



TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson-Dingle *Angelique Johnson-Dingle*
William P. Murphy *William Murphy*

SUBJECT: Proposed Amendment of Section 100.2 of the Regulations of the Commissioner of Education Relating to Completion of the Free Application for Federal Student Aid (FAFSA) by Seniors Enrolled in School Districts

DATE: October 24, 2024

AUTHORIZATION(S): *Donna B. B...* *B...*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 100.2 of the Regulations of the Commissioner of Education relating to the completion of the Free Application for Federal Student Aid (FAFSA) by seniors enrolled in school districts?

Reason(s) for Consideration

Required by State Statute (Part C of Chapter 56 of the Laws of 2024).

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the November 2024 Regents meeting. A copy of the proposed rule (Attachment A) is attached.

Procedural History

The proposed amendment was presented to a joint meeting of the Higher Education and P-12 Education committees for discussion and recommendation to the Full Board for adoption as an emergency rule at the July 2024 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 31, 2024, for a 60-day public comment period. Because the July 2024 emergency action was set to expire on October 13, 2024, a second emergency action was necessary at the September 2024 Regents meeting, effective October 14, 2024, to

ensure that the emergency rule remained continuously in effect until it could be permanently adopted and take effect as a permanent rule. A Notice of Emergency Adoption was published in the State Register on October 30, 2024.

Following publication in the State Register, the Department received two comments on the proposed amendment. An Assessment of Public Comment (Attachment B) is attached. No changes to the proposed amendment are recommended at this time. If adopted at the November 2024 meeting, a Notice of Adoption will be published in the State Register on November 20, 2024. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

The Enacted State Budget for the 2024-25 fiscal year included a provision (Part C of Chapter 56 of the Laws of 2024), effective August 15, 2024, which requires that each school district shall ensure verification from the parent or guardian of a student who is a senior (or from the student where the student is 18 years of age or older or legally emancipated) that the student either: (1) completed the Free Application for Federal Student Aid (FAFSA) or, if applicable, the Jose Peralta New York State Development, Relief, and Education for Alien Minors (DREAM) Act application; or (2) completed a waiver on a form promulgated by the Department indicating that the parent or guardian (or student, as applicable), understands the nature of the FAFSA or, if applicable, the DREAM Act application and has chosen not to file such application. The Department will develop and provide a waiver form for school districts to utilize.

School districts must also notify each high school senior enrolled in such school district, no less than two times during each school year, of all state-sponsored scholarships, financial aid, and assistance available to college or post-secondary education students. Additionally, school districts must provide referrals for support or assistance to complete the FAFSA or, if applicable, the DREAM Act application.

Finally, on and after July 1, 2025, each school district must annually report to the Department certain data for all seniors enrolled in such district, aggregated by high school. This data includes (1) the total number of students who completed the FAFSA or, if applicable, the DREAM Act application; (2) the number of students who completed a waiver; and (3) the total number of seniors enrolled.

The legislation and this regulation prohibit students from being penalized if their parents or guardians do not comply with the above requirements.

Consistent with the above, the Department proposes to add a new subdivision (gg) to section 100.2 of the Commissioner's regulations to implement this new legislation.

Related Regents Items

[July 2024: Proposed Amendment of Section 100.2 of the Regulations of the Commissioner of Education Relating to Completion of the Free Application for Federal Student Aid \(FAFSA\) by Seniors Enrolled in School Districts](https://www.regents.nysed.gov/sites/regents/files/724hep12a1.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/724hep12a1.pdf>)

[September 2024: Proposed Amendment of Section 100.2 of the Regulations of the Commissioner of Education Relating to Completion of the Free Application for Federal Student Aid \(FAFSA\) by Seniors Enrolled in School Districts](https://www.regents.nysed.gov/sites/regents/files/924brca9.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/924brca9.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 100.2 of the Regulations of the Commissioner of Education be amended, as submitted, effective November 20, 2024.

Timetable for Implementation

If adopted at the November 2024 meeting, the proposed amendment will become effective as a permanent rule on November 20, 2024.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, and 305 of the Education Law, and Section 1 of Part C of Chapter 56 of the Laws of 2024.

Section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (qq) to read as follows:

(qq) FAFSA completion.

