



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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

**FROM:** Angelique Jonson-Dingle   
Jason Harmon 

**SUBJECT:** Proposed Amendment of Section 100.2 of the Regulations of the Commissioner of Education Relating to Requirements for School Districts to Issue Diplomas to Eligible Students Confined in a Facility Operated by a State Department or Agency Providing Educational Programming within the District Boundary

**DATE:** June 30, 2022

**AUTHORIZATION(S):** 

### SUMMARY

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendment of section 100.2 of the Regulations of the Commissioner of Education relating to requirements for school districts to issue diplomas to eligible students confined in a facility operated by a state department or agency providing educational programming within the district boundary?

#### **Reason(s) for Consideration**

Required by State statute.

#### **Proposed Handling**

The proposed amendment is presented to the Full Board for adoption as an emergency rule at its July 2022 meeting. A copy of the proposed amendment is included as (Attachment A) and a statement of facts and circumstances which necessitate emergency action is included as (Attachment B).

## **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the June 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 29, 2022, for a 60-day public comment period.

Because the June emergency action will expire on September 11, 2022, a second emergency action is necessary to ensure the rule remains continuously in effect until it can be permanently adopted at the October 2022 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on September 28, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

## **Background Information**

Chapter 754 of the Laws of 2021, as amended by Chapter 26 of the Laws of 2022, added a new section 112-a to the Education Law. This section provides for the manner in which diplomas can be issued to students who have met all diploma requirements and are confined to certain facilities that provide educational programming but do not have the authority to issue diplomas. This legislation was proposed by the Board of Regents to ensure that these students have a pathway to an earned diploma.

Prior to the enactment of this law, barriers existed that often made it extremely difficult to secure a diploma for students placed by the courts in residential facilities offering educational programming. Such facilities ensure education of students placed in their care but have no authority to grant diplomas. Previously, the facility was expected to reach out to the district where a student attended in the past, or in which the facility was located, to request the issuance of a diploma. These efforts were often unsuccessful.

New Section 112-a provides that the school district of location—the district in which the facility is located—shall issue a high school diploma to qualified students who receive education in a State-run facility. There is a single exception: when credit-bearing educational programming is directly provided by another school district, that district shall be responsible for issuing the high school diploma. The school district responsible for issuing the diploma is responsible for determining when each student has completed the minimum New York State diploma requirements in section 100.5 of the Commissioner's regulations while placed with, committed to, under the supervision of, detained, or confined in such facility.

## **Summary of the Proposed Amendment**

The proposed amendment adds subdivision (pp) to section 100.2 of the Commissioner's regulations, which explains: (1) how to determine the district

responsible for the issuance of the diploma, and (2) the responsibilities of both the facility where the student is placed and the diploma-issuing district. Diploma issuing districts will be given credit for diplomas issued under section 112-a of the Education Law in the calculation of district graduation rates.

Additionally, the Department proposes to amend subdivision (y) of section 100.2 to confirm that a student who completes an educational program provided by a facility shall be entitled to enroll in the school district of location for purposes of being issued a diploma.

### **Related Regents Items**

June 2022: [Proposed Amendment of Section 100.2 of the Regulations of the Commissioner of Education Relating to Requirements for School Districts to Issue Diplomas to Eligible Students Confined in a Facility Operated by a State Department or Agency Providing Educational Programming within the District Boundary](https://www.regents.nysed.gov/common/regents/files/622p12a2.pdf) (https://www.regents.nysed.gov/common/regents/files/622p12a2.pdf)

December 2020: [2021-22 Non-State Aid Budget and Legislative Priorities](https://www.regents.nysed.gov/common/regents/files/1220bra6revised.pdf) (https://www.regents.nysed.gov/common/regents/files/1220bra6revised.pdf)

### **Recommendation**

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

VOTED: That section 100.2 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 12, 2022, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately implement Chapter 754 of the Laws of 2021, as amended by Chapter 26 of the Laws of 2022, to require school districts to issue diplomas to eligible students confined in a residential facility operated by a state department or agency providing educational programming within the district boundary, and to ensure that the emergency action taken at the June 2022 Regents meeting remains continuously in effect.

### **Timetable for Implementation**

If adopted as an emergency rule at the July 2022 Regents meeting, the rule will become effective on September 12, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the October 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the October 2022 meeting, the proposed amendment will become effective on October 19, 2022.

**Attachment A**

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 112, 112-a, 207, 208, 209, 215, 305, 3204, and 3205 of the Education Law and Chapter 754 of the Laws of 2021 and Chapter 26 of the Laws of 2022.

1. Section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (pp) to read as follows:

(pp) District Responsibility for the Issuance of Diplomas.

(1) Definitions. For the purposes of this subdivision:

(i) "Residential facility" means a facility operated or administered by a state department or agency or political subdivision of the state pursuant to Education Law §112 or a correctional facility as defined in Correction Law §2(4) which provides educational programming to youth age 21 or younger who have not received a high school diploma and who are placed, committed, supervised, detained or confined at the facility.

(ii) "District of location" means the school district in which the facility where a youth is placed, committed, supervised, detained, or confined is located.

(iii) "Credit granting school district" means the school district or local education agency providing an educational program and granting diploma credits to students placed in a facility.

(iv) "Diploma issuing district" means the school district that is determined to be responsible for the issuance of the diploma pursuant to this subdivision.

