



TO: The Honorable the Members of the Board of Regents

FROM: Kimberly Young Wilkins *Kimberly Young Wilkins*

DATE: April 1, 2021 *Jan M. P.*

SUBJECT: Proposed Amendment to Section 100.5(h) of the Regulations of the Commissioner of Education Relating to Requirements for Awarding the New York State Seal of Biliteracy (NYSSB or "the Seal")

AUTHORIZATION(S): *John L. D'Agati* *Bellamy*

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment to section 100.5(h) of the Regulations of the Commissioner of Education relating to requirements for awarding the New York State Seal of Biliteracy (NYSSB or "the Seal")?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as a permanent rule at its April 2021 meeting. A copy of the proposed amendment is attached (Attachment A). Supporting materials are available upon request to the Secretary of the Board of Regents.

Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion at the December 2020 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on December 30, 2020 for a 60-day public comment period in accordance with the State Administrative Procedure Act (SAPA). Following the 60-day public comment period, the Department received comments on the proposed amendment. An Assessment of Public Comment is included as Attachment B. No changes to the proposed amendment are recommended at this time.

Background Information

On July 31, 2012, Governor Andrew Cuomo signed into law Chapter 271 of the Laws of 2012 (Section 815 of Education Law), which established the New York State Seal of Biliteracy (NYSSB, or the Seal) to recognize high school graduates who have attained a "high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English." In April 2016, the Board of Regents approved the addition of section 100.5(h) to the Commissioner's regulations, which established the requirements for students to earn the Seal.

Commissioner's regulations section 100.5(h)(4)(ii)(b) describes student requirements for demonstrating proficiency in a World Language (Language Other Than English) that may be applied toward earning the NYSSB, which include successful completion of a World Language course aligned to a Checkpoint C world language assessment, a Home Language Arts (HLA) course and the district HLA exam, and the earning of specific scores on one of 12 approved Checkpoint C world language assessments.

The Department is proposing to amend section 100.5(h)(4)(ii)(b)(1)(i) to remove the following language: "coursework and final examination consistent with Checkpoint C learning standards." This amendment will make the item consistent with the description of the English Language Arts course requirement provided in section 100.5(h)(4)(ii)(a)(1)(iii). This amendment will also make the Seal available to more students, as some students have been unable to meet this qualification because their school does not provide a final exam for these courses.

Additionally, the Department is proposing to amend section 100.5(h)(4)(ii)(b)(1)(ii) to replace the language "Home Language Arts (HLA) coursework and the district HLA exam" with "complete all required Home Language Arts (HLA) courses with an average of 85 or higher." This amendment will make the section consistent with the description of the English Language Arts course requirement provided in section 100.5(h)(4)(ii)(a)(1)(iii). It will also make the Seal available to more students, especially English Language Learners, as some students have been unable to meet this qualification because their district does not offer a district HLA exam.

Finally, the Department is proposing to amend section 100.5(h)(4)(ii)(b)(1)(iii) to replace the current list of approved World Language assessments and required scores with a statement authorizing the Commissioner to approve assessments that will apply toward this requirement. The current list of approved assessments, all of which are developed and administered by entities outside of the Department, only allows students to earn the NYSSB in a limited number of World Languages, which has at times served as an impediment for students who seek to earn the Seal based on their proficiency in a World Language that is not evaluated by one of these assessments. The Department has identified a number of assessments that could potentially be added to this requirement, which would support the ability for more students – and especially English Language Learners – to earn the Seal.

This change will allow more students to earn the Seal and will recognize the effort that institutions throughout New York State and the country have made to increase the number of languages for which schools provide high quality instruction and assessment. In addition, removal of the specific test names and score levels from this section will make the regulation more consistent with other sections that describe the use of outside assessments to apply toward diploma requirements and other honors.

Related Regents Items

April 2016: [Addition of Section 100.5\(h\) of the Commissioner’s Regulations, Relating to the New York State Seal of Biliteracy](https://www.regents.nysed.gov/common/regents/files/416brca2.pdf)

(<https://www.regents.nysed.gov/common/regents/files/416brca2.pdf>)

September 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/920bra7revised.pdf)

(<https://www.regents.nysed.gov/common/regents/files/920bra7revised.pdf>)

December 2020: [Proposed Amendments to Section 100.5\(h\) of the Regulations of the Commissioner of Education Relating to Requirements for Awarding the New York State Seal of Biliteracy \(NYSSB or “the Seal”\)](https://www.regents.nysed.gov/common/regents/files/1220p12d1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/1220p12d1.pdf>)

Recommendation

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

VOTED: That section 100.5(h) of the Regulations of the Commissioner of Education be amended, as submitted, effective April 28, 2021.

Timetable for Implementation

If adopted at the April 2021 meeting, the proposed amendment will become effective on April 28, 2021.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 308, 309 and 815 of the Education Law.

