

GUIDELINES FOR AN AGE AND/OR FOUR YEAR LIMITATION WAIVER FOR STUDENTS WITH DISABILITIES

The purpose of these guidelines is to provide direction to school districts on the waiver process to allow a student with a disability to continue participation beyond the age or four year limitation for interscholastic athletics.

Commissioner's Regulation 135.4(c)(7)(ii)(b)(1)

(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 non-contact athletic competition for a fifth year 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 not already participated in an additional season of athletic competition pursuant to a waiver granted under this subclause;

(iv) 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

(v) 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.

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Intent of the Regulation

The regulation provides a waiver for students with disabilities, as defined in section 4401 of the Education Law, to the age and four-year limitations for participation in senior high school athletic competition, as set forth in Section 135.4 of the Commissioner's Regulations. This amendment will advance initiatives of inclusion by allowing students with disabilities who would otherwise be unable to participate in interscholastic athletic competition due to their age or years in school to participate in a sport for one additional season if they have not graduated as a result of their disability delaying their education.

The amendment is designed to offer students with disabilities continued socialization with teammates during practices and games and to further develop the student's skills and abilities associated with his or her participation in such sport, all while assuring the health and safety of the given student and the other students competing in the sport and preserving fair athletic competition.

Each waiver will be assessed on a case-by case basis and will only be granted after a determination is made by the superintendent of schools or chief executive officer of a non-public school that the student meets all eligibility requirements. The waiver will be limited to non-contact sports to ensure the safety of the given student as well as the other students competing in the sport who may be younger and less physically developed. These non-contact sports 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.

Additionally, the student's participation would not be scored for purposes of competition to ensure fair competition among students who may present different levels of physical maturity and athletic ability. The proposed amendment is designed to prevent abuse of the waiver process, for example, by a student seeking an additional year of competition to further his or her athletic career. It is also designed to avoid use of such waiver to fill positions on teams or reward a given student for athletic ability. Instead, the proposed amendment aims to afford students with disabilities continued access to athletic activities for inclusion purposes.

Additional Information

If an athlete with disabilities has received an extension of eligibility pursuant to CR 135.4(c)(7)(ii)(b)(1)(i): *due to illness, accident, or similar circumstances beyond the control of the student*, they may be eligible to use this provision for one additional year of participation pursuant to the rules set forth in the regulation.

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Waiver Process

To use this option, school districts will use the following process:

1. Student requests waiver to participate beyond the age or four year limit of eligibility.
2. Director of Physical Education/Athletics completes the **Section I of the Request for Waiver** form (see Appendix A) and secures School Medical Officer approval and signature for **Section II** of the waiver form.
3. Director of Physical Education/Athletics sends Request for Waiver form (with first two sections completed) to the **Superintendent of Schools (Chief School Officer) to complete Section III.**
4. Director of Physical Education/Athletics secures parental signature in **Section III** of this form prior to sending to the Superintendent/Chief School Officer.
5. Superintendent of Schools (Chief School Officer) completes **Section IV** and returns completed Request for Waiver to the Director of Physical Education/Athletics.
6. Director of Physical Education/Athletics notifies the student of approval or disapproval. If approved, as a courtesy, the Director notifies league opponents regarding the participation of an individual on a non-contact, non-scoring basis. (Reminder: care must be taken not to disclose the nature of the student's disability).

Appeals

Appeals of this regulation are to follow the 310 Appeal process found at the following link: <http://www.counsel.nysed.gov/appeals/>