




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

TO: P-12 Education Committee
FROM: Ken Slentz 
SUBJECT: Approval of Proposed Amendment to Section 100.5 of the Regulations of the Commissioner of Education Relating to the Safety Net for Students with Disabilities to Graduate with a Local High School Diploma

DATE: October 2, 2012

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents approve as an emergency adoption the amendment of section 100.5 of the Regulations of the Commissioner of Education to expand options for students with disabilities to graduate with a local high school diploma?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment will be presented to the P-12 Education Committee for approval and to the Full Board for adoption as an emergency action at the October 2012 Regents meeting. A Statement of the Facts and Circumstances Which Necessitate Emergency Action is attached.

Procedural History

The proposed amendment was discussed at the June 2012 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on July 3, 2012.

Background Information

In January 2012, the Regents discussed the need to consider additional options for students with disabilities to earn a local diploma. Discussions around the Safety Net are intended to address the group of students with disabilities who, with appropriate accommodations, supports and services, can reach the State's learning standards at the Commencement Level.

At the April 2012 Regents Meeting, the Department recommended that the Board expand the safety net options for students with disabilities to earn a local diploma beyond the current option of the 55-64 pass score on the five required Regents exams. Current high school ninth graders must have advance notification to fully understand their options and plan their future academic programs (i.e., courses of study) in the context of their post-high school goals and individualized education program (IEP) transition plans.

Below is a table summarizing local diploma safety net options for students with disabilities:

Local High School Diploma Options (Safety Net)			
Topic	Status	Eligibility	Key Components
55-64 Pass Score Option	Current Policy: Students with disabilities may graduate with a local diploma if they obtain a 55-64 on one or more Regents examinations	Students with disabilities	<ul style="list-style-type: none"> Students with disabilities must take and pass the five required Regents examinations or Regents Competency Tests (RCT) May graduate with a local diploma if the score(s) on one or more of the required Regents examination(s) is between 55-64
Regents Competency Test (RCT)	Current Policy: Student with disabilities may graduate with a local diploma by passing one or more of the RCTs	Students with disabilities who entered grade 9 prior to September 2011	<ul style="list-style-type: none"> Available only to those students who entered grade nine prior to September 2011 Students must take required Regents examinations. If they fail one or more of the required Regents examinations, but pass the RCT in that subject area, student may graduate with a local diploma
Compensatory Option	Proposed: Proposed regulations to add to the safety net options for students with disabilities	Students with disabilities	<ul style="list-style-type: none"> Students with disabilities who score less than 55 on one or more of the required Regents examinations* may graduate with a local diploma if they compensate with scores higher than 65 on other Regents examinations. Attendance and course grade requirements. <p>*English and Math scores must be at a score of 55 or higher</p>

Proposed regulations on the Compensatory Option were discussed at the June 2012 Regents meeting. During a 45-day public comment period, the Department received 79 comments on the proposed amendment, including comments from school district administrators, parents, special education advocates/advocacy organizations and others.

The proposed amendment has been revised in response to public comment as follows:

- Section 100.5(b)(7)(vi)(c)(2) has been revised to require that the student have attained a passing grade for the course in the subject area of the Regents examination in which he or she received a score of 45-54, rather than require that the student have attained at least a 65 course average in the subject area of the Regents examination in which he or she received a score of 45-54.
- Section 100.5(b)(7)(vi)(c)(3) has been revised to delete the proposed requirement that the student have an attendance rate of at least 95 percent for the school year during which the student took the Regents examination in which he or she received a score of 45-54, exclusive of excused absences and replace it with a requirement that the student have an acceptable attendance rate, in accordance with district policy established pursuant to Commissioner's Regulations subparagraph 104.1(i)(2)(v), for the school year during which the student took the Regents examination in which he or she received a score of 45-54, in consideration of excused absences.

A copy of the revised proposed rule and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Recommendation

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

VOTED: That section 100.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 31, 2012, 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 the timely implementation during the 2012-2013 school year, of the safety net options for students with disabilities to graduate with a local diploma.