(1) Each school district shall:

(a) Ensure verification of one of the following from the parent or guardian of each student, or from the student if the student is 18 years of age or older or legally emancipated, during the school year in which the student is a senior enrolled in such school district:

(i) completion of either the Free Application for Federal Student Aid (FAFSA) for such student or, if applicable, the Jose Peralta New York State Development, Relief, and Education for Alien Minors (DREAM) Act application. Such verification of completion shall not require a parent, guardian, or student to identify which type of application was completed; or

(ii) completion of a waiver on a form promulgated by the Department indicating that the parent or guardian, or the student if the student is 18 years of age or older or legally emancipated, understands the nature of the FAFSA or, if applicable, the DREAM Act application and has chosen not to file an application pursuant to subparagraph (a) of this paragraph.

(b) Notify each high school senior enrolled in such school district, no less than two times during each school year, of state-sponsored scholarships, financial aid, and assistance available to college or post-secondary education students.

(c) Provide referrals for support or assistance to complete the FAFSA or, if applicable, the DREAM Act application.

(2) On and after July 1, 2025, each school district shall annually report to the Department the following data for all seniors enrolled in such school district, aggregated by high school:

(i) the total number of students that have completed either the FAFSA or, if applicable, the DREAM Act application;

(ii) the number of students who completed a waiver pursuant to clause (ii) of subparagraph (a) of paragraph (1) of this subdivision; and

(iii) the total number of seniors enrolled.

(3) A student shall not be penalized or punished nor shall a student's ability to graduate be affected if the student's parent or guardian, or student if the student is 18 years of age or older or legally emancipated, does not fulfill the verification requirements prescribed in subparagraph (a) of paragraph (1) of this subdivision.

ASSESSMENT OF PUBLIC COMMENT

Following publication of the Notice of Proposed Rule Making in the State Register on July 31, 2024, the Department received the following comments on the proposed amendment:

1. COMMENT:

One commenter expressed concerns about distributing information relating to the DREAM Act or applications for the DREAM Act. The commenter's concerns include (1) the potential liability of school districts for distributing the application if it is interpreted as providing legal advice or if the recipient does not properly understand the applications; (2) distributing DREAM Act applications could result in students having their privacy compromised as it could inadvertently expose undocumented student's status; (3) the process for applying for aid pursuant to the DREAM Act is sensitive and complex, and widespread distribution of applications could result in unwanted exposure and trauma to an affected student if the application is disclosed; (4) potentially inconsistent implementation across the state in how students receive the materials and the message tied to the DREAM Act application; and (5) the fact that parents and guardians of students with evolving immigration status should be the ultimate decision-makers in whether to fill out a DREAM Act application.

DEPARTMENT RESPONSE:

While the Department appreciates the commenter's concerns, the Department believes that the proposed rule as currently drafted is necessary to implement Part C of Chapter 56 of the Laws of 2024 ("Part C"). Part C requires, in part, that school districts ensure verification from parents/guardians that a student either completed the Free Application for Federal Student Aid (FAFSA) or, if applicable, the (DREAM) Act

application. The proposed rule is consistent with this statutory requirement. Additionally, the provision of information to high school seniors related to state-sponsored scholarships and financial aid, as well as assisting students with such applications, does not constitute legal advice. Similarly, the Department does not anticipate that distributing applications would lead to a breach of privacy, and students and their parents/guardians remain the ultimate decision-makers regarding submissions of the FAFSA and DREAM Act applications. Therefore, no change to the proposed rule is needed.

2. COMMENT:

A commenter, a superintendent of a school district, questioned why schools are responsible for what parents do regarding the FAFSA, opining that it should not be a school district's function to ensure "that everyone fills out things they either want to or not." The commenter opined that guidance counselors have more important social-emotional tasks to deal with and that the state should not continue to burden school districts with additional duties.

DEPARTMENT RESPONSE:

The proposed rule is consistent with and necessary to implement the new statutory requirements. Additionally, while the proposed rule requires districts to be more proactive to ensure FAFSA/DREAM Act completion and data collection and reporting, there is a concerted effort on behalf of the Department, as well as other stakeholders, to assist in meeting these requirements. Guidance distributed to districts includes links to resources such as the Higher Education Serves Corporation's (HESC's) FAFSA Ready page, which offers training, webinars, and toolkits for counselors; HESC's FAFSA Completion Initiative, which facilitates data sharing on

FAFSA completion; and information and links to training and workshops provided by SUNY, CUNY, and independent colleges. No changes to the proposed rule are needed.