

8 CRR-NY 135.4
NY-CRROFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER G. HEALTH AND PHYSICAL EDUCATION
PART 135. HEALTH, PHYSICAL EDUCATION AND RECREATION8 CRR-NY 135.4
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135.4 Physical education.

(a) School district plans.

It shall be the duty of trustees and boards of education to develop and implement school district plans to provide physical education experiences for all pupils as provided in this section. Such current plans shall be kept on file in the school district office and shall be filed with the Division of Physical Education, Fitness, Health, Nutrition and Safety Services. All school districts shall comply with the provisions of this section by August 1, 1982. However, the requirement for submission of a plan shall become effective by January 1, 1983. A school district may conduct an instructional physical education program which differs from, but is equivalent to, the required program of instruction set forth in paragraph (2) of subdivision (c) of this section, with the approval of the commissioner. An equivalent program may be implemented only after approval from the Division of Physical Education, Fitness, Health, Nutrition and Safety Services. A request for approval to conduct an equivalent instructional physical education program shall be filed with the Division of Physical Education, Fitness, Health, Nutrition and Safety Services, and shall include the:

- (1) program goals and objectives;
- (2) way in which students are to be scheduled and the length of time daily, weekly, monthly or yearly;
- (3) program activities offered at each grade level or each year of instruction; and
- (4) assessment activities for determining the students' performance toward the goals and objectives of the program.

(b) Nonpublic schools.

Similar courses of instruction shall be prescribed and maintained in private schools in the State, and all pupils in grades kindergarten through 12 shall attend such courses. If such courses are not established and maintained in any private school, instruction in such school shall not be deemed to be substantially equivalent to instruction given to children of like ages in the public school or schools of the city or district in which the child resides.

(c) Program plans.

School district plans shall include the following:

- (1) Curriculum.
 - (i) The curriculum shall be designed to:
 - (a) promote physical activity and the attainment of physical fitness, and a desire to maintain physical fitness throughout life;
 - (b) attain competency in the management of the body and useful physical skills;
 - (c) emphasize safety practices;
 - (d) motivate expression and communication;
 - (e) promote individual and group understanding;

- (f) provide knowledge and appreciation of physical education activities;
- (g) make each individual aware of the effect of physical activity upon the body;
- (h) provide opportunities for the exercise of pupil initiative, leadership and responsibility; and
- (i) reinforce basic learnings of other areas of the total school curriculum.

(ii) There shall be experiences of sufficient variety in each of the following:

- (a) basic and creative movement;
- (b) rhythm and dance;
- (c) games;
- (d) perceptual-motor skills;
- (e) individual and team sports;
- (f) gymnastics;
- (g) aquatics, where possible;
- (h) lifetime sports activities;
- (i) outdoor living skills; and
- (j) other appropriate activities which promote the development of boys and girls.

(iii) There shall be opportunity provided for participation in appropriate extra-class activities.

(iv) There shall be activities adapted to meet the needs of pupils who are temporarily or permanently unable to participate in the regular program of physical education. Adaptive physical education programs shall be taught by a certified physical education teacher.

(v) There shall be continuous evaluation of the instructional program and assessment of individual pupil needs and progress. Appropriate cumulative records shall be maintained which cover the essential features of the physical education program for each pupil, and when a pupil transfers to another school, such records shall be transferred with the student's transcript.

(2) Required instruction.

(i) Elementary instructional program—grades K through 6. Pupils in grades K-6 shall participate in the physical education program as follows:

- (a) all pupils in grades K-3 shall participate in the physical education program on a daily basis. All pupils in grades 4-6 shall participate in the physical education program not less than three times each week. The minimum time devoted to such programs (K-6) shall be at least 120 minutes in each calendar week, exclusive of any time that may be required for dressing and showering;
- (b) notwithstanding the provisions of clause (a) of this subparagraph, pupils in grades 5-6 who are in a middle school shall participate in the physical education program a minimum of three periods per calendar week during one semester of each school year and two periods during the other semester, or a comparable time each semester if the school is organized in other patterns; or
- (c) as provided in an equivalent program approved by the Commissioner of Education.

