



TO: The Honorable the Members of the Board of Regents

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

SUBJECT: Amendment of §100.5(d)(7) of the Commissioner's Regulations to Adjust the Eligible Score Band for an Appeal of the English Language Arts Regents Examination for Eligible English Language Learners (ELLs), to Align with the Recent Expansion of the Eligible Score Band for Appeals for Certain Regents Examinations for All Students

DATE: June 1, 2017 *Margellen Eis*

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend §100.5(d)(7) of the Commissioner's Regulations to adjust the existing eligible score band for an appeal of the English Language Arts Regents examinations passing scores by eligible English Language Learners (ELLs), to align with the recent expansion of the eligible score band for appeals of certain Regents examinations by all students?

Reason(s) for Consideration

Implementation of policy.

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at its June 2017 Regents meeting. A copy of the proposed amendment and a statement of the facts and circumstances which necessitate emergency action are attached.

Procedural History

At its April 2017 meeting, the Board of Regents adopted the proposed amendment, as an emergency measure, effective April 3, 2017. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 19, 2017. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

In January 2015, the Board of Regents extended the Regents Examination appeal process to include a provision to allow eligible English language learners (ELLs) to appeal scores of 55-61 on the English Language Arts (ELA) Regents Examination. At its March 2016 meeting, the Board of Regents adopted a proposed amendment to expand the eligible score bands for appeals of Regents examinations for all students from 62-64 to 60-64. Due to this expansion of the eligible score band for such appeals for all students (including ELLs), it is necessary to adjust the eligible score band for appeals of the English Language Arts Regents examinations for qualifying ELLs by two points, from 55-61 to 55-59, to clarify that a separate appeal for ELLs who score between 60-61 on the ELA Regents Examination is not necessary.

Related Regents Items

<http://www.regents.nysed.gov/common/regents/files/215p12a1.pdf>

<http://www.regents.nysed.gov/common/regents/files/316p12a3.pdf>

<http://www.regents.nysed.gov/common/regents/files/616brca6.pdf>

Recommendation

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

VOTED: That subclause (1) of clause (b) 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 July 3, 2017, upon a finding by the of the Board of Regents that such action is necessary for the preservation of the general welfare to immediately adjust the existing eligible score band for an appeal of the English Language Arts Regents examination passing scores for qualifying English Language Learners for beginning in the 2016-2017 school year and to ensure that the emergency rule adopted at the April 2017 Regents meeting remains continuously in effect until it can be adopted as a permanent rule.

Timetable for Implementation

Following the 45-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the July 2017 Regents meeting. However, a second emergency adoption is necessary, effective July 3, 2017, to ensure that the emergency rule adopted at the April 2017 remains continuously in effect until it can be adopted as a permanent rule.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Subclause (1) of clause (b) of subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended as follows:

(1) has scored between [55 and 61] 55-59 on the required Regents examination in English language arts under appeal;

8 NYCRR §100.5(d)(7)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to implement revisions to policy adopted by the Board of Regents to adjust the eligible score band for an appeal of the English Language Arts Regents examination passing scores by qualifying English Language Learners (ELLs). Under the proposed amendment, qualifying ELLs will be eligible to appeal scores of 55-59, instead of the current 55-61, on the required Regents examination in English Language Arts. This proposed amendment is necessary to align to amendments made by the Board of Regents at its March 2016 meeting which allow all students (including ELLs) to appeal scores of 60-64 on certain Regents examinations, so a separate appeal for ELLs from 60-61 is not necessary.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be presented for regular adoption is the July 2017 Regents meeting, after publication of the proposed rule in the State Register on April 19, 2017 and expiration of the 45-day public comment period for State agency rule makings. Furthermore, pursuant to the State Administrative Procedure Act (SAPA), the earliest effective date of the proposed amendment, if adopted at the July meeting, would be August 2, 2017, the date a Notice of Adoption would be published in the State Register. However, the emergency measure adopted by the Board of Regents at the April 2017 meeting will expire on July 2, 2017. Therefore, a second emergency action is needed to ensure that the emergency rule adopted by the Board of Regents at its April 2017 meeting remains continuously in effect until it can be adopted as a permanent rule.

Emergency action is also necessary for the preservation of the general welfare in order to immediately adjust the eligible score band for an appeal of the English Language Arts Regents examination passing scores for qualifying ELLs for the 2016-2017 school year.