





TO: The Honorable the Members of the Board of Regents

FROM: Angélica Infante-Green *A. Infante - Green*

SUBJECT: Proposed Amendment to §100.5 of the Commissioner's Regulations Relating to the Superintendent Determination Option for Certain Students with Disabilities to Graduate with a Local Diploma

DATE: February 6, 2018

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt, as a second emergency action, proposed amendments to §100.5 of the Commissioner's regulations relating to the superintendent determination option for certain students with disabilities to graduate with a local diploma?

Reason(s) for Consideration

Implementation of policy.

Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as a second emergency rule at the February 2018 Board of Regents meeting. A Notice of Emergency Adoption will be published in the State Register on February 28, 2018. A statement of facts and circumstances is included as Attachment A. A copy of the statement of facts and circumstances justifying the emergency is attached.

Procedural History

At the December 2017 Board of Regents Meeting, the Board adopted the proposed amendments as an emergency measure, effective December 17, 2017. Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents at the April 2018 meeting for adoption as a permanent rule. However, the emergency action taken at the December 2017 meeting will expire on March 11, 2018. Therefore, emergency action is necessary at the February 2018 meeting to ensure that the rule remains continuously in effect until it can be adopted as a permanent rule at the April 2018 Regents meeting.

In June 2016, the Board of Regents adopted regulations to automatically require superintendents to make a determination for every student with a disability who did not meet the graduation requirements through the existing appeal and safety net options. In response to public comment and questions raised by the field, the regulations were subsequently revised and adopted on an emergency basis at the October 2016 Regents meeting to require that on or after October 18, 2016 (the effective date of the revised rule), a superintendent may only make a determination whether an eligible student has met the requirements for graduation through the superintendent determination option upon receipt of a written request from an eligible student's parent or guardian; the district must provide prior written notice that the student is not eligible to receive a free appropriate public education after graduation with a local diploma; and that the development of transition goals and services at a committee on special education meeting include a discussion with the student's parents of the student's progress toward receiving a diploma and that parents be provided with information explaining graduation requirements, including eligibility criteria and process for requesting the superintendent determination option. The regulation, as revised, was adopted as a permanent rule at the December 2016 Regents meeting.

Background Information

All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the State provided a superintendent determination option for eligible students to graduate with a local diploma, beginning in June 2016 and thereafter.

Under current regulations, to be eligible for the superintendent determination option to graduate with a local diploma, a student with a disability must meet all conditions as follows:

- The parent/guardian submitted a written request that their child be considered for a superintendent determination;

- The student has a current individualized education program and is receiving special education programs and/or related services;
- The student did not meet the graduation requirements through the low pass (55-64) safety net option or the compensatory safety net option;
- The student has earned the required course credits and has passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents examination areas (English language arts (ELA), mathematics, social studies, and science);
- The student has earned a minimum score of 55 on both the ELA and mathematics Regents examinations or a successful appeal of a score between 52 and 54;
- The student has participated in other Regents examinations, but has not passed one or more of these examinations as required for graduation; and
- The student has otherwise demonstrated competency in the subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the Regents examination.

Summary of Proposed Amendments

The proposed rule would, on or after December 12, 2017, allow students with disabilities who have not earned a minimum score of 55 on the ELA and/or mathematics Regents examinations or did not initiate an appeal of a score between 52 and 54 to meet the ELA and/or mathematics Regents examinations eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. For these students, the superintendent must conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge, skills and abilities in ELA and/or mathematics, in addition to any other subject areas where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination(s) required for graduation.

In addition, because some students may not have had the opportunity to work towards earning the CDOS Commencement Credential and would be unable to use the credential to meet the ELA and mathematics Regents examinations eligibility conditions for the superintendent determination option, the proposed rule includes an exception to certain requirements to allow appropriate discretion to school principals to determine whether students have otherwise demonstrated the knowledge and skills related to the CDOS learning standards sufficient for entry-level employment. Specifically, for students with disabilities who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, the exception would allow school districts, and nonpublic high schools and charter schools to award the CDOS Commencement Credential to a student with a disability who has not fully met all of the requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated

knowledge and skills in the commencement level CDOS learning standards 1, 2 and 3a. The principal must have evidence that the student has successfully completed relevant instructional and work-based learning activities during the student's secondary school years that demonstrates the student has readiness skills for entry-level employment. However, for students who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, the total hours of the career and technical education coursework and/or work-based learning activities may be less than the required equivalent of two units of study (216 hours).