Timetable for Implementation

If adopted at the October Regents meeting, the emergency rule will become effective on October 31, 2012. It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the January 2013 Regents meeting, after

publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on October 31, 2012 and expiration of the 30-day public comment period for revised rule makings.

Next Steps

To address the public comment received, the Department will convene a stakeholder group to continue discussions on recommendations to ensure that more students with disabilities have the opportunity to earn a local or Regents diploma.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Section 100.5 of the Regulations of the Commissioner of Education is amended, effective October 31, 2012, as follows:

§100.5 Diploma requirements.

(a) General requirements for a Regents or a local high school diploma. Except as provided in paragraph (d)(6) of this section, the following general requirements shall apply with respect to a Regents or local high school diploma. Requirements for a diploma apply to students depending upon the year in which they first enter grade nine. A student who takes more than four years to earn a diploma is subject to the requirements that apply to the year that student first entered grade nine. Students who take less than four years to complete their diploma requirements are subject to the provisions of subdivision (e) of this section relating to accelerated graduation.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) State assessment system. (i) Except as otherwise provided in subparagraphs (ii), (iii) and (iv) of this paragraph, all students shall demonstrate attainment of the New York State learning standards:

(a) . . .

(b) . . .

(c) United States history and government:

(1) . . .

(2) . . .

(3) for students with disabilities who first enter grade nine in or after September 1998 and prior to September 2011 and who fail the Regents examination in United States history and government, the United States history and government requirements for a local diploma may be met by passing the Regents competency test in United States history and government. For students with disabilities who first enter grade nine in September 2005 and thereafter, the United States history and government requirements for a local diploma may also be met by passing the Regents examination in United States history and government with a score of 55-64 or as provided in subparagraph (b)(7)(vi) of this section. This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5);

(4) . . .

(d) Science:

(1) . . .

(2) . . .

(3) for students with disabilities who first enter grade nine in or after September 1999 and prior to September 2011 and who fail a Regents examination in science, the science requirements for a local diploma may be met by passing the Regents competency test in science. For students with disabilities who first enter grade nine in September 2005 and thereafter, the science requirements for a local diploma may also be met by passing a Regents examination in science with a score of 55-64 or as

provided in subparagraph (b)(7)(vi) of this section. This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5);

(4) . . .

(e) Global history and geography:

(1) . . .

(2) . . .

(3) for students with disabilities who first enter grade nine in or after September 1998 and prior to September 2011 and who fail the Regents examination in global history and geography, the global history and geography requirements for a local diploma may be met by passing the Regents competency test in global studies. For students with disabilities who first enter grade nine in September 2005 and thereafter, the global history and geography requirements for a local diploma may also be met by passing the Regents examination in global history and geography with a score of 55-64 or as provided in subparagraph (b)(7)(vi) of this section. This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5);

(4) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(6) . . .

(7) . . .

(8) . . .

(b) Additional requirements for the Regents diploma. Except as provided in paragraph (d)(6) of this section, the following additional requirements shall apply for a Regents diploma.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

(7) Types of diplomas.

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) Local diploma options for students with disabilities. The provisions of this subparagraph shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law section 3202 or 4402(5).

(a) For students with disabilities who first enter grade nine in or after September 2001 and prior to September 2011 and who fail required Regents examinations for graduation but pass Regents competency tests in those subjects, as provided for in

paragraph (a)(5) of this section, a local diploma may be issued by the local school district.

(b) For students with disabilities who first enter grade nine in September 2005 and thereafter, a score by such student of 55-64 may be considered as a passing score on any Regents examination required for graduation, and in such event and subject to the requirements of paragraph (c)(6) of this section, the school may issue a local diploma to such student. [This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5).]

