



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable Members of the Board of Regents

**FROM:** Ceylane Meyers-Ruff 

**SUBJECT:** Proposed Amendment of Section 100.7(a) of the Regulations of the Commissioner of Education Relating to the General Comprehensive Examination Sub-tests and Grandfathering of Prior Passing Scores

**DATE:** June 2, 2022

**AUTHORIZATION(S):**  

#### **SUMMARY**

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendment of section 100.7(a) of the Regulations of the Commissioner of Education relating to the general comprehensive examination sub-tests and grandfathering of prior passing scores?

#### **Reason(s) for Consideration**

Review of Policy.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at its June 2022 meeting. A copy of the proposed rule is included as (Attachment A) and a statement of facts and circumstances justifying emergency action is included as (Attachment B).

#### **Procedural History**

The proposed amendment was presented to the Adult Career and Continuing Education Services Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the April 2022 meeting of the Board of Regents.

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 27, 2022 for a 60-day public comment period.

Because the April 2022 emergency action will expire on July 10, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the September 2022 meeting. A Notice of Emergency Adoption will be published in the State Register on July 27, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

### **Background Information**

The Department contracts for the provision of the state's general comprehensive exam for assessing the knowledge and skills needed to obtain a high school equivalency (HSE) diploma. The General Educational Development (GED®) Test<sup>1</sup> served as the state's general comprehensive exam from the 1940s through 2013, when the Department changed vendors and contracted with the Data Recognition Corporation (DRC) from 2014-2021 for the provision of the Test Assessing Secondary Completion (TASC™ Test)<sup>2</sup>.

The Board adopted a regulatory amendment in December 2013 permitting candidates for the high school equivalency diploma to use up to four of their passing sub-tests scores from the GED® as passing scores on the corresponding TASC™ sub-tests. The TASC™ was discontinued on December 31, 2021, and effective January 2022, the GED® Test once again serves as the state's general comprehensive exam.

Therefore, the Department proposes a regulatory amendment of section 100.7(a) of the Commissioner's regulations to permit candidates for the high school equivalency diploma to apply passing sub-test(s) scores from the GED® taken in calendar years 2002 through 2013 for the English version of the examination and 2003 through 2013 for the Spanish version of the examination as passing scores for up to four corresponding subtest(s) of the approved HSE examination (which was the TASC™) administered on or after January 1, 2014 and before December 31, 2021. Additionally, the proposed amendment permits candidates for the high school equivalency diploma to apply passing sub-test(s) scores from the TASC™ taken in calendar years 2014 through 2021 as passing score(s) for up to three corresponding sub-test(s) of the approved HSE examination (which is currently the GED®) administered on and after January 1, 2022.

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<sup>1</sup> The GED® consists of four subtests, mathematics, social studies, science and reasoning through language arts (RLA).

<sup>2</sup> The TASC™ consisted of five subtests, mathematics, social studies, science, reading, and writing.

## **Related Regents Items**

December 2013: [Report of Regents Adult Career and Continuing Education Services \(ACCES\) Committee to The Board of Regents](https://www.regents.nysed.gov/report/dec-2013/p-12-education-adult-career-and-continuing-education-services)

(<https://www.regents.nysed.gov/report/dec-2013/p-12-education-adult-career-and-continuing-education-services>)

February 2014: [Proposed Amendment to Section 100.7 of the Regulations of the Commissioner, Relating to the Transition to the New High School Equivalency Test](https://www.regents.nysed.gov/common/regents/files/214brca1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/214brca1.pdf>)

April 2022: [Proposed Amendment of Section 100.7\(a\) of the Regulations of the Commissioner of Education Relating to the General Comprehensive Examination Sub-tests and Grandfathering of Prior Passing Scores](https://www.regents.nysed.gov/common/regents/files/412accesa1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/412accesa1.pdf>)

## **Recommendation**

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

VOTED: That section 100.7(a) of the Regulations of the Commissioner of Education be amended, as submitted, effective July 11, 2022, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to timely provide candidates for a high school equivalency diploma the ability to continue to use their passing TASC™ sub-test scores as passing scores on the corresponding GED® Test administered on and after January 1, 2022, to substitute for up to three of the four corresponding GED® sub-tests, and to ensure the emergency action taken at the April 2022 meeting remains continuously in effect.

