



TO: P-12 Education Committee

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

SUBJECT: Proposed Amendments to Section 100.5 of the Commissioner's Regulations to Require Superintendents to Make a Local Determination as to Academic Proficiency for Certain Students with Disabilities to Graduate with a Local Diploma

DATE: June 10, 2016

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SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment to Section 100.5 of the Commissioner's regulations to require superintendents to make a local determination as to academic proficiency for certain students with disabilities to graduate with a local diploma?

Reason(s) for Consideration

Implementation of policy.

Proposed Handling

The proposed amendment is submitted to the P-12 Education Committee for a recommendation to the Full Board for adoption as an emergency rule at its June 2016 meeting. A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on June 29, 2016. A copy of the statement of facts and circumstances justifying the emergency is attached.

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on June 29, 2016. A copy of the proposed amendment is attached. Supporting materials are available upon request to the Secretary of the Board of Regents.

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.

Current 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 Rate Safety Net Option:** 5 required Regents exams with a score of 55 – 64.
2. **Low Pass Rate Safety Net Option with Appeal:** Students who score up to three points below a score of 55 on a Regents exam would be eligible to receive the local diploma via appeal if all of the conditions of appeal are met.
3. **Compensatory Safety Net Option:** A student with a disability may receive a local diploma if he/she scores between 45-54 on one or more of the Regents exams required for graduation, other than 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.

Summary of Proposed Amendments

Superintendent's Review

All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum

to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the State is providing a superintendent review option for eligible students to graduate with a local diploma.

The proposed amendment to current regulations has been developed to ensure that students with disabilities have demonstrated that they have met the State's learning standards for graduation. As such, the school principal and superintendent must review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the standards for graduation with a local high school diploma. Because ELA and math are foundation skills for which there must be a standardized measure of achievement, this option does require a minimum score on the ELA and math Regents exams. However, for the other three exams required for graduation, this option allows review of other documentation of proficiency when the student cannot pass one or more of these exams. The conditions of the review are detailed below:

Applicability

This option would be open to students with disabilities with a current Individualized Education Program (IEP) only. It does not apply to students with section 504 accommodation plans or students who have been declassified from special education.

Process

Beginning with students with disabilities who are otherwise eligible to graduate in June 2016 and thereafter, a school superintendent (or the principal of a registered nonpublic school or charter school, as applicable) has the responsibility to determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on the Regents exams required for graduation.

Automatic Review

The superintendent must ensure that every student with a disability who does not meet the graduation standards through the existing appeal and safety net options is considered for the superintendent determination. This option does not need to be formally requested by the student or parent.

Conditions

1. The student has a current IEP and is receiving special education programs and/or related services.
2. The student did not meet the graduation requirements through the low pass (55-64) safety net option¹ or the compensatory option² [section 100.5(b)(7)(vi)(c) and (d)(7)].
3. The student must have earned the required course credits and have passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents exam areas (ELA, math, social studies, and science).
4. The student must have received a minimum score of 55 on both the Regents ELA and math exams or a successful appeal of a score between 52 and 54.
5. There must be evidence that the student participated in the other exams required for graduation pursuant to section 100.5(a)(5), but has not passed one or more of these as required for graduation.
6. In a subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the assessment required for graduation, there must be evidence that the student has otherwise demonstrated graduation level proficiency in the subject area.

Review and Documentation

In conducting a review to ensure the student has met the academic standards, the superintendent must consider evidence that demonstrates that the student:

1. Passed courses culminating in the exam required for graduation, in accordance with the grading policies of the district. In making this determination, the superintendent must consider the student's final course grade as well as student work completed throughout the school year and/or interim grades on homework, projects, class work, quizzes, tests, etc., that demonstrate that the student has met the learning standards for the course; and
2. Actively participated in the exam required for graduation.

¹ A student also has the option to appeal a score of 52-54 on up to two Regents exams pursuant to section 100.5(b)(7)(vi)(c). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

² A student also has the option to appeal the ELA and/or math scores pursuant to section 100.5(d)(7). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

The school principal and superintendent must sign a document, on a form prescribed by the Commissioner, which describes the evidence reviewed and the decision rendered by the superintendent. The student and the parent of the student must receive a copy of this documentation and written notification of the superintendent's determination. Where the superintendent determines that the student has not met requirements for graduation, the notice must inform the student that he/she has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first.³

The superintendent must sign an assurance on the form that certifies that the information is accurate and the superintendent attests that the student has met graduation requirements. A copy of the form must be placed in the student's record and a copy must be submitted to the Department no later than by August 31st following the student's graduation.

Decision

A determination by the superintendent is final.

Audit

The Commissioner shall periodically audit the determinations granted by superintendents to ensure that conditions described above are being met.

