



**TO:** P-12 Education Committee

**FROM:** Angelique Johnson-Dingle *Angelique Johnson-Dingle*

**SUBJECT:** Proposed Amendment of Sections 135.1, 135.4, and 135.5 of the Regulations of the Commissioner of Education Relating to Mixed Competition and Extra Class Athletic Activities

**DATE:** April 25, 2024

**AUTHORIZATION(S):** *Tom M. G. Bellotti*

## SUMMARY

### Issue for Discussion

Should the Board of Regents adopt the proposed amendment of sections 135.1, 135.4, and 135.5 of the Regulations of the Commissioner of Education relating to mixed competition and extra class athletics?

### Reason for Consideration

Review of Policy.

### Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for discussion at the May 2024 Regents meeting. A copy of the proposed rule (Attachment A) is attached.

### Procedural History

A Notice of Proposed Rule Making will be published in the State Register on May 22, 2024, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

### Background Information

Girls have an equal right to participate in athletics. The State Education Department first addressed this issue 51 years ago when it adopted amendments to Commissioner's regulation §135.4. This amendment provides parameters for male and female students to participate on the same interschool athletic team under circumstances when a school

did not offer separate male and female teams. These parameters are sometimes referred to as “mixed competition.”

Current mixed competition requires female students to obtain the approval of a review panel before they may participate on a team with males in sports including football, basketball, and ice hockey. Federal regulations are even less generous, allowing school districts to prohibit girls from trying out for “contact sports”; *i.e.*, those sports that involve “bodily contact.”<sup>1</sup> This policy rests upon a protectionist rationale.

Courts, however, have been skeptical of “[t]he exclusion of girls to protect them from injury,” finding that exclusionary policies are arbitrary where schools only consider sex stereotypes “without any regard for the wide range of individual variants within each class.”<sup>2</sup>

In 2022, the Department learned that a female student who attended a nonpublic high school was subjected to multiple requirements to which male students were not subjected before being allowed to participate on the boy’s football team. The student was required to pass the Presidential Physical Fitness test, undergo a health examination that included the Tanner Sexuality Maturity Rating,<sup>3</sup> submit a written statement of interest, and receive a determination of eligibility to play on the team after a panel evaluation. Some of these requirements were derived from Department guidance regarding mixed competition.

The Department thereafter reviewed its guidance and regulations regarding participation in extra class athletic activities and mixed competition. The Department convened a series of meetings of stakeholders to further inform the development of new regulations and guidance. Stakeholder groups included the New York State Public High School Athletic Association (NYSPHSAA), Office of Children and Family Services, Department of Health, Association for Health, Physical Education, Recreation and Dance (NYSAPHERD), Association of School Nurses, and the Athletic Administrators Association. The Department met with these groups, as well as several students and their family members, on five evenings in October 2023 to discuss the current regulations.

Most participants underscored the importance of considering the well-being and inclusivity of all students, particularly those from marginalized or underrepresented groups such as transgender students. Many questioned the relevance and appropriateness of the current fitness test requirements for mixed competition, as required tests measure types of fitness levels that may not be required for the desired sport (e.g., a mile run for

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<sup>1</sup> 34 CFR 106.41 (b) (“where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.” Contact sports “include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact”).

<sup>2</sup> *Hoover v. Meiklejohn*, 430 F Supp 164,170 (D. Colo. 1977), citing *Carnes v. Tennessee Secondary Sch. Athletic Ass’n*, 415 F Supp 569 (E.D. Tenn. 1976); see also *Lantz v. Ambach*, 620 F Supp 663 (SD NY 1985).

<sup>3</sup> The Tanner Sexual Maturity Rating is an objective classification system that healthcare providers use to track the development of secondary sex characteristics of children during puberty through examination of an individual’s genitals and breasts. <https://www.ncbi.nlm.nih.gov/books/NBK470280/>

students who want to participate on the swim team). Almost unanimously, participants stated the requirement for a determination of eligibility to be made by an evaluation panel was unfair, subjective, and lacked transparency. Participants requested standardized decision-making processes across different schools and regions. Participants also raised concerns about maintaining fairness and equity, especially regarding whether male students should be allowed to participate on female teams.