## **Timetable for Implementation**

If adopted as an emergency rule at the June 2022 Regents meeting, the emergency rule will become effective July 11, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the September 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency action will expire before the September 2022 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the July 2022 Regents meetings. If adopted at the September 2022 meeting, the proposed amendment will become effective as a permanent rule on September 28, 2022.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 308, 309, 3204 of the Education Law.

Subparagraph (ii) of paragraph (2) of subdivision (a) of section 100.7 of the Regulations of the Commissioner of Education is amended to read as follows:

(ii) Notwithstanding the provisions of clauses (i)(a) and (b) of this paragraph and subdivision (d) of this section, a passing score or scores on at least one but not more than four of the sub-tests of such examination or examinations taken in calendar years 2002 through 2013 for the English version of the examination and 2003 through 2013 for the Spanish version of the examination may be accepted as a passing score on the corresponding sub-test or sub-tests of any general comprehensive examination prescribed for the program and administered on or after January 1, 2014 and before December 31, 2021, and a passing score on one or more of the sub-tests of such examination or examinations taken in calendar years 2014 through 2021 may be accepted as a passing score on up to three of the corresponding sub-test or sub-tests of any general comprehensive examination prescribed for the program and administered on or after January 1, 2022.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTON

The Department contracts for the provision of the state's general comprehensive exam for assessing the knowledge and skills needed to obtain a high school equivalency (HSE) diploma. The General Educational Development (GED®) Test<sup>3</sup> served as the state's general comprehensive exam from the 1940s through 2013, when the Department changed vendors and contracted with the Data Recognition Corporation (DRC) from 2014-2021 for the provision of the Test Assessing Secondary Completion (TASC™ Test)<sup>4</sup>.

The Board adopted a regulatory amendment in December 2013 permitting candidates for the high school equivalency diploma to use up to four of their passing sub-tests scores from the GED® as passing scores on the corresponding TASC™ sub-tests. The TASC™ was discontinued on December 31, 2021, and effective January 2022, the GED® Test once again serves as the state's general comprehensive exam.

Therefore, the Department proposes a regulatory amendment to section 100.7(a) of the Commissioner's regulations to permit candidates for the high school equivalency diploma to apply passing sub-test(s) scores from the GED® taken in calendar years 2002 through 2013 for the English version of the examination and 2003 through 2013 for the Spanish version of the examination as passing scores for up to four corresponding subtest(s) of the approved HSE examination (which was the TASC™)

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<sup>3</sup> The GED® consists of four subtests: mathematics, social studies, science and reasoning through language arts (RLA).

<sup>4</sup> The TASC™ consisted of five subtests: mathematics, social studies, science, reading, and writing.

administered on or after January 1, 2014 and before December 31, 2021. Additionally, the proposed amendment permits candidates for the high school equivalency diploma to apply passing sub-test(s) scores from the TASC™ taken in calendar years 2014 through 2021 as passing score(s) for up to three corresponding sub-test(s) of the approved HSE examination (which is currently the GED®) administered on and after January 1, 2022.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the September 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the September 2022 meeting, would be September 28, 2022, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire July 10, 2022. Therefore, a second emergency action is necessary at the June 2022 meeting for the preservation of the general welfare to timely provide candidates for a high school equivalency diploma the ability to continue to use their passing TASC™ sub-test scores, as passing scores on the corresponding GED® Test administered on and after January 1, 2022, to substitute for up to three of the four corresponding GED® sub-tests, and to ensure the emergency action taken at the April 2022 meeting remains continuously in effect.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the September 2022, meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by

SAPA for state agency rule making. However, since the emergency action will expire before the September 2022 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the July 2022 Regents meetings.