(ii) Secondary instructional program—grades 7 through 12. All secondary pupils shall have the opportunity for regular physical education, but not less than three times per week in one semester and two times per week in the other semester, taught by a certified physical education teacher, and all such pupils shall participate in the physical education program either:

- (a) a minimum of three periods per calendar week during one semester of each school year and two periods during the other semester; or
- (b) a comparable time each semester if the school is organized in other patterns; or
- (c) for pupils in grades 10 through 12 only, a comparable time each semester in extraclass programs for those pupils who have demonstrated acceptable levels of physical fitness, physical skills, and knowledge of physical education

activities; or

(d) for pupils in grades 10 through 12 only, a comparable time each semester in out- of-school activities approved by the physical education staff and the school administration; or

(e) as provided in an equivalent program approved by the Commissioner of Education.

(3) Attendance.

(i) All pupils shall attend and participate in the physical education program as approved in the school plan for physical education and as indicated by physicians' examinations and other tests approved by the Commissioner of Education. Individual medical certificates of limitations must indicate the area of the program in which the pupil may participate.

(ii) School district plans shall indicate through the sequential curriculum the steps to be taken to insure that each pupil meets the requirement for participation in physical education program which complies with the provisions of this section. School districts may award local diploma credit for the required program, and may also submit plans for elective units in physical education for additional credit.

(4) Personnel.

(i) Elementary classroom teachers may provide instruction under the direction and supervision of a certified physical education teacher.

(ii) When students participate in out-of-school activities as part of alternative programs, such activities may be taught by noncertified personnel, provided they have appropriate experience and are so approved by the board of education.

(iii) Each school district operating a high school shall employ a director of physical education who shall have certification in physical education and administrative and supervisory service. Such director shall provide leadership and supervision for the class instruction, intramural activities, and interschool athletic competition in the total physical education program. Where there are extenuating circumstances, a member of the physical education staff may be designated for such responsibilities, upon approval of the commissioner. School districts may share the services of a director of physical education.

(5) Facilities.

Trustees and boards of education shall provide adequate indoor and outdoor facilities for the physical education program at all grade levels.

(6) Administrative procedures.

(i) School district plans for the physical education program shall include information on the following administrative procedures:

(a) curriculum development in relation to grade levels, as referred to in paragraph (1) of this subdivision;

(b) appropriate examinations and tests to be employed by school authorities in determining pupil needs and progress in physical fitness, knowledge and skills;

(c) class size and grouping patterns which are compatible with the activities being taught;

(d) use of nonschool facilities;

(e) use of noncertified persons, such as student leaders, practice teachers, etc.;

(f) use of supplementary personnel which are described in section 80.33 of this Title;

(g) summer school physical education programs, if conducted; and

(h) policies and procedures for the conduct of extraclass programs.

(ii) Periodic reports regarding the status and progress of equivalent programs which have been approved by the commissioner shall be filed with the Division of Physical Education, Fitness, Health, Nutrition and Safety Services as requested.

(7) Basic code for extraclass athletic activities. Athletic participation in all schools shall be planned so as to conform to the following:

(i) General provisions. It shall be the duty of trustees and boards of education:

(a) to conduct school extra class athletic activities in accordance with this Part and such additional rules consistent with this basic code as may be adopted by such boards relating to items not covered specifically in this code. A board may

authorize appropriate staff members to consult with representatives of other school systems and make recommendations to the board for the enactment of such rules;

(b) to make the extraclass athletic activities an integral part of the physical education program;

(c) to appoint individuals, whether in a paid or non-paid (volunteer) status, to serve as coaches of interschool athletic teams, other than intramural teams or extramural teams, in accordance with the following:

(1) Certified physical education teachers may coach any sport in any school.

