

SUBPART 145-2

EDUCATIONAL REQUIREMENTS FOR AWARDS AND LOANS

(Statutory authority: Education Law, §§ 207, 602, 666, 667-a, 669-a, 670; L. 1995, ch. 83, §359)
Sec.

- 145-2.1 Full-time and part-time study and remedial workload
- 145-2.2 Program pursuit and academic progress
- 145-2.3 Approved programs for general and academic performance awards
- 145-2.4 Matriculated status
- 145-2.5 In-State study
- 145-2.6 Theological study
- 145-2.7 Five-year programs
- 145-2.8 Noninstructional external degree programs
- 145-2.9 Accelerated summer study
- 145-2.10 Educational fees
- 145-2.11 Level of study
- 145-2.12 *(Reserved)*
- 145-2.13 Limitation of amount of awards
- 145-2.14 Eligibility for category II tuition assistance program awards
- 145-2.15 Administration of ability-to-benefit tests for purposes of eligibility for awards

Historical Note

Subpart (§§ 145-2.1--145-2.14) filed July 1, 1975 eff. Aug. 1, 1975.

§ 145-2.1 Full-time and part-time study and remedial workload.

- (a) For programs at degree-granting institutions which measure study in terms of credit hours or a comparable measure, the following definitions shall apply:

(1) For State student financial aid programs, except the supplemental tuition assistance program (STAP), *full-time study*, where required by law, shall mean enrollment for at least 12 semester hours for a semester of not less than 15 weeks, inclusive of examination periods; or eight semester hours a quarter; or, in programs not organized on a semester or quarter basis, 24 semester hours for an academic year of not more than 12 months or the equivalent, as determined by the commissioner. A student shall be considered full-time for a program organized on an academic-year basis only if the student has filed a plan of study with the institution for the entire academic year. Except as otherwise defined in paragraph (4) of this subdivision. *Part-time study*, for general awards, other than tuition awards for Vietnam veterans and tuition awards for part-time undergraduate students, and for academic performance awards, shall mean enrollment for at least 6, but less than 12, semester hours or the equivalent for a semester of not less than 15 weeks, inclusive of examination periods; or at least four, but less than eight, semester hours a quarter. The definition of the term *semester hour* shall be that provided in subdivision (o) of section 50.1 of this Title. Independent or individualized study, practice teaching, graduate assistantships, thesis or dissertation research, preparation for language or qualifying examinations, and noncredit or remedial courses, may all be considered as contributing toward full-time or part-time study on an hour-for-hour equivalent basis, if the student effort required is the same as would be required for a credit-bearing course in conformity with subdivision (o) of section 50.1 of this Title, and if required or approved by the school, in a plan of study prefiled by the student with the school, as an integral part of the student's program. Credit for independent or individualized study shall be computed in accordance with full-time or part-time requirements. Effective for academic terms beginning after January 1, 1978, a student carrying a full-time program that includes noncredit remedial courses shall carry at least six semester hours a semester, except that in the first

semester of study such a student need carry only three semester hours. Effective for academic terms beginning on or after July 1, 1984, a student carrying a part-time program that includes noncredit remedial courses shall carry at least three semester hours a semester. A combination of such credit and remedial work shall equal the minimum student effort requirement for full-time study or part-time study, respectively, in nonremedial programs. However, courses taken solely to meet teacher certification, licensing, or other external requirements, and not recommended or required by the school as an integral part of the student's program, shall not contribute to full-time or part-time study.

(2) For the supplemental tuition assistance program (STAP), *full-time study* shall mean, in programs organized on a semester basis, enrollment for at least 12 remedial hours of noncredit study in a session of summer remediation immediately preceding and/or immediately following the initial year of matriculated study; or in programs organized on a quarter basis, enrollment for at least eight remedial hours of noncredit study in a session of summer remediation immediately preceding and/or immediately following the initial year of matriculated study. The student effort required for a remedial hour shall be the same as would be required for a semester hour in conformity with subdivision (o) of section 50.1 of this Chapter.

(3) For the supplemental tuition assistance program (STAP), an approved program of noncredit-bearing remediation shall mean the student's entire noncredit course load taken in the summer immediately preceding and/or immediately following the initial year of matriculated study, subject to the following conditions:

(i) such course load shall have been approved as educationally sound by an institutional official familiar with the student's academic deficiencies; and

(ii) such course load shall consist of noncredit remedial work designed to remedy academic deficiencies which, if not addressed, might prevent the student from successfully completing a degree or certificate program at the institution.

