraduate and graduate level to petition the Board of Regents to amend their charters to use the word “university” in their names. It also ensures breadth and depth of academic offerings by requiring institutions that identify as universities to offer a range of registered undergraduate and graduate programs in the liberal arts and sciences, including graduate programs in at least 3 of the 10 NYS Taxonomy of Academic Programs discipline areas identified above. It will allow those New York chartered institutions that qualify, and secure subsequent charter amendments to more effectively compete and market their programs within the state, nationally and globally.

Related Regents Items

February 2021: [Proposed Amendment to Section 50.1\(l\) of the Regulations of the Commissioner of Education Relating to the Definition of “University”](https://www.regents.nysed.gov/common/regents/files/221hed1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/221hed1.pdf>)

November 2020: [Definition of “University” in New York State](https://www.regents.nysed.gov/common/regents/files/1120hed1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1120hed1.pdf>)

May 2019: [Definition of “University” in New York State](#)

(<https://www.regents.nysed.gov/common/regents/files/519hed5.pdf>)

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the revised proposed amendment will be presented for permanent adoption at the January 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act for revised rule makings. If adopted at the January 2022 meeting, the proposed amendment will become effective on January 26, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 201, 205, 207, 250, 211, 215, 305, and 6506 of the Education Law.

Paragraph (l) of section 50.1 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(l) *University* means a higher educational institution offering a range of registered undergraduate and graduate curricula in the liberal arts and sciences, [degrees in two or more professional fields, and doctoral programs] including graduate programs registered in at least three [academic fields] of the following discipline areas: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences, and social sciences.

Attachment B

ASSESSMENT OF PUBLIC COMMENT

Since publication of the Notice of Proposed Rule Making in the State Register on February 24, 2021, the State Education Department (Department) received the following comments on the proposed amendments. Below is an assessment of the public comments received.

1. COMMENT: One Commenter strongly suggested that the Board of Regents consider master's level programming as the baseline qualification for university status in New York State.

DEPARTMENT RESPONSE: The Department agrees with this comment and has revised its proposed amended definition of "university" to require registered graduate programs in at least three of the stated discipline areas, which may or may not include doctoral programs. Therefore, no additional revisions to the proposed amendment are necessary.

2. COMMENT: Numerous commenters, signing an identical form letter, supported the Department's proposed amendment, but suggested that, "in order for independent institutions of higher education to survive, continue to serve successful students, and provide critical jobs in our communities and across NYS" greater flexibility in the use of the term "university" is needed. Commenters suggest that the definition proposed by the Department be modified to permit an eligible institution that offers a range of registered undergraduate and graduate curricula in the liberal arts and sciences and doctoral programs registered in at least two (*versus three*) of the following

discipline areas: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences, and social sciences, be permitted to use the term “University”.

DEPARTMENT RESPONSE: The Department believes that the definition of “university” should include graduate level programs in at least three of the stated disciplinary areas, however, the Department has revised its proposed amended to remove the requirement for doctoral programs. No further revisions to the proposed amendment are necessary.

3. COMMENT: One Commenter, writing on behalf of many constituent organizations, stated its support of the Department’s proposal to amend the definition of “university” but stated that the proposal “does not go far enough to clarify and broaden the term in a way that would align New York with other states and nations.” Commenter stated further that an institution’s inability to use “university” is a competitive disadvantage when recruiting nationally and internationally and recruiting online. Commenter also opined that master’s-level programs bring academic benefits to all degree levels at an institution since master’s programs require a higher level of commitment to research for faculty and for students. Although the Department’s proposed revision would allow all doctoral programs to be considered, Commenter argues that the definition remains overly restrictive since it requires that an institution offer at least three doctorates in three different discipline areas. Requiring a specific number of doctoral programs and requiring that those doctorates be offered in three different disciplines is arbitrary and counter to the use of “university” in all other states and nations. The Commenter proposes two possible alternatives to the Department’s

suggested definition. (1) that a university offer graduate curricula in 3 different discipline areas, offering 2 doctoral degrees; or (2) that an institution simply offer a graduate curricula.

DEPARTMENT RESPONSE: The Department has revised its proposed amended definition of “university” to require registered graduate programs in at least three of the stated discipline areas, which may or may not include doctoral programs. The Department does not agree with the suggested definition to require only one graduate program, as requiring only one graduate program does not sufficiently assure the desired breadth and depth of academic program offerings at both the undergraduate and graduate levels.

4. COMMENT: Several Commenters voiced their opposition to the Department’s proposed amendment stating that while the proposed definition would be an improvement, it would still limit most of the institutions in New York wishing to adopt the designation of University. Commenter, instead, proposed the following alternative definition:

“University means a higher educational institution offering a range of registered undergraduate and graduate curricula in the liberal arts and sciences including graduate programs registered in at least three of the following discipline areas: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences, and social sciences; and at least two registered doctoral programs encompassing one or more such discipline area.”