(2) Teachers with coaching qualifications and experience certified only in areas other than physical education may coach any sport in any school, provided they have completed:

(i) the first aid requirement set forth in section 135.5 of this Part;

(ii) an approved pre-service or in-service education program for coaches or will complete such a program within five years of appointment. Such program shall include an approved course in philosophy, principles and organization of athletics, which shall be completed within two years after initial appointment as a coach, and approved courses in health sciences applied to coaching, and theory and techniques of coaching that is sport specific, which shall be completed within five years after initial appointment as a coach. Such approved programs for coaches will consist of one of the following (credits and hours vary depending upon the contact and endurance involved in the sport): a department-approved college program of from two to eight credits; or a department approved in-service education program, conducted by schools, colleges, professional organizations or other recognized groups or agencies, from 30 to 120 clock hours; or an equivalent experience which is approved by the Commissioner of Education. Upon application to the Commissioner of Education in a format prescribed by the commissioner and setting forth the reasons for which an extension is necessary, the period in which to complete such training may be extended to no more than seven years after such appointment; provided that coaches who have a lapse in service due to maternity leave, military leave, or other extenuating circumstances may apply to the commissioner for an additional extension of no more than two years to complete course work; and

(iii) on a biennial basis, a course of instruction relating to mild traumatic brain injuries pursuant to section 136.5(b) of this Title.

(3) Temporary coaching license. Except as provided in subclause (4) of this clause and notwithstanding the provisions of section 80-5.10 of this Title, other persons with coaching qualifications and experience satisfactory to the board of education may be appointed as temporary coaches of interschool sport teams whether in a paid or non-paid (volunteer) status, when certified teachers with coaching qualifications and experience are not available, upon the issuance by the commissioner of a temporary coaching license. A temporary coaching license, valid for one year, will be issued under the following conditions:

(i) the superintendent of schools shall submit a statement to the department that the district is unable to obtain the services of a certified teacher with coaching qualifications and experience;

(ii) candidates for initial temporary licensure shall have completed the first aid requirement set forth in section 135.5 of this Part prior to the first day of coaching and the coursework or training requirement for identifying and reporting child abuse and maltreatment set forth in section 135.7 of this Part;

(iii) candidates for the first renewal of a temporary license shall have completed or be enrolled in an approved course in philosophy, principles and organization of athletics;

(iv) candidates for any subsequent renewal of a temporary license shall have completed an approved pre-service or in-service education program for coaches which shall include an approved course in philosophy, principles and organization of athletics, which shall be completed within two years after initial appointment as a coach, and approved courses in health sciences applied to coaching, and theory and techniques of coaching that is sport specific, which shall be completed within five years after initial appointment as a coach. Such approved programs for coaches shall consist of one of the following (credits and hours vary depending upon the contact and endurance involved in the sport): a department-approved college program of from two to eight credits; or a department approved in-service education program, conducted by schools, colleges, professional organizations or other recognized groups or agencies, from 30 to 120 clock hours; or an equivalent experience which is approved by the Commissioner of Education. Upon application in a format prescribed by the Commissioner of Education and setting forth the reasons for which an extension is necessary, the period in which to complete such training may be extended to no more than seven years after such appointment; provided that coaches who have a lapse in service due to maternity leave, military leave, or other extenuating circumstances may apply to the commissioner for an additional extension of no more than two years to complete course work; and

(v) on a biennial basis, candidates shall have completed a course of instruction relating to mild traumatic brain injuries pursuant to section 136.5(b) of this Title.

(4) professional coaching certificate.

(i) Notwithstanding the provisions of subclauses (1)-(3) of this clause, other persons with coaching qualifications and experience satisfactory to the board of education may coach a specific sport in any school, upon the issuance by the commissioner of a professional coaching certificate. A professional coaching certificate, valid for three years, shall be issued to a candidate who submits a fee of \$50 together with an application, in a form prescribed by the commissioner, which satisfactorily establishes that:

(A) the candidate has completed the requirements set forth in items (3)(ii), (iii), (iv) and (v) of this clause; and

(B) the candidate has a minimum of three years coaching experience in a specific sport in a New York State interschool athletic program;

(ii) a professional coaching certificate shall be valid for a three year period, provided that such certificate may be renewed for additional three year periods upon the submission of a fee of \$50 together with a renewal application for each successive renewal period, in a form prescribed by the commissioner, which satisfactorily establishes that:

(A) the candidate meets the requirements of subitems (i)(A) and (B) of this subclause; and

(B) the candidate has received a satisfactory evaluation by the principal or athletic director for each of the preceding three years that the candidate coached in the specific sport for which a professional coaching certificate is sought, provided, however that a candidate who held a temporary coaching certificate for the winter 2019-2020, spring 2020, fall 2020, winter 2020-2021, and/or spring 2021 sports seasons shall not be required to have received an evaluation by the principal or athletic director during the applicable sport season(s) for the professional coaching certificate due to the State of Emergency declared by the governor pursuant to an Executive Order for the COVID-19 crisis;

(iii) evaluation by principal or athletic director;

(A) A school district that employs an individual as a coach pursuant to a professional coaching certificate shall ensure that the principal or athletic director responsible for the supervision of such individual conducts an evaluation of such individual during each year in which such individual is so employed;

(B) Each evaluation shall include, but not be limited to, a review of the coach's: communication and interpersonal skills, including interactions with colleagues, students, parents and the general public; supervisory, organizational, and leadership capabilities; knowledge and proficiency in first aid, CPR, sexual abuse guidelines, and other athlete injury-related protocols and procedures; and adherence to guidelines for purchasing equipment, uniforms and related supplies and for storing and maintaining sports equipment;

(5) persons who were employed as coaches in New York State schools on or before September 1, 1974 and who do not meet the requirements set forth in subclause (1), (2), (3) or (4) of this clause, may continue to coach any sport;

(d) to determine the need for an athletic trainer and to permit individuals to serve as athletic trainers for interschool athletic teams, intramural teams or physical education classes only in accordance with the following:

(1) Qualifications. Persons serving as an athletic trainer shall possess a valid license as a certified athletic trainer from the State of New York issued pursuant to article 162 of the Education Law and, commencing July 10, 2003 and thereafter, shall have successfully completed training pursuant to Public Health Law, section 3000-b(3)(a) in the operation and use of an automated external defibrillator provided that persons already serving as athletic trainers on July 10, 2003 shall successfully complete such training no later than December 31, 2003.

(2) Scope of duties and responsibilities. The practice of the profession of athletic training shall be as defined in Education Law, section 8352. Consistent with Education Law, section 8352, the services provided by an athletic trainer shall include, but not be limited to, the following:

(i) prevention of athletic injuries, including assessment of an athlete's physical readiness to participate;

(ii) management of athletic injuries;

(iii) reconditioning to minimize the risk of re-injury and to return the athlete to activity as soon as possible, excluding the reconditioning of neurologic injuries, conditions or disease:

(iv) health care administration, including medical recordkeeping, documentation and reporting of injuries, writing policies and procedures, budgeting and referral of injured athletes to appropriate authorized health care professionals when indicated;

(v) education and counseling of coaches, parents, student athletic trainers and athletes;

(vi) risk management and injury prevention, including:

(A) assisting in the arrangement of pre-participation examinations;

(B) assisting in the proper selection and fitting of protective equipment, including the application of wraps, braces, tape and pads;

(C) assisting in the inspection of fields and playing surfaces for safety;

(D) advising on weather-related conditions and care for their specific injuries/illnesses;

(E) advising on designing and implementation of fitness and conditioning programs for athletes;

(F) advising students on the maintenance and attainment of optimal body weight and physical conditioning to prevent and avoid athletic injury; and

(G) advising the athlete in avoidance of substance abuse;

(vii) management of athletic injuries, including:

(A) recognizing the various types of musculoskeletal and nervous system injuries that may occur in athletes;

(B) understanding the various phases of healing and promoting an environment that assists in the healing process;

(C) referring the athlete for further evaluation and accurate diagnosis after the initial management of an injury; and

(D) accessing local health services, including social support services available to the athlete;

(viii) immediate care of athletic injury and physical conditions, including responsibility for:

(A) the initial on-the-field injury assessment of acute injuries;