(c) Notwithstanding the provisions of clause (b) of this subparagraph, for students with disabilities who first enter grade nine in September 2005 and thereafter, a student's score of 45-54 on a Regents examination required for graduation, other than the English and mathematics examinations, may, for purposes of earning a local diploma, be compensated by a score of 65 or higher on one of the other required Regents examinations; provided that:

(1) each examination for which the student earned a score of 45-54 must be compensated by a score of 65 or higher on a separate examination; a score of 65 or higher on a single examination may not be used to compensate for more than one examination for which the student earned a score of 45-54; and

(2) the student has attained a passing grade, that meets or exceeds the required passing grade by the school, for the course in the subject area of the Regents examination in which he or she received a score of 45-54; and

(3) the student has a satisfactory attendance rate, in accordance with the district's or school's attendance policy established pursuant to subparagraph

104.1(i)(2)(v) of this Title, for the school year during which the student took the Regents examination in which he or she received a score of 45-54, exclusive of excused absences; and

(4) a student shall not use the compensatory score option if the student is using a passing score on one or more Regents competency tests (RCT) pursuant to clause (a) of this subparagraph to graduate with a local diploma.

(vii)

(viii)

(ix)

(x)

(c)

(d)

(e)

(f)

PROPOSED AMENDMENT OF SECTION 100.5 OF THE REGULATIONS OF THE
COMMISSIONER OF EDUCATION PURSUANT TO SECTIONS 101, 207, 208, 209,
305, 308 AND 309 OF THE EDUCATION LAW, RELATING TO DIPLOMA
REQUIREMENTS FOR STUDENTS WITH DISABILITIES

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment establishes a new safety net local diploma option, which would provide opportunity for certain students with disabilities to earn a local high school diploma based on performance on Regents examinations or approved alternatives. Specifically, the proposed amendment would allow students with disabilities, who first enter grade nine in September 2005 or thereafter, to earn a local high school diploma if:

(1) the student attains a score of 55-64 on each of the five required Regents exams (English, mathematics, U.S history and government, science, and global history and geography) and/or passes an alternative examination; or

(2) the student scores 45-54 on one or more of the five required Regents exams, other than the English or mathematics exam, but scores 65 or higher on one or more of the other required Regents exams, in which case, for purposes of earning a local diploma, the lower score(s) can be compensated by the higher score(s); provided that

(a) each examination for which the student scores 45-54 must be compensated by a score of 65 or higher on a separate examination;

(b) the student must have also attained a passing grade, that meets or exceeds the required passing grade by the school, for the course in the subject area of the Regents examination in which he or she received a score of 45-54;

(c) the student must have a satisfactory attendance rate, in accordance with the district's or school's attendance policy established pursuant to section 104.1(i)(2)(v) of this Title, for the school year during which the student took the Regents examination in which he or she received a score of 45-54, exclusive of excused absences; and

(d) a student cannot use the compensatory score option if the student is using a passing score on one or more Regents competency tests pursuant to section 100.5(b)(7)(vi)(a).

Since publication of the proposed amendment was published in the State Register on July 3, 2012, the proposed amendment has been revised in response to public comment.

Because the Board of Regents meets at scheduled intervals, the December 10-11, 2012 meeting is the earliest the revised proposed rule could be presented for permanent adoption, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period required under State Administrative Procedure Act §202(4-a). Pursuant to SAPA §203(1), the earliest effective date of the proposed amendment, if adopted at the December Regents meeting, would be December 26, 2012, the date a Notice of Adoption will be published in the State Register. However, school districts and eligible students need to know now what graduation options will be available under the safety net amendments, so that they may be timely implemented during the 2012-2013 school year.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to ensure the timely implementation, during the 2012-2013 school year, of the safety net options for students with disabilities to graduate with a local diploma.

It is anticipated that the proposed amendment will be presented for adoption at the January 14-15, 2013 Regents meeting, after publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on October 31, 2012 and expiration of the 30-day public comment period for revised rule makings.

PROPOSED AMENDMENT OF SECTION 100.5 OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTIONS 101, 207, 208, 209, 305, 308 AND 309 OF THE EDUCATION LAW, RELATING TO THE SAFETY NET FOR STUDENTS WITH DISABILITIES TO GRADUATE WITH A LOCAL HIGH SCHOOL DIPLOMA

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on July 3, 2012, the State Education Department (SED) received the following substantive comments on the proposed amendment.

