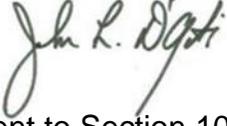




**TO:** The Honorable the Members of the Board of Regents

**FROM:** John L. D'Agati 

**SUBJECT:** Proposed Amendment to Section 100.7(h) of the Regulations of the Commissioner of Education Relating to Alternative High School Equivalency Preparation and Alternative Transition Programs

**DATE:** June 3, 2020

**AUTHORIZATION(S):**  

## SUMMARY

### Issue for Discussion

Should the Board of Regents adopt the proposed amendment to Section 100.7(h) of the Regulations of the Commissioner of Education relating to alternative high school equivalency preparation and alternative transition programs?

### Reason(s) for Consideration

Review of policy.

### Proposed Handling

The proposed amendment will be presented to the Full Board for discussion at its June 2020 meeting. A copy of the proposed rule is attached (Attachment A).

### Procedural History

A Notice of Proposed Rule Making will be published in the State Register on June 24, 2020. Supporting materials are available upon request from the Secretary to the Board of Regents.

### Background Information

On April 10, 2017, the Raise the Age (RtA) legislation was enacted (Part WWW of Chapter 59 of the Laws of 2017). Implementation of this law was phased in. Beginning on October 1, 2018, the new provisions took effect for offenses committed by 16-year-olds, and on October 1, 2019, the new provisions took effect for offenses committed by 17-year-olds.

Raising the age of criminal jurisdiction has led to an increase in residential placement of students into the care of various State agencies or in alternative settings within existing agency placements. These State agencies, which include the New York State Office of Children and Family Services (OCFS), Division of Corrections and Community Services (DOCCS), Office of Mental Health (OMH), and the Office of Addiction Services and Supports (OASAS), are responsible for meeting the educational needs of students placed in their residential settings pursuant to section 112 of the Education Law.

The Alternative High School Equivalency Preparation (AHSEP) Program and the Alternative Transition Program (ATP) are geared toward students who will not graduate with their cohort because of credit deficiency, but who are otherwise capable of completing graduation requirements. These programs are designed to provide high school equivalency exam preparation for students who are over aged and under credited. Currently, entities that are eligible to run ASHEP and ATP programs are school districts, Boards of Cooperative Educational Services (BOCES), and facilities run by the OCFS.

The Department has hosted or participated in numerous meetings with leaders and staff from various State agencies that are responsible for the education of the students residing under their care, including the State agencies above, nonsecure and secure detention facilities, along with alternative education providers Statewide to both answer questions and learn more about the providers' concerns regarding their ability to provide the robust educational programming needed to engage these youth and to provide opportunities that lead them toward a path of success. One of the most concerning issues raised was the number of students who have experienced significant credit deficiency in their educational experience, as well as failure to succeed in a "traditional" school setting, due to a multitude of issues including, but not limited to, interrupted educational process due to involvement with the justice system, substance abuse/addiction problems, transience, or pregnancy. Many of these students are over aged and under credited and have little chance of graduating with their cohort or graduating at all. For many of these students, achieving a high school equivalency diploma can be a catalyst to changing their future.

The Department is proposing to expand the eligibility to run the ASHEP and ATP programs to other State agencies responsible for providing daily instruction to residential students at least 16 years of age and under the age of 21. This amendment will expand access for New York's students who are experiencing circumstances that may hinder their ability to achieve high school completion. [A study by the National Center for Education Statistics](https://nces.ed.gov/programs/coe/indicator_cba.asp) (https://nces.ed.gov/programs/coe/indicator\_cba.asp) demonstrates a difference of approximately \$6,000 in median annual earnings between nongraduates and persons who held either a high school diploma or a high school equivalency diploma. Likewise, [historical data](https://static.prisonpolicy.org/scans/nydocs/NYDOCS_2003_effect_of_ged_on_recidivism.pdf) (https://static.prisonpolicy.org/scans/nydocs/NYDOCS\_2003\_effect\_of\_ged\_on\_recidivism.pdf) shows that youth who attain their high school equivalency diploma while incarcerated at NYS DOCCS facilities recidivate at a significantly lower rate than those that did not earn their high school equivalency diploma. Attainment of the high school equivalency diploma opens access to institutions of higher learning as well. During the public

comment period, the Department will share and seek feedback from the Alternative Education Steering Committee.