Participants recommended that revised regulations:

- Modify language to promote clarity and inclusivity;
- Update outdated sport lists;
- Eliminate gender distinctions wherever possible;
- Redefine fitness evaluation criteria and impact assessment;
- Replace the review panel procedure with a more straightforward and equitable system;
- Provide clear guidelines when only one gender team is offered and allow members of the other gender to try out; and
- Provide a uniform team selection process for all athletes.

### **Proposed Amendment:**

Based upon the review of the law and research and with guidance from stakeholders and affected students, the Department proposes the following amendment of Part 135 of the Commissioner's regulations. The Department is committed to providing athletes of all genders equal opportunities to play and participate in extra class athletic activities, as athletics are a vital part of any student's education. This includes promoting equality between separate male and female athletic programs and encouraging mixed gender teams. The Department believes this is an important step in ensuring equality.

The proposed amendments also require that where a school employs a selection process for student athletes to participate on a team, eligibility for participation should be determined during the try-out process, where school staff can determine whether student athletes have sufficient sport-related skills, motor development, knowledge of the sport, motivation, cognitive and social development to be on a particular team.

### **Terminology**

The proposed rule employs gender neutral and gender inclusive language throughout. Additionally, the proposed rule updates outdated terminology used to reference students with disabilities.

## **Definitions**

The proposed amendment defines the term “extra class athletic activities” and deletes the definitions of “mixed competition” and “physiological maturity.”

## **Health Examinations**

The proposed amendment:

- Clarifies that documentation from a licensed health professional, consistent with their scope of practice, is sufficient to determine which areas of the physical education program in which a student with activity limitations can participate.
- It clarifies, and codifies in one section, the requirements for health examination before tryouts begin, ensuring that students provide proof of health examination and clearance to participate in extra class athletic activities. The proposed rule also indicates when an additional health history must be provided in accordance with the Dominick Murray Sudden Cardiac Arrest Act.
- It clarifies that health care providers must assess a student athlete’s overall physical fitness and readiness to participate while ensuring that the irrelevant and intrusive Tanner Rating of secondary sex characteristics is not utilized for student athletes who wish to be considered under the Athletic Placement Process.
- It permits the district’s director of school health services (a.k.a. medical director), after consultation with a student’s health care provider, to preclude a student with a severe health condition from participation in extra class athletic activities for health and safety reasons.

## **Requirements for Participation**

Beginning July 1, 2025, the proposed amendment clarifies the Athletic Placement Process for those districts that choose to allow students in grades 7 and 8 to play up to high school level teams or students in grades 9-12 to move down to play at the modified level. These changes ensure that:

- student athletes participate safely at an appropriate level of competition;
- the process includes informed consent of the parent or person in parental relation; and
- that the student successfully demonstrates sufficient personal and social responsibility, sport-specific skill development, knowledge of the game, and physical fitness to be eligible during team selection.

The proposed rule provides that requirements to participate on a team must be the same for all genders for any interschool athletic competition, intramural or extramural extra class athletic activity in any sport, including a sport where there may be a heightened risk for a student athlete's safety.

### **Equal Opportunity to Participate in Extra Class Activities**

- The proposed amendment requires school districts to provide equal opportunity to students to participate in extra class athletic activities, either on separate teams or on the same team, as follows:
  - By providing separate extra class athletic activities for students of different genders. This is not intended to prevent schools from providing opportunities for students of different genders to play together on the same team; or
  - Where a school does not provide sufficient opportunity for students of different genders to participate on separate teams, schools must permit a student of a different gender to participate in the team selection process. The expectations for personal and social responsibility, health, physical fitness, and sport-specific skill development and knowledge of the game requirements must be the same for students of all genders.
- The proposed amendment requires that criteria for determining whether students will be selected to participate on the team shall be the same for all students who wish to participate, regardless of student-identified gender, and shall be publicly posted on the website of every school district or nonpublic school or school system which elects to be governed by these provisions.
- The proposed amendment requires that if no selection process is employed for participation in a particular extra class athletic activity, all students must be permitted to participate equally, regardless of self-identified gender.
- The proposed amendment clarifies that a person aggrieved by the selection process for participation in interschool competition or the decision that a student cannot participate in such competition may appeal to the Commissioner in accordance with Education Law § 310.

### **Tanner Scale Evaluation and Risk**

The Department proposes elimination of the use of the Tanner Sexual Maturity Rating because, while it has been used as a vehicle to assess risk, there are less intrusive and more accurate ways to do so. The Athletic Placement Process for Interscholastic Programs (APP) is a program for evaluating students who wish to participate in sports at higher or lower levels. The intent of the APP is to provide a protocol for those districts that choose to allow students in grades 7 and 8 to try out for high school level teams (Freshman, Junior Varsity, or Varsity), sometimes referred to as "playing up"; or for students in grades 9-12 to move down, playing at the modified level; allowing students seeking to participate safely at the appropriate level of competition based upon physical and emotional readiness and athletic ability rather than age and grade alone.

One part of this process has been to have a student's health care provider or the district's director of school health services (a.k.a., medical director), conduct a health examination that also determines the developmental age or maturity level of the student using the Tanner Sexual Maturity Rating. While Tanner staging conducted by a licensed healthcare provider indicates an approximation of physical development, it is not intended to be used as a means to assess a student's potential for injury related to playing with older or younger students, as it is currently being used in New York State.

Current regulations also require that students with disabilities who wish to participate in inclusive interschool athletic competition undergo the Tanner Sexual Maturity Rating Scale.

The Department recommends elimination of the Tanner Scale, which is intrusive and demeaning. Instead, the Department recommends that schools use research-based<sup>4</sup> factors that affect the likelihood that a student would be more susceptible to injury, including:

- age;
- kinematics/biomechanics (movement of the body);
- body composition (% fat, bone, and muscle in the body);
- previous injury;
- grade of competition;
- training load (hours per week);
- position played;
- competition or practice;
- strength;
- player experience;
- checking, tackling, body contact; and
- environmental factors.

Other considerations that can impact injury risk are:

- emotional development;
- student's interest in sports (is the child ready and interested);

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<sup>4</sup> Factors Associated With Sports Injuries in Adolescents Who Play Team Sports at a Nonelite Level: A Scoping Review. *Journal of Orthopaedic and Sports Physical Therapy*. 2023  
<https://www.jospt.org/doi/10.2519/josptopen.2023.0006>

- education and awareness about safety precautions and potential injury;
- availability and appropriateness of sports safety gear/equipment;
- playing environment: well-lit and appropriate for the sport;
- proper physical conditioning of players’;
- knowing and enforcing safety rules’;
- ensuring players are and remain hydrated; and
- taking breaks to prevent overuse injuries.<sup>5</sup>

### **Related Regents Items**

Not applicable.

### **Recommendation**

Not applicable.

### **Timetable for Implementation**

It is anticipated that the proposed amendment will be presented for permanent adoption at the September 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 September meeting, the proposed amendment will become effective on September 25, 2024

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<sup>5</sup> Johns Hopkins Medicine, “Sports Safety for Children,” <https://www.hopkinsmedicine.org/health/wellness-and-prevention/sports-safety-for-children> (last accessed Apr. 12, 2024).

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 803, and 3201-a of the Education Law.

1. Section 135.1 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 135.1. Definitions

Definitions as used in this Part:

(a) ...

(b) ....

(c) ...

(d) ...

(e) *Adaptive physical education* means a specially designed program of developmental activities, games, sports and rhythms suited to the interests, capacities and [limitations] abilities of [pupils] students with [handicapping conditions] disabilities who may not safely or successfully engage in unrestricted participation in the activities of the regular physical education program.