COMMENT:

Several individuals supported the proposed amendment without providing comment. Others supported with comments: proposal makes it possible for many more students with disabilities to earn local high school diploma and be accepted into the armed forces, training schools, have a career, and become productive members of society; without this option, students unable to achieve Regents level will drop out; proposal is all-encompassing and relevant to students with learning disabilities; elimination of the Regents Competency Tests (RCTs) and a focus on Regents exams only will result in less test anxiety for students; and requiring all students to take Regents exams enables students with disabilities to be treated similarly to their nondisabled peers; the proposed amendment could provide some students with the flexibility needed to keep them engaged and recognizes that students have different modes of learning.

DEPARTMENT RESPONSE:

Comments are supportive in nature; no response is necessary.

COMMENT:

Many objected to the proposed safety net option because it would establish a diploma only for students with disabilities: Make local diploma available to all students. Compensatory model, which is only for students who are in special education, have a 504 plan, or successfully appeal a failed Regents test, makes it a “students with disabilities only” diploma. Having separate diploma for students with disabilities will result in over-identification of students needing special education services, will be stigmatizing and of little value, and will force students to disclose their disability status to employers. Proposed rule may be inconsistent with the Americans with Disabilities Act (ADA) and IDEA, as it results in a separate, secondary and less valuable education, testing, and diploma track which will significantly limit postsecondary opportunities for students with disabilities.

DEPARTMENT RESPONSE:

All students with disabilities must have access to the coursework and State assessments that would enable them to earn a Regents diploma. Therefore, in order to earn a local diploma through the proposed compensatory option, or the currently available RCT and 55-64 pass option, students must satisfactorily pass the required coursework as is required for a Regents examination. Therefore, the proposed rule does not result in a separate, secondary or less valuable education. Rather, it addresses the real concern that, while many students with disabilities can pass the required courses, they often have difficulty with the Regents examinations because of disability-related factors. The proposed rule is intended to provide this group of

students the opportunity to exit school with a diploma that would be recognized for entry into post-secondary schools and employment. The local diploma option is not an option only available to students with disabilities. Under current State regulations, all students, including students with disabilities, who satisfactorily appeal two Regents test scores, may earn local diplomas.

COMMENT:

Most opposed the proposed safety net option because it continues to make graduation with a local diploma contingent upon Regents examinations and does not provide alternative ways for students with disabilities to demonstrate their knowledge: Provide an option that would allow students with disabilities to adequately demonstrate their knowledge and skills without taking standardized tests; compensatory model only provides flexibility for students who struggle with one or two exams; proposal will make the local diploma unachievable for students who cannot score a 65 on any Regents exam and assumes that students with disabilities have average skills in one area to compensate for below average skills in science or social studies, an unlikely scenario; pushing a defective testing process, and proposing a safety net that is encumbered by a burdensome bureaucratic process, devalues integrity of all NYS diploma options.

DEPARTMENT RESPONSE:

The proposed rule is intended to recognize that some students with disabilities, while they can pass the required coursework, have difficulty passing Regents examinations because of disability-related factors. The proposal was developed, in part, upon review and consideration of the numbers of students with disabilities who were able to pass their math and English Regents examinations, but did not pass one or

more of the other required Regents examinations. Standardized measures of achievement of State learning standards are essential to provide statewide and objective measures to determine which students should be granted a New York State diploma.

COMMENT:

Most urged the Department to develop meaningful pathways to a regular diploma for all students: Proposal does not go far enough to establish meaningful alternatives, especially for students from disadvantaged backgrounds; address College and Career Readiness for students with disabilities in a more comprehensive fashion that resolves past policy decisions that have not adequately served this population; need multiple pathways to a regular Regents diploma based on students' abilities and/or career goals rather than creating another lower level of "minimum standards"; need alternative for students who do not qualify for the alternative assessment, but whose disabilities preclude them earning a local diploma; replace with a multiple pathway option that is not based on high stakes tests; until alternative pathways are offered, students with disabilities should be required to take the Regents and be eligible for a local diploma, regardless of their scores; students who pass required subjects at the local level should not be forced to take State tests; need a better understanding of ideas being proposed in relation to the Alternate Career Certificate before assessing the proposed safety net amendment. A diploma must have value to employers and colleges and make meaningful links to post-secondary opportunities and preparedness.