Therefore, to address the unique needs of this student population, the Department proposes to revise §100.7(h) of the Commissioner's regulations to provide expanded access to the AHSEP and ATP programs by allowing State agencies responsible for providing daily instruction to residential students the ability to provide AHSEP and ATP programs to their populations of students who are eligible for such programs. These State agencies include OCFS, DOCCS, OASAS, and OMH. Additionally, the proposed amendments clarify and update the regulatory language regarding the requirements and process for program approval. Specifically, the proposed amendments clarify that:

- AHSEP and ATP program applications must assure that they will provide *intensive* instruction in reading, and/or mathematics, as necessary, designed to assist the student in attaining a minimum 9.0 mathematics and/or reading grade equivalent, and in *social emotional competency development* [emphasis added];
- All AHSEP and ATP programs must maintain documentation of student eligibility rather than requiring the local school district to maintain such documentation and requiring such documentation to include a transcript of academic record at the time of enrollment or placement into the AHSEP or ATP program;
- Regarding tests and assessments:
  - Students enrolled or placed in AHSEP or ATP programs shall be given academic achievement tests or assessments approved by the Commissioner in reading and mathematics to determine each student's approximate skill level;
  - Students preparing for the high school equivalency examination shall be given academic achievement tests or assessments in each subtest subject area of the high school equivalency examination;
  - Students who have taken and passed one or more Regents examination(s) shall be assisted in completing and sending the application for the NYS High School Equivalency Credit for Regents Examination Scores; and
  - Students who have received credit for having taken and passed one or more NYS Regents examination(s) shall not be given additional test assessments or instruction in the corresponding subtest area of the high school equivalency examination.
- In addition to the requirements pertaining to all students, English Language Learners (ELLs) and other students with language acquisition needs shall be given academic achievement tests or assessments specifically designed for such students or other test or assessments as approved by the Commissioner and shall be provided English as a New Language instruction.

### **Related Regents Items**

N/A

**Recommendation**

N/A

**Timetable for Implementation**

Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its September 2020 meeting. If adopted at the September 2020 meeting, the proposed amendment will become effective on September 30, 2020.

## Attachment A

### AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 206, 207, 210, 214, 215 and 305 of the Education Law.

1. Subdivision (h) of section 100.7 of the Regulations of the Commissioner of Education is amended to read as follows:

(h) Alternative high school equivalency preparation programs operated by school districts, boards of cooperative educational services, and [facilities operated by the Office of Children and Family Services] state agencies responsible for providing daily instruction to residential students for students at least 16 years of age and under the age of 21.

(1) State Agencies. For purposes of this subdivision, state agencies responsible for providing daily instruction to residential students shall include facilities operated by the Office of Children and Family Services, Department of Corrections and Community Supervision, Office of Addiction Services and Supports, and Office of Mental Health.

(2) Eligibility. (i) The alternative high school equivalency preparation program is intended for students who will not graduate with their class because of credit deficiency but who are otherwise capable of completing graduation requirements. Students who are at least 16 years of age and have completed the school year during which they reached 16 years of age, or such older maximum age as the board of education of the school district may designate for required school attendance pursuant to section 3205(3) of the Education Law, [and who have completed the school year during which they reached 16 years of age,] and who are under the age of 21, may be enrolled in an alternative high school equivalency [programs.] preparation program. In addition, to be eligible for such program students shall have fewer than 12 1/2 percent of the number of units of credit required by the school district

for a diploma multiplied by the number of years the student has attended grades 9 through 12.

(ii) Other students may be eligible where a variance from the eligibility requirements application is submitted and approved based upon a finding by the commissioner that extenuating circumstances exist.

(iii) Students who do not meet the age requirements [above] in subparagraph (ii) of paragraph (2) of this subdivision, but who are at least 16 years of age, may be [enrolled] placed in an approved full-time alternative transition program. Such alternative transition programs may include components of the alternative high school equivalency preparation program but shall provide sufficient instruction to meet the full-time day instruction requirements of section 3205(1)(c) of the Education Law. Such pupils may [transfer]be placed directly from a regular high school program or enroll after having left secondary school.

[(2) in order] (3) Application. To obtain the approval of the department for alternative high school equivalency preparation or alternative transition programs, the governing body of the school district, [or] board of cooperative educational services, or [Office of Children and Family Services facility] a state agency responsible for providing daily instruction to residential students shall submit an application annually no later than June 30th for programs to be operated during the following school year in a form and format as prescribed by the [commission] commissioner, and shall assure in such application that:

(i) the program approval requirements and assurances set forth in paragraph (4) of this subdivision are satisfied;

(ii) [the program] Alternative high school equivalency preparation programs offered each student shall consist of not less than 15 hours per week, provided that:

(a) [for] students [with] that have demonstrated a grade level equivalent of 9.0 or above in reading and mathematics [levels at grade nine or above] on academic achievement tests or assessments approved by the commissioner, shall receive no less than 9 hours of the minimum 15 hours of instruction in preparation for the high school equivalency examination [shall be no less than nine hours of the minimum 15 hours for the high school equivalency examination as part of the program]; and

(b) [for] students [with] that have demonstrated a grade level equivalent below 9.0 in reading or mathematics [levels below grade nine] on academic achievement tests or assessments approved by the commissioner, shall receive no less than 12 hours of the minimum 15 hours in preparation for the high school equivalency examination [as part of the program];

[(iii)](c) subjects or activities are scheduled in addition to preparation for the high school equivalency examination as part of the program of at least 15 hours as follows:

[(a)](1) intensive instruction in reading, and/or mathematics, as necessary, designed to assist the student in attaining a minimum 9.0 mathematics and/or reading grade equivalent, oral and written communication, instructional supports, enrichment, programs that are aligned with career readiness, counseling, social emotional competency development, and other related life skills activities, [shall be] subject to approval by the department; and

[(b)](2) a workforce preparation component shall be provided to all students. This component shall be approved by the department and may include career and technical

education, career exploration, internships, work experience or other school-to-work transition activities;

(iii) Alternative transition programs be offered each student enrolled in the program shall consist of not less than 27.5 hours per week, provided that:

(a) intensive instruction in reading and/or mathematics is provided, as necessary, designed to assist the student in attaining a minimum 9.0 mathematics and/or reading grade equivalent, oral and written communication, instructional supports, enrichment, programs that are aligned with career readiness, counseling, social emotional competency development, and other related life skills activities, subject to approval by the department;  
and

(b) a workforce preparation component shall be provided to all students. This component shall be approved by the department and may include career and technical education, career exploration, internships, work experience or other school-to-work transition activities;

(iv) All programs must obtain written approval by a person in parental relation to the student or by the student, as [provided for in Education Law,] required by section 3212(1) and (4) of the Education Law, of each student's enrollment [shall be obtained] or transfer, as well as written consent to counseling services, as necessary;

(v) All programs must maintain documentation of student eligibility [shall be maintained by the local school district and] which shall be available to the department. [In order for students who are at least 16 years of age but under the age of 21 to be eligible to enroll in an alternative high school equivalency preparation program, a student who has not been on the regular day school register of grade nine for at least one school year shall score

below the passing score on a State elementary assessment. In order to be eligible to enroll in an alternative high school equivalency preparation program, other students who are at least 16 years of age but under the age of 21 shall have fewer than 12 1/2 percent of the number of units of credit required by the school district for a diploma multiplied by the number of years the student has been in grades 9 through 12. Approval may be granted for a variance from the eligibility requirements set forth in this paragraph upon a finding by the commissioner that exceptional circumstances warrant such a variance] Such documentation shall include, but not be limited to, a transcript of academic record at time of enrollment or placement into the alternative high school equivalency preparation or alternative transition program; and

(vi) documentation setting forth the name of each student transferred or placed into [a]an alternative high school equivalency preparation or alternative transition program approved pursuant to this subdivision from a regular high school program or otherwise enrolled or placed shall be maintained by the [local school district] program and be available to the department.

(vii) [In addition, such] documentation [shall indicate what] detailing the academic intervention services, remedial instruction, counseling and support services that were provided to [the] each student prior to transferring or being placed into the program;

(viii) documentation regarding the current status of each student to include, but not be limited to, whether such student continues in the program, has received a high school equivalency diploma, or has withdrawn from the program; and such other information as may be required by the commissioner. A summary of such documentation shall be submitted annually to the department on a form prescribed by the commissioner.

[(3) The alternative high school preparation program shall be designed for students who will not graduate with their class because of credit deficiency but who are otherwise capable of completing graduation requirements.]

(4) Annual Program approval requirements. [In order to] To obtain the approval of the department for any program to prepare students to meet the requirements of the State high school equivalency diploma, the governing body of the school district, board of cooperative educational services, or [Office of Children and Family Services] an educational program of a state agency responsible for providing daily instruction to residential students [shall provide performance data which shall be reviewed by the commissioner to determine if the program shall be approved. In addition, the governing body of the school district, board of cooperative educational services, or Office of Children and Family Services educational program] shall assure in its application that:

(i) students enrolled or placed in an alternative high school equivalency preparation or alternative transition program shall be given academic achievement tests or assessments approved by the commissioner in reading and mathematics to determine each student's approximate skill level and shall not begin instruction specifically designed to prepare for the high school equivalency examination unless or until each student reads and performs math at a 9.0 grade equivalent or greater as demonstrated on ongoing academic achievement tests or assessments approved by the commissioner and administered at required intervals to determine status and progress;

(ii) students preparing for the high school equivalency examination are given academic achievement tests or assessments in each subtest subject area of the high school equivalency examination to determine the specific instruction needed and are provided

appropriate instruction in order to attain the minimum score in each subtest subject to qualify for a New York State high school equivalency diploma;

(iii) students preparing to take the high school equivalency examination shall not be referred to such examination unless they demonstrate readiness as indicated by academic achievement tests or assessments in each subtest subject area of the high school equivalency examination and have achieved the minimum score on the readiness assessment approved by the commissioner;

(iv) students that have taken and passed one or more New York State Regents examination(s) shall be assisted to complete and send the application for the New York State High School Equivalency Credit for Regents Examination Scores to the Department High School Equivalency Office;

(v) students that have received credit for having taken and passed one or more New York State Regents examination(s) in accordance with subdivision (2)(i)(a) and (b) of this section shall not be given additional test assessment or instruction in the corresponding subtest area of the high school equivalency examination;

(vi) the curriculum to be used satisfactorily addresses the subject matter areas included in a general comprehensive examination prescribed for the program pursuant to subparagraph (a)(2)(i) of this section and meets the required State standards pertaining to such examination;

[(ii)] (vii) instruction is individually prescribed and paced in each class;

[(iii)] (viii) individual student [folders] files are easily accessible to students and teachers and include information concerning registration, attendance, testing and individual program needs;

[(iv)] (ix) no class register exceeds 20 students;

[(v) at least 150 hours per year of total instruction is made available to individual students] (x) instruction is provided annually for sufficient hours to meet the goals included in individual student plans to achieve proficiency in subject matter and increase the likelihood of exam readiness; for accountability purposes, student enrollment hours must be recorded and 150 hours of instructional time is the minimum hours permitted for program review pursuant to section 100.2(p)(17) of this Part;

[(vi) English-speaking students are given entrance tests or assessments in reading and mathematics to determine the approximate skill level;

(vii) English-speaking students in need of basic education are provided instruction in reading, mathematics, oral and written communication and life skills;

(viii) English-speaking students are given standardized achievement tests which report scores in grade equivalents, and which have forms for retesting at required intervals or other such instruments approved by the commissioner;]

[(ix) students with limited] (xi) In addition to the requirements pertaining to all students, English [proficiency] Language Learners and other students with language acquisition needs are given [placement]academic achievement tests or assessments specifically designed for such students or other tests or assessments as approved by the commissioner prior to placement in an appropriate level of the instructional program;

[(x) students with limited English proficiency are provided instruction in listening, reading, mathematics, oral and written communication and life skills;

(xi) students with limited English proficiency are given achievement tests specifically designed for such students or other such instruments approved by the commissioner;

(xii) students preparing for the high school equivalency examination are given diagnostic tests to determine the specific instruction needed to attain the minimum score in each subject to qualify for a New York State high school equivalency diploma and are provided such instruction;]

~~[(xiii)]~~(xii) In addition to the requirements pertaining to all students, [students with needs other than basic education, high school equivalency examination preparation, and ]English [as a second language] Language Learners and other students with language acquisition needs, are provided at a minimum, English as a New Language instruction and other appropriate instruction, such as bilingual instruction[, as authorized by the commissioner] as well as instruction in listening, speaking, and writing, as appropriate;

(xiii) students entering a program with an individualized education program shall be provided the required services by the Alternative high school equivalency preparation program or Alternative transition program;

(xiv) [all students are tested at intervals necessary to determine status and progress;]

(xv)] individual and group counseling are available to all students enrolled in the program;

~~[(xvi)]~~(xv) professional staff assigned to conduct approved programs of preparation for a high school equivalency diploma shall be provided with appropriate staff development; and

[(xvii) enrolled students shall not begin instruction specifically designed to prepare for the high school equivalency examination, unless they read at a 9.0 grade level on tests approved by the commissioner; and

(xviii) students preparing to take the high school equivalency examination shall not be referred to that test unless they demonstrate readiness as indicated by tests approved by the commissioner.]

(xvi) for reapproval, the program shall provide performance data which shall be reviewed by the commissioner to determine if the program shall be reapproved.

[(i)](5) Program approval variance. Program [Approval] approval may be granted for a variance from the standards and assurances set forth in paragraphs (h)(1) [and], (2), (3) and (4) of this section upon a finding by the commissioner that the requirements of such paragraphs will be substantially met.