



**NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY
ASSISTANCE**
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Administrative Directive

Section 1

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Issuing Division/Office:	Center for Employment and Economic Supports
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Subject:	Enrollments in Educational Activities for Nonexempt Public Assistance Applicants and Recipients
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Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
08 ADM-07		18 NYCRR §385.6 18 NYCRR §385.7 18 NYCRR §385.9	SSL Title 9-B	Employment Policy Manual Sections 6, 7 and 9	

Section 2

I. Summary

The Office of Temporary and Disability Assistance (OTDA) seeks to expand access to education and training by public assistance recipients as one means to increase their opportunities for obtaining and/or retaining employment and experiencing wage gains. As part of OTDA's ongoing efforts in this regard, regulations have been adopted defining basic literacy level as a literacy level equivalent to the ninth grade and requiring districts, beginning October 1, 2009, to:

- encourage (and may require) nonexempt recipients who have not attained a "basic literacy level" to enroll in a basic literacy program, high school equivalency program or other educational program in combination with other work activities and consistent with the employment plan.
- offer (and may require) nonexempt recipients who have attained a "basic literacy level" but have not attained a high school diploma or the equivalent the opportunity to enroll in an educational program designed to improve basic literacy level and/or prepare an individual for attainment of a high school diploma or the equivalent in combination with other work activities and consistent with the employment plan.

These changes do not affect the educational requirements included in 18 NYCRR 385.9 which continue to require in most instances that individuals less than 20 years of age be assigned to educational activities unless it is determined through their assessment that educational activities are not appropriate. Individuals between the ages of 16 and 18 may be excused from secondary school attendance if it is determined, through an assessment, that further attendance is not likely to result in attainment of a high school diploma or its equivalent, and the individual participates in another educational activity designed to lead to the attainment of a diploma or equivalent, or in job skills training designed for youths. Additionally, districts may still require any nonexempt adult aged 20 or older to participate in educational activities consistent with the individual's assessment and employment plan.

The regulatory changes also formally establish authority for districts to count supervised and limited hours of unsupervised homework as part of an individual's participation in assigned educational activities as the district determines appropriate.

Consistent with previous regulations, when making an assignment to an educational activity, districts will determine the appropriateness of such assignment based on the individual's employment assessment, the district's need to comply with federal and State work participation rate requirements and other factors taken into consideration when developing the individual's employment plan. Districts will also continue to determine when, and to what extent, homework/study time is approved as a work activity based on district policy, the individual's circumstances and the district's need to meet federal and State participant rate requirements.

Purpose

The purpose of this Administrative Directive (ADM) is to provide districts with information and guidance necessary to implement requirements effective October 1, 2009 resulting from changes to 18 NYCRR 385.6 and 18 NYCRR 385.7 which now define "basic literacy level" and provide nonexempt individuals receiving public assistance expanded opportunities to participate in appropriate education

activities to increase their skills. The regulatory changes also amend 18 NYCRR 385.9 to formally establish a district's authority for reporting homework time which is completed as part of an individual's participation in approved educational activities.

II. Background

OTDA promulgated regulatory changes to expand access to educational activities for nonexempt public assistance recipients to help them increase their skills through participation in education and other skill development activities as part of their public assistance work requirement. Improved basic skills and other jobs skills training can expand the number of jobs individuals are qualified to perform, enhance the ability of individuals to learn on the job, and increase the number of higher level training opportunities that they may be qualified to enter.

Consistent with Social Services Law (SSL) § 335 and § 335-a, when an assessment indicates that a participant who is not otherwise subject to the educational requirements of SSL § 336-a(4) has not attained a "basic literacy level" districts must encourage and may require nonexempt public assistance recipients to participate in educational activities as part of their work requirement. The term "basic literacy level" is not defined in State law and prior to these regulatory changes was not defined in regulations resulting in considerable variation among districts' education enrollment policies. OTDA promulgated regulatory changes to 18 NYCRR 385.6 and 385.7 to define "basic literacy level" as equivalent to the ninth grade. Additionally, the regulations now establish that nonexempt individuals who have attained a "basic literacy level" but who have not attained a high school diploma or equivalent will be offered the opportunity to participate in educational activities including activities intended to prepare them to attain a high school diploma or its equivalent.