(B) administering appropriate first aid and emergency care to the injured athlete including, as necessary, the use of an automatic external defibrillator, and deciding on the management of acute injuries, provided that nothing herein shall authorize the use of an automatic external defibrillator by an athletic trainer who has not successfully completed training in the use of such equipment pursuant to Public Health Law, section 3000-b(3)(a); and

(C) the recognition and evaluation of potentially serious, life threatening injuries;

(ix) treatment and reconditioning of athletic injuries, including responsibility for:

(A) under the supervision of a physician, designing reconditioning programs that make use of appropriate therapeutic exercise, reconditioning equipment or therapeutic modalities in relation to athletic injuries;

(B) overseeing the reconditioning process and returning the athlete to full activity;

(C) designing and supervising an athletic injury reconditioning program and modifying that program based on the healing process;

(D) using appropriate therapeutic exercise techniques;

(E) designing a series of sport-related activities that allow the athlete to gradually progress to complete functional ability; and

(F) assisting in social support of an injured athlete, with regards to pain threshold, compliance, competitiveness, and the ability to adjust to injury;

(x) organization and administration, including:

(A) responsibility for maintaining an athletic training room facility;

(B) maintaining detailed injury reports, treatment records, and reconditioning program;

(C) responsibility for ordering equipment and supplies;

(D) establishing rules and policies for the daily operation of the athletic training room; and

(E) educating student athletic trainers by providing a quality environment consistent with all rules and regulations to develop professionally;

(xi) professional development and responsibilities, including:

(A) attending continuing education programs offered at State, district or national meetings;

(B) consulting and reviewing professional journals and textbooks;

(C) educating the community of health care professionals as to the role of the certified athletic trainer;

(D) informing parents, coaches and athletes as to the importance of quality health care for the physically active; and

(E) on a biennial basis, completing a course of instruction relating to mild traumatic brain injuries pursuant to section 136.5(b) of this Title;

(e) to give primary consideration to the well-being of individual boys and girls in the conduct of games and sports;

(f) to sacrifice no individual for the sake of winning events;

(g) to conduct all activities under adequate safety provisions;

(h) to equalize insofar as possible the powers of opponents in individual and group athletic competition;

(i) to provide adequate health examination before participation in strenuous activity and periodically throughout the season as necessary, and to permit no pupil to participate in such activity without the approval of the school medical officer;

(j) to maintain an equitable division of facilities, budget and personnel between boys and girls;

(k) to permit no athletic team to represent a school except in conformance with this Part;

(l) to approve all traveling of individuals or teams under their jurisdiction;

(m) to permit no post-season games or tournaments;

(n) to permit no post-schedule games or tournaments other than those conducted by school authorities in accordance with approved standards;

(o) to permit any individual or team to represent a school only in games, meets or tournaments which are conducted by secondary school authorities;

(p) to provide opportunity for instruction, practice and competition for pupils in grades four through six in extraclass programs which shall be basically intramural activities;

(q) to provide opportunity for instruction and practice for pupils in grades 7 through 12 in extraclass athletic activities which are intramural activities and approved interschool competition;

(r) to limit athletic activities conducted by the school to appropriate competition and practice between pupils in grades 7 through 12, except that a post-graduate pupil may participate in intramural activities;

(s) to provide the same general degree of opportunity for participation in intramural and interscholastic activities to both males and females.

(ii) Provisions for interschool athletic activities for pupils in grades 7 through 12. It shall be the duty of the trustees and boards of education to conduct interschool athletic competition for grades 7 through 12 in accordance with the following:

(a) Interschool athletic competition for pupils in junior high school grades seven, eight and nine. Such competition shall be conducted in accordance with the following: Seventh and eighth grade teams may participate only with teams of like grade groups, with the following exceptions:

(1) In junior high school, competition may include grades seven through nine.

(2) In six-year high schools, competition may include grades seven through nine.

(3) In four-year high schools, ninth grade pupils may participate in junior high competition.

(4)

(i) A board of education may permit pupils in grades no lower than seventh to compete on any senior high school team, or permit senior high school pupils to compete on any teams in grades no lower than seventh, provided the pupils are placed at levels of competition appropriate to their physiological maturity, physical fitness and skills in relationship to other pupils on those teams in accordance with standards established by the commissioner.