(4) For purposes of section 661(d)(4) of the Education Law, for a student with a disability, as defined in 42 USC 12102 (2) (United States Code, 1994 edition, volume 23; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; 1995 - available at the office of Higher and Professional Education, Education Building Annex, Room 979, Albany, NY 12234), part-time study or attendance shall mean enrollment for at least three but less than 12 semester hours per semester or the equivalent, or at least two but less than eight semester hours per quarter.

(b) In noncollegiate programs which measure study solely in terms of instructional hours as defined in subdivision (j) of section 126.1 of this Chapter, such as nondegree two-year business programs and nondegree nursing programs, the equivalent of a semester or quarter of full-time study shall require at least 24 instructional hours a week and part-time study shall require at least 12 instructional hours a week.

(c) In schools not organized on a semester or quarter basis, four months of full-time attendance shall be considered the equivalent of a semester.

(d) Full-time or part-time status, respectively, must be established independently for each separate semester or term of attendance, except where the measure of full-time is 24 semester hours for an academic year of not more than 12 months as provided for in subdivision (a) of this section.

(e) Where full-time or part-time study is required, it shall be required during the final semester in the same manner as for any other semester of study, even if not necessary in order to complete graduation requirements, except that full-time study shall not be required for recipients of Regents

college scholarships during their last semester of eligibility if part-time study during such semester would be sufficient to complete the approved course of study.

(f) Upon presentation of satisfactory medical evidence to substantiate that serious illness or mental or physical disability precludes attendance on a full-time basis, work performed during two or more terms of study may be approved as equivalent to a regular term for scholarship, tuition assistance program or other benefits.

Historical Note

Sec. filed July 1, 1975: amds. filed: April 30, 1976; June 27, 1977; Aug. 7, 1979; April 28, 1980; May 24, 1982; June 29, 1982; July 31, 1984; Jan. 27, 1986; March 26, 1987; Jan. 24, 1991 as emergency measure; March 26, 1991; July 25, 1995 as emergency measure; July 20, 1999 eff. Sept. 1, 1999. Amended (a)(l). added (a)(4).

§ 145-2.2 Program pursuit and academic progress.

(a) For the purposes of articles 13 and 14 of the Education Law, students who have received a State award prior to September 1, 1981 shall meet the following academic requirements:

(1) Attendance. Failure of the student to pursue the program of study will result in the loss of eligibility to receive an award. The institution, in recording and reporting student academic progress, shall take cognizance of attendance as it relates to progress.

(2) Good academic standing. Good academic standing, where required by law, means that: (i) the institution maintains a formal, published statement of its requirements for the maintenance of good academic standing; (ii) the student is matriculated at the institution; and (iii) the institution has determined that the student meets its standards for good academic standing.

(b) For the purposes of articles 13 and 14 of the Education Law, students who receive their first State award during the 1981-82 school year and thereafter shall maintain good academic standing.

(1) Loss of good academic standing for full-time study or part-time study, whichever is applicable, shall be determined at the end of each term of the academic year, and shall mean that a student has either:

(i) failed to pursue the program of study in which he is enrolled, as determined pursuant to paragraph (3) of this subdivision; or

(ii) failed to make satisfactory progress toward the completion of his program's academic requirements, as determined by paragraph (4) of this subdivision.

(2) Following a determination that the recipient of an award has lost good academic standing, further payments of any award under article 13 or 14 of the Education Law shall be suspended until the student is restored to good academic standing by either:

(i) pursuing the program of study in which he is enrolled and making satisfactory progress toward the completion of his program's academic requirements; or

(ii) establishing in some other way, to the satisfaction of the commissioner, evidence of his ability to successfully complete an approved program.