DEPARTMENT RESPONSE: The Department has revised its proposed amended definition of “university” to require registered graduate programs in at least

three of the stated discipline areas, which may or may not include doctoral programs. Therefore, no additional revisions to the proposed amendment are necessary.

5. COMMENT: Several Commenters supported the Department's proposed amendment. However, according to one Commenter, its requirement that an institution offer three doctoral programs unfairly excludes those institutions offering both masters level and/or two doctoral programs. Commenter stated that its institutions currently offers two doctoral programs but is still a way off from developing and receiving approval for a third program. This impacts Commenter's ability to immediately compete and reflect the breadth and depth of the programs it offers. Commenter urges the Department to consider further revising the regulation to allow institutions to use university status as long as they have at least three master's level programs in agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences and social sciences and at least two doctoral programs in any area. This change would immediately put New York state institutions on equal footing with universities across the nation and with SUNY and CUNY institutions across New York State who already have the freedom to designate as universities and would help Commenter more easily recruit and enroll international students.

DEPARTMENT RESPONSE: The Department has revised its proposed amended definition of "university" to require registered graduate programs in at least three of the stated discipline areas, which may or may not include doctoral programs. Therefore, no additional revisions to the proposed amendment are necessary.

6. COMMENT: Two Commenters offered their support for the Department's proposed amendment but suggested the following alternative definition:

“University means a higher educational institution offering a range of registered undergraduate and graduate curricula in the liberal arts and sciences including graduate programs registered in at least three of the following discipline areas: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences, and social sciences; and at least two registered doctoral programs encompassing one or more such discipline area.”

DEPARTMENT RESPONSE: The Department has revised its proposed amended definition of “university” to require registered graduate programs in at least three of the stated discipline areas, which may or may not include doctoral programs. Therefore, no additional revisions to the proposed amendment are necessary.

7. COMMENT: One Commenter supports the effort of the Department to address the restrictive language of the definition. However, Commenter suggested that the Board of Regents and the State Education Department should amend the restrictive definition of “university” by eliminating the need for doctoral programs in three academic fields. Commenter stated that New York should adopt a more permissive definition, like a Massachusetts definition adopted in 2010, that states that a “university” “...must provide graduate programs in four or more distinct professional fields of study.”

DEPARTMENT RESPONSE: The Department has revised its proposed amended definition of “university” to require registered graduate programs in at least three of the stated discipline areas, which may or may not include doctoral programs. Therefore, no additional revisions to the proposed amendment are necessary.

8. COMMENT: Several Commenters stated that they support the Department's proposed definition but suggest a more expanded definition:

“University means a higher educational institution offering a range of registered undergraduate and graduate curricula in the liberal arts and sciences including graduate programs registered in at least three of the following discipline areas: agriculture, biological sciences, business, education, engineering, fine arts, health professions, humanities, physical sciences, and social sciences; and at least two registered doctoral programs encompassing one or more such discipline areas.”

DEPARTMENT RESPONSE: The Department has revised its proposed amended definition of “university” to require registered graduate programs in at least three of the stated discipline areas, which may or may not include doctoral programs. Therefore, no additional revisions to the proposed amendment are necessary.

9. COMMENT: Commenter requested that the Department and Board of Regents recognize the Carnegie Classification System for institutions, which is recognized nationally. Within this system, Baccalaureate Colleges are defined as institutions where fewer than 50 master's degrees or 20 doctoral degrees are awarded during the previous year. Once a College begins to award a significant number of master's degrees (i.e., more than 50 per year), it would be considered to fall within the next level, that of Masters' Colleges and Universities.

DEPARTMENT RESPONSE: The Department does not agree with this suggested alternative. Under the Carnegie Classification System an institution could award all necessary master's or doctoral degrees in one discipline which would not ensure the desired breadth and depth of academic programs. Therefore, no additional revisions to the proposed amendment are necessary.

10. COMMENT: One Comment offered its full support of the Department's proposal with one modification. Commenter suggests that the Department consider adding language as follows:

"University" means an institution that offers a wide breadth of graduate-level degrees, and at least one doctoral degree, which would show the depth of the institution's academic expertise at the doctoral level.

DEPARTMENT RESPONSE: The Department has revised its proposed amended definition of "university" to require registered graduate programs in at least three of the stated discipline areas, which may or may not include doctoral programs. Therefore, no additional revisions to the proposed amendment are necessary.

11.COMMENT: Several Commenters suggested the following alternative definition of "university":

"University" means a higher educational institution offering a range of registered undergraduate programs and at least one graduate degree.

DEPARTMENT RESPONSE: The Department has revised its proposed amended definition of "university" to more broadly reference programs at the graduate level, and proposes requiring registered graduate programs in at least three of the stated discipline areas, which may or may not include doctoral programs. The Department does not agree with the suggested definition to require only one graduate program, as requiring only one graduate program does not sufficiently assure the desired breadth and depth of academic program offerings at both the undergraduate and graduate levels.