




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

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

DATE: January 5, 2013

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt as a permanent rule the proposed 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 submitted to the Full Board for adoption at the January 2013 meeting.

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. At the October 2012 Regents meeting, the proposed amendment was revised in response to public comment and adopted as an emergency action, effective October 31, 2012, in order to ensure the timely implementation, during the 2012-13 school year,

of the safety net options for students with disabilities to graduate with a local diploma. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on October 31, 2012. During a 30-day public comment period, the Department received 55 comments on the revised proposed amendment. No further revisions were made to the proposed rule. A copy of the proposed rule and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

In January 2012, the Regents discussed the need to consider additional options for students with disabilities to earn a local diploma 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.

The proposed rule would provide a student with a disability who has earned a score of 45-54 on one or more of the required Regents examinations, other than the Math and English exams, to graduate with a local diploma if the student can compensate each such score with a score of 65 or higher on another required Regents examination. This compensatory option is available only if the student has 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; and if the student has an acceptable attendance rate, in accordance with district policy, 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.

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 January 30, 2013.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule, effective October 31, 2012 in order to ensure the timely implementation, during the 2012-13 school year, of the safety net options for students with disabilities to graduate with a local diploma. If adopted at the January Regents meeting, the proposed amendment will become effective on a permanent basis on January 30, 2013.

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 January 30, 2013, 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 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 Emergency Adoption and Revised Rule Making in the State Register on October 31, 2012, the State Education Department (SED) received the following new comments that were not otherwise addressed in the Summary of Assessment of Public Comment resulting from the Notice of Proposed Rule Making published on July 3, 2012.

COMMENT:

Comments in support: the rule addresses students who will never meet Regents standards; considers attendance rate and passing grades in the courses; recognizes students seldom do poorly across all academic courses, and allows another opportunity to meet graduation requirements; will allow students to transition into programs aligned to career interests sooner rather than continuing to try to pass exams; is realistic and achievable for students with disabilities; and will provide students with confidence and encouragement to succeed. Allowing scores between 45-54 on Regents exams may encourage students to take more rigorous coursework.

DEPARTMENT RESPONSE:

Comments supportive in nature; no response necessary.

COMMENT:

Students with learning disabilities should be expected to achieve same high standards as other students. Premise of a safety net is an antiquated, out-of-step,

paternalistic approach that creates second class outcomes and reinforces stigma that individuals with disabilities are less capable.

DEPARTMENT RESPONSE:

In order to earn a local diploma through the compensatory option, students must satisfactorily pass the same required coursework as for a Regents diploma. Therefore, the 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.

COMMENT:

Regents' College and Career Readiness agenda should be addressed in a more comprehensive, systemic and responsible fashion, rather than through isolated policy decisions. Establish more opportunities for all students to earn diplomas by creating incentives for school to work with over-age students and remove penalties for schools with strong 5 and 6-year graduation rates.

DEPARTMENT RESPONSE:

These comments will be taken into consideration as the Regents continue to discuss broader policy on college and career readiness and pathways to graduation for all students.

COMMENT:

Phase-out of RCTs, elimination of IEP diploma, limitation of the Skills and Achievement Commencement Credential to only students participating in NYS Alternate Assessment, and confusion regarding development of Phase II high school exiting credential have seriously compromised secondary educational opportunities and future access to career and post-secondary endeavors for students with disabilities. Disagree

that compensatory option is better than continuing RCTs. It is not “better” for more students to drop out or to leave school with no credential. Question what diploma students not eligible for alternate assessment or able to pass Regents exams will obtain. In effort to raise standards for all, this group of students will leave school without a diploma or credential.

DEPARTMENT RESPONSE:

RCTs are not aligned with the Regents coursework and were 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 compensatory option 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. The rule is intended to provide this group of students the opportunity to exit school with a regular high school diploma that would be recognized for entry into post-secondary schools and employment. SED has, under a separate rule-making, proposed regulations to provide a Regents Certificate of Work Readiness for students with disabilities who cannot graduate with a regular diploma, even with the various safety net options.

COMMENT:

SED's data overstates number of students with disabilities that will graduate with local diploma. New examinations are based on common core standards, which teachers are not adequately prepared to teach.

DEPARTMENT RESPONSE:

SED recognizes that the data projections based on the 2006 cohort are not necessarily predictive of what will happen when districts and students move to a greater

focus on the common core standards, Regents courses and assessments versus relying on the RCTs to generate hypotheses. However, they were useful to generally project, given all things equal, that a significant number of students with disabilities are likely to benefit from the proposed safety net option.

COMMENT:

English language learners, students whose education has been disrupted, students who are homeless or in shelters, and students with multiple disciplinary suspensions are the general education students most likely to be in danger of not graduating with a Regents diploma. Without an alternate pathway, these students may be referred for special education services solely as a means of getting a local diploma.

