



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

TO: The Higher Education Committee

FROM: Joseph P. Frey

SUBJECT: Proposed Regulations Relating to New Standards of Academic Progress for the Tuition Assistance Program (TAP) for the 2010-2011 Academic Year

DATE: November 7, 2010

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment to section 145-2.2 of the Regulations of the Commissioner of Education relating to the new standards of academic progress for TAP for the 2010-2011 academic year?

Reason(s) for Consideration

Required by Statute and Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Higher Education Committee for adoption as an emergency measure and permanent adoption at its December 2010 meeting. A statement of facts and circumstances justifying the emergency action is attached.

Background Information

The proposed amendment was adopted, as an emergency measure, by the Board of Regents at its September 2010 meeting. The enacted 2010-2011 New York State budget includes new provisions for TAP which are set forth in Chapter 53 of the Laws of 2010. In particular, Chapter 53 establishes new standards of academic

progress (SAP) for non-remedial students first receiving State aid in 2007-2008 and thereafter. These standards take effect for students enrolled in the 2010-2011 academic year. These standards, however, do not apply to “students enrolled in a program of remedial study approved by the Commissioner.”

For purposes of the new standards of academic progress established in Chapter 53 of the Laws of 2010, the proposed amendment provides that a student shall be deemed to be in a program of remedial study approved by the Commissioner if he/she:

- Is enrolled in the Higher Education Opportunity Program (HEOP), the Education Opportunity Program (EOP), The Search for Education, Elevation and Knowledge (SEEK) program or the College Discovery (CD) program; or
- Is enrolled in six credit hours of remedial instruction in their initial term of receipt of financial aid and at least nine semester hours of remedial instruction in the first year; or
- Is enrolled in three credit hours of remedial instruction in their initial term of receipt of financial aid and enrolled in at least nine semester hours in their first year of receipt of financial aid.
- Remedial courses taken in the summer session preceding the first academic year may count towards the required nine or more credits of remedial instruction for the purpose of program approval by the Commissioner for remedial study. In addition, for students first becoming eligible for TAP in the 2010-2011 academic year due to a change in their financial circumstances, remedial courses taken in a previous academic year may also be counted.
- For the 2010-2011 academic year only, a student who first received an award prior to the 2010-2011 academic year and does not meet the eligibility requirements to be certified for TAP under the 2010-2011 SAP shall be deemed to be in an approved program of remedial study for the 2010-2011 academic year solely for the purpose of defining which standards of academic progress apply for the 2010-2011 academic year. This includes students who become ineligible for TAP in the Spring 2011 term because they have insufficient time to adjust their schedule in the Fall term to carry the required number of credits under the new standards of academic progress due to courses becoming unavailable, full or because the add/drop period has ended. The Department will issue guidance on this issue to the colleges.

Following publication in the State Register, the Department received two comments, both of which supported the proposed amendment. Attached is an assessment of public comment.

Recommendation

VOTED: That clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education, be amended, effective December 17, 2010, as an emergency action upon a finding by the Board of

Regents that such action is necessary for the preservation of the general welfare to ensure that the rule remains continuously in effect until it is adopted as a permanent rule.

VOTED: That clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education, be amended, effective January 5, 2010.

Timetable for Implementation

If adopted at the December 2010 meeting, the proposed amendment will become effective as an emergency measure on December 17, 2010 and will be effective as a permanent rule on January 5, 2011.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 602, 661 and 665 of the Education Law and Chapter 53 of the Laws of 2010

Clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education shall be amended effective December 17, 2010, to read as follows:

(b) (1) for students who receive their first State award during the 2006-2007 academic year and thereafter, and who are enrolled full-time in a two-year, four-year, or five-year undergraduate program on a semester or trimester basis, or their equivalent, the applicable required minimum number of credits accrued and minimum grade point average earned at the time of the institution's certification for each payment made on the student's award, as specified in subparagraph (i), (ii), (iii) or (iv) of paragraph (c) of subdivision (6) of section 665 of the Education Law; provided that institutions operating on a trimester basis during the 2006-2007 academic year shall apply the satisfactory academic progress standard pursuant to the provisions in section 665 of the Education Law, and shall apply the particular requirements prescribed in the satisfactory academic progress charts in such section of law for the 2007-2008 academic year and thereafter.

(2) (i) notwithstanding subclause (1) of this clause, for students receiving a State award in the 2010-2011 academic year who are not enrolled in a program of remedial study, as defined in item (ii) of this subclause, and who first received aid in the 2007-2008 academic year and thereafter, and who are enrolled in a two-year, four-year or five-year undergraduate program on a semester or trimester basis, or their equivalent, shall apply the required minimum number of credits accrued and minimum grade point average earned at the time of the institution's certification for each payment made on

the student's award, as applicable in Chapter 53 of the Laws of 2010; provided that students enrolled in a program of remedial study, as defined in item (ii) of this subclause, shall apply the particular requirements prescribed in the satisfactory academic progress charts in section 665 of the Education Law for the 2010-2011 academic year.

