



# Corrections and Community Supervision

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Acting Commissioner

August 23, 2022

The Honorable Miguel Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Ave, SW  
Washington, DC 20202.

Submitted via Federal eRulemaking Portal.

RE: Docket ID ED-2022-OPE-0062  
Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program

Dear Secretary Cardona:

We appreciate the opportunity to comment regarding the notice of proposed rulemaking on Docket ID ED-2022-OPE-0062, the Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program. This comment letter is submitted on behalf of the New York State Department of Corrections and Community Supervision (NYSDOCCS) to express our concern for the proposed regulations.

The NYSDOCCS has historically maintained a systemic, highly structured approach to post-secondary education that has provided sustainable, accountable programs. The NYSDOCCS maintained its steadfast commitment to Prison Education Programs despite the 1994 Violent Crime Control and Law Enforcement Act, which banned incarcerated individuals from receiving Pell aid, and again in 1995 when New York State changed the State Education law to eliminate incarcerated individuals' eligibility for its Tuition Assistance Program (TAP).

At that time, Section 661 (6) (d) was amended to read "No student who is incarcerated in any federal, state or other penal institution shall be eligible for any general or academic performance award made pursuant to this article". The impact of both the federal and state legislation was immediate and drastic. Without funding, most of the colleges discontinued their programs in our correctional facilities. Despite this, the NYSDOCCS continued to provide leadership and vision for public/private partnerships to grow post-secondary programs, without utilizing public funds. And because of the dedication of all entities involved, the NYSDOCCS today partners with 30 college programs in 36 different correctional facilities.

The NYSDOCCS has also demonstrated its steadfast support for prison education programs through changing laws and establishing programs such as Limited Credit Time Allowances (LCTA), effective in 2009, which is a six-month benefit for a large category of incarcerated individuals. Eligible

individuals may qualify to earn a six-month LCTA benefit against their sentence if they participate in two years of college and receive 24 college credits.

I also wish to point out that I personally demonstrate my support for college programs by speaking at college graduations and attending college events on a regular basis. On occasion, I will don a cap and gown and be part of the procession into the auditorium with the graduating students, the college faculty and outside speakers. At these events, family members of the graduates attend and witness the conferring of the degrees.

Furthermore, the NYSDOCCS continued to work collaboratively with its college partners during the pandemic to maintain continuity of the programs by providing course delivery assistance expanding our technological capabilities.

Additionally, the NYSDOCCS has modeled its commitment by authorizing and supporting the creation of the four-part Ken Burns documentary film series within its facilities, COLLEGE BEHIND BARS. The film that tells the story of a small group of incarcerated men and women struggling to earn college degrees and improve their lives. This documentary aired nationally on PBS and is believed to have been a significant factor in helping to change public opinion to one of support for college programming within prison. This is one of the many examples where the NYSDOCCS, in partnerships with colleges, challenge individuals to continue their post-secondary education while incarcerated in New York State.

Turning now to our specific concerns with the regulations, the use of the NYSDOCCS as the oversight entity raises enormous problems. Specifically, the NYSDOCCS should not be responsible for the assessment that is used to determine that a PEP is operating in the best interest of students. In general, we are gravely concerned about being the entity to determine the qualifications of college professors, staff turnover, transferability of credits earned and professor performance evaluations. Additionally, below are our concerns in bulleted format.

- There is an over emphasis on criteria such as job placement
- Holistic assessment of the rates at which incarcerated individuals continue their education post-release
- Tracking employment wages for participants post-release in assisting in evaluating college program success
- Determinations on the experience, credentials and rates of turnover of instructors being similar to those who teach on campus
- Determinations of academic delivery quality

#### **Recommendations:**

- Job placement rates are important criteria to evaluate but it is not the only criteria for the varied choices that individuals will make in their lives following incarceration. There is no matrix currently available to evaluate when a person finds and maintains gainful employment related to their college education. Also, we feel that more significant than the development of a specific career path, is the fact that a college education provides the incarcerated individual with critical thinking, reasoning, analytical, oral and writing skills, intellectual curiosity, self-confidence, and an enhanced ability to make sound life choices. In a nutshell, a college education provides a life path that is very far removed from the one that led that person to prison in the first place.
- Holistic assessments of the rates at which incarcerated individuals continue their education should be the responsibility of the college

- The NYSDOCCS lacks the resources and experience to track earnings for participants.
- Colleges currently are accredited by agencies that make determinations about experience, credentials and rates of turnover of instructors and we would support the continuation of this as an outcome measurement
- The NYSDOCCS proposes instead that a more logical approach would be to use a nationally approved accreditation agency and an independent auditor as the entity that would be charged with the responsibility for assessing the performance indicators described above. This alternative would lead to reliable and informed decisions regarding “the best interest of the students” criteria and would avoid even the appearance of potential bias.

The NYSDOCCS is proud to report that we have never witnessed any academic abuse nor any watered-down curriculum, with any of our many college partners. Time and time again the feedback that we have received from faculty is that incarcerated students work harder, are more engaged, more mature and more appreciative of the opportunity for higher education, than the regular students at their campuses.

In conclusion, the NYSDOCCS has carefully developed over time an impressive and robust network of college programs within its facilities, that is based upon professional, respectful, cooperative and congenial relationships with our college partners, where the primary beneficiaries are, and always have been, the incarcerated students. We respectfully urge that careful consideration be given to the concerns we have raised, as well as those by our college partners, so that college programs, with the restoration of PELL funding, can further grow and thrive here in New York, as well as elsewhere in the country.

Sincerely,

Anthony J. Annucci  
Acting Commissioner