DEPARTMENT RESPONSE:

Comment is beyond the scope of this rulemaking, which 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.

COMMENT:

Make compensatory options available to both special education students and students with Section 504 plans.

DEPARTMENT RESPONSE:

Students with a Section 504 accommodation plan are considered students with disabilities under 504 of the Rehabilitation Act and would qualify for the compensatory safety net option if recommended and documented by the 504 Multidisciplinary team on the student's Accommodation Plan.

COMMENT:

Many students cannot meet requirement of having an acceptable attendance rate for the school year during which they took the Regents examination in which the score of 45-54 was obtained. Attendance should be for the year the student took the course, not the year the student took the examination.

DEPARTMENT RESPONSE:

The attendance criterion that is based on the year in which the student took the Regents is to ensure that a student's score on the exam is due to disability-related factors rather than lack of attendance. District policy could address extenuating circumstances that might affect a student's attendance in the year the student took the examination.

COMMENT:

Rule should be revised to not require that students earn scores of 55 or higher on math and English exams and to allow students to use compensatory score on exams in all subject areas.

DEPARTMENT RESPONSE:

The rule is based on the principle that all students who graduate with a regular diploma must have 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.

COMMENT:

Lowering standards is fundamental alteration of high school diploma and is not required by either Americans with Disabilities Act or Section 504. Postsecondary institutions do not lower standards for students with disabilities. Lower standards provide a false sense of accomplishment and overstate student's ability to succeed in college. Students may develop an expectation of lower standards in postsecondary

institutions and/or employment settings. Lowering standards for local diploma will impact community colleges, particularly if there is no corresponding increase for disability support services.

DEPARTMENT RESPONSE:

We disagree that the proposed safety net lowers standards for students with disabilities. The 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:

Tests should follow principles of universal design, rather than lowering standards to mitigate for poorly designed tests and poorly accommodated students. Proposal to reduce test score punishes schools/districts and does not acknowledge current testing standards are not helping students

DEPARTMENT RESPONSE:

It is up to each Committee on Special Education (CSE) to recommend the appropriate testing accommodations for each student with a disability. SED has not proposed to “reduce test scores” but rather to recognize that some students have disability-related factors that impact on their ability, even with appropriate accommodations, supports and services, to earn a higher score on a Regents exam. There is nothing in the rule that would “punish” schools/districts.

COMMENT:

Provision regarding RCTs is confusing.

DEPARTMENT RESPONSE:

The rule relating to RCTs is intended to clarify that students may use either the RCT safety net option (provided they entered grade nine before September 2011) or the compensatory safety net option to graduate with a local diploma. Students may combine both the RCT and 55 low pass safety net options to graduate with a local diploma. The compensatory option (use higher scores to compensate for lower scores) may be not used for RCT examinations.

COMMENT:

Local diploma should be based on meeting NYS standards and core curriculum, and measured by passing each subject with a final comprehensive or project based exam.

DEPARTMENT RESPONSE:

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:

Proposal will require students to take and retake courses in order to pass, and make it difficult to participate in career and tech education. Students with disabilities are being forced to learn material that is too difficult for them and which they will not need. One-size-fits-all educational policy is not acceptable. Many students, despite huge efforts of support and assistance, cannot pass a Regents exam, yet deserve same opportunities that high school diploma affords.

DEPARTMENT RESPONSE:

The compensatory option is proposed in consideration of current graduation requirements, which include earning 22 credits. It was not intended to establish an alternate pathway to a high school diploma. The policy recommended by the Regents on a local diploma must represent 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

COMMENT:

Appears amendment is being proposed to help with graduation rates in failing districts rather than to help individual students.

DEPARTMENT RESPONSE:

Most students with disabilities have the intellectual ability to be successful in careers and go on to further courses of study after high school, but many have real disability-related factors that impede students from earning scores between 55 and 64 on one or more of the five required Regents exams. State policy should meaningfully recognize these disability-related factors, while at the same time hold school districts accountable for ensuring that a local diploma represents a legitimate route to a meaningful future for students with disabilities. The rule addresses the concern that, while many students with disabilities can pass the coursework required for a Regents

exam, they often have difficulty passing the exam because of disability-related factors. The 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. In the 2006 cohort, 7,382 students with disabilities graduated with a local diploma. 4,971 of those students relied on the RCTs. Regardless of whether this diploma is recognized for federal accountability purposes, this rule will provide an opportunity for many of these students to earn a diploma credential.

COMMENT:

Question if requirements for local diploma will be uniform in all school districts across the State.

DEPARTMENT RESPONSE:

The Regulations of the Commissioner of Education, which include requirements for a local diploma, apply to all public school districts in the State.