



TO: P-12 Education Committee

FROM: Charles A. Szuberla, Jr. *Charles A. Szuberla Jr.*

SUBJECT: Amendment to Regulations regarding Graduation Requirements to Extend the Appeal Process to include Appeal of Scores for the Safety Net Local Diploma for Students with Disabilities

DATE: September 8, 2015

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SUMMARY

Issue for Discussion

Should the Board of Regents amend section 100.5(d)(7) of the Commissioner's Regulations to extend the ability to graduate with a Local Diploma via appeal of a score of 55 to students with disabilities who meet all other conditions for appeal and are otherwise eligible to graduate in January 2016 and thereafter?

Reason(s) for Consideration

Implementation of Policy.

Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for discussion. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents. A Notice of Proposed Rule Making will be published in the State Register on October 7, 2015.

Procedural History

Commissioner's Regulation section 100.5 provides that students with disabilities who score between a 55 and 64 on one or more Regents examination may graduate with a local diploma. In January 2012, the Board of Regents discussed a number of potential revisions of high school graduation requirements to provide safety net options

for students with disabilities. At the October 2012 meeting, the Board approved adoption of an amendment to Commissioner's Regulation section 100.5 to provide an additional option for a student with a disability to earn a local diploma through the use of a "compensatory option" if the student scores between 45-54 on one or more of the required Regents exams, other than the English language arts (ELA) or mathematics exam, but scores 65 or higher on one or more of the required Regents exams, in which case the lower score(s) can be compensated by the higher score(s).

Background Information

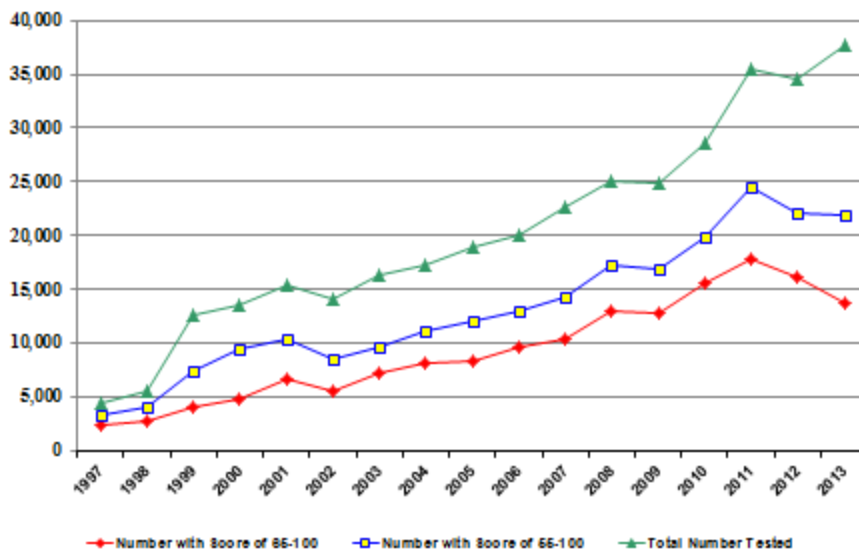
It is essential that we have high expectations for what students with disabilities can learn and to provide reasonable accommodations for them to demonstrate that they have reached the standards. With these high expectations for students, we must also have high expectations for teaching with appropriate opportunities, supports, services and instruction provided to students with disabilities.

Most students with disabilities have the cognitive abilities to earn a high school diploma, but disability factors impede many of them from demonstrating their knowledge and skills through the standardized Regents exams. Without a regular high school diploma, these students will be greatly disadvantaged in achieving their post-secondary academic or employment goals. While data shows that New York State's graduation rate of students with disabilities with a regular high school diploma has been steadily increasing over the past several years, and more students with disabilities are taking and passing Regents exams, still far too many students with disabilities are not exiting school with a regular high school diploma.

The tables below display the increased numbers of students with disabilities who are passing Regents English exams and the three-year trend for increasing percentages of students with disabilities graduating with a regular high school diploma. Of those students with disabilities who graduate with a regular diploma, more than half graduate with a Regents diploma¹.

¹ In the 2010 cohort of 31,873 students with disabilities, 7,799 graduated with a Regents diploma and 7,166 graduated with a local diploma.

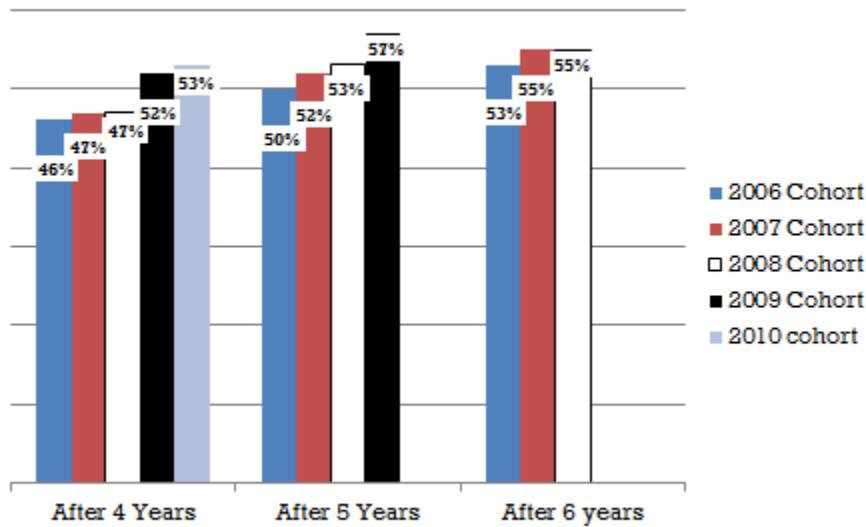
Results of Regents English Examinations for Students with Disabilities 1997-2013



