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### Field Guidance

To: District Superintendents  
Superintendents of Schools  
Administrators of Public and Charter Schools  
Bilingual/ESL Coordinators/Directors

Date: May 2016

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Subject: Guidance Relating to the Right of Individuals Over Compulsory School Age to Attend High School

As part of its work, the Office of Bilingual Education and World Languages (OBEWL) helps to ensure access to public education in New York State for English Language Learners (ELL) and Students with Interrupted/Inconsistent Formal Education (SIFE), including immigrant students. This memorandum serves to clarify the right of all individuals, regardless of citizenship, who reside in New York State (NYS) and are between the ages of 5 and 21, to a free public high school education in their school district of residence.

Education Law §3201 states that no NYS public school shall refuse admission to any person on account of race, creed, color, or national origin. Education Law §3202 states that persons over 5 and under 21 years of age who have not received a high school diploma are entitled to attend the public schools in their district of residence without the payment of tuition. Such individuals include those identified as ELL and SIFE, and are entitled to the full range of public school educational services, including, but not limited to special education and related services, services and programs for ELLs/SIFE, guidance services, college and career counseling, athletics, and extracurricular activities.

The Commissioner's regulations at §100.5(d)(5)(i) require the principal to evaluate the transcript or other records of a transfer student enrolling in a NYS high school and award appropriate units of transfer credit towards a high school diploma. These reviews must be undertaken in a timely manner and include foreign transcripts. However, districts may not turn away eligible residents from enrollment if they do not possess a transcript.

Students over the age of compulsory school attendance (age 16 in New York State<sup>1</sup>), while not required to attend upon full-time instruction, are entitled to attend a full time high school program (Education Law §3205[1][a]). However, they may *voluntarily* choose to instead pursue a high school equivalency diploma earned by passing the General Educational Development (GED) or Test Assessing Secondary Completion (TASC™)<sup>2</sup>. Districts may not force such individuals to forego a full time high school program to pursue this alternative option, or otherwise steer such individuals toward this alternative option.

<sup>1</sup> Individual districts may require that students from 16 to 17 years old who are not employed to attend upon full-time instruction until the last day of session in the school year in which the student turns 17 (Education Law §3205[3]).

<sup>2</sup> Effective January 2, 2014, New York State has selected the TASC™ to be the high school equivalency test. However, in some instances the GED® is still being administered.

In conclusion, students who reside in NYS and are between the ages of 5 and 21 have the right to receive a free public high school education in their school district of residence. School districts may not force or steer individuals over compulsory school age to forego pursuing a high school diploma to attend a high school equivalency preparation program, regardless of the number of high school credits they have accrued and whether they are “on track” to graduate with a high school diploma.

If you have any questions, please contact the Office of Bilingual Education and World Languages at (718) 722-2445 or [OBEFLS@nysed.gov](mailto:OBEFLS@nysed.gov)