(2) Determination of diploma issuing district. If a student placed, committed, supervised, detained, or confined in a residential facility completes an educational program provided by employees of such facility leading to a Regents (with or without an advanced designation diploma) or local diploma, the district in which the residential facility is located shall be the diploma issuing district. If a student placed, committed, supervised, detained, or confined in/to a residential facility receives credit-bearing educational programming from a school or district other than the district of location of the residential facility, such credit-granting school district providing the educational programming shall be the diploma issuing district.

(3) Residential facility responsibility. When a student who has been placed, committed, supervised, detained, or confined in/to a residential facility completes all diploma requirements in accordance with section 100.5 of this Part, such residential facility shall notify the diploma issuing district to confer such student's diploma. Such notification shall be in writing and shall include the following documentation:

(i) All student records indicating the credits such student has attained at previous New York State schools and schools located in other states.

(ii) Documentation of transfer credits attested to by current or previous residential facilities pursuant to section 100.5(d)(b)(5)(i)(b)(2) of this Part and a summary of all academic credits earned and assessment requirements met which shall be attested to by the chief educational officer at such residential facility

(4) Diploma issuing district responsibility. Upon receipt of written notification and student records from a residential facility located within the district boundary, the diploma issuing district shall:

(i) Conduct a review of the documentation provided and make a determination of such student's eligibility to receive a diploma.

(ii) Notify the residential facility within 10 business days of receipt of such documentation of its findings and determination as to whether such student has met the requirements for a diploma; provided, however, that the findings and determination may be submitted after 10 business days where the facility and diploma issuing district mutually agree to extend such timeline.

(a) A notification that the student has not met the requirements of a diploma shall detail the deficiencies in the student records, clearly listing any requirements that have not been met. Such students are not required to meet local diploma requirements that exceed those indicated in section 100.5 of this Part. Facilities shall be given the opportunity to provide additional records, if available, to address any deficiencies noted by the diploma issuing district.

(b) A notification that the student has met the requirements for a diploma shall indicate when such diploma shall be conferred. Diplomas shall be conferred in January, June, or August, whichever is soonest.

(iii) Enroll such student prior to issuing the diploma, create a student transcript, and assume responsibility to retain all such student records in the district's student management system consistent with section 104.2 of this Chapter.

(iv) Forward such diploma and a copy of the district-developed student transcript by registered mail to the facility that made the request on behalf of the student.

(v) Include such student in the district's accountability measures for the purposes of calculating the graduation rate, as a graduate from the district of location in the school year in which the diploma is issued.

2. Subdivision (y) of section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (7) to read as follows:

(7) Notwithstanding any provision of this subdivision to the contrary, in the case of a student placed, committed, supervised, detained, or confined in a residential facility located in a school district pursuant to subdivision (pp) of this section, such residential facility shall request enrollment of a child who has completed an educational program provided by employees of such facility leading to a Regents (with or without an advanced designation diploma) or local diploma in the diploma issuing district as defined in subparagraph (pp)(1)(iv) of this section. Such child shall be entitled to enroll in such school district solely for purposes of obtaining a Regents (with or without an advanced designation diploma) or local diploma, provided that the residential facility shall provide documentation of age in accordance with subparagraph (ii) of paragraph (9) of this subdivision and documentation of such child's placement, commitment, supervision, detainment, or confinement in/to such residential facility.

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING  
EMERGENCY ACTION

Chapter 754 of the Laws of 2021, as amended by Chapter 26 of the Laws of 2022, added a new section 112-a to the Education Law. This section provides for the manner in which diplomas can be issued to students who have met all diploma requirements and are confined to certain facilities that provide educational programming but do not have the authority to issue diplomas. This legislation was proposed by the Board of Regents to ensure that these students have a pathway to an earned diploma.

Prior to the enactment of this law, barriers existed that often made it extremely difficult to secure a diploma for students placed by the courts in residential facilities offering educational programming. Such facilities ensure education of students placed in their care but have no authority to grant diplomas. Previously, the facility was expected to reach out to the district where a student attended in the past, or in which the facility was located, to request issuance of a diploma. These efforts were often unsuccessful.

New Section 112-a provides that the school district of location—the district in which the facility is located—shall issue a high school diploma to qualified students who receive education in a State-run facility. There is a single exception: when credit-bearing educational programming is directly provided by another school district, that district shall be responsible for issuing the high school diploma. The school district responsible for issuing the diploma is responsible for determining when each student has completed the minimum New York State diploma requirements in section 100.5 of

the Commissioner's regulations while placed with, committed to, under the supervision of, detained, or confined in such facility.

The proposed amendment adds subdivision (pp) to section 100.2 of the Commissioner's regulations, which explains: (1) how to determine the district responsible for the issuance of the diploma, and (2) the responsibilities of both the facility where the student is placed and the diploma-issuing district. Diploma issuing districts will be given credit for diplomas issued under section 112-a of the Education Law in the calculation of district graduation rates.

Additionally, the Department proposes to amend subdivision (y) of section 100.2 to confirm that a student who completes an educational program provided by a facility shall be entitled to enroll in the school district of location for purposes of being issued a diploma.

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the June 2022 meeting of the Board of Regents, effective June 14, 2022. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (non-emergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the October 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the October meeting, would be October 19, 2022, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on September 11, 2022. Therefore, a second emergency action is necessary at the July 2022 meeting, effective September 11, 2022, for the preservation of the general welfare to immediately implement Chapter 754 of the Laws of 2021, as amended by Chapter 26 of the Laws of 2022, to require school districts to issue diplomas to eligible students confined in a residential facility operated by a state department or agency providing educational programming within the district boundary and to ensure the emergency action taken at the June meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the October 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.