



**TO:** P-12 Education Committee

**FROM:** Elizabeth R. Berlin

**SUBJECT:** Proposed Amendment of Section 100.5 of the Commissioner's Regulations to Implement Provisions Relating to the Physical Education Requirements for a Diploma and Transfer Credits for Students Earning Credit in an Educational Program Pursuant to Education Law §§ 112 and 3202 (7) and Parts 116 or 118 of the Regulations of the Commissioner of the Education

**DATE:** October 24, 2019

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**SUMMARY**

**Issue for Discussion**

Should the Board of Regents amend Section 100.5 of the Regulations of the Commissioner of Education to Implement Provisions Relating to Physical Education Requirements for a Diploma and Transfer Credits for Students Earning Credit in an Educational Program Pursuant to Education Law §§112 and 3202(7) and Parts 116 and 118 of the Regulations of the Commissioner of Education?

**Reason(s) for Consideration**

Review of policy.

**Proposed Handling**

The proposed rule is being presented to the P-12 Education Committee for discussion at the November 2019 Regents meeting. A copy of the proposed rule is attached.

**Procedural History**

A Notice of the Proposed Rule Making will be published in the State Register on November 20, 2019. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

On April 10, 2017, the Raise the Age (RtA) legislation was enacted (Part WWW of Chapter 59 of the Laws of 2017). Implementation of this law was phased in. Beginning on October 1, 2018, the new provisions took effect for offenses committed by 16-year olds and on October 1, 2019, the new provisions took effect for offenses committed by 17-year olds.

The Department has hosted or participated in numerous meetings with leaders and staff from the New York State Office of Children and Family Services (OCFS), and the New York State Division of Criminal Justice Services (DCJS) and the Division of Corrections and Community Services (DOCCS), and non-secure and secure detention facilities to both answer questions and learn more about the providers' concerns regarding their ability to provide the robust educational programming needed to engage these youth and to provide opportunities that lead them toward a path of success.

One of the most concerning issues raised was the failure of school districts to award credit for school work completed by students while detained, placed or incarcerated. Students who attend educational programs operated by juvenile and criminal justice agencies other than the Office of Children and Family Services and other State agencies pursuant to Education Law §112 and Part 116 of the Commissioner's Regulations are not automatically granted credit for their coursework because such facilities are not registered high schools. Rather, upon a student transferring to a public school, each principal makes an individual determination to grant or deny the student credit for such coursework based upon whether the principal deems the coursework done at a State agency facility to be comparable. In 2014, the Department amended Commissioner's Regulations section 100.5(d) to provide that principals of registered public high schools shall grant transfer credit to a student for credit awarded while the student attended an educational program administered by a State agency pursuant to Education Law §112 and Part 116 of the Commissioner's Regulations, upon the attestation of the chief administrator of such program that:

- the student has completed coursework that is aligned with the applicable New York State commencement-level learning standards, including the New York State Common Core Learning Standards, and meets the requirements for the award of units of credit including, but not limited to, the requirement for 180 minutes of instruction per week throughout the school year, or the equivalent; and
- the student was provided instruction by a teacher certified pursuant to Part 80 of this Title.

The proposed amendment extends the attestation provisions to additional settings where system-involved youth are receiving an education.

Currently, the diploma requirements require that a student complete two units of credit in Physical Education (PE) and that students participate in PE every semester they

are enrolled in school, even if they have met the required two credits and remain in school beyond their senior year.

Due to the Civil Service titles and the unique needs and nature of the education programs offered by juvenile and criminal justice system facilities, students receive extensive physical education, but the classes are taught by recreational specialists, who may or may not be certified physical education teachers. When the students transfer back to high school part way through high school are finding themselves severely under credited in physical education, notwithstanding the fact that they have spent hours in physical education classes in these facilities. This often results in, at best, course selections being impacted due to the necessity to enroll in 2 or 3 PE courses each semester to catch up, or at worst, students not graduating on time.

Therefore, to address the unique needs of this student population, the Department proposes a revision to §100.5(d)(5) of Commissioner's Regulations to provide these students with the same exemption currently provided to students transferring from another state and students of military families, who transfer into a registered New York state high school from another state, to allow such students to be exempt from the required two units of credit requirement in physical education to meet the diploma requirements. Instead, such students shall be required to enroll in physical education courses every semester they are in a registered New York State high school and shall earn  $\frac{1}{4}$  unit of credit for each semester of physical education completed in a registered New York State high school to meet the diploma requirements.

The Department further proposes an amendment to allow students who have earned the required number of credits in physical education to meet the diploma requirements, but may need more than 8 semesters to graduate due to other course or assessment deficiencies, to be permitted to stop enrolling in physical education courses. Often students need to return beyond their senior year to make up a failed course or attend preparatory sessions to pass failed assessments, and the current regulation requires these students to enroll in physical education courses for those semesters as well, even though they have met the required number of diploma credits for graduation. The proposed amendment will eliminate this requirement.

### **Related Regent's Items**

[Proposed Amendment to §100.5\(b\) of the Commissioner's Regulations Relating to the Laboratory Experiences Required in Order to Take a Science Regents Examination for Students in State Agency Educational Programs and Correctional Facilities](https://www.regents.nysed.gov/common/regents/files/318p12a1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/318p12a1.pdf>)

[Proposed Amendment of Section 100.5 of the Regulations of the Commissioner of Education and Proposed New Section 100.20 of the Regulations of the Commissioner of Education to Implement the Interstate Compact on Educational Opportunity for Military Children and Provisions Relating to Transfer Credits and Diploma Requirements for Physical Education](http://www.regents.nysed.gov/common/regents/files/917p12a2.pdf)

(<http://www.regents.nysed.gov/common/regents/files/917p12a2.pdf>)

[http://Amendment of Section 100.5\(d\) of the Commissioner's Regulations Relating to Transfer High School Credit for Students in State Agency Educational Programs](http://www.regents.nysed.gov/common/regents/files/914brca9.pdf)  
(<http://www.regents.nysed.gov/common/regents/files/914brca9.pdf>)

### **Timetable for Implementation**

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the February 2020 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 February 2020 meeting, the proposed amendment will become effective on February 26, 2020.

## AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 112, 207, 208, 209, 210, 215, 305, 309, 3202, and 3204 and Part WWW of Chapter 59 of the Laws of 2017.

1. Paragraph (4) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended as follows:

(4)(i) . . .

(ii) Students who enter a registered New York State high school and have completed one or more semesters in a high school outside New York State or in a residential facility or home operated or supervised by any state agency pursuant to Education Law section 112 and 3202(7) and /or Parts 116 or 118 of this Title shall be exempt from the required two units of credit requirement in physical education for a diploma. Instead, such students shall be required to enroll in physical education courses every semester they are in a registered New York State high school, and shall earn 1/4 unit of credit in physical education for each semester completed in a registered New York State high school to meet the diploma requirements.

2. Paragraph (1) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended as follows:

(d) *Alternatives to Specific Regents and local diploma requirements.*

(1) Credit by examination. A student may earn a maximum of 6 ½ units of credit for either a Regents or local diploma without completing units of study for such units of credit, if:

(i) based on the student's past academic performance, the superintendent of a school district or the chief administrative officer of a registered nonpublic high school or

the chief administrator of an educational program administered or supervised by any State agency pursuant to Education Law sections 112 and 3202 (7) and/or Parts 116 or 118 of this Title, or his or her designee, determines that the student will benefit academically by exercising this alternative;

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

3. Paragraph (5) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended as follows:

(5) Transfer credit. Transfer credit is awarded for work done outside the registered New York State high school awarding the credit.

(i) The principal shall evaluate the transcript or other records of a transfer student enrolling in a New York State high school. Based on the student's transcript or other records, the principal shall award the appropriate units of transfer credit towards a high school diploma.

(a) Registered high schools. The principal shall grant transfer credit for all credit awarded by any New York State registered public or nonpublic high schools.

(b) Other educational/cultural institutions and independent study.

(1) Except as provided in subclause (2) of this clause, the principal, after consultation with relevant faculty, may award transfer credit for work done at other educational and cultural institutions and for work done through independent study. The

decision as to whether or not to award transfer credit for work done at educational institutions other than New York State registered high schools shall be based on whether the record indicates that the work is consistent with New York State commencement learning standards and is of comparable scope and quality to that which would have been done in the school awarding the credit.

(2) Transfer credit by attestation [(State agency educational programs)]

(Educational program administered or supervised by a State agency).

(i) Definitions. For purposes of this subdivision, “State agency” means a State department or agency or political subdivision, except a board of education or a board of cooperative educational services, that provides or supervises an educational program pursuant to Education Law sections 112 and 3202 (7) and Parts 116 or 118 of this Title.

(ii) A principal shall award transfer credit to any student for credit awarded while the student attended an educational program administered or supervised by a State agency pursuant to Education Law sections 112 and 3202 (7) and Parts 116 or 118 of this Title, upon the attestation of the chief administrator of such program, in a format prescribed by the commissioner, of the following:

(A) the student:

(l) has completed coursework that is aligned with the applicable New York State commencement-level learning standards, including the New York State Common Core Learning Standards, and that meets the requirements of this Part for the award of units of credit including, but not limited to, the requirement for 180 minutes of instruction per week throughout the school year, or the equivalent, as set forth in section 100.1(a) of this Part; and/or

(II) has met the requirements for the award of credit by examination pursuant to paragraph (1) of this subdivision; and/or

(III) has met the requirements for the award of make-up credit pursuant to paragraph (8) of this subdivision; and/or

(IV) has met the requirements for the award of credit for independent study pursuant paragraph (9) of this subdivision; and/or

(V) has met the requirements for the award of credit for online and/or blended courses pursuant to paragraph (10) of this subdivision; and

(B) the student was provided instruction by a teacher certified pursuant to Part 80 of this Title or, where the coursework was for make-up credit or in online and/or blended courses, the student was provided instruction in accordance with the requirements of paragraphs (8) and (10), respectively, of this subdivision.

4. Paragraph (8) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended as follows:

(8) Making up incomplete or failed course credit. Commencing July 1, 2011 and thereafter, a school district, registered nonpublic school, charter school or the chief administrator of an educational program administered or supervised by a State agency pursuant to Education Law sections 112 and 3202(7) and Parts 116 and 118 of this Title may provide a student, who had the opportunity to complete a unit of study in a given high school subject but who failed to demonstrate mastery of the learning outcomes for such subject, with an opportunity to make up a unit of credit for such subject toward either a Regents or local diploma, pursuant to the following:



5. Paragraph (9) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended as follows:

(9) Credit for independent study. Students enrolled in a school district, a charter school, a registered nonpublic school or educational program administered or supervised by a State agency pursuant to Education Law sections 112 and 3202 (7) and Parts 116 and 118 of this Title may earn a maximum of three units of elective credit towards a Regents diploma through independent study, pursuant to the following:

6. Paragraph (10) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended as follows:

(10) Credit for online and blended courses.

(i) . . .

(ii) A school district, a charter school, a registered nonpublic school or the chief administrator of an educational program administered or supervised by a State agency pursuant to Education Law sections 112 and 3202 (7) and Parts 116 and 118 of this Title may provide its students with an opportunity to earn units of credit towards a Regents diploma through online and/or blended course study, pursuant to the following: