



SENIOR DEPUTY COMMISSIONER OF EDUCATION – P-16
Office of Elementary, Middle, Secondary and Continuing Education
Office of Higher Education

CEO 07-02

July 20, 2007

To: Chief Executive Officers/Presidents of Institutions of Higher Education
From: Johanna Duncan-Poitier 
Subject: Update on new requirements for Tuition Assistance Program (TAP) awards

I am writing to update you on a recently enacted State law that impacts State student financial aid for New York State students.

On April 9, 2007, the Legislature and the Governor enacted Chapter 57 of the Laws of 2007, which went into effect immediately. It requires that students seeking Tuition Assistance Program (TAP) awards and other State student financial aid for the first time in the 2007-08 academic year, who do not possess a U.S. high school diploma or the recognized equivalent, achieve a score on a federally approved Ability-to-Benefit (ATB) test identified by the Board of Regents and independently administered as defined by the Commissioner. Therefore, students without a high school diploma or its equivalent and students educated in other countries that apply for State student financial aid are impacted by this new law. To assist in the development of regulations to implement these new provisions in Chapter 57, the Department convened representatives from all four sectors of higher education and a representative from the New York State Higher Education Services Corporation. With the assistance and recommendations from this workgroup, the Department drafted regulations to implement the new requirements concerning ATB testing.

I am pleased to inform you that, on June 26, 2007, the Board of Regents approved the addition of Section 145-2.15 to the Regulations of the Commissioner of Education regarding the use of Ability-to-Benefit (ATB) tests for eligibility for Tuition Assistance Program (TAP) awards and other State student financial aid. The newly enacted Section 145-2.15 of the Commissioner's Regulations is attached. As an emergency action, the regulation is subject to approval as a permanent rule at the Board's September meeting.

For the fall of 2007, all federally approved ATB tests may be used. For terms subsequent to the fall of 2007, the Department intends to identify a subset of tests that are suitable for use by higher education institutions and present it to the Board of Regents for their consideration at its September 2007 meeting. Once the Regents have approved the list of ATB tests, the Department will immediately notify all institutions of the tests which were selected for use subsequent to the fall 2007 term.

The new regulation also requires each eligible institution to seek approval of the passing score it proposes to use, which may not be lower than the federally approved score. For the fall 2007 term, and until the Department approves a new pass point for your institution, institutions may use any score that is not lower than the federally approved score.

In determining whether to approve a score requested by an institution, the Department will take into consideration the:

- The levels of curricula the institution offers.
- The admission criteria and procedures the institution uses in evaluating the capacity of a student to undertake a course of study and the capacity of the institution to provide instructional and other support that the student needs to complete the program. The evidence that those criteria and procedures are effective in admitting only persons who have such a capacity and who can be provided that support.
- The adequacy of the academic support services it provides, as evidenced by the institution's record in promoting successful student outcomes, as evidenced by 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, of the date they entered the institution; and such other information as the Commissioner shall specify.
- The evidence that the institution engages in evaluating the success of its academic and other support services in providing the instructional and other support that the student needs to complete the program and uses that evaluation to improve those services and to modify its admission criteria and procedures.

In enacting this approach, the Regents were looking for alignment of college admission requirements with the level of the academic program and the academic support being provided to the student. Additional guidance on how the process of identifying a college's pass point on the ATB tests is being developed and will be shared with you this fall.

The regulation also provides that assessment centers, where ATB tests are administered and that are not located on or affiliated with the institution, are deemed to be independent. It also provides that ATB tests administered on campus may be deemed independently administered if the institution's chief executive officer annually certifies to the Department that the administration of the tests meets the requirements identified in the regulation. For the fall of 2007, separate certification will not be required; the test will be deemed independently administered if its administration meets the criteria in federal regulations. For terms subsequent to the fall of 2007, an institution wanting to administer ATB tests on campus will be required to certify to the Department that it meets the criteria set forth in the regulation. If the Department finds that an institution has violated the certification procedure or the federal ability-to-benefit procedures, it may require the institution to use an assessment center external to the institution.

I appreciate the tremendous effort of all colleges in assisting students to succeed in college.

For further information on these regulations, please feel free to contact Joseph P. Frey at (518) 486-3633 or via E-mail at jfrey@mail.nysed.gov.

Attachment

cc: Chief Academic Officers

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 215 and 661 of the Education Law and Chapter 57 of the Laws of 2007.

Section 145-2.15 of the Regulations of the Commissioner of Education is added, effective July 1, 2007, as follows:

§145-2.15. Administration of ability-to-benefit tests for purposes of eligibility for awards and loans.

(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, academic performance awards or student loans 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. Such requirements shall be applicable to students who first receive aid pursuant to section 661 of the Education Law in academic year 2007-2008.

(b) Definitions. For purposes of this section:

(1) Assessment 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 who are not employed through 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 and loans 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 and loans 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 and loans 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 and loans 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 and loans 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 or loans under section 661 of the Education Law, the institution shall independently administer ability-to-benefit tests approved by the Board of Regents in accordance with the requirements of this section. 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 an assessment center that is not located and/or affiliated with the institution for which the student is seeking enrollment and the test administrator is an employee of such center; or

(2) the test is administered at 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:

(i) the test is administered by a unit of the institution that is responsible for other forms of testing or for a 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;

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

(iii) 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;

(iv) 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;

(v) each test used for ability to benefit purposes is administered to all students together and the test administrator is unaware which students are taking the test for ability to benefit purposes until after the test is completed and scored;

(vi) the scoring of ability-to-benefit tests is overseen by institutional employees who are not employed through the admissions, student financial aid, or registrar's offices and such scores are verified by more than one employee;

(vii) all tests, test results, and test databases, if any, are kept in locked and secure containers;

(viii) 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;

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

(x) the test administrator is not a current or former student of the institution;

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

(xii) 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.

(3) 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.

(4) 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 test taken by such student, the date of the test and the student's scores on such tests.

(5) 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.

(6) 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 an assessment center independent of such institution.