Prior to these regulatory changes, districts were required, during the employment assessment, to encourage nonexempt recipients who had not attained a basic literacy level to enroll in a basic literacy, high school equivalency or other educational program in combination with other work activities. Additionally, districts continue to be required to comply with the education requirements of SSL § 336-a(4) and 18 NYCRR 385.9 which:

- require districts to assign individuals under age 18 without a high school diploma or the equivalent to educational activities. An individual between the ages of 16 and 18 may be excused from secondary school if an assessment indicates that further attendance is not likely to result in attainment of a high school diploma or the equivalent and if the individual participates in another educational activity intended to lead to a high school diploma or the equivalent or in job skills training designed for youth; and
- require districts to assign an individual aged 18 or 19 without a high school diploma or the equivalent to educational activities unless an assessment determines that such participation is not appropriate or the individual fails to make satisfactory progress in educational activities.

Districts may assign a nonexempt individual to an educational activity if such assignment is consistent with the individual's employment assessment and plan.

Additionally, to ensure that each district's Temporary Assistance and Food Stamp Employment Plan (Local Plan) development process includes an active effort to identify educational services available for nonexempt individuals whose assessment indicates that education or training is appropriate, districts are asked to describe in their Local Plan how they identify and provide appropriate education or job skills services for individuals whose assessment indicates that such services would be an appropriate work activity assignment, and what arrangements the district has in place with education and training providers, including contracted services, to provide such services. Districts are also instructed during Local Plan development that they should make efforts to ensure that education and job training services are available to nonexempt individuals whose assessment indicates a need for adult basic education or English Language Instruction and should also strive to provide opportunities for additional job skills training for individuals whose job placement efforts would benefit from these services.

Homework/Study Time

The amendments to 18 NYCRR 385.9 establish formal authority for districts to count, at district discretion, homework/study time completed as part of an approved educational activity towards an individual's public assistance work requirement. Districts were permitted to count homework/study time towards federal participation requirements beginning with implementation of the Final TANF rule at 45 CFR § 261.60(e) which allowed states to count supervised homework/study time and up to one hour of unsupervised homework/study time associated with an allowable educational activity for each hour of approved class time toward federal work participation requirements. Districts retain the authority to approve an individual's participation in homework/study time as countable toward the individual's weekly work participation requirements; however, the total number of hours of supervised and unsupervised homework/study time reported towards the federal participation rate may not exceed the documented number of hours of study expected by the education program. Districts should refer to 08 ADM-07 for additional information pertaining to documenting and reporting hours of homework/study time towards the federal participation rate.

III. Program Implications

Each district is expected to determine which public assistance recipients are subject to work requirements, or are nonexempt, in accordance with 18 NYCRR 385.2 and to engage individuals determined to be capable of participating in appropriate work preparation and job placement services in an effort to help these individuals obtain and retain employment. Districts continue to be able to enroll nonexempt individuals in work activities prior to completing an assessment within the required timeframes, but in all instances the activities to which an individual is assigned must be appropriate in that the individual is capable of participating in the activity and the activity will benefit the individual's employment efforts. Individuals determined to be unable to participate in work activities and that are deemed exempt pursuant to 18 NYCRR 385.2 are not affected by these changes.