1. Clause (b) of subparagraph (ii) of paragraph (4) of subdivision (h) of section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) Area 2: Criteria for demonstrating proficiency in a world language.

(1) Students shall earn one point per item for achieving the following items:

(i) complete a level four Checkpoint C world language course, with a grade of 85 or higher, or a comparable score using another scoring system set by the district and approved by the commissioner[, for both the coursework and final examination consistent with Checkpoint C learning standards];

(ii) for students enrolled in a bilingual education program, complete all required Home Language Arts (HLA) [coursework and the district HLA exam] courses with an 85 or higher, or a comparable score using another scoring system set by the district and approved by the commissioner;

(iii) score at a proficient level on [one or one group, as applicable, of the following] an accredited Checkpoint C world language [assessments] assessment, approved by the Commissioner [:

AP--Advanced Placement Examination (minimum score 4)

IB--International Baccalaureate (minimum score 5)

STAMP4S--Standard Based Measurement of Proficiency (minimum score 6)

DELE--Diplomas of Spanish as a Foreign Language through Cervantes Institute of NYC (minimum score B1)

AAPPL--The ACTFL Assessment of Performance toward Proficiency in Languages (minimum score I-5)

OPI--The ACTFL Oral Proficiency Interview (minimum score Intermediate High)

OPIc--The ACTFL Oral Proficiency Computer Test (minimum score Intermediate High)

WPT/BWT--The ACTFL Writing Proficiency Test/Business Writing Test (minimum score Intermediate High)

RTP--The ACTFL Reading Proficiency Test (minimum score Intermediate High)

LPT--The ACTFL Listening Proficiency Test (minimum score Intermediate High)

ALIRA--The ACTFL Latin Interpretive Reading Assessment (minimum score I-4)

SLPI: ASL--American Sign Language Proficiency Interview (minimum score intermediate plus)]; and

(iv) ...

(2)

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on December 30, 2020, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT

One commenter addressed regulations regarding the requirements for English Language Learners (ELLs) to show achievement on Regents Exams, the NYS English as a Second Language Achievement Test (NYSESLAT), ELA coursework, Advanced Placement (AP) exams, and the New York State Seal of Biliteracy (NYSSB) scholarly essay in order to earn the Seal. Specifically, the commenter stated that for purposes of earning the seal, the Department should lower the average requirement for ELLs on Regents exams; the NYSESLAT scale score should be clarified so that schools make appropriate determinations for ELL proficiency levels; the NYSSB legislation should be expanded so that 11th graders can earn the seal; there should be an exemption from the requirement that students receive an average of 85 or higher on English Language Art (ELA) courses and the average should be lowered; and the average should be lowered for AP exams. Additionally, the commenter noted that ELLs may not have the English proficiency level to write a scholarly essay.

DEPARTMENT RESPONSE:

These comments are outside of the scope of the proposed rule; therefore, no response is necessary, and no changes are needed.

2. COMMENT

One commenter addressed how the COVID-related test exemptions and emergency regulations impact ability of ELLs to earn the Seal.

DEPARTMENT RESPONSE:

This comment is outside of the scope of the proposed rule, however, the Department has adopted emergency regulations which provide that students who were unable to take applicable Regents exams due to the COVID-19 related cancellation will satisfy criteria for the NYSSB that would have been met by the required June 2020 or August 2020 Regents exams(s), provided such student has received an exemption for such exam. Additionally, the emergency regulations provide that ELLs will satisfy criteria for the NYSSB that would have been met by a 2020 NYSESLAT score through a combination of having achieved an English language proficiency level of Transitioning or Expanding on the 2019 NYSESLAT or NYS Identification Test for ELLs (NYSITELL) and who earned credit in a course of study for English as a New Language or Bilingual Education in the 2019-2020 school year.

3. COMMENT

One commenter addressed regulations regarding the submission of transcripts from countries outside of the U.S., including recommendations to recognize transcripts from lower grade levels and to develop an alternate method for proving prior academic achievement for those students whose former schools are unable to provide transcripts due to extenuating circumstances (e.g., natural disaster).

DEPARTMENT RESPONSE:

This comment is outside of the scope of the proposed rule; therefore, no response is necessary, and no changes are needed.

4. COMMENT:

One commenter recommended that NYSED “encourage schools to offer a yearly course where ELL students can have sufficient time to learn about a topic” to help prepare students in the preparation of a culminating project, scholarly essay, or portfolio toward earning the Seal.

DEPARTMENT RESPONSE:

This comment is outside of the scope of the proposed rule; therefore, no response is necessary, and no changes are needed.

5. COMMENT:

One commenter expressed agreement with the change to remove the phrase “coursework and final examination consistent with Checkpoint C learning standards” from item 100.5(h)(4)(ii)(b)(1)(i).

DEPARTMENT RESPONSE:

Since the comment is supportive, no change is necessary.