(ii) Nothing in this subclause shall prohibit a bona fide seventh or eighth grade student, as defined by section 135.1(g) of this Part, who is regularly enrolled in a public school district organized for pupils in kindergarten through eighth grade that contracts with a neighboring school district or districts on a tuition basis for the education of its high school students pursuant to Education Law sections 2040 and 2045 and section 174.4 of this Title, from seeking to participate in a high school team, in accordance with the standards described in item (i) of this subclause, provided that the boards of education of the sending school district (as such term is defined in section 174.4[a][1] of this Title) and the receiving school district(s) (as such term is defined in section 174.4[a][2] of this Title) adopt a resolution to permit such participation. In the case of seventh and eighth grade students attending a public school district organized for pupils in kindergarten through eighth grade that contracts with more than one neighboring school district for the education of its high school students, any such seventh or eighth grade student who participates in high school athletics pursuant to this subclause may select only one high school in which to compete during their seventh and eighth grade participation; if, following participation in a high school team during seventh and/or eighth grade, such student chooses to attend a different high school with which the student's kindergarten through eighth grade school district contracts for the education of its high school students, such student shall be ineligible to participate in any interscholastic athletic contest in a particular sport for a period of one year.

(b) Interschool athletic competition and inclusive athletic activities for pupils in senior high school grades 9, 10, 11 and 12. Inter-high school athletic competition and inclusive athletic activities shall be limited to competition between high school teams, composed of pupils in grades 9 to 12 inclusive, except as otherwise provided in subclause (a)(4) of this

subparagraph for interschool athletic competition. Such activities shall be conducted in accordance with the following:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause, or except as authorized by a waiver granted under clause (d) of this subparagraph to a student with a disability, or as authorized for participation in inclusive athletic activities pursuant to clause (e) of this paragraph. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) or clause (d) of this subparagraph, or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances.

(i) If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, documented social/emotional condition, or documented social/emotional circumstances beyond the control of the pupil, such pupil's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must demonstrate that:

(a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil;

(b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; and

(c) such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except as provided in clause (ii)(d) of this subparagraph.

(ii) If the chief school officer demonstrates to the satisfaction of the section that the pupil's failure to enter competition during one or more seasons of a sport is caused by such pupil's enrollment in a national or international student exchange program or foreign study program, that as a result of such enrollment the pupil will be required to attend school for one or more additional semesters in order to graduate, and that the pupil did not enter competition in any sport while enrolled in such program, such pupil's eligibility shall be extended accordingly in such sport.

(iii) If the section declines to extend the pupil's eligibility in accordance with this subclause, the section shall provide written notice of such determination to the chief school officer, with a copy to the pupil's parent, guardian or person in parental relation. Such notice shall include, as applicable: information regarding the athletic association's internal appeal process, including the name of the individual and address to which such appeal is to be directed; or a statement that the determination may be appealed to the Commissioner of Education, in accordance with Education Law section 310, within 30 days of the date of such determination and shall include the name and address of the section official upon whom such appeal shall be served. If the athletic association hears and denies an appeal, written notice of the determination shall be provided to the chief school officer, with a copy to the pupil's parent, guardian or person in parental relation. Such notice shall include a statement that the determination may be appealed to the Commissioner of Education, in accordance with Education Law, section 310, within 30 days of the date of such determination and shall include the name and address of the athletic association official upon whom such appeal shall be served.

(2) Registration. 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. 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 individualized education program under the Individuals with Disabilities Education Act or education plan approved under section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

(3) Sports standards. Interschool athletic programs shall be planned so as to provide opportunities for pupils to participate in a sufficient variety of types of sports. Inclusive athletic activities shall be planned so as to provide proportional representation of students with and without disabilities and meaningful participation. Sports standards, such as number of contests, length of seasons, time between contests, required practice days, etc., for all interschool sports shall conform to guidelines established by the Commissioner of Education.

(c) Male and female pupils on interschool athletic teams and inclusive athletic activities.