(f) ...

(g) ...

(h) *Extra class [periods in physical education] athletic activities* mean those sessions organized for instruction, [and] practice, and/or competition in skills, attitudes and knowledge through participation in individual, group, and team activities organized on an intramural, extramural, interschool athletic or inclusive athletic basis to supplement regular physical education class instruction.



(i) *Extramural activities* mean those games or other events which involve the participation of [pupils] students from two or more school districts and which are conducted as play-days or sports days at the end of the intramural season.

(j) ...

(k) ...

(l) ...

(m) *Intramural activities* mean those activities conducted within one school district involving only those [pupils] students enrolled in such school district and which are organized to serve the entire enrollment.

(n) ...

(o) ...

(p) [*Mixed competition* means the combination of male and female pupils participating on the same interschool athletic teams.

(q) [*Organized practice* means a session of [an athletic squad or group] a team organized for interschool athletics for the purpose of providing instruction and practice in physical conditioning activities, skills, team play, and game strategy, under the supervision of a qualified school official.

[(r)] [(q)] [*Physical fitness activities* mean those physical activities which are designed to develop endurance, strength, and agility and to fit the individual so that [he] the student can perform the task repeatedly without undue fatigue and with a reserve capacity to meet unexpected stresses and hazards.

[(s)] [*Physiological maturity* means a stage of maturation identified by the school physician in determining an appropriate level of interschool athletic competition in accordance with standards established by the commissioner.]

[(t)] (r) *Recreation* means the program which is organized to include types of activities such as arts and crafts, athletics, dramatics, music, rhythms, sports, swimming, and water safety provided at the discretion of school district authorities under the supervision of qualified personnel and designed to provide for the worthy use of leisure by individuals and groups.

[(u)] (s) *Sports day* means a day when [pupils] students from two or more schools meet and engage in a variety of competitive sports events.

[(v)] (t) *Section* means an organization of schools within a specified geographic area which holds membership in an athletic association, and is established for the purpose of administering athletic programs for the member schools and leagues within such area.

[(w)] (u) *Inclusive athletic activities* mean those activities which provide competition between representatives of two or more schools and which combine students with and without disabilities on teams for the purpose of interscholastic play and which ensure proportional representation of students with and without disabilities.

2. Section 135.4 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 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] students 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) ...
- (2) ...
- (3) ...
- (4) ...

(b) Nonpublic schools. Similar courses of instruction shall be prescribed and maintained in private schools in the State, and all [pupils] students 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) ...
    - (b) ...
    - (c) ...
    - (d) ...

(e) ...

(f) ...

(g) ...

(h) provide opportunities for the exercise of [pupil] student initiative, leadership and responsibility; and

(i) ...

(ii) ...

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

(iv) There shall be activities adapted to meet the needs of [pupils] students 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] student needs and progress. Appropriate cumulative records shall be maintained which cover the essential features of the physical education program for each [pupil] student, and when a [pupil] student 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] Students in grades K-6 shall participate in the physical education program as follows:

(a) all [pupils] students in grades K-3 shall participate in the physical education program on a daily basis. All [pupils] students 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] students 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) ...

(ii) Secondary instructional program--grades 7 through 12. All secondary [pupils] students 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] students shall participate in the physical education program either:

(a) ...

(b) ...

(c) for [pupils] students in grades 10 through 12 only, a comparable time each semester in [extra class] interschool athletics programs for those [pupils] students who have demonstrated acceptable levels of physical fitness, physical skills, and knowledge of physical education activities; or

(d) for [pupils] students 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) ...

(3) Attendance.

(i) All [pupils] students 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] For students with activity limitations, documentation from a licensed health professional, consistent with their scope of practice, must indicate the area of the program in which the [pupil] student may participate.

(ii) School district plans shall indicate through the sequential curriculum the steps to be taken to insure that each [pupil] student meets the requirement for participation in a 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) ...

(ii) ...

(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] and extra class athletic activities 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) ...

(6) Administrative procedures.

- (i) School district plans for the physical education program shall include information on the following administrative procedures:
- (a) ...
  - (b) appropriate examinations and tests to be employed by school authorities in determining [pupil] student needs and progress in physical fitness, knowledge and skills;
  - (c) ...
  - (d) ...
  - (e) ...
  - (f) ...
  - (g) ...
  - (h) policies and procedures for the conduct of [extra class] extra class athletic activities [programs].

(ii) ...

(7) Basic code for [extra class] extra class 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) ...

(b) ...

(c) ...

(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) ...

(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) ...

(ii) ...

(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) ...

(v) ...

(vi) risk management and injury prevention, including:

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

(B) ...

(C) ...

(D) ...

(E) ...

(F) ...

(G) ...

(vii) ...

(viii) ...

(ix) ...

(x) ...

(xi) ...

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

(f) ...



(g) ...

(h) to equalize insofar as possible the [powers] abilities 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 to participate in such activity without the approval of the school medical officer] ensure students provide proof of health examination before participation in extra class athletic activities as follows:

(A) a health certificate pursuant to Education Law §903; or

(B) a health appraisal pursuant to Education Law §904.

(ii) For interschool athletics, such health examinations shall be valid for 12 months through the last day of the month the exam was conducted in. Provided however, if the examination was conducted more than 30 days before the start of the season, the student must submit a health history to the school in accordance with standards established by the commissioner. Provided further, if the 12-month period for the health examination expires during an interschool or inclusive athletic season, which includes try outs for that season, or during the scheduled time frame for intramural or extramurals, participants may complete the season or scheduled time frame so long as a health history was submitted not more than 30 days prior to the season for interschool or inclusive athletics, or once during the school year before the student participates in intramural or extramural activities.

(iii) Pursuant to sections 136.5(d) and 136.9(d) of this Subchapter, the director of school health services must approve the resumption of participation of students who are believed to have sustained a mild traumatic brain injury or display signs or symptoms of pending or increased risk of sudden cardiac arrest.

(iv) After consulting with a student's health care provider, the director of school health services may determine that the student may not participate in extra class athletic activities if the student has a severe health condition such that participation would be detrimental to the student's health and safety;

(j) to maintain an equitable division of facilities, budget, equipment, scheduling, and personnel [between boys and girls] opportunities provided for students of different genders;

(k) ...

(l) ...

(m) ...

(n) ...

(o) ...

(p) to provide opportunity for instruction, practice and/or competition for [pupils] students in grades four through six in [extra class programs which shall be basically] intramural and extramural activities;

(q) to provide opportunity for instruction and practice for [pupils] students in grades 7 through 12 in [extra class athletic activities which are] intramural and extramural activities and approved interschool competition;

(r) to limit athletic activities conducted by the school to appropriate competition and practice between [pupils] students 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 extra class athletic activities to [both males and females] students, regardless of gender.

(ii) Provisions for interschool athletic activities for [pupils] students 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] students 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) ...

(2) ...

(3) ...

(4)

(i) [A] (A) Prior to July 1, 2025, 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.

(B) Beginning July 1, 2025, a board of education may permit students in grades no lower than seventh to compete on any senior high school interschool athletic team, or permit senior high school students to compete on any teams in grades no lower than seventh, provided the parent or person in parental relation has submitted an informed consent in accordance with standards established by the commissioner and the student successfully demonstrates sufficient personal and social responsibility, sport-specific skill development, knowledge of the game, and physical fitness to be eligible during team selection. Criteria for determining whether students will be selected to participate in the team shall be the same for all students who qualify to tryout, regardless of

student-identified gender, and publicly posted on the website of every school district or nonpublic school or school system which elects to be governed by this clause 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] students 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] students 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) Interscholastic athletic competition and inclusive athletic activities for [pupils] students 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] students 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] student 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] student's entry into the ninth grade and prior to graduation, except that otherwise eligible students graduating at the end of the spring semester may continue to participate in athletics until the conclusion of the spring interscholastic athletic season, or 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] students in the seventh and eighth grades to compete in senior high school athletic competition, such [pupils] students shall be eligible for competition during five consecutive seasons of a sport commencing with the [pupil's] student'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] student enters competition in a given year when the [pupil] student is a member of the team in the sport involved, and that team has completed at least one contest. A [pupil] student 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] student 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] student'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] student, such [pupil's] student's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must demonstrate that:

(A) the [pupil's] student'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] student;

(B) as a direct result of such circumstances the [pupil] student 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] students 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] student's failure to enter competition during one or more seasons of a sport is caused by such [pupil's] student's enrollment in a national or international student exchange program or foreign study program, that as a result of such enrollment the [pupil] student will be required to attend school for one or more additional semesters in order to graduate, and that the [pupil] student did not enter competition in any sport

while enrolled in such program, such [pupil's] student's eligibility shall be extended accordingly in such sport.

(iii) If the section declines to extend the [pupil's] student'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] student'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] student'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] student shall be eligible for interschool competition or inclusive athletic activities in a sport during a semester, provided that [he or she] the student 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, has not graduated from high school, except that otherwise eligible students graduating at the end of the spring semester may continue to participate in athletics until the conclusion of the spring interscholastic athletic season

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] their 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] students 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] Equal opportunity to participate in extra class athletic activities.

(1) Equal opportunity to participate in extra class athletic activities [interschool competition and inclusive athletic activities], either on separate teams or [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] extra class athletic activities for [male and female] students of different genders in a specific [sport] activity, no student shall be excluded from such [competition solely by reason of sex] activity, except in accordance with the provisions of [subclauses (2) and (4)]



subclause (3) 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] extra class athletic activities for [male and female pupils in] students of different genders, [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] students shall participate in the separate extra class athletic activities provided for the student's identified gender. This requirement does not prevent schools from providing opportunities for students of different genders to play together on the same team.

[(4)](3) Where a school does not provide [separate competition for male and female pupils] separate opportunity for students of different genders in the same extra class athletic activities, [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 interschool athletic activities in that sport] shall ensure that students of a different gender are able to participate fully in the team selection process, if applicable, and that expectations for personal and social responsibility, sport-specific skill development, knowledge of the game, and physical fitness are the same for all students, regardless of gender. If a school develops criteria for determining whether students will be selected to participate on the team, these criteria shall be the same for all students who wish to participate, regardless of student-identified gender, and shall be publicly posted on the website of every school district or nonpublic school or school system which elects to be governed by this clause. If there is no selection process employed for participation in a particular extra class athletic activity, all students shall be permitted to participate equally, regardless of identified gender.

(4) A person aggrieved by the selection process employed for participation in interschool competition or a decision that a student cannot participate in interschool competition based on such selection process may appeal to the Commissioner in accordance with Education Law § 310.

(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, except that otherwise eligible students graduating at the end of the spring semester may continue to participate in athletics until the conclusion of the spring interscholastic athletic season, 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] the student's disability delaying [his or her] the student's education for one year or more;

(ii) such student is otherwise qualified to compete in the athletic competition for which [he or she] the student 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]

successfully demonstrates sufficient personal and social responsibility, sport-specific skill development, knowledge of the game, and physical fitness to be eligible during team selection; and

(iv) ...

(2) ...

(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, except that otherwise eligible students graduating at the end of the spring semester may continue to participate in athletics until the conclusion of the spring interscholastic athletic season, 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) ...

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

(iii) such student [has undergone a physical evaluation by the director of school health services which shall include an assessment of the student's level of physical development and maturity, 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] successfully demonstrates sufficient personal and social responsibility, sport-specific skill development, knowledge of the game, and physical fitness to be eligible during team selection; and

(2) ...

3. Subdivision (a) of section 135.5 of the Regulations of the Commissioner of Education is amended to read as follow:

(a) Coaches of extra class [periods in physical education] athletic activities, as defined in section 135.1(h) of this Part, shall meet the requirements of this section.