Students who are awarded the CDOS Commencement Credential under this exception may not use such credential to meet the requirements for the career development and occupational studies graduation pathway to a local or Regents diploma.

Related Regents Items

[Proposed Amendment to Section 100.5 December 2017](http://www.regents.nysed.gov/common/regents/files/1217p12a1.pdf)

<http://www.regents.nysed.gov/common/regents/files/1217p12a1.pdf>

[June 2016 BOR P12](http://www.regents.nysed.gov/meetings/2016/2016-06/p-12-education)

<http://www.regents.nysed.gov/meetings/2016/2016-06/p-12-education>

[September 2016 BOR P12](http://www.regents.nysed.gov/meetings/2016/2016-09/meeting-board-regents-0)

<http://www.regents.nysed.gov/meetings/2016/2016-09/meeting-board-regents-0>

[October 2016 BOR P12](http://www.regents.nysed.gov/meetings/2016/2016-10/p-12-education)

<http://www.regents.nysed.gov/meetings/2016/2016-10/p-12-education>

[December 2016 BOR P12](http://www.regents.nysed.gov/meetings/2016/2016-12/meeting-board-regents-1)

<http://www.regents.nysed.gov/meetings/2016/2016-12/meeting-board-regents-1>

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That paragraph (12) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 11, 2018, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that certain students with disabilities who are graduating from high school in January 2018 and thereafter are aware that they may be considered an eligible student for the superintendent determination option if they meet the requirements of the proposed rule. It is also necessary to ensure that superintendents are on notice that they must, upon the written request of a parent or guardian, make a determination as to whether certain students with disabilities are eligible for a local diploma, if the student meets the requirements of the proposed rule.

Timetable for Implementation

If adopted at the February Regents meeting, the proposed amendment will become effective as an emergency measure on March 11, 2018. Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents at the April 2018 meeting for adoption as a permanent rule. If adopted at the April 2018 Regents meeting, the proposed amendment will be effective as a permanent rule on April 25, 2018.

8 NYCRR §100.5

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment is necessary to implement Regents policy to permit students with disabilities to meet the Regents ELA and/or mathematics examinations eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. In addition, the proposed rule would allow, for students with disabilities who are otherwise eligible to exit from high school in either the 2017-2018 school year or 2018-2019 school year only, a school district or nonpublic school to award the CDOS Commencement Credential to a student with a disability who has not met all of the requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards. Students who are awarded the CDOS commencement credential under this exception may not use such credential to meet the requirements for the career development and occupational studies graduation pathway option.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the March 12-13, 2018 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective

date of the proposed rule, if adopted at the March meeting, would be March 28, 2017, the date a Notice of Adoption would be published in the State Register. However, the proposed rule would allow students with disabilities to meet the Regents ELA and/or mathematics examinations eligibility conditions for the superintendent determination option by completing the requirements for the CDOS Commencement Credential beginning with students who are otherwise eligible to graduate in January 2018.

Therefore, a second emergency action is necessary at the February 2018 Regents meeting for the preservation of the general welfare in order to ensure that the rule remains continuously in effect until the rule can be permanently adopted.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305, 308, 309 and 3204

1. Paragraph (12) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective March 11, 2018, as follows:

(12) Superintendent determination pathway for certain students with disabilities for eligibility for a local diploma.

(i) For purposes of this paragraph only, superintendent shall mean the superintendent of a school district or the principal, head of school, or their equivalent, of a charter school or nonpublic school, as applicable.