(ii) For purposes of this subclause only, students enrolled in a program of remedial study shall mean:

(A) students enrolled in remedial courses equivalent to at least six credits in their initial term of receipt of state financial aid and enrolled in at least nine credits in their first year of receipt of state financial aid; or

(B) students enrolled in remedial courses equivalent to at least three credits in their initial term of receipt of state financial aid and enrolled in at least nine credits in their first year of receipt of state financial aid; or

(C) students enrolled in the Higher Education Opportunity Program (HEOP), the Education Opportunity Program (EOP), the Search for Education, Elevation and Knowledge (SEEK) program or the College Discovery (CD) program; or

(D) students who first received an award in the 2007-2008 academic year and thereafter and who in the semester, trimester or their equivalent, preceding the 2010-2011 academic year, met the requirements prescribed in the satisfactory academic progress charts in section 665 of the Education Law for the 2007-2008 academic year but do not meet applicable standards for academic progress for the 2010-2011 academic year, as set forth in Chapter 53 of the Laws of 2010, shall be deemed to be in an approved program of remedial study for purposes of determining which standards for academic progress apply.

(E) students who first received an award in the 2007-2008 academic year and thereafter and who in the first semester, trimester or their equivalent of the 2010-2011 academic year, met the requirements prescribed in the satisfactory academic progress charts as set forth in Chapter 53 of the Laws of 2010 but did not meet applicable standards in Chapter 53 of the laws of 2010 for academic progress for the second semester, trimester or their equivalent in the 2010-2011 academic year, for good cause, as described in guidelines prescribed by the Commissioner, shall be deemed to be in an approved program of remedial study for purposes of determining which standards for academic progress apply.

(F) For purposes of subitems (A) and (B), remedial courses taken in a prior academic year where the student was not eligible for state financial aid or in the summer preceding the student's initial term of receipt of state financial aid may be counted towards the required credits of remedial study to be considered a program of remedial study for purposes of this subclause.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ADOPTION

The enacted 2010-11 New York State budget includes new provisions for TAP which are set forth in Chapter 53 of the Laws of 2010. In particular, Chapter 53 establishes new standards of academic progress (SAP) for non-remedial students first receiving State aid in 2007-08 and thereafter. These standards take effect for students enrolled in the 2010-11 academic year. These standards, however, do not apply to “students enrolled in a program of remedial study approved by the Commissioner.”

The intent of the new law is to ensure that students receiving TAP funds and not needing remedial instruction or needing only a small amount of such remedial instruction demonstrate sufficient academic progress to complete their academic program in a timely manner. The intent is not to deny TAP to students who need remedial instruction.

However, a problem arises for some students who entered college on or after the 2007-08 academic year and were meeting the 2006 standards of academic progress. Now they are faced with new standards which may preclude them from being eligible for TAP for the 2010 fall term. For example, for students in a baccalaureate program based on semesters, under the 2006 SAP requirements, students must have completed at least 21 credits by the end of the fourth term in order to be eligible for TAP in the fifth term. However, under the new 2010 SAP students now must have completed 30 credits by the end of the fourth term to be eligible for TAP in the fifth term. Some students are therefore put into a situation where they were not aware of the new requirements and could not possibly have time to take additional credit hours to meet the new standards

in the 2010 SAP. A similar situation is also true for students pursuing an associate degree.

To remedy this situation, in the proposed emergency regulation, these returning students that “fall in the gap” between the 2006 and 2010 SAP, will be deemed to be remedial students for the 2010-11 academic year only and therefore can continue to be eligible for TAP if they meet the 2006 SAP. The rationale is that these “gap” students are not progressing along their academic programs at a rate of success that the State finds acceptable for participation in the TAP program. They, therefore, are being given an academic year to achieve the level of academic performance necessary for participation in TAP.

Emergency action is necessary at the December Regents meeting for the preservation of the general welfare to implement Chapter 53 of the Laws of 2010 and to ensure that the rule remains continuously in effect until such time as it can be adopted as a permanent rule, after expiration of the 45-day public comment period as prescribed in the State Administrative Procedure Act.

SUMMARY OF ASSESSMENT OF PUBLIC COMMENT

Since publication of the proposed amendment in the State Register on September 29, 2010, the Department received the following comments.

Comment: One comment expressed support for the proposed amendment and for the Regents development of new SAP regulations for remedial students with participation and input from all sectors of higher education.

Response: SED agrees with this comment.

Comment. One comment expressed support for the proposed amendment. The SAP proposal put forward in last year's budget, which took effect via the Governor's vetoes in July, would have prevented thousands of low income and minority students from being able to remain in college. The solution put forward by the Department, and ultimately implemented via regulation, resulted in these students being able to continue with their education while also providing an opportunity for students and colleges to plan for a new set of SAP to take effect for the 2011 academic year.

Response. SED agrees with this comment.