DEPARTMENT RESPONSE:

The proposed rule was not intended to create an alternate pathway to a diploma. The Regents are having separate discussions on alternate pathways.

COMMENT:

Many commented that the proposed safety net does not address the disability-related factors that preclude most students with disabilities from passing the Regents exams: Compensatory model is not a safety net for many learning disabled students; some students with disabilities (e.g., those who are blind or deaf) are able to achieve, but cannot demonstrate skills and academic achievement on Regents examinations. Test items are not sensitive to disability factors. Compensatory model ignores the needs of those students who are unable to score a 55 on the ELA and math exams and who do not qualify for the alternate assessment and will deny students a local diploma based on their disability. Many students with reading and language disabilities struggle to pass the math and/or ELA exams. The proposal only addresses students with challenges remembering facts from history or science. It does not address the challenges for students with disabilities in conceptual content like math. Department should approve a curriculum of business and consumer math and create an exam for that.

DEPARTMENT RESPONSE:

The proposed rule is intended to recognize that some students with disabilities, while they can pass the required coursework, have difficulty passing Regents examinations because of disability-related factors. The proposal was developed, in part, upon review and consideration of the numbers of students with disabilities who were able to pass their math and English Regents examinations, but did not pass one or

more of the other required Regents examinations. In recognition that the standards for a regular high school diploma in this State must be rigorous and represent readiness for employment or postsecondary education, the proposed required score of 55 or higher on the ELA and Math Regents tests ensures that students with disabilities leave school with an appropriate level of knowledge in foundation skills (literacy/English language arts and math) which are fundamental to career or postsecondary education or training.

COMMENT:

Some commented that, without meaningful changes in instructional practices, schools will not graduate more students with disabilities: Proposal does not address root issues of classroom pace, learning style and technique, and inabilities due to disability; stricter requirements and widespread decisions that do not consider individual needs and abilities may allow weaker students who are not eligible for the Career Credential to fall through the cracks; as currently structured, requirements for the local diploma may encourage students to drop out. Board of Regents' rationale that districts will increase resources in classrooms to help raise the bar for all students will not happen due to current fiscal climate.

DEPARTMENT RESPONSE:

The proposed compensatory model recognizes the unique challenges presented by students' disabilities in demonstrating certain knowledge, while representing a rigorous standard that would indicate that the school district has appropriately and sufficiently prepared a student with a disability for his or her readiness for post-school education and/or employment. SED agrees that there is a need to accelerate improvements in teaching and learning for students with disabilities and most schools

are working to improve instructional programs through implementation of the Common Core standards and the Teacher Leader Evaluation system. We agree that many students with disabilities would benefit from increased access and participation to CTE courses. These comments will be taken into consideration as the Regents continue to discuss broader policy on alternative pathways to graduation for all students.

COMMENT:

Many recommended that the Department develop a CTE/Vocational diploma option as a local diploma: CTE programs with hands-on instruction and application better meet needs and capabilities of students with disabilities. Provide lower functioning students with skill preparation and a trade diploma. Until CTE diploma option is developed, permit a passing course grade in CTE to be substituted for one Regents exam. Recognize transition goals that will enable students to leave high school with valuable work skills. Consider a two-option diploma with a vocational track and a college preparatory track, both of which would be of equal educational value.

DEPARTMENT RESPONSE:

In addition to the proposed rule, the Regents are discussing an alternate credential that could also be a supplement to a regular diploma for students with disabilities. This credential would recognize student achievement and experiences toward the Career Development and Occupational Studies (CDOS) State learning standards. Comments supporting a CTE diploma will be further considered in the Regents discussions on alternate pathways, expansions to CTE coursework and recognition of CTE alternative assessments. The Regents have discussed creating CTE programs of study that begin in middle school and continue to high school. This would solidify the connections between grade levels and develop greater opportunities for middle

level CTE acceleration in grades 7 and 8, thereby allowing more students to enter high school with diploma credit.

