





TO: The Honorable the Members of the Board of Regents

FROM: *A. Infante - Green*
Angélica Infante-Green

SUBJECT: Proposed Amendment to Sections 100.2 and 100.5 of the Regulations of the Commissioner of Education to Establish Criteria for the Approval of Pathway Assessments in Languages other than English (LOTE)

DATE: May 3, 2017

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend Sections 100.2 and 100.5 of the Regulations of the Commissioner of Education in order to provide for approval of pathway examinations in Languages other than English (LOTE) to meet diploma requirements?

Reason(s) for Consideration

Review of policy.

Proposed Handling

At its March 2017 meeting, the Board of Regents adopted the proposed amendment, as an emergency measure, effective March 14, 2017. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 29, 2017. In accordance with the State Administrative Procedure Act, there is a 45-day public comment period which will expire on May 15, 2017.

The proposed amendment is being presented to the full Board for adoption as a second emergency rule at its May 2017 meeting in order to ensure that the emergency rule adopted at the March 2017 meeting remains continuously in effect until it can be permanently adopted at the June 2017 meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 29, 2017. A copy

of the proposed amendment and a statement of facts and circumstances justifying the emergency are attached.

Background Information

In January 2015, the Board established regulations to establish multiple, rigorous assessment pathways for graduation for all students. Those pathways included STEM, Humanities, Career and Technical Education (CTE), Languages other than English (LOTE), and the Arts. In March of 2016, the Board established a Career Development Occupational Studies (CDOS) pathway as a sixth option for New York State students.

Since that time, the Office of State Assessment has approved 30 examinations in CTE and 9 examinations in the Arts. At the time the regulations establishing the pathways were approved, the specific rules governing the criteria for evaluating pathway examinations, outlined in Commissioner's Regulations §100.2(mm), only included approval of CTE and Arts examinations. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

Related Regents Items

Board of Regents Item Establishing Pathways in January 2015 can be found at: <http://www.regents.nysed.gov/common/regents/files/meetings/Jan%202015/115p12a2.pdf>

Board of Regents item Establishing the CDOS Pathway in March 2016 can be found at: <http://www.regents.nysed.gov/common/regents/files/316p12a1.pdf>

Board of Regents Adoption of Proposed Amendment as Emergency Rule in March 2017 can be found at: <http://www.regents.nysed.gov/common/regents/files/317p12a2.pdf>

Recommendation

It is recommended that the Board take the following action:

VOTED: That subdivisions (f) and (mm) of Section 100.2 of the Commissioner's Regulations be amended and that subclause (1) of clause (f) of subparagraph (i) of paragraph (5) of subdivision (a) of Section 100.5 be amended, effective June 11, 2017, 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 that there is an appropriate set of criteria by which assessments in Languages other than English can be evaluated and approved to be used to meet assessment requirements for graduation and to ensure that the emergency rule adopted at the March 2017 meeting remains continuously in effect until it can be adopted as a permanent rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency measure at the March 2017 meeting. The emergency action will expire on June 10, 2017. It is anticipated that the proposed amendment will be presented to the Board of Regents at the June 2017 meeting for adoption as a permanent rule. If adopted at the June meeting, the proposed amendment will be effective on June 28, 2017. Therefore, a second emergency action is needed at the May meeting to ensure that the emergency rule adopted at the March 2017 meeting remains continuously in effect until it can be adopted as a permanent rule. If adopted at the May meeting, the second emergency rule will become effective on June 11, 2017.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment will allow the Department to seek applications from third parties to submit Languages other than English (LOTE) examinations to be approved for use as a pathway assessment toward graduation under Commissioner's Regulations 100.2(mm). It is anticipated that some entities may wish to submit assessments in order to make them available to students for graduation at the end of this school year.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), is the June 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting would be June 28, 2017, the date a Notice of Adoption would be published in the State Register. Emergency action is therefore needed at the May 2017 meeting in order to ensure there is adequate time for the Department to review examinations for potential use for graduation purposes before the end of the 2016-17 school year and so applicants throughout the State have an adequate amount of time to become familiar with the application process, which will be made available once the proposed amendment becomes effective as an emergency rule.

It is also necessary to ensure that the emergency rule adopted at the March meeting, which will expire on June 10, 2017, remains continuously in effect until it can be adopted as a permanent rule. It is anticipated that the proposed amendment will become effective as a permanent rule at the June 2017 meeting, effective June 28, 2017.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Item (iv) of subclause (1) of clause (f) of subparagraph (i) of paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

(iv) a pathway assessment [(e.g., languages] in Languages other than English [] approved by the commissioner in accordance with section 100.2 [(f)(2)] mm of this Part;
or

2. Paragraph (2) of subdivision (f) of section 100.2 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

(2) Pathway assessments. With the approval of the commissioner, pathway assessments which measure an equivalent level of knowledge and skill may be substituted for the assessments specified in this Part. Notwithstanding the requirements of subdivision (d) of this section and section 100.5(b)(7)(v)(c) of this Part any examination that is used to satisfy the pathway assessment graduation requirements in section 100.5(a)(5)(i)(f) of this Part, other than those specifically enumerated in subdivision (mm) of this section relating to pathway assessments in career and technical education, Languages other than English and in the arts. shall meet the conditions and criteria set forth in subparagraphs (1)(i) through (vi) of this subdivision.

3. Subdivision (mm) of section 100.2 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

Pathway assessments in career and technical education, Languages other than English, and [in] the arts.

Except as provided in subdivision (f) of this section, students who have passed four required Regents examinations or department-approved alternative assessments in each of the areas of English Language Arts, mathematics, science, and social studies pursuant to section 100.5 of this Part and who are otherwise eligible to receive a high school diploma in June 2015 and thereafter may meet the fifth assessment requirement for graduation pursuant to section 100. 5 of this Part by passing a fifth pathway assessment in career and technical education (CTE), Languages other than English, or [in] the arts, that is approved by the commissioner pursuant to the following conditions and criteria:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .