




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:** Proposed amendment of sections 100.4(e)(2) and 100.18(b)(14) of the Commissioner's Regulations to provide flexibility to school districts and charter schools regarding the administration of Regents Examinations in Mathematics (Common Core) to grade 7 and 8 students  
**DATE:** February 3, 2014

**AUTHORIZATION(S):**

  
  
SUMMARY

**Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt as an emergency action the revised proposed amendment of sections 100.4(e)(2) and 100.18(b)(14) of the Commissioner's Regulations to eliminate the need for "double-testing" so that school districts and charter schools may administer only the Regents Examinations in Mathematics (Common Core) to grade 7 and 8 students without also having to administer the grade level mathematics assessment in the 2013-2014 school year?

**Reason for Consideration**

Implementation of policy.

**Proposed Handling**

The revised proposed amendment will be presented to the Full Board for adoption as an emergency action, effective February 11, 2014, at the February 2014 Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

## **Procedural History**

At the January 2014 Regents meeting, the proposed amendment to section 100.18(b)(14) was discussed by the P-12 Education Committee and adopted by the Full Board as an emergency rule, effective January 14, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 29, 2014.

Since its January adoption, the proposed amendment has been revised to make a technical, conforming change. Specifically, Commissioner's Regulation section 100.4(e)(2), which requires mathematics assessments to be administered in grades 7 and 8 beginning with the 2005-2006 school year, has been amended to provide that for the 2013-2014 school year, students who attend grade seven or eight may take a Regents examination in mathematics in lieu of or in addition to the Grade 7 or 8 mathematics assessment, in accordance with section 100.18(b)(14) of this Part. This amendment is necessary in order to make section 100.4(e)(2) consistent with the January amendment of section 100.18(b)(14).

A copy of the revised proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

At the October 2013 meeting, the Board of Regents directed the State Education Department (SED or "the Department") to submit a request to the United States Department of Education (USDE) to waive provisions of the federal Elementary and Secondary Education Act (ESEA) [Sections 1111(b)(1)(B) and 1111(b)(3)(C)(i)] that require states to measure the achievement of standards in mathematics using the same assessments for all students.

On December 20, 2013, USDE granted SED a one-year waiver (for the 2013-2014 school year) from ESEA §§1111(b)(1)(B) and 1111(b)(3)(C)(i) so that the Department may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. However, the result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll. The proposed amendment will conform existing regulations with the newly-granted waiver.

Currently, seventh and eighth grade students who are receiving instruction in Algebra I and who take the Regents Examination in Algebra I (Common Core) are also required to take the NYS Common Core Mathematics Test for the grade in which they

are enrolled. The same requirement also applies to students who are receiving instruction in Geometry and who take the Regents Examination in Geometry.

Based on the waiver, the proposed amendment to 8 NYCRR §§ 100.4(e)(2) and 100.18(b)(14) will permit Local Educational Agencies (LEAs) to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for "double-testing" in grades 7 and 8. This provision also applies to students in grades 7 and 8 who receive instruction in Geometry and who take the Regents Examination in Geometry. The waiver serves to relieve students, teachers, and schools from having to prepare students in seventh and eighth grade who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments. The memo that was sent to the field regarding "double testing" can be found at: [http://www.p12.nysed.gov/accountability/waivers/documents/DoubleTestingFieldMemo1-25-13\\_1.pdf](http://www.p12.nysed.gov/accountability/waivers/documents/DoubleTestingFieldMemo1-25-13_1.pdf)

The proposed amendment also reflects the way in which student results will be used for institutional accountability purposes under the waiver:

- If a district opts to have accelerated students take the NYS Grade 7 or 8 Common Core Mathematics Test in addition to one or both Regents Examinations in Algebra, the results from the NYS Grade 7 or 8 Common Core Mathematics Test will be used for institutional accountability purposes rather than the results from a Regents Examination in mathematics. Students who take the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be counted as participants when determining the participation rate in mathematics for the school they attend in grade 7 or 8. The result on the Regents Examination in Algebra I (Common Core) taken in grade 7 or 8 will not count towards the participation rate in mathematics for the high school in which they later enroll. The same rule would apply for any students who take the Regents Examination in Geometry in grade 7 or 8.
- Results for students who take only the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be incorporated into the Performance Index for the school in which the student is enrolled. Grade 7 or 8 students who accelerate and obtain, at a minimum, the score on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will, for the purposes of calculating a school's or a district's Performance Index, be counted at the "full credit" level. Grade 7 or 8 students who do not obtain scores on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will earn the school or district "no credit" for the student's performance. The same rule will apply to seventh and eighth grade students who take another Regents Examination in mathematics (e.g., Geometry).

- The waiver and proposed regulatory amendments pertain to institutional accountability requirements, not to the requirements that individual students must meet in order to graduate from high school. The waiver does not change (i.e., the waiver neither increases nor decreases) the requirements students must currently meet in order to obtain a diploma. However, for institutional accountability, high schools will only get credit in the Performance Index for Regents exams or their equivalents that are taken after a student first enters ninth grade, even if students have taken Regents exams in math or their equivalents in grade 7 or 8.

### **Recommendation**

Staff recommends that the Board of Regents take the following action:

VOTED: That the emergency rule amending paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner, which was adopted at the January 13-14, 2014 meeting of the Board of Regents, is repealed, effective February 11, 2014, and it is further

VOTED: That paragraph (2) of subdivision (e) of section 100.4 and paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education be amended as submitted, effective February 11, 2014, 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 immediately adopt the revised proposed amendment and thereby ensure that LEAs are given sufficient notice to implement the USDE waiver regarding the administration of Regents Examinations in Algebra I (Common Core) and Geometry to grade 7 and 8 students for the 2013-14 school year.

### **Timetable for Implementation**

The proposed amendment was adopted as an emergency rule at the January 2014 Regents meeting, effective January 14, 2014. If action is taken by the Regents at the February 2014 Regents meeting, the January emergency rule will be repealed, and the revised emergency rule will become effective, on February 11, 2014 for a 60-day period.

It is anticipated that the proposed amendment will be presented for permanent adoption at the April 2014 Regents meeting, after publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on February 26, 2014 and expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for revised rule makings. In addition, another emergency adoption will be necessary at the March 2014 Regents meeting in order to keep the emergency rule continuously in effect until the effective date of its adoption as a permanent rule at the April meeting.

## AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 210, 215, 305, 308, 309, 3204 and 3713

1. The emergency rule amending paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education, which was adopted at the January 13-14, 2014 meeting of the Board of Regents, is repealed, effective February 11, 2014.

2. Paragraph (2) of subdivision (e) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective February 11, 2014, as follows:

(2) Beginning with the 1998-99 school year, the mathematics intermediate assessment shall be administered in grade eight. Beginning with the 2005-2006 school year, mathematics assessments shall be administered in grades seven and eight, provided that, for the 2013-2014 school year, students who attend grade seven or eight may take a Regents examination in mathematics in lieu of or in addition to the grade 7 or 8 mathematics assessment, in accordance with section 100.18(b)(14) of this Part.

3. Paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective February 11, 2014, as follows:

(14) Performance levels shall mean:

(i) for elementary and middle grades:

(a) level 1 (well below proficient)

(1) not on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student

does not have a growth percentile target; or a score of level 1 on a State alternate assessment; or a score of 64 or less, or a comparable score as approved by the Board of Regents, on a Regents examination in mathematics for a student in grade 7 or grade 8.

(2) on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 1 on State assessments in science or other State assessments, or a score of level 1 on a State alternate assessment;

(b) level 2 (below proficient)

(1) not on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student does not have a growth percentile target; or a score of level 2 on a State alternate assessment;

(2) on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 2 on State assessments in science or other State assessments, or a score of level 2 on a State alternate assessment;

(c) level 3 (proficient)

(1) a score of level 3 on State assessments in English language arts, mathematics and science or a score of level 3 on a State alternate assessment;

(2) a score of 65 or higher, or a comparable score as approved by the Board of Regents, on a Regents Examination in science or mathematics for students in grade seven or eight pursuant to subdivision 100.4(d) of this Part;

(d) level 4 (excels in standards): a score of level 4 on State assessments in English language arts, mathematics and science or a score of level 4 on a State alternate assessment;

(ii) for high school:

(a) level 1 (well below proficient)

(1) a score of 64 or less on the Regents comprehensive examination in English or a Regents mathematics examination;

(2) a failing score on a State-approved alternative examination for those Regents examinations.

(3) a score of level 1 on a State alternate assessment;

(4) a cohort member who has not been tested on the Regents comprehensive examination in English or a Regents mathematics examination or State-approved alternative examination for these Regents examinations;

(b) level 2 (below proficient)

(1) a score between 65 and 74 on the Regents comprehensive examination in English or between 65 and 79 on a Regents examination in mathematics.

(2) a score of level 2 on a State alternate assessment;

(c) level 3 (proficient)

(1) a score between 75 and 89 on the Regents comprehensive examination in English or between 80 and 89 on a Regents examination in mathematics; or [passes] a passing score on a State-approved alternative to those Regents examinations;

(2) a score of level 3 on a State alternate assessment;

(d) level 4 (excels in standards)

(1) a score of 90 or higher on the Regents comprehensive examination in English or a Regents mathematics examination;

(2) a score of level 4 on a State alternate assessment;

(iii) Notwithstanding the provisions of this section:

(a) For students who attend grade 7 or 8 and take a Regents examination in mathematics in the 2013-2014 school year, but do not take the Grade 7 or 8 Mathematics Assessment, participation and accountability determinations for the school in which the student attends grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on mathematics assessments taken after the student first enters grade 9. For such students, a score of 65 or above, or a comparable score as approved by the Board of Regents, on a Regents Examination in mathematics taken in grade 9 or thereafter will be credited as level 3 for purposes of calculating the High School Performance Index.

(b) For students who attend grade 7 or 8 and who take both the Grade 7 or 8 Mathematics Assessment and a Regents Examination in mathematics during the 2013-2014 school year, participation and accountability determinations for the school such students attend in grade 7 or 8 shall be based upon the student's performance on the Grade 7 or 8 Mathematics Assessment.



## **8 NYCRR §§ 100.4 & 100.18**

### STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

On December 20, 2013, the United States Department of Education (USDE) granted the State Education Department a one-year waiver (for the 2013-2014 school year) from Elementary and Secondary Education Act (ESEA) §§1111(b)(1)(B) and 1111(b)(3)(C)(i) so that the Department may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. However, the result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

The proposed amendment of section 100.18(b)(14) of the Commissioner's Regulations, which conforms existing regulations with the newly-granted waiver, was adopted as an emergency rule at the January 13-14, 2014 Regents meeting, effective January 14, 2014. Since its January adoption, the proposed amendment has been revised to make a technical, conforming change. Specifically, Commissioner's Regulation section 100.4(e)(2), which requires mathematics assessments to be administered in grades 7 and 8 beginning with the 2005-2006 school year, has been amended to provide that for the 2013-2014 school year, students who attend grade seven or eight may take a Regents examination in mathematics in lieu of or in addition

to the Grade 7 or 8 mathematics assessment, in accordance with section 100.18(b)(14) of this Part. This amendment is necessary in order to make section 100.4(e)(2) consistent with the January amendment of section 100.18(b)(14).

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the April 28-29, 2014 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period for revised rulemakings mandated by the State Administrative Procedure Act (SAPA).

Pursuant to SAPA §203(1), the earliest effective date of the permanent rule, if adopted at the April Regents meeting, is May 14, 2014, the date a Notice of Adoption will be published in the State Register. However, the mathematics assessments for grades 7 and 8 are scheduled to be administered in April. Emergency action is therefore necessary for the preservation of the general welfare to immediately repeal the January emergency rule and adopt the revised proposed amendment, and thereby ensure that local educational agencies (LEAs) are given sufficient notice to timely implement the USDE waiver regarding the administration of Regents Examinations in Algebra I (Common Core) and Geometry to grade 7 and 8 students for the 2013-14 school year.