Allowance of Low Pass Appeal in Addition to Compensatory Option

Under current regulations, students with disabilities who make use of the compensatory option described above are not eligible to also make use of the low pass appeal wherein they are able to appeal scores of 52-54. The proposed amendment removes this prohibition and allows these students to make use of both options in meeting graduation requirements.

Recommendation

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

VOTED: That a new paragraph (12) be added to subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education and that clause (c) of subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective June 20, 2016; 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 certain

³ A student with a disability who has not yet earned a diploma and who has not reached the age of 21 may reenroll in school and graduate through this option, provided the student has a current IEP, is participating in the required coursework and is receiving special education programs and services.

students with disabilities who are graduating from high school in June 2016 and thereafter are aware that if they do not meet the graduation standards through the existing appeal and safety net options, that the superintendent will make a determination as to whether the student has met the academic standards and is eligible for a diploma; and to further ensure that superintendents are on notice that they must make a determination as to whether certain students with disabilities are eligible for local diploma if the student meets the requirements of the proposed amendment.

Timetable for Implementation

If adopted at the June Regents meeting, the proposed amendment will become effective as an emergency measure on June 20, 2016. It is anticipated that the proposed amendment will be presented to the Board of Regents at the September meeting for adoption as a permanent rule. If adopted at the September meeting, the proposed amendment will be effective on September 28, 2016.

Attachments

8 NYCRR §100.5

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

All students with disabilities must be held to high expectations and be provided meaningfully opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the proposed amendment provides a superintendent review option in order for certain students with disabilities to graduate with a local diploma, beginning with students graduating in June 2016.

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 the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2016, the date a Notice of Adoption would be published in the State Register. However, the proposed amendment provides a superintendent review option in order for certain students with disabilities to graduate with a local diploma, beginning with students graduating in June 2016.

Therefore, emergency action is necessary at the June 2016 Regents meeting for the preservation of the general welfare in order to ensure that certain students with disabilities who are graduating from high school in June 2016 and thereafter are aware that if they do not meet the graduation standards through the existing appeal and safety net options, that the superintendent will make a determination as to whether the student has met the academic standards and is eligible for a diploma if the student meets the requirements of the proposed amendment. It is also necessary to ensure that superintendents are on notice that they must make a determination as to whether certain students with disabilities are eligible for local diploma if the student meets the requirements of the proposed amendment.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 12-13, 2016 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

A new paragraph (12) shall be added to subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education, effective June 20, 2016, to read as follows:

(12) Superintendent determination pathway for certain students with disabilities for eligibility for a local diploma. School districts, registered nonpublic high schools and charter schools shall ensure that every student who is identified as a student with a disability as defined in Education Law section 4401(1) and section 200.1(zz) of this Title and who does not meet the assessment requirements for graduation through the existing appeal and safety net options available through this section but is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination pathway in accordance with the requirements of this clause, provided that the student:

(i) has a current individualized education program and is receiving special education programs and/or related services pursuant to Education Law section 4402 and section 200.4 of this Title; and

(ii) took the English Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision; and

(iii) took a mathematics Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of

between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision;
and

(iv) participated in the remaining assessments required for graduation pursuant to clauses (c), (d), (e) and (f) of subparagraph (a)(5)(i) of this section, provided that if the student was unable to achieve a passing score on one or more of the remaining assessments required for graduation or to successfully appeal a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or did not initiate such an appeal pursuant to paragraph (7) of this subdivision, or to use the compensatory score option for one or more such examinations pursuant to clause (b)(7)(vi)(c) of this section, then the superintendent shall determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities measured by the relevant Regents examination(s) and shall document such determination in accordance with the following:

(a) the superintendent shall consider evidence that the student attained a grade for the course 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. Such evidence shall include but need not be limited to the student's final course grade, student work completed throughout the school year and/or any interim grades on homework, projects, class work, quizzes and tests; and

(b) with respect to subparagraph (iv) of this paragraph, the superintendent shall consider the extent to which the student participated in such examination(s); and

(c) the superintendent shall, as soon as practicable, in a form and manner prescribed by the commissioner, document the evidence reviewed for an eligible

student with disability under this paragraph and make a determination as to whether the student met the requirements for issuance of a local diploma pursuant to this clause and certify that the information provided is accurate; and

(d) the superintendent shall, as soon as practicable, provide each student(s) and parent or person in parental relation to the student with a copy of the completed form and must place a copy of the completed form in the student's record; and

(e) the superintendent shall, no later than August 31 of each year, provide the commissioner with a copy of the completed form for each student; and

(f) the commissioner may conduct audits of compliance with the requirements of this clause.

2. Clause (c) of subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner is amended, effective June 13, 2016, 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 (a)(2)-(4) of this subparagraph.

[Notwithstanding the provisions of this clause, a student with a disability who makes use of the compensatory option in clause (b)(7)(vi)(c) 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.]