



**TO:** The Honorable Members of the Board of Regents

**FROM:** Angelique Johnson-Dingle *Angelique Johnson-Dingle*  
William P. Murphy *William P. 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:** August 29, 2024

**AUTHORIZATION(S):** *Dom N. P. Belmont*

## 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 an emergency rule at the September 2024 Regents meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances which necessitate emergency action (Attachment B) are 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 first emergency action will expire on October 13, 2024, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the November 2024 Regents meeting. If adopted, a Notice of Emergency Adoption will be published in the State Register on October 30, 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) complete 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) complete 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 students attending college or post-secondary education. 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>)

### **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 October 14, 2024, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to conform the Commissioner's regulations to Part C of Chapter 56 of the Laws of 2024 and to ensure that the emergency action taken at the July 2024 meeting remains continuously in effect.

**Timetable for Implementation**

If adopted as an emergency rule at the September 2024 Regents meeting, the emergency rule will become effective on October 14, 2024. It is anticipated that the proposed amendment will be presented for permanent adoption at the November 2024 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. 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 the state-sponsored scholarships, financial aid, and assistance available to students attending college or post-secondary education.

(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.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

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, among other things, 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) complete 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) complete 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 proposes to add a new subdivision (gg) to section 100.2 of the Commissioner's regulations to implement this new legislation.

The proposed amendment was presented to a joint meeting of the Higher Education and P-12 Education committees for recommendation to the Full Board for adoption as an emergency rule at the July 2024 meeting of the Board of Regents, effective August 15, 2024. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the November 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the November meeting, would be November 20, 2024, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on October 13, 2024. Therefore, a second emergency action is necessary at the September 2024 meeting, effective October 14, 2024, for the preservation of the general welfare to conform the Commissioner's regulations to Part C of Chapter 56 of the Laws of 2024 and to ensure that the emergency action taken at the July meeting remains continuously in effect.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the November 2024 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule-making.