COMMENT:

Some commented that the proposed safety net is a lower standard than that offered through the RCT option: Proposal lowers bar without recognizing unique needs of students with disabilities, examining the level and types of instruction provided, or allowing students to be evaluated in a meaningful way.

DEPARTMENT RESPONSE:

We do not agree that the proposed safety net is a lower standard than that offered through the RCT option. RCTs are not aligned with the State's learning standards and often require that the student engage in substitute courses/instruction in order to pass the RCTs. The proposed rule is intended to address the group of students with disabilities who, with appropriate accommodations, supports and services, can reach the State's learning standards at the Commencement Level, but because of disability-related factors cannot pass all of the Regents exams. It was developed based on the guiding principles that students with disabilities must demonstrate an appropriate level of knowledge in foundation skills (literacy/English language arts and mathematics) which are fundamental to career or postsecondary education and/or training; while recognizing the unique challenges presented by students' disabilities in demonstrating certain knowledge, students with disabilities must show competence in a range of key content subject areas through successful coursework and an objective and recognized measure of their knowledge; and diploma standards should recognize completion of rigorous career-related skill development coursework and a formal process for

demonstration of competence in these areas, which can lead to employment or more advanced postsecondary training.

COMMENT:

Some suggested alternatives to the proposed amendment: Consider including a list of approved alternatives to the Regents exams for students with disabilities, such as CTE exams; a low-pass option on all Regents exams, or an alternative test, would be more achievable; eliminate exams in Global History and Geography for students with disabilities and allow them to substitute a second Regents exam in math or science or a vocational exam; have Global Regents exam at the end of each year, rather than after covering two years of information; allow students with disabilities two years to complete a Regents course before challenging the assessment within the 55-64 scoring range; propose exams that are more rigorous than the RCTs, but not as difficult as the proposed safety net; require student's percentile score on Regents exams to meet or exceed his or her percentile score over the preceding ten years and require student to earn a certificate in some field of potential employment; develop alternate forms of assessment, such as portfolios and performance-based assessments of functional skills; include a combination of options, such as flexibility relating to test scoring, method of testing and required exams.

DEPARTMENT RESPONSE:

In the alternate pathways discussions, the Regents have discussed establishing processes by which the CTE Advisory Group could evaluate technical assessments for a level of rigor that meets Department criteria as an approved alternative. This process will be completed this year and the Department will discuss the results with the Board.

Current regulations provide a low-pass option of 55-64 on the required Regents examinations for a student to earn a local diploma. In a separate discussion, the Regents are considering revisions to the Global and Geography requirements (see <http://www.regents.nysed.gov/meetings/2012Meetings/September2012/912p12d1.pdf>)

The option proposed to offer students two years to complete a Regents course before challenging the assessment is currently available based on local district policy.

Developing alternate State tests or forms, more rigorous than the RCTs but less rigorous than the Regents examinations is not fiscally or programmatically feasible. Students who can pass the required coursework should be assessed on the same content as learned in these courses. Use of alternate forms of assessment (e.g., portfolios) would not provide an objective and consistent measure to establish a Regents-recognized high school diploma. There must be an objective demonstration of sufficient proficiency to warrant Regents endorsement and the loss of entitlement by students with disabilities to receive a free appropriate public education under the IDEA upon receipt of a regular diploma.

COMMENT:

Any proposed alternatives should also follow principles of respect for student and family choice; value to employers and colleges and linkage to post-secondary opportunities and preparedness; development of student strengths; connection with curricula; and yet be flexible enough to benefit students who experience interruptions or changes in their schooling.

DEPARTMENT RESPONSE:

SED considered other acceptable alternatives (e.g., scoring variations other than 55-64 on the required Regents exams; passing scores on tests other than the current

five mandated Regents exams and allowing students with disabilities to substitute courses for currently required courses and credits). The Regents selected the compensatory model as the most appropriate option, based on review of data and in consideration of disability issues that may preclude a student from receiving a score of 55 or higher on all Regents examinations. These comments will be taken into consideration as the Regents continue to discuss broader policy on alternative pathways to graduation for all students.

