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July 24, 2013

Dr. John B. King, Jr.
Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dear Commissioner King:

I write to request a change to the New York State Education Department's (NYSED) Age Limitation Waiver for Students With Disabilities as set forth in the Commissioner's Guidelines. Currently, subsection (iii) of Commissioner's Regulation 135.4(c)(7)(ii)(b)(1) prevents the granting of a waiver to a student over nineteen years of age if they have secured a waiver in previous years. **Specifically, I ask that the subsection (iii) be stricken from the Commissioner's Regulations to ensure students with disabilities are able to participate in all four years of high school athletics.** While this subsection is well-intended, I believe it is having a negative impact on some student athletes.

I understand that this waiver was created in order to allow students with disabilities to continue to participate in non-contact sports after their normal eligibility has ended. I applaud NYSED and the New York State Board of Regents for undertaking these reforms. However, there are some students with disabilities who were held back in elementary or middle school and will be twenty-one years old before completing their fourth year of high school. As a result, they have to secure a waiver for both their third and fourth years of high school, which is prohibited under current regulations.

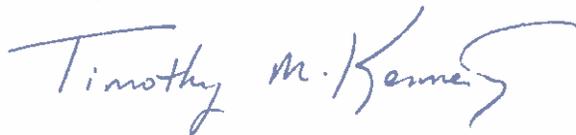
This scenario has real-life consequences, as demonstrated in the case of David Gorczynski. David, who has persevered through both a physical disability and an autism spectrum disorder, has been a member of Orchard Park High School's cross country team for his first three years of high school. Unfortunately, he now faces the prospect of being barred from the team during his senior year because NYSED granted a waiver the previous year. Age rules were put in place to protect younger athletes from injury and to prevent redshirting for athletic purposes. In examining the facts of the case, it is clear that David is not a threat to other athletes on the field, and gaining a competitive advantage in high school athletics is clearly not a goal of the school or David's family in pursuing this waiver.

It is stated that the intent of the regulation is “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...preserving fair athletic competition.” Allowing students like David to participate for the full four years of their high school career is directly in accordance with the intention and spirit of this regulation.

I hope that after reviewing subsection (iii), you will agree that it is unfairly preventing students with disabilities from fully enjoying and benefiting from the programs that are offered by their schools. **I ask that the proposal to strike the subsection be brought before the New York State Board of Regents for review during their next meeting.**

I appreciate your consideration of this request. Should you have any questions or concerns regarding this case, please feel free to contact me at (716) 826-2683.

Sincerely,

A handwritten signature in blue ink that reads "Timothy M. Kennedy". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Timothy M. Kennedy
New York State Senator, 63rd District

CC: Board of Regents Chancellor Merryl H. Tisch
Board of Regents Vice Chancellor Anthony S. Bottar
Board of Regents Chancellor Emeritus Robert M. Bennett
Regent James C. Dawson
Regent Geraldine D. Chapey
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Regent James E. Cottrell
Regent T. Andrew Brown