(3) Except as provided for in paragraph (5) of this subdivision, a student shall be deemed to be

pursuing the approved program of study in which he is enrolled if:

(i) during each term of study in the first year for which an award is being received, he receives a passing or failing grade in at least one half of the minimum amount of study required to constitute full-time study or part-time study, whichever is applicable, pursuant to section 145-2.1 of this Subpart;

(ii) during each term of study in the second year for which an award is being received, he receives a passing or failing grade in at least three fourths of the minimum amount of study required to constitute full-time study or part-time study, whichever is applicable, pursuant to section 145-2.1 of this Subpart;

(iii) during each subsequent term of study for which an award is being received, he receives a passing or failing grade in no less than the minimum amount of study required to constitute full-time study or part-time study, whichever is applicable, pursuant to section 145-2.1 of this Subpart.

(4) Except as provided for in paragraph (5) of this subdivision, to determine whether a student receiving an award is making satisfactory progress toward the successful completion of his program's academic requirements, each institution shall establish and apply a standard of satisfactory academic progress which includes required levels of achievement to be measured at stated intervals. Criteria for achievement shall include, but need not be limited to:

(i) the minimum number of credits earned, or courses successfully completed, at each interval; and

(ii) the minimum cumulative grade point average or similar measure at each interval. Each institution shall obtain the approval of the commissioner prior to the implementation of its standard of satisfactory academic progress and prior to any changes in such standard.

(5) The provisions of paragraphs (3) and (4) of this subdivision may be waived once for an undergraduate student and once for a graduate student if an institution certifies, and maintains documentation, that such waiver is in the best interests of the student. Prior approval by the commissioner of the criteria and procedures used by an institution to consider and grant waivers shall not be required. The commissioner may review such criteria and procedures in use, and require an institution to revise those found to be not acceptable.

Historical Note

Sec. filed July 1, 1975; amd. filed June 27, 1977; repealed, new filed April 28, 1980; amds. filed: Aug. 3, 1981; July 31, 1984; March 26, 1987 eff. May 1, 1987. Amended (b)(1).

§ 145-2.3 Approved programs for general and academic performance awards.

(a) The commissioner shall periodically provide each approved institution of postsecondary education in the State with a list of registered programs approved by the commissioner for purposes of general and academic performance awards in that institution, and such institution shall certify as attending approved programs of study only those students enrolled in programs included in such list, except as otherwise specifically authorized by the commissioner because of administrative error, pending registration, or other special circumstances. Copies of all such lists of registered programs shall be provided to the president of the Higher Education Services Corporation for use in implementing the purposes of this section.

(b) *Approved programs*, for general and academic performance awards other than part-time tuition awards and tuition awards for Vietnam veterans, where authorized and specified by statute, shall be

defined as follows:

(1) *Collegiate level programs* shall denote those programs registered by the State Education Department under section 52.2 of this Title or other appropriate regulation applying to a program leading to a degree, or leading to a diploma or certificate fully creditable towards a degree in an institution authorized to grant degrees. Approved diploma and certificate programs shall be of at least one academic year's duration. Programs registered under section 52.22 of this Title shall not be considered collegiate level programs. Further, post-doctoral programs leading to specialty certification, such as in psychoanalysis or orthodonture, shall not be considered diploma or certificate programs within the intent of articles 13 and 14 of the Education Law.

(2) Noncollegiate programs. (i) *Hospital programs of professional nursing*. Such programs shall denote programs registered by the State Education Department under section 52.12(a)(1) of this Title as programs offered by a hospital nursing school and approved by the Regents as leading to licensure as a registered professional nurse.

(ii) *Other health-related programs*. Such programs shall denote other programs that lead to licensure as a licensed practical nurse registered by the State Education Department under section 52.12(a)(2) of this Title, or to certification in an area of medical or health technology, and that are registered, licensed or approved by the State Education Department or by the State Department of Health.

(iii) *Two-year programs in registered private business schools*. Such programs shall denote programs of at least 1440 instructional hours' duration that are offered by private business schools not authorized to grant degrees and that are registered by the State Education Department under Part 126 of this Title.

(c) When a private business school is registered or when an institution is authorized by the Regents to grant degrees, the effective date of the eligibility of students attending such institution to receive awards shall be the beginning of the academic year in which such action is taken by the Regents. When a program is registered by the commissioner, the effective date of the eligibility of students enrolled in such program shall be the date on which the program is registered, unless the registration is specifically made retroactive to an earlier date.

(d) Programs approved for a Regents award for children of deceased and disabled veterans, and a Regents award for children of deceased State correction officers and State civilian employees of a correction facility, shall be the same as programs approved for a Regents college scholarship.