COMMENT:

Many recommended continuing the RCT Safety Net option: Allow flexibility to use the compensatory score with RCTs. RCTs are better measure of success because a score of 55 represents a broader range of knowledge and skills mastered. Retain RCTs until policies are developed regarding testing, graduation requirements, Career and Technical Education (CTE), Science, Technology, Engineering and Mathematics (STEM) and alternate pathways. Unacceptable that number of students predicted to benefit from compensatory model is less than the number of students that were successful in meeting high school diploma requirements using RCT option. Many commented that allowing a student to graduate with a score of 45-54 on up to two examinations would be establishing a lower standard than was assessed using Regents Competency Tests (RCTs).

DEPARTMENT RESPONSE:

The RCT policy was first adopted by the Regents over a decade ago as a temporary measure to provide students with disabilities increased opportunities to earn a diploma at a time when many had never had full access to general education learning

standards and course completion diploma requirements that could lead to a Regents diploma. Access to the RCTs was meant to terminate once districts had revised their instructional programs to provide full access to the general education standards both in elementary school and when students reached secondary level classes. The existing RCT safety net is, by regulation, only available to students with disabilities entering grade 9 prior to September 2011. The RCTs are available to these students until they graduate or until the end of the school year in which they turn 21. Most students with disabilities earning a local diploma have relied on at least one RCT but many students continue to drop out after failing both the Regents and the RCTs. Because the RCTs are not aligned with the Regents coursework and recognizing that the standards for a regular high school diploma in this State must be rigorous and represent readiness for employment or postsecondary education, we do not recommend extending the RCT option. It is difficult to predict what will happen when districts and students move to a greater focus on Regents courses and assessments versus relying on the RCTs (even without accounting for the effect of fuller access to Regents-level instruction). In addition, the Regents will be continuing their discussions of multiple pathways to earning a diploma.

COMMENT:

Some supported a lower score threshold to serve as the Safety Net: Students with disabilities who pass the coursework for ELA and/or math, and meet the attendance requirement, should be allowed to pass the Regents exams for those subjects with a 45-54 because the quality of the education and testing accommodations

for this population is substandard. The low pass option should be changed to 50-64 for all 5 required Regents exams.

DEPARTMENT RESPONSE:

In order to earn a Regents recognized diploma, students with disabilities must demonstrate an appropriate level of knowledge in foundation skills (literacy/English language arts and mathematics) which are fundamental to career or postsecondary education and/or training; show competence in a range of key content subject areas through successful coursework and an objective and recognized measure of their knowledge. If instruction is substandard as the commenter suggests, the State's response should not be to lower expectations for students with disabilities, but rather expect schools to improve teaching and learning. There must be an objective demonstration of sufficient proficiency to warrant Regents endorsement and the loss of entitlement by students with disabilities to receive a free appropriate public education under the IDEA upon receipt of a regular diploma.

COMMENT:

Many objected to the 45-54 floor: Score of 45 is not an appropriate measure of success and students will not be college or career ready. Proposal will increase number of students with disabilities requiring remediation, extend the length of time needed to complete college, and put these students at risk of depleting their financial assistance. Weaker preparation for college will lower the potential for successful completion and subsequent employment. While lowering the passing grade will increase the number of individuals with high school diplomas, it will negatively impact

the value of that diploma if a student is demonstrating mastery of less than 50% of the course content.

DEPARTMENT RESPONSE:

The floor of not less than 45 was proposed to ensure that school districts provide students with meaningful access to participate and progress in the required coursework and to encourage all students with disabilities to put forth their full effort to pass the course and the Regents exam at as high a score level as possible. It is not intended to signify that a score of 45-54 is an acceptable level of achievement. For this reason, the proposed rule includes a requirement that students must have also passed the required coursework and regularly participated in the class through the attendance requirement, in order for the local diploma to be awarded.

COMMENT:

Clarify if students are required to earn a score of 65 on both the English language arts (ELA) and math Regents exams.