(1) Equal opportunity to participate in interschool competition, and inclusive athletic activities, either on separate

teams or in mixed competition on the same team, shall be provided to male and female students, except as hereinafter provided. In schools that do not provide separate competition for male and female students in a specific sport, no student shall be excluded from such competition solely by reason of sex, except in accordance with the provisions of subclauses (2) and (4) of this clause. For the purposes of this clause, baseball and softball shall be considered to constitute a single sport.

(2) In the sports of baseball, basketball, boxing, field hockey, football, ice hockey, lacrosse, rugby, soccer, softball, speedball, team handball, power volleyball where the height of the net is set at less than eight feet, and wrestling, the fitness of a given student to participate in mixed competition shall be determined by a review panel consisting of the school physician, a physical education teacher designated by the principal of the school, and if requested by the parents of the pupil, a physician selected by such parents. Such panel shall make its determination by majority vote of the members, and in accordance with standards and criteria issued by the department.

(3) Where a school provides separate competition for male and female pupils in interschool athletic competition or inclusive athletic activities in a specific sport, the superintendent of schools, or in the case of a nonpublic school or school system which elects to be governed by this clause, the chief executive officer of the school or school system, may permit a female or females to participate on a team organized for males. However, where separate competition is provided, males may not participate on teams organized for females.

(4) Where a school does not provide separate competition for male and female pupils in interschool athletic competition or inclusive athletic activities in a specific sport, the superintendent of schools, or in the case of a nonpublic school or school system which elects to be governed by this clause, the chief executive officer of the school or school system, or the section may decline to permit a male or males to participate on a team organized for females upon a finding that such participation would have a significant adverse effect upon the opportunity of females to participate successfully in interschool competition or inclusive athletic activities in that sport.

(d) Waiver from the age requirement and four-year limitation for interschool athletic competition for students with disabilities in senior high school grades 9, 10, 11, and 12. For purposes of this clause, the term *non-contact sport* shall include swimming and diving, golf, track and field, cross country, rifle, bowling, gymnastics, skiing and archery, and any other such non-contact sport deemed appropriate by the commissioner. A student with a disability, as defined in section 4401 of the Education Law, who has not yet graduated from high school may be eligible to participate in a senior high school noncontact athletic competition under the following limited conditions:

(1) such student must apply for and be granted a waiver to the age requirement and four-year limitation prescribed in subclause (b)(1) of this subparagraph. A waiver shall only be granted upon a determination by the superintendent of schools or chief executive officer of the school or school system, as applicable, that the given student meets the following criteria:

(i) such student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more;

(ii) such student is otherwise qualified to compete in the athletic competition for which he or she is applying for a waiver and the student must have been selected for such competition in the past;

(iii) such student has undergone a physical evaluation by the school physician, which shall include an assessment of the student's level of physical development and maturity, and the school physician has determined that the student's participation in such competition will not present a safety or health concern for such student; and

(iv) the superintendent of schools or chief executive officer of the school or school system has determined that the given student's participation in the athletic competition will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

(2) Such student's participation in the additional season of such athletic competition shall not be scored for purposes of such competition.

(e) Exemption from the age requirement and four-year limitation for inclusive athletic activities. A student who is enrolled in grades 9 through 12 and has not yet graduated from high school may be eligible to participate in inclusive athletic activities under the following limited conditions:

(1) such student may be granted an exemption to the age requirement and four-year limitation prescribed in subclause (b)(1) of this subparagraph. An exemption shall only be granted upon a determination by the superintendent of schools or chief executive officer of the school or school system, as applicable, that the given student meets the following criteria:

(i) such student is a *bona fide* student of the high school for which the student wishes to participate in inclusive athletic activities and has not graduated from high school; and

(ii) such student is otherwise qualified to compete in the inclusive athletic activities for which he or she is applying for an exemption; and

(iii) such student has undergone an adequate health examination by the director of school health services, and the director of school health services has determined that the student's participation in such activities will not present a safety or health concern for such student; and

(2) nothing in this clause shall permit the extension of eligibility for a student to participate in interschool athletic competition as defined in this section.

8 CRR-NY 135.4

Current through February 28, 2021

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