6. COMMENT:

One commenter expressed support for the changes: “I am writing to express my support for the proposed amendments to the New York State Seal of Biliteracy. I believe in any changes that to make the Seal more available to students and to make the NYSSB regulations more consistent.”

DEPARTMENT RESPONSE:

Since the comment is supportive, no change is necessary.

7. COMMENT:

One commenter expressed support for the changes: "I support the proposed amendments for the NYS Seal of Biliteracy as I feel that by aligning the coursework criteria (requiring the 85 as ELA does) helps to ensure the rigor and quality of "the Seal" process. I furthermore support the removal of the final exam/approved checkpoint C assessments as I feel this will provide a more equitable opportunity for more students to pursue the Seal of Biliteracy."

DEPARTMENT RESPONSE:

Since the comment is supportive, no change is necessary.

8. COMMENT:

One commenter expressed support for the changes: "I do agree with the latest proposed amendments to Section 100.5h related to the Seal of Biliteracy. I especially strongly support the department to have more latitude with the exams that can be used."

DEPARTMENT RESPONSE:

Since the comment is supportive, no change is necessary.

9. COMMENT:

One commenter expressed support for the changes: "I support the proposed changes to the language of the NYS Seal of Biliteracy as it will make the Seal more available to students while not changing the expected rigor to earn it."

DEPARTMENT RESPONSE:

Since the comment is supportive, no change is necessary.

10. COMMENT:

One commenter expressed support for the changes: “I agree with the proposed amendments to the NYSSB. As educators, we need to be flexible and provide students with different approaches to succeed. The proposed amendments do not limit the potential of our students; they encourage more learners to achieve higher. Students must demonstrate proficiency, but they should not be restricted to the paths currently included to attain this proficiency, as many students might speak a language for which a proficiency assessment has not being yet created; therefore, although these students can demonstrate proficiency through other means, they would not have the opportunity to achieve the Seal under the current terminology of the requirements; the change in language regarding the different paths would recognize the ability of these students to read and write in more than one world language.

In addition, I believe that removing coursework and final examination consistent with Checkpoint C learning standards from section 100.5(h)(4)(ii)(b)(1)(i) would be fair to all students, as this requirement does not asks beyond the established one for ELA. The amendment will also allow students in schools not administering a final exam for a Checkpoint C course the opportunity to apply for the Seal.

The vision of NYSSB is noble. Let's allow more students the opportunity to accomplish, feel confident about their future, and realize they are members of a global society. Thank you for the work you do to recognize the multilingual student population of our state and the efforts of students to achieve and succeed.”

DEPARTMENT RESPONSE:

Since the comment is supportive, no change is necessary.

11. COMMENT:

One commenter expressed support for the changes: “I am in favor of the changes to the regulations for the Seal of Biliteracy in order to make the Seal available to more students. Thank you for your consideration in making these worthy changes.”

DEPARTMENT RESPONSE:

Since the comment is supportive, no change is necessary.

12. COMMENT:

One commenter expressed support for the changes: “After reading the prepared changes, I support the amendments. I appreciate that the department looked [to] create consistency and ensure access to all students that they [were] limited. I think the removal of the assessment list is smart knowing that new assessments will be made in the future and [will] need quick access to approval.”

DEPARTMENT RESPONSE:

Since the comment is supportive, no change is necessary.

13. COMMENT

One commenter expressed support for the changes: “The passage of these amendments is extremely important to increase access to the NYSSB for our Multilingual Learners and English Language Learners (MLs/ELLs). All proposed amendments would increase equity of access for our students. Specifically, in NYCDOE, our multilingual learners in bilingual programs have been prevented from receiving credit for the rigorous learning they do in their Home Language Arts (HLA) courses.

- In NYCDOE, we have 64 high schools with bilingual programs (both Transitional Bilingual Education and Dual Language) across the city. A total of

7,890 high school students are served in these programs. 5,834 (74%) of these students are current ELLs.

- Since NYCDOE does not have a district HLA exam, 5,834 ELLs in these programs have been ineligible for the 2c point, negating the important learning they do in their Home Language Arts courses, and thus are not currently pursuing the NYSSB.
- In addition to the Division of Multilingual Learners team, 49 colleagues from 40 NYCDOE high schools have signed on to this letter of support, sharing the following additional comments:
 - ‘The amendment is so important for our HLA Spanish population in NYC DOE schools and would be a further step towards equity for our MLL/ELL and newer New Yorkers who strive for College and Career Readiness opportunities. Thank you for considering this change on behalf of our communities and families.’
 - ‘These amendments MUST be passed for the sake of our students. Let's make education our number 1 priority!’

We the undersigned, respectfully submit these comments for your consideration. We look forward to continued collaboration to support our Multilingual Learners and English Learners.”

DEPARTMENT RESPONSE:

Since the comment is supportive, no change is necessary.