(e) Programs approved for part-time tuition awards pursuant to section 666 of the Education Law shall be credit-bearing undergraduate degree, certificate, and diploma programs offered by an institution authorized to grant degrees, which are registered by the State Education Department pursuant to Part 52 of this Title or other appropriate regulation.

(f) Programs approved for tuition awards for Vietnam veterans shall be undergraduate programs in degree-granting institutions of at least 12 semester hours or the equivalent which are registered by the State Education Department pursuant to Part 52 of this Title, or noncredit vocational training programs of at least 320 clock hours or the equivalent which have been approved by the commissioner pursuant to Part 162 of this Title.

Historical Note

Sec. filed July 1, 1975; amds. filed: June 27, 1977; Aug. 7, 1979; Sept. 29, 1980; July 31, 1984; Sept. 25, 1984; Jan. 27, 1986; March 26, 1987 eff. May 1, 1987. Amended (e).

§ 145-2.4 Matriculated status.

(a) A student shall be considered in matriculated status if:

(1) the student has filed a written application for enrollment at the institution for the purpose of earning a degree, diploma or certificate;

(2) in accepting the student's application, the institution has taken into account the capacity of the student to undertake a course of study and its own capacity to provide what instructional and other support the student needs to complete the program, as required by section 52.2(d) of this Title; and

(3) the institution, on the basis of that demonstration has recognized the student as a candidate for that degree, diploma or certificate. It shall not be necessary that the student, in addition, have passed matriculation examinations or language examinations, or completed any other particular prerequisites established by the school in accordance with local custom or regulation. Effective for academic terms beginning after January 1, 1978, students accepted in special programs for the disadvantaged may be considered matriculated on that basis only if such programs are in the EOP, HEOP, SEEK, or College Discovery categories, or are otherwise approved by the commissioner.

(b) The student who is enrolled for courses solely to complete teacher certification, licensing or other external requirements, or solely for personal or cultural advancement, and who is not recognized as a candidate for a degree, diploma or certificate, shall not be considered a matriculated student.

(c) A student shall be considered matriculated only if the courses pursued by the student are fully recognized at that time as contributing towards fulfillment by the student of the requirements for completion of the program. A student required to complete certain courses to make up deficiencies in background or training may be considered matriculated if acceptance and credit are not conditioned upon additional and special requirements designed to establish the qualifications of the student to pursue the program successfully. However, if credit is conditional, depending upon satisfactory completion of certain special and additional requirements, then the student shall not be considered to be fully matriculated.

(d) Retroactive matriculation by the school shall not establish retroactive eligibility for student aid unless such retroactive action was necessary to correct clerical error or administrative delay in reviewing the application of a student who was in fact eligible for matriculation as of the retroactive date.

(e) Students enrolled under permit from other institutions where they are matriculated may be certified as matriculated by the school attended.

Historical Note

Sec. filed July 1, 1975; amd. filed June 27, 1977 eff. July 20, 1977. Amended (a)-(c).

§ 145-2.5 In-State study.

To be considered in attendance at a school in New York State, the student must either be matriculated at that school, or must be registered at that school under permit from another school in New York State at which the student is regularly matriculated. A student who is regularly matriculated at an out-of-state school and who attends a New York State school without full transfer and matriculation shall be considered as an out-of-state student.

(b) Instruction received by a student outside New York State may be considered as instruction

conducted by an institution in this State, within the intent of the law, only if the student is required to pay all tuition and instructional fees for such foreign or out-of-state study to the approved New York State institution. To be approved, an off-campus study program must be an integral part of the curriculum of the New York State institution, and tuition must be payable to the school and received by the school in the same manner as tuition charged for any other school program. If the student pays tuition or educational fees to an out-of-state institution, the student shall be considered as receiving instruction provided by that institution, notwithstanding the fact that the student may be maintaining registration in a New York State institution, or that the New York State institution may also be charging the student a fee for supervisory, guidance, or administrative services.

Historical Note

Sec. filed July 1, 1975 eff. Aug. 1, 1975.

§ 145-2.6 Theological study.

General and academic performance awards shall not be provided for study in programs that, in the determination of the commissioner, provide professional training in theology or religious education, or in programs leading to the following theological degrees:

Bachelor of Divinity (B.D.)
Bachelor of Religious Education (B.R.E.)
Bachelor of Sacred Theology (S.T.B.)
Bachelor of Theology (Th.B.)
Master of Divinity (M.Div.)
Master of Religious Education (M.R.E.)
Master of Arts in Religious Education (M.A. in R.E.)
Master of Sacred Theology (S.T.M.)
Master of Theology (Th.M.)
Master of Arts in Theology (M.A. in Th.)
Doctor of Ministry (D.Min.)
Doctor of Religious Education (D.R.E.)
Doctor of Theology (Th.D.)

Historical Note

Sec. filed July 1, 1975: amd. filed April 28, 1980 eff. Sept. 2, 1980.

§ 145-2.7 Five-year programs.

(a) For purposes of student aid, a five-year program shall denote an organized program registered and approved by the State Education Department as a program at the undergraduate level normally requiring more than four years to complete.

(b) A student shall be eligible for a fifth year of benefits even if the student has not yet completed four full years of credit because of failure, reduced programs, transfer, or other reasons, so long as the student is currently enrolled in a five-year program. However, the student who requires more than four years to complete a program normally completed in four years shall not be considered as enrolled in a five-year program, except as specifically provided above.

(c) A student shall also be considered to be enrolled in a five-year program if enrolled in a HEOP, EOP, or SEEK program, or in any other organized program of remedial study approved by the commissioner for the purposes of this section. Such approval shall apply to eligibility for payments of all academic performance and general purpose awards for which payment of fifth-year benefits is authorized under the law. To be approved, programs must include diagnostic and referral procedures

and such educational options as tutoring, special counseling, and special coursework. Students must enter the program prior to the completion of two academic years of study.

Historical Note

Sec. filed July 1, 1975; amd. filed April 28, 1980 eff. Sept. 2, 1980. Amended (a).

§ 145-2.8 Noninstructional external degree programs.

(a) Notwithstanding the provisions of any other section of this Subpart, students enrolled in approved noninstructional external degree programs shall be considered in matriculated status.

(b) *Full-time study* shall mean enrollment for 12 semester hours, or eight semester hours a quarter, or the equivalent as defined by the commissioner; *half-time study* shall mean enrollment for at least six semester hours, or four to seven semester hours a quarter, or the equivalent, but less than 12 semester hours, or eight semester hours a quarter. Students must prefile a plan of study with the institution.

(c) Tuition for noninstructional external degree programs shall be construed as including charges for examinations, enrollment, and records maintenance.

(d) Payment of awards shall be made upon successful completion of all examinations included in the prefiled plan of study, as certified by the institution.

Historical Note

Sec. filed July 1, 1975; amd. filed June 27, 1977 eff. July 20, 1977. Amended (b).

§ 145-2.9 Accelerated study.

(a) To be eligible to receive payment for accelerated study beyond the regular program of study for the academic year, except for part-time awards pursuant to Education Law, section 666, or for Vietnam veterans tuition awards pursuant to Education Law, section 669-a, a student shall, during the regular academic year, be a full-time student matriculated in an approved program in a school in this State, unless out-of-state study is approved during the regular academic year. For the purposes of this section, all attendance during a single summer period, including intersessions, shall be considered to constitute a single term of attendance. To be eligible for an award for half-time accelerated study, a student shall be a full-time student during the preceding or succeeding term.

(b) Accelerated study shall denote study which meets the following criteria:

(1) The term of study shall be a separately organized term in addition to the regular school year, with separate registration and separate charge for tuition and fees.

(2) Accelerated study shall be accompanied by accelerated tuition charges, so that the total tuition charge upon completion of the accelerated program is comparable to the total tuition charge for the nonaccelerated program.

Historical Note

Sec. filed July 1, 1975; amds. filed: July 31, 1984 as emergency measure; Sept. 25, 1984; Aug. 1, 1989 eff. Sept. 15, 1989.

§ 145-2.10 Educational fees.

For purposes of student aid, educational fees shall include library fees, registration fees, laboratory fees and diploma fees. Fees charged for purposes involving primarily the pleasure, comfort or penalty of the student shall be considered noneducational. Such fees include athletic fees, student publication fees, health fees and insurance, student activities fees, maintenance costs, cost of books or uniforms, late registration fees, laboratory breakage fees, and graduation assessment costs other than diploma fees.