(ii) School districts, registered nonpublic high schools and charter schools shall ensure that every student who is identified as a student with a disability as defined in Education Law section 4401(1) and section 200.1(zz) of this Title and who does not meet the assessment requirements for graduation through the existing appeal options, including the compensatory score option or the 55-64 low pass safety net option available under this section but who is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination pathway in accordance with the requirements of this paragraph, provided that the student:

(a) has a current individualized education program and is receiving special education programs and/or related services pursuant to Education Law section 4402 and section 200.4 of this Title;

(b) took the English Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between

52 and 54 on such examination pursuant to paragraph (7) of this subdivision, except as otherwise provided in subparagraph (v) of this paragraph; and

(c) took a mathematics Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision, except as otherwise provided in subparagraph (v) of this paragraph; and

(d) participated in the remaining Regents examinations required for graduation pursuant to clauses (c), (d), (e) and (f) of subparagraph (a)(5)(i) of this section, but was unable to achieve a minimum score of 55 on one or more of the remaining assessments required for graduation or did not initiate an appeal of a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or was unable to use the compensatory score option for one or more such examinations pursuant to clause (7)(vi)(c) of this subdivision; and

(e) has earned the required course credits pursuant to this section and passed, in accordance with district policy, all courses required for graduation.

(iii) For each eligible student under this paragraph, the superintendent shall conduct a review to determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities in the subject area(s) where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination(s) and document such determination in accordance with the following procedures:(a) the superintendent shall consider evidence that the student attained a grade for the course that meets or exceeds the required passing grade by the school for the subject area(s) under review and such grade is recorded on the student's official transcript with grades achieved by the student

in each quarter of the school year. Such evidence may include, but need not be limited to, the student's final course grade, student work completed throughout the school year and/or any interim grades on homework, class work, quizzes and tests; and

(b) the superintendent shall consider the evidence that demonstrates that the student actively participated in the Regents examination(s) for the subject area(s) under review; and

(c) the superintendent shall, as soon as practicable, in a form and manner prescribed by the commissioner, document the evidence reviewed for an eligible student with disability under this paragraph and make a determination as to whether the student met the requirements for issuance of a local diploma pursuant to this paragraph and certify that the information provided is accurate; and

(d) the superintendent shall, as soon as practicable, provide each student and parent or person in parental relation to the student with a copy of the completed form and written notification of the superintendent's determination, and place a copy of the completed form in the student's record.

(1) Where the superintendent determines that the student has not met the requirements for graduation pursuant to this paragraph, the written notice shall inform the student and parent or person in parental relation to the student that the student has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first.

(2) Where the superintendent determines that the student has met the requirements for graduation pursuant to this paragraph, the parent shall receive prior written notice pursuant to the requirements of section 200.5(a)(5)(ii) of this Title indicating

that the student is not eligible to receive a free appropriate public education after graduation with the receipt of the local diploma pursuant to this paragraph; and

(e) the superintendent shall, no later than August 31 of each year, provide the commissioner with a copy of the completed form for each student; and

(f) the commissioner may conduct audits of compliance with the requirements of this paragraph.

(iv) On or after October 18, 2016, a superintendent shall only make a determination under this paragraph upon receipt of a written request from an eligible student's parent or guardian. Such request shall be submitted in writing to the student's school principal or chairperson of the district's committee on special education. A written request received by the school principal, chairperson of the district's committee on special education, or any other employee of the school as applicable, shall be forwarded to school superintendent immediately upon its receipt.

(v) On or after December 12, 2017, a student who was unable to achieve a minimum score of 55 or did not initiate an appeal of a score of between 52 and 54 on the English and/or mathematics Regents exams shall be considered an eligible student for the superintendent determination pathway pursuant to this paragraph, provided that the student has completed the requirements for the New York State career development and occupational studies commencement credential pursuant to section 100.6(b) of this Part.

(a) For students with disabilities who are otherwise eligible to graduate in either the 2017-2018 school year or the 2018-2019 school year only, the district, registered nonpublic high school or charter school may award the career development and occupational studies commencement credential to a student who has not met all of the requirements in section 100.6(b)(3)(ii) of this Part, for purposes of eligibility for the

superintendent determination pathway pursuant to this paragraph, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills relating to the commencement level career development and occupational studies learning standards. The principal must have evidence that the student has successfully completed relevant instructional and work-based learning activities during the student's secondary school years that demonstrate the student has readiness skills for entry-level employment. Students who are awarded the career development and occupational studies commencement credential pursuant to this clause may not use such credential to meet the requirements set forth in section 100.5(d)(11) of this Part for the career development and occupational studies pathway to a local or Regents diploma.

(b) The superintendent shall, in accordance with the requirements of subparagraph (iii) of this paragraph, conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge, skills and abilities in English language arts and/or mathematics, in addition to reviewing any other subject areas required for graduation where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination pursuant to clause (ii)(d) of this paragraph.