Effective October 1, 2009, districts are required to inform nonexempt individuals without a high school diploma or the equivalent of the possible option of participating in educational activities in conjunction with other work activities. An insert to the LDSS-4148A (*What You Should Know About Your Rights and Responsibilities*) will be available to districts for use beginning October 1, 2009 that includes the required notification to inform nonexempt individuals without a high school diploma and must be

provided to all applicants at application and recipients at the next recertification. Effective October 1, 2009, districts are required to apply the new regulations for individuals without a high school diploma who express an interest in participating in an educational activity. Specifically, districts are required to:

- encourage (and may require) nonexempt recipients who possess less than a 9th grade literacy level to enroll in education activities including basic literacy, high school equivalency or other educational programs; and
- offer (and may require) nonexempt recipients who have attained a “basic literacy level” but have not attained a high school diploma or the equivalent the opportunity to enroll in educational programs designed to improve literacy level and/or prepare an individual to attain a high school diploma or the equivalent.

Districts may encourage all individuals without a high school diploma to participate in educational activities when warranted by the assessment and must encourage participation by those who have not attained basic literacy. An example of encouraging enrollment would be that the individual is not only informed of the option to participate in education but the worker also describes how improving literacy levels and/or obtaining a high school diploma would increase the jobs he or she would be qualified to perform.

In addition to properly notifying all applicants and addressing requests from any individual without a high school diploma as noted above, districts are required to provide information to individuals affected by the regulation changes who are currently receiving public assistance and likely enrolled in work activities about the availability of educational activities, and address the new requirements directly at the individual’s next employment assessment update or recertification for public assistance benefits, but no later than March 1, 2011. Additionally, districts may encourage participation in literacy testing and/or a program to improve basic literacy skills for individuals with a high school diploma who through observation or other means indicate the need to improve basic literacy skills.

Completion of an Individual Education Plan (IEP), in and of itself, is not considered to be the equivalent of completing high school and receiving a high school diploma. Therefore, recipients who have completed an IEP but have not attained either a high school diploma or a General Educational Development (GED) diploma should be treated consistent with all individuals who do not have a high school diploma or GED for purposes of work assignments and access to education activities.

An individual’s literacy level must be established based on a test for basic literacy level as determined appropriate by the State Education Department. Districts may choose to first offer the opportunity to enroll in an educational program to nonexempt recipients without a high school diploma or the equivalent and then pursue a test of basic literacy for those individuals for whom an educational enrollment is of interest and that is being considered as part of the individual’s work assignment. Alternatively, districts may choose to provide a test of basic literacy to all individuals or categories of individuals and then offer enrollment in an educational activity.

Individuals with Limited English Proficiency

Districts are required to offer (and may require) nonexempt individuals without a high school diploma obtained in the United States the opportunity to participate in education activities such as adult basic education or preparation for a high school equivalency diploma. An individual with limited English

proficiency should be assessed to determine whether enrollment in English for Speakers of Other Languages (ESOL) is necessary before the individual may be enrolled in an Adult Basic Education or secondary education program. Educational providers should follow assessment guidelines established by the New York State Education Department for purposes of determining the appropriate instructional setting in which a student should be placed.

Individuals Currently Enrolled in Training Programs

Districts are not required to initiate a re-assessment of individuals who are enrolled in a full time vocational education/job skills training or two-year college program for purposes of offering or encouraging enrollment in adult education. Districts would review the appropriate assignment for these individuals upon program completion or other factors that result in a re-assessment, including a request by the participant. As with all participants, districts would also review the appropriate assignment for these individuals if requested by the individual.

Approval of Education Activities as a Work Activity

Assignment to an educational activity must be consistent with the individual's assessment and employment plan. Districts may assign an individual to work activities, including education activities, prior to the completion of the employment assessment; however, the district must first determine that an activity is appropriate before assignment. As with all activity assignments, when determining whether or not assignment or continuation in an educational activity is appropriate, districts may consider factors such as, but not necessarily limited to, the following, with the district policy also establishing the weight assigned to each factor:

- The extent to which the educational program requested is appropriate for the individual based on his or her educational needs.
- The extent to which the individual has an interest in participating in an educational activity.
- The extent to which the individual is capable of participating in and able to benefit from participation in an educational activity.
- The individual's progress with the activity or progress achieved in similar prior activity assignments. When reviewing progress, districts should consider the time that has elapsed since prior participation, whether or not the prior enrollment was appropriate for the individual, and factors known or presented by the individual which may have impacted his or her ability to make satisfactory progress.
- The individual's attendance or prior compliance with past similar educational activity assignments. When reviewing program attendance or prior compliance, districts should consider the time that has elapsed since prior participation and factors known or presented by the individual which may have impacted his or her ability to satisfactorily attend.
- The availability of educational programs locally and the extent to which the educational activity reasonably permits the district to assign the individual to other activities including a work-based activity as needed to attain federal and state work participation rate requirements.

- Whether or not the educational provider is an approved provider and the extent to which the provider cooperates with the district's request to report hourly participation as needed to meet federal and state work participation requirements or other purposes.

In all instances, districts are encouraged to combine education activities with at least 20 hours weekly of work based activities, such as employment, work experience, or internships, for purposes of meeting federal and State work participation rates and to improve employment outcomes. Districts may also consider the homework/study time that may be needed for the individual to make progress in and complete an approved educational activity and are encouraged to count such hours of participation towards the individual's work requirement consistent with federal requirements and the district's need to meet federal and State participation rates, which generally only count hours of participation in educational activities for hours of participation once the individual has participated in a minimum of 20 hours averaged weekly in work-based activities. Districts are also encouraged to identify a range of educational instruction available to participants including adult education programs funded by the State Education Department or services funded through OTDA's Educational Resources contracts.

IV. Required Action

Effective October 1, 2009, districts are required to inform new applicants who have not attained a high school diploma or the equivalent of the possible option of participating in educational activities as part of the individual's public assistance work requirement. Districts are also required, effective October 1, 2009, to apply the new regulations for individuals without a high school diploma who express an interest in participating in an educational activity by:

- encouraging (and may require) nonexempt recipients who possess less than a 9th grade literacy level to enroll in education activities including basic literacy, high school equivalency or other educational program; and
- offering (and may require) nonexempt recipients who have attained a "basic literacy level" but have not attained a high school diploma or the equivalent the opportunity to enroll in educational programs designed to improve literacy level and/or prepare an individual for attainment of a high school diploma or the equivalent.

For affected individuals currently enrolled in work activities other than full time vocational education/job skills training or a two-year college program, districts are required to provide information about the availability of educational activities to and inquire about the interest of those who have not attained a high school diploma in participating in educational activities at the next employment assessment update or recertification for public assistance benefits, but no later than March 1, 2011. Additionally, any currently enrolled individual without a high school diploma or its equivalent who expresses an interest in participating in education activities shall have his or her request reviewed in accordance with the new regulations within a three-month period.

OTDA will make available to districts an insert to the LDSS-4148A (*What You Should Know About Your Rights and Responsibilities*) that must be used to inform individuals affected by these changes of the opportunity to participate in available educational programs beginning October 1, 2009. The insert will be used until language is added to the LDSS-4148A incorporating these regulatory changes.

Districts are required to have incorporated the changes into the ongoing assessment and employment plan procedures, no later than March 1, 2010.

District processes implementing these requirements will be reviewed as part of the next biennial Local Plan approval process. Districts will be required to describe, beginning with their 2010-2011 Local Plan, their processes for:

- making education activities available to nonexempt recipients who have not attained a high school diploma; and
- determining whether participation in educational activities is appropriate for these individuals.

V. Systems Implications

Districts are reminded to have workers maintain current information regarding educational and basic literacy levels in the Welfare Management System (WMS), Welfare to Work Caseload Management System (CMS) and NYCWAY systems as appropriate.

VI. Effective Date

Regulatory changes are effective October 1, 2009, to be implemented in a manner consistent with this directive.

Issued By

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