Historical Note

Sec. filed July 1, 1975 eff. Aug. 1, 1975.

§ 145-2.11 Level of study.

A student matriculated for a post-baccalaureate degree, or in a professional school of medicine, dentistry, podiatry, veterinary medicine, or law, shall be considered enrolled at the graduate level. In addition, the commissioner may designate a baccalaureate degree program as at the graduate level if admission to such program is limited to persons with baccalaureate degrees, or if the preponderance of persons admitted to such programs already have a baccalaureate degree. Otherwise, a college graduate who is matriculated for a second baccalaureate degree shall be considered to be enrolled in undergraduate study. A student matriculated for an undergraduate degree shall not be considered at the graduate level, even if concurrently enrolled for graduate level courses.

Historical Note

Sec. filed July 1, 1975 eff. Aug. 1, 1975.

§ 145-2.12

Historical Note

Sec. filed July 1, 1975: repealed, new filed June 27, 1977; repealed, filed April 28, 1980 eff. Sept 1, 1980.

§ 145-2.13 Limitation of amount of awards.

(a) Except as provided in subdivision (b) of this section, the following educational aid shall be considered to duplicate the purposes of tuition assistance program awards, awards for part-time study and Vietnam veterans tuition awards, and shall therefore serve to limit the amount of such awards:

(1) Federal assistance. An educational grant or scholarship by the Armed Forces of the United States or by a Federal agency which provides tuition assistance.

(2) State assistance. A tuition grant awarded by a New York State department or agency.

(3) Institutional assistance. Tuition remission or a tuition grant or waiver awarded by the institution on the basis of:

(i) the student's status as a faculty or staff member, or dependent;

(ii) service as a graduate assistant, or other services related to the student's program; and

(iii) the student's enrollment in a particular program of study.

(4) Other educational grants or scholarships to the extent that the combination of such awards with other benefits would exceed the student's full cost of tuition and maintenance.

(b) The following aid shall not be considered to duplicate the purposes of tuition assistance program awards, awards for part-time study, and Vietnam veterans tuition awards, and shall therefore not serve to limit the amount of such awards:

(1) Federal assistance. The following Federal assistance shall not be considered duplicative:

(i) United States War Orphan's Educational Benefits;

(ii) benefits of the Veterans' Readjustment Act of 1966 (G.I. Bill);

(iii) basic and supplemental educational opportunity grants. However, if the student has a maintenance cost less than that allowed under the basic educational opportunity grant program, the amount of the basic educational opportunity grant in excess of maintenance costs shall be considered duplicative;

(iv) special assistance for disadvantaged students; and

(v) Robert C. Byrd Honors Scholarships.

(2) State assistance. Tuition grants from the following State agencies shall not be considered duplicative:

(i) the Office of Vocational Rehabilitation of the State Education Department; and

(ii) the Commission for the Blind and Visually Handicapped of the Department of Social Services.

(3) Institutional assistance. The following awards shall not be considered duplicative:

(i) academic, athletic or other prizes to the extent that the combination of such awards with tuition assistance program awards does not exceed the student's cost of tuition and maintenance. *Maintenance* shall consist of charges for room, board, transportation, textbooks and instructional material, and personal or other expenses as normally calculated by the institution for determining student expenses in connection with student aid programs;

(ii) nonservice grants by the institution, or tuition credit in lieu of grants, designed to supplement the State award and based on the student's total financial need; and

(iii) salary, or tuition credit in lieu of salary, representing payment solely for services performed and not as a tuition grant or waiver associated with the student's program of study.

Historical Note

Sec. filed July 1, 1975; repealed, new filed April 28, 1980; amds. filed: July 31, 1984; Sept. 25, 1984; Nov. 2, 1987 *eff.* Dec. 11, 1987. Amended (b).

§ 145-2.14 Eligibility for category II tuition assistance program awards.

(a) Where eligibility for a category II tuition assistance grant is limited by law to persons who did not graduate from high school prior to a specified date, the award of a high school equivalency diploma shall be considered in the same manner as high school graduation.

(b) Where eligibility for a category II tuition assistance grant is limited by law to persons who did not begin post-secondary study prior to a specific date, such limitation shall not apply to high school

students who enroll for incidental college courses for acceleration purposes without formal admission or matriculation by the post-secondary institution.

Historical Note

Sec. filed July 1, 1975 eff. Aug. 1, 1975.

§ 145-2.15 Administration of ability-to-benefit tests for purposes of eligibility for awards [Note: includes amendments effective April 9, 2009]

(a) Applicability. To the extent authorized by chapter 57 of the Laws of 2007 and section 661 of the Education Law, this section identifies certain ability-to-benefit tests approved by the Board of Regents and the passing scores for such tests, for purposes of eligibility for general awards and academic performance awards prescribed under section 661 of the Education Law. This section also establishes the criteria the commissioner will utilize to determine whether an approved ability-to-benefit test is independently administered and evaluated. Such requirements shall be applicable to students who first receive aid pursuant to section 661 of the Education Law in academic year 2007-2008 and each academic year thereafter.

(b) Definitions. For purposes of this section:

(1) *Testing center* means a center that:

- (i) is not located and/or affiliated with an eligible institution as defined in this subdivision; or
- (ii) is located at an eligible institution if the following requirements are met:
 - (a) the center is responsible for gathering and evaluating the information about individual students for multiple purposes, including appropriate course placement;
 - (b) the center is independent of the admissions and financial aid processes at the institution in which it is located;
 - (c) the center is staffed by professional employees who have been trained in test administration and Federal guidelines regarding the administration of ability-to-benefit tests and such employees shall not be employed through, or perform the duties of, the admissions, student financial aid, or registrar's offices of the institution; and
 - (d) the center does not have as its primary purpose the administration of ability-to-benefit tests.

(2) *Federally approved ability-to-benefit test* means an ability-to-benefit test approved by the secretary for Federal financial aid purposes.

(3) *School providing secondary education from a state within the United States* means a school authorized, recognized or approved by a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(4) *Secretary* means the Secretary of the United States Department of Education or any official or employee of the department acting for the secretary under a delegation of authority.

(c) Ability-to-benefit tests approved by the Board of Regents for eligibility for awards under section 661 of the Education Law.

(1) For students first receiving aid pursuant to section 661 of the Education Law in the 2007-2008

academic year and each academic year thereafter, students shall have a certificate of graduation from a recognized school providing secondary education from a state within the United States, or the recognized equivalent of such certificate, or receive a passing score on a federally approved ability-to-benefit test identified by the Board of Regents as satisfying the eligibility requirements of this section that has been independently administered and evaluated, as defined by the commissioner in subdivision (e) of this section.

(2) For purposes of eligibility for awards under section 661 of the Education Law, the department shall publish a list of ability-to-benefit tests that the Board of Regents has identified as satisfactory in determining eligibility to receive a first award in the academic year 2007-2008 and each year thereafter for students without a certificate of graduation from a school providing secondary education from a state within the United States or the recognized equivalent of such a certificate. The identification of such tests shall be without term unless the department determines that a test is no longer satisfactory in determining eligibility for awards under section 661 of the Education Law or the secretary discontinues Federal recognition of such test.

(d) Satisfactory passing score. For purposes of eligibility for awards under section 661 of the Education Law, an eligible institution shall submit for approval by the Board of Regents the passing score it proposes to utilize on any ability-to-benefit test approved by the Board of Regents under subdivision (c) of this section, in a form prescribed by the commissioner. Such score shall not be lower than the score set by the secretary and the eligible institution shall submit an explanation of its reasons for selecting such passing score and any other information the commissioner may require. Approval of such passing score shall be without term unless the department determines that the passing score is no longer satisfactory in determining eligibility for awards under section 661 of the Education Law or the institution seeks to change such passing score or no longer offers the approved ability-to-benefit test.

In determining whether to approve the proposed score or scores, the commissioner shall take into consideration the following factors:

- (1) the level of curricula the institution offers, as provided in section 52.2(c) of this Title;
- (2) the admission criteria and procedures the institution utilizes to evaluate the capacity of a student to undertake a course of study and the capacity of the institution to provide instructional and other support services to ensure that the student can complete the course of study, as is required by section 52.2(d)(2) of this Title;
- (3) evidence that the admission criteria and procedures that the institution utilizes are effective in admitting only persons who have the capacity to undertake a course of study and that the institution provides proper instructional and support services;
- (4) the adequacy of the academic support services the institution provides under section 52.2(f)(2) of this Title, which shall be evidenced by the institution's record in promoting successful student outcomes; the percentage of first-time students enrolling in noncredit remedial courses; the percentage of first-time students returning at the beginning of the next academic year; the percentage of first-time students earning an associate degree within three years or a baccalaureate degree within six years from the date they entered the institution and such other information as the commissioner shall specify; and
- (5) evidence that the institution evaluates the success of its academic and other support services in providing instructional and other support services that the student needs to complete the

program and that the institution uses the evaluation to improve those services and to modify its admission criteria and procedures.