DEPARTMENT RESPONSE:

Under the proposed compensatory model, students must earn at least a 55-64 on the math and ELA Regents exams and a score of 65 or higher on the ELA and math exams, may be used to compensate for a score between 45-54 on one or more of the other required Regents exams.

COMMENT:

Most objected to the proposed requirement for attendance. Attendance requirement is determined by the district for students in general education, and proposal establishes a different set of State requirements for students with disabilities to qualify

for the safety net. Attendance requirement is too strict, unrealistic and would prohibit many students who have demonstrated proficiency by passing the course from graduating. Make attendance requirement more reasonable. School attendance can be affected by various legitimate reasons and does not necessarily predict competence in specific skills. Allow exceptions for documented circumstances. Special education students should have the same opportunity to appeal and seek a waiver at the local level as general education students. Attendance records are recorded at the discretion of the teacher and aren't always accurate. Attendance rate policies need to be more clearly defined. Many students surpass permissible absences due to circumstances from the disadvantaged backgrounds as well as challenges stemming from their disability. Requirement would prohibit many students who have demonstrated subject proficiency by passing the course from graduating. School attendance is often not recorded properly; parents have little to no opportunity to ensure their accuracy.

DEPARTMENT RESPONSE:

An attendance criteria is proposed to ensure that a student's score is due to disability related factors rather than lack of attendance. However, in response to public comment, the proposed rule has been revised to delete the required attendance rate of 95% and replace it with a requirement that "the student have a satisfactory attendance rate, in accordance with the district's or school's attendance policy established pursuant to subparagraph 104.1(i)(2)(v) of this Title, for the school year during which the student took the Regents examination in which he or she received a score of 45-54, exclusive of excused absences". Local school districts set their own policy for what is considered an excused or unexcused absence. Commissioner's Regulation section 104.1 was

established, in part, to ensure sufficient student attendance at all scheduled periods of actual instruction or supervised study activities to permit pupils to succeed at meeting the State learning standards. All schools must establish a comprehensive attendance policy and the Regulations and accompanying guidance establish the requirements and expectations for school districts to maintain accurate attendance records. The policy must establish the kinds of absences, tardiness and early departures that will be excused and those that will not be excused; a list of excused and unexcused absences and tardiness to illustrate each; and a description of the coding system to be used in the register of attendance.

COMMENT:

Several commented that the proposed option is complex, difficult to understand, would be difficult to track and interpret to students and families: Proposed compensatory model is challenging to interpret and wording is too complicated. The proposal will result in increased record keeping, and the procedures and staffing required will be burdensome for districts. There are too many factors to consider and it will be difficult to regulate. Decrease some of the contingencies.

DEPARTMENT RESPONSE:

School districts must review student transcripts to determine if a student has completed the required coursework and passed the required assessments to be awarded a diploma. The Department will provide guidance to assist families and school personnel to understand and implement the proposed safety net option.

COMMENT:

Some recommended deferring implementation of the additional safety net option to be effective beginning with the first graduating class not covered by RCTs.

DEPARTMENT RESPONSE:

The Department considered this option, but felt that there is no disadvantage to providing this option to all currently enrolled students with disabilities, so as to provide maximum opportunity for students with disabilities to graduate with a regular diploma.

COMMENT:

One commenter questioned how the proposed compensatory model is linked to growth model.

DEPARTMENT RESPONSE:

Student growth is measured based on student progress, not on whether students earn a local or Regents diploma.

COMMENT:

One commenter questioned why students receiving outside tutoring receive a Regents diploma, while students receiving school based tutoring (e.g., resource room) can only receive a local diploma.

DEPARTMENT RESPONSE:

A Regents diploma is available to any student who meets the criteria for such diploma pursuant to section 100.5 of the Commissioner's Regulations.

COMMENT:

Recommend extending school day by one class period as benefits far outweigh any added costs. Issue regulations stating that students with disabilities who qualify for academic intervention services are entitled to these as a general education service.

DEPARTMENT RESPONSE:

Comments are beyond the scope of the proposed regulations.