"Data represents Public Schools, including Charter Schools"

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Statewide Graduation Rate After 4, 5 and 6 Years**



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Safety Net Options for Students with Disabilities

Over the past several years, the Board of Regents has reviewed and revised the safety net options available to students with disabilities. Currently, there are three safety net options available to students with disabilities to graduate with a local diploma:

1. **Low Pass Safety Net Option:** 5 required Regents exams with a score of 55 or better.
2. **Regents Competency Test (RCT) Safety Net Option:** This option, which is available to students who entered grade 9 prior to September 2011, allows a student with a disability to receive a local diploma based on a passing score on the RCT if student does not achieve a score of 55 or higher on the Regents examination.
3. **Compensatory Safety Net Option:** For students not relying on RCTs, a student with a disability may receive a local diploma if he/she scores between 45-54 on one or more of the five required Regents exams, other than the English language arts (ELA) or mathematics, but achieves a score of 65 or higher on another required Regents exam which can compensate for the lower score. A score of 65 or higher on a single examination may not be used to compensate for more than one examination for which a score of 45-54 is earned.

Data on Impact of Proposed Expanded Appeal Option

All students, including students with disabilities, can appeal a score on a Regents exam that is within three points of a 65 on up to two Regents exams. Successful appeal of one Regents exam score results in the student graduating with a Regents diploma. Appeal of two Regents exam leads to a local diploma.

Currently there is no appeal option for a score of less than 55 for a student with a disability to earn a local diploma. While this appeal option may be important for some students, data shows that in the 2010 cohort, there were only 258 students with disabilities who did not graduate who received a test score between 52 and 54 on any Regents exam.

Summary of Proposed Amendments

Under the proposed amendment, all students with disabilities otherwise eligible to graduate in January 2016 or thereafter², and who score up to three points below a score of 55 on a Regents exam after at least two attempts would be eligible to receive the Local Diploma via appeal. To be eligible to appeal a score of less than 55, the student must meet all other conditions of appeal as follows:

1. has attained at least a 65 course average in the subject area of the Regents examination under appeal;

² The expanded appeal option would not be available to students who would be relying on the compensatory option to graduate with a local diploma.

2. provides evidence that he or she has received academic intervention services by the school in the subject area of the Regents examination under appeal;
3. has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents examination under appeal;
4. has attained a course average in the subject area of the Regents examination under appeal that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; and
5. is recommended for an exemption to the passing score on the required Regents examination under appeal by his or her teacher or department chairperson in the subject area of such examination.

Appeals by students with disabilities of a score of less than 55 under the proposed amendment would be reviewed by the same committee that reviews all other Regents appeals.

Recommendation

It is recommended that the Board of Regents support publication of the proposed amendment for a 45-day public comment period.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented for adoption at the December 2015 Regents meeting, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed for State agency rule makings. If adopted at the December 2015 meeting, the amendment would take effect on December 30, 2015.

Additional Option for Consideration

For students who take, but cannot pass Regents exams after one or more attempts, the Department would like to also explore the feasibility of other State assessment option(s) that would ensure that students are held to the same standards, but are provided more than one means to demonstrate proficiency in the same State standards as are assessed through the Regents exams. An example is the use of Project-Based Assessments. A Project-Based Assessment is a set of activities that a student completes independently of classroom instruction in order to demonstrate proficiency in the content area and meet state graduation requirements.

Recommendation and Timetable

With support of the Board of Regents, a Department team with representatives from the Offices of Assessment, Curriculum and Instruction and Special Education will benchmark with other states, begin preliminary discussion with stakeholder groups and propose options for consideration by the Board of Regents by December 2015.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended by adding a new clause (c), effective December 30, 2015, to read as follows:

(c) A student who is otherwise eligible to graduate in January 2016 or thereafter, is identified as a student with a disability as defined in section 200.1(zz) of this Title, and fails, after at least two attempts, to attain a score of 55 or above on up to two of the required Regents examinations for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph for purposes of graduation with a local diploma, provided that the student:

(1) has scored within three points of a score of 55 on the required Regents examination under appeal and has attained at least a 65 course average in the subject area of the Regents examination under appeal; and

(2) has met the criteria specified in subclauses (2) - (5) of clause (a) of this subparagraph.

Notwithstanding the provisions of this clause, a student with a disability who makes use of the compensatory option in clause (c) of subparagraph (vi) of paragraph (7) of subdivision (b) of this section to obtain a local diploma may not also appeal a score below 55 on the English language arts or mathematics Regents examinations pursuant to this clause.