(e) Independent administration and evaluation of ability-to-benefit test. For purposes of meeting the eligibility requirements for awards under section 661 of the Education Law, the institution shall independently administer and evaluate ability-to-benefit tests approved by the Board of Regents in accordance with the requirements of this subdivision. The department will consider an ability-to-benefit test to be independently administered and evaluated if the following requirements are met:

(1) the test is administered at one of the following locations:

(i) a testing center that is not located at and/or affiliated with the institution for which the student is seeking enrollment and the test administrator is an employee of such center; or
(ii) a degree-granting institution that confers two-year or four-year degrees or an institution that qualifies as an eligible public vocational institution and the chief executive officer of such institution certifies annually, in a form prescribed by the commissioner, that:

(a) the test is administered by a unit of the institution that is responsible for other forms of testing or for provision of academic support services, or both, and such unit does not report to officers responsible for admissions or the administration of student financial aid for such institution;

(b) the test is administered in an environment that is separate, secure, closed and continuously monitored during testing;

(c) students are required to provide written verification of identity, such as a photo identification, and to sign in prior to taking the test and students are prohibited from bringing into the test area any materials prohibited by the test publisher and are required to leave the test area immediately upon completion of the test;

(d) the test is proctored by professional employees who have been trained in test administration and Federal guidelines regarding the administration of ability-to-benefit tests and who are not employed through the admissions, student financial aid, or registrar's offices of the institution;

(e) the scoring of ability-to-benefit tests is in accordance with the test publisher's instructions and is overseen by institutional employees who are not employed through, or perform the functions of the admissions, student financial aid, or registrar's offices and such scores are verified by more than one employee;

(f) all tests, test results, and test databases, if any, are kept secure;

(g) the test administrator has no prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test;

(h) the test administrator is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors or a chief executive officer;

(i) the test administrator is not a current student of the institution;

(j) the test administrator is not scoring the test; and

(k) the annual certification shall also include the following information relating to the previous academic year: the number of students examined, the number of re-tests administered, the scores on all ability-to-benefit tests for each student examined, the number of students achieving passing scores on such tests, the number of students tested that are enrolling in such institution and the success of tested students in terms of retention and graduation; or

(iii) an eligible institution that does not have degree-conferring authority and such institution

is not a public vocational institution and the test is given by a test administrator who:

- (a) has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;
- (b) is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;
- (c) is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals; and
- (d) is not a current or former student of the institution;
- (e) is certified by the test publisher to give and score the publisher's test;
- (f) administers the test in accordance with instructions provided by the test publisher and in a manner that insures the integrity and security of the test;
- (g) makes the test available only to a test-taker, and then only during a regularly scheduled test;
- (h) secures the test against disclosure or release;
- (i) submits the completed test to the test publisher within two business days after test administration in accordance with the test publisher's instructions; and
- (j) upon request, gives the commissioner, guaranty agency, accrediting agency, and law enforcement agencies access to test records or other documents related to an examination, audit, investigation, or program review of the institution or test publisher.

- (2) The commissioner will not consider a test independently administered if an institution:
 - (i) compromises test security or testing procedures;
 - (ii) pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test; or
 - (iii) otherwise interferes with the test administrator's independence or test administration.
- (3) Any institution administering an ability-to-benefit test shall maintain a record for each student who sat for an ability-to-benefit test under this section, including the name of the test taken by such student, the date of the test and the student's scores on such tests. This information shall be retained in the student's permanent record.
- (4) Upon request, the eligible institution shall provide the commissioner with access to test records or other documents related to an audit, investigation or program review of the institution;
- (5) If the commissioner finds that an institution has violated the certification procedures or the ability-to-benefit test procedures under this section, the commissioner shall have the authority to require an eligible institution to employ a testing center independent of such institution.

Effective April 9, 2009