



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234
Assistant Commissioner
Office of Curriculum, Instruction and Early Learning

June 29, 2020

TO: District Superintendents
Superintendents of Schools
Public School Administrators
Charter School Administrators
Nonpublic School Administrators

FROM: Marybeth Casey *Marybeth Casey*

SUBJECT: Amendment to Section 135.4 of the Regulations of the Commissioner of Education relating to eligibility for participation in interschool competition and inclusive athletic activities for students who have Section 504 or ADA plans.

The Commissioner's Regulation §135.4(b)(2) provides that a pupil shall be eligible for interschool competition or inclusive athletic activities in a sport during a semester, provided that he or she:

- is a bona fide student, enrolled during the first 15 school days of such semester;
- is registered in the equivalent of three regular courses;
- is meeting the physical education requirement; and
- has been in regular attendance 80 percent of the school time, bona fide absence caused by personal illness excepted.

The regulation, as written, has been interpreted by schools and athletic associations, etc., as precluding consideration of a request for an accommodation on behalf of an otherwise qualified student with a disability who is not registered in the equivalent of three regular courses as a result of his or her education plan approved under section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act (ADA). The amendment makes it clear that the regulation should not be interpreted as barring consideration of such accommodation requests in accordance with federal law.

This amendment provides that:

Nothing in this clause shall be construed to preclude a chief school officer, athletic association, league or section from duly considering a request for an accommodation on behalf of an otherwise qualified student with a disability who is not registered in the equivalent of three regular courses as a result of his or her education plan approved under section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Note that this amendment only applies to the course requirements under the bona fide student rule. No other eligibility requirements have been amended.

The emergency rule became effective June 9, 2020 and there is a 60-day public comment period as required under the State Administrative Procedure Act. See June BOR meeting: <https://www.regents.nysed.gov/common/regents/files/620bra4.pdf>

For questions about physical education and interschool athletic regulations, please contact the Office of Curriculum and Instruction at emscurric@nysed.gov or (518) 474-5922.