



CEO 07-03

September 27, 2007

To: Chief Executive Officers/Presidents of Institutions of Higher Education

From: Johanna Duncan-Poitier *Johanna Duncan-Poitier*

Subject: Requirements related to Tuition Assistance Program (TAP) awards for students receiving their first award beginning in 2007-08 who do not hold U.S. high school diplomas or the recognized equivalent

I am writing to share with you information on two actions that the Board of Regents took this month regarding student eligibility for the Tuition Assistance Program (TAP) and other State grant programs.

Regulation Concerning State Student Aid Grants for College Students without a U.S. High School Diploma. In July, CEO memo 07-02 was sent to you with information on a regulation (Section 145-2.15) approved by the Board of Regents to implement a newly enacted statutory requirement and to help ensure that all students are prepared to succeed in higher education before entering college and to protect the public investment in higher education. Beginning in 2007-08, first-time applicants for TAP, who do not hold U.S. high school diplomas or the recognized equivalent, must achieve a passing score on a federally designated ability-to-benefit (ATB) test identified by the Board of Regents and independently administered as defined by the Commissioner. In addition, this new regulation will require colleges to identify an appropriate pass point on its ATB examination and requires approval of that pass point by the Board of Regents. In approving a college's pass point on the ATB test, the regulation requires the Commissioner to consider the following factors:

- (1) the level of curricula offered;
- (2) the admission criteria and procedures it uses to evaluate a student's capacity to undertake a course of study and the institution's capacity to provide instructional and other support services to ensure that the student can complete the course of study;
- (3) evidence that the institution's admission criteria and procedures are effective in admitting only persons who have the capacity to undertake a course of study and that it provides proper instructional and support services;
- (4) the adequacy of the academic support services it provides; and
- (5) evidence that it 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.

The new regulation went into effect immediately and affects eligibility for State student aid of applicants without a U.S. high school diploma or the recognized equivalent for terms following the fall 2007 term.

Based on feedback on the regulation that we shared in June, the regulation adopted in September differ from the regulation approved in June as follows: (1) References to loans were removed in response to the legislative intent that the ability-to-benefit provisions are intended to apply only to awards; (2) a provision was added authorizing eligible nondegree schools to administer ability-to-benefit (ATB) tests in accordance with federal standards; and (3) the requirement that degree-granting institutions administer ATB tests to all students together, with the administrator unaware of which students were taking the test for ATB purposes, was eliminated because several institutions reported using tests differently depending on whether a student is an ATB student or a high school graduate being placed into specific courses. A copy of Section 145-2.15 is enclosed. The Board will be asked to confirm it as a permanent rule at its October 2007 meeting.

Identification of Ability-to-Benefit Tests. The Board's second action identified the following four federally approved ATB tests as appropriate for use by higher education institutions for the purpose of eligibility of first-time TAP applicants who do not hold U.S. high school diplomas or the recognized equivalent:

- Accuplacer
- ASSET
- COMPASS
- CELSA, with the condition that passing scores approved by the Regents for that test be accompanied by Regents-approved passing scores on the numerical/qualitative elements of the Accuplacer, ASSET, or COMPASS tests.

The Department is developing guidelines that will be helpful as you seek approval of the passing scores on these four ability-to-benefit tests and for the annual certification of independent administration of tests provided on-campus by higher education institutions. The guidelines will be developed in consultation with the working group of academic and student financial aid officers from the four sectors of higher education and the Higher Education Services Corporation. Until institutions receive approval of their passing scores, they may continue to use their current passing scores that are not lower than those approved by the U.S. Secretary of Education.

I would like to thank all the educators who have collaborated with the Department on this policy issue.

If you have any questions, please contact Associate Commissioner Joseph P. Frey at (518) 486-3633 or via E-mail to jfrey@mail.nysed.gov.

Enclosure

cc: Chief Academic Officers
James C. Ross, President, Higher Education Services Corporation
Joseph P. Frey

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 September 27, 2007, as follows:

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

(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 and academic performance awards 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 and evaluated. Such requirements shall be applicable to students who first receive aid pursuant to section 661 of the Education Law in academic year 2007-2008 and each academic year thereafter.

(b) Definitions. For purposes of this section:

(1) Assessment center means a center that:

(i) is not located at 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 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 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 academic 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 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 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 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 under section 661 of the Education Law, the institution shall independently administer and evaluate ability-to-benefit tests approved by the Board of Regents in accordance with the requirements of this subdivision. 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 at 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) 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;

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

(vii) 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;

(viii) 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;

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

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

(xi) 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 test is administered at an eligible institution that does not have degree-conferring authority and the test is given by a test administrator who:

(i) has no current or 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, and has no controlling interest in any other educational institution;

(ii) is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(iii) is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals; and

(iv) is not a current or former student of the institution;

(v) is certified by the test publisher to give and score the publisher's test;

(vi) administers the test in accordance with instructions provided by the test publisher and in a manner that insures the integrity and security of the test;

(vii) makes the test available only to a test-taker, and then only during a regularly scheduled test;

(viii) secures the test against disclosure or release;

(ix) submits the completed test to the test publisher within two business days after test administration in accordance with the test publisher's instructions; and

(x) upon request, gives the commissioner guaranty agency, accrediting agency, and law enforcement agencies access to test records or other documents related to an examination, audit, investigation, or program review of the institution or test publisher.

(4) 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.

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

(6) 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.

(7) 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.