



Charles S. Dedrick
Executive Director
charles@nyscoss.org

Robert N. Lowry, Jr.
Deputy Director for
Advocacy, Research and
Communications
boblowsy@nyscoss.org

Kelly O. Masline
Senior Associate Director
kelly@nyscoss.org

Jacinda H. Conboy, Esq.
General Counsel
jacinda@nyscoss.org

Theresa W. Moore
Associate Director
theresa@nyscoss.org

Deborah N. Orsini
Associate Director
deborah@nyscoss.org

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December 21, 2016

Angelica Infante-Green

Deputy Commissioner for P12 Instructional Support
New York State Education Department
2M West, Albany, NY 12234

Re: Proposed Rule Making-Eligibility for Participation in Interscholastic Sports and Duration of Competition Regulations

Dear Deputy Commissioner Infante-Green,

I respectfully submit the following comments on behalf of The New York State Council School Superintendents (THE COUNCIL), regarding proposed regulations to alter eligibility for participation in interscholastic sports and duration of competition provisions. THE COUNCIL respects the goals of the Board of Regents and the State Education Department (Department) to open up avenues to participating in interscholastic sports to students who may not be eligible under current regulations. However, we have to weigh the impact of this proposal against the important public policy of ensuring that all students are safe, treated equally, and that school district leaders know the rules that they must abide by. It is our conclusion that these proposed regulations have more negative consequences than positive, and would detrimentally impact school district interscholastic programs.

1. Duration of Competition

Current regulations provide that a student may be eligible for an additional season of an interscholastic sport if the superintendent presents evidence to the section athletic council that demonstrates the student's "failure to enter competition during one or more seasons of a sport was caused by illness or accident..." (8 NYCRR 135.4(c)(7)(ii)(a)(4)). The evidence must show that as a direct result of the illness or accident, the student would be required to attend school for one or more additional semesters in order to graduate. These regulations ensure that all students are treated equitably and provide superintendents and section athletic councils with a clear set of rules to follow.

The proposed regulations create uncertainty for superintendents and section athletic councils by expanding that exemption by allowing it to be granted "for other circumstances beyond the control of the pupil..." The proposal would also require a judgment decision regarding the safety of the student and others, as well as whether granting the exemption would create an unfair advantage in competition. This proposal would put superintendents and section athletic councils in an untenable position of making judgment decisions about athletic abilities and forcing subjective determinations about what "circumstances" justify an exemption.

Further troubling is the proposal authorizes the commissioner to hear appeals pursuant to a *de novo* standard of review. This would allow the commissioner to completely disregard the judgment of the section athletic council when making a decision on §310 appeals. The commissioner should not be substituting her judgment for that of the school district leader and the section athletic councils that know the circumstances and

situation firsthand. The existing *arbitrary and capricious* standard of review is the more appropriate legal standard for §310 appeals of this nature.

Recommendation: The Board of Regents should reject in their entirety the proposed regulations. If the Board opts to alter the requirements to earn a duration of competition extension, the Board should maintain the existing standard of review for the §310 appeals.

2. Athletic Placement Process

Current regulations authorize a 7th or 8th grade student of a school district to participate on a high school athletic team under certain conditions (8 NYCRR 135.4(c)(7)(ii)(a)(4)). Students attending one of the few K-8 districts in the state are not eligible to utilize this athletic placement process because they are not bona fide students of a school district with a high school.

The proposed regulations would authorize 7th and 8th grade students attending a K-8 district to utilize the athletic placement process (APP) to participate in high school level athletics at a district that contracts with the K-8 district. The proposal further provides that if a student successfully utilizes the APP, but chooses a different high school for 9th grade, such student would be ineligible to participate in athletics for an entire year.

THE COUNCIL respects the motivation of the Board of Regents to address athletic competition issues for K-8 school districts, however, this proposal opens up numerous other potential complications and fails to provide clarity necessary to be workable for school districts. The high school that would be accepting the student for a limited athletic purpose may only have limited information about such student and the potential complications that come with accepting such a student outweigh the benefits to the student. Furthermore, this regulation opens the door to requests from non-public school and homeschooled students to utilize the APP. If adopted, the regulation may even justify the participation of students in different school districts if the district they attend does not offer a specific athletic opportunity.

Recommendation: The Board of Regents should reject the entirety of the proposed regulations. Maintaining the bona fide student requirement is an integral and critical aspect of the APP because of all the responsibilities that are assigned to the school district implementing the APP. If the Board decides to move forward with the expansion of the APP to K-8 districts, the Board should address issues such as district responsibility for insurance, transportation, discipline, physical fitness tests and which district gives the student approval to utilize the APP. Further, if the APP process is expanded to K-8 districts, the Board should limit penalty provision to only the interscholastic sport the student participated in as a 7th or 8th grader, instead of all sports.

Sincerely,



Charles S. Dedrick, Ed.D.
Executive Director