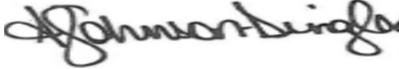




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson-Dingle 
Jason Harmon 

SUBJECT: Proposed Amendment of Section 100.5(d)(7) of the Regulations of the Commissioner of Education Relating to the Special Appeal to Earn Diplomas with a Lower Score on a Regents Examination Taken in the 2021-2022 or 2022-2023 School Year

DATE: June 30, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents approve the proposed amendment of section 100.5(d)(7) of the Regulations of the Commissioner of Education relating to the special appeal to earn diplomas with a lower score on a Regents examination taken in the 2021-2022 or 2022-2023 school year?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

This proposed amendment is submitted to the Full Board for adoption as an emergency rule at its July 2022 meeting. A copy of the proposed rule is included as (Attachment A) and a statement of facts and circumstances justifying 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 May 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 1, 2022, for a 60-day public comment period.

Because the May emergency action will expire on August 14, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the September 2022 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on August 31, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

The COVID-19 pandemic has resulted in the limited administration of Regents examinations since spring 2020. In response, the Department has adopted regulatory amendments exempting students from the diploma, credential, and endorsement requirements related to the passing of such examinations.

In March 2022, the Department determined that Regents examinations can be administered safely and equitably across the State in June and August 2022. The Department believes it is important for schools and districts to offer these exams as one of multiple measures of student achievement in the 2021-2022 school year. Assessing our students at the State level provides a valuable opportunity to determine the extent to which individual students are achieving the NYS learning standards and informs steps the Department can take to foster equity and improve educational opportunities for every student in New York.

While the Department supports the administration of the Regents examinations in June and August of 2022, it recognizes that the COVID-19 pandemic continued to have adverse impacts on students and schools during the 2021-2022 school year. Conditions for teaching and learning have varied significantly across the State depending on how the pandemic has affected individual communities, schools, families, and students.

To reduce the impact of these varied conditions on students and facilitate decision-making about the effects of the pandemic at the school district level, the Department now proposes amendments to section 100.5(d)(7) of the Commissioner's regulations to provide a temporary expansion of the process to file an appeal and graduate with a lower score on a Regents examination taken in the 2021-2022 or 2022-2023 school years, provided certain criteria are met.

Proposed Amendment

The proposed amendment to section 100.5(d)(7) of the Commissioner's regulations provides that students who have passed a course of study leading to a Regents examination and who have scored a 50-64 during the June 2022, August 2022, January 2023, June 2023, or August 2023 examination administration periods may file a special appeal to apply such scores as passing scores toward a diploma. In order to be eligible to appeal, a student must have: (1) taken the Regents examination during the

June 2022, August 2022, January 2023, June 2023, or August 2023 test administration periods; (2) earned a score of 50-64 on the Regents examination that is the subject of the appeal; and (3) attained a course average in the corresponding course of such Regents examination 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.

A student does not have to take advantage of academic assistance provided by the school in the subject tested by the Regents examination, or take the examination a second time, to be eligible. Superintendents may consider the recommendations of a local school standing committee, a recommendation from the student's teacher, or any other evidence presented or collected related to the student's attainment of the learning standards for the course that corresponds to the Regents examination. Appeals granted could be applied toward a Local, Regents, or a Regents with an Advanced designation diploma earned in any subsequent year. A student's parent or person in parental relation may refuse an appeal granted to their child if the parent wishes the student to remain in school and receive additional instruction. Such appeal may be considered again at any time before the student graduates. The outcome of such an appeal may then be appealed to the Commissioner of Education pursuant to Education Law §310.

Additionally, the proposal amends the current requirements for appeals under section 100.5(d)(7) to remove the requirement that a student must be recommended for an exemption to the passing score on the required Regents examination by his or her teacher or department chairperson in the subject area of the examination.

Related Regents Items

March 2016: [Amendment of §100.5\(d\)\(7\) of the Commissioner's Regulations to Expand the Eligible Score Band for the Appeal Process on Regents Examinations Passing Scores](https://www.regents.nysed.gov/common/regents/files/316p12a3.pdf) (https://www.regents.nysed.gov/common/regents/files/316p12a3.pdf)

September 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 804.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/920brca3.pdf) (https://www.regents.nysed.gov/common/regents/files/920brca3.pdf)

April 2021: [Proposed Amendments to Sections 155.17\(f\) and 100.5\(a\) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/4211brca9.pdf) (https://www.regents.nysed.gov/common/regents/files/4211brca9.pdf)

December 2021: [Proposed Amendment to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19, and 151-1.3 and the addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1221brca4.pdf) (https://www.regents.nysed.gov/common/regents/files/1221brca4.pdf)

January 2022: [Proposed Amendment to Section 100.5 of the Regulations of the Commissioner of Education Relating to the January 2022 Administration of Regents Examinations](https://www.regents.nysed.gov/common/regents/files/122p12a2.pdf) (https://www.regents.nysed.gov/common/regents/files/122p12a2.pdf)

March 2022: [Proposed Amendment of Section 100.5 of the Regulations of the Commissioner of Education Relating to the January 2022 Administration of Regents Examinations](https://www.regents.nysed.gov/common/regents/files/322brca7.pdf) (https://www.regents.nysed.gov/common/regents/files/322brca7.pdf)

May 2022: [Proposed Amendment of Section 100.5\(d\)\(7\) of the Regulations of the Commissioner of Education Relating to the Special Appeal to Earn Diplomas with a Lower Score on a Regents Examination Taken in the 2021-2022 or 2022-2023 School Year](https://www.regents.nysed.gov/common/regents/files/522p12a6.pdf) (https://www.regents.nysed.gov/common/regents/files/522p12a6.pdf)

Recommendation

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

VOTED: That section 100.5(d)(7) of the Regulations of the Commissioner of Education be amended, as submitted, effective August 15, 2022, as an emergency action upon a finding of the Board of Regents that such action is necessary for the preservation of the general welfare to immediately provide regulatory flexibility so that students can meet the diploma requirements related to the passing of Regents Examinations administered during the 2021-2022 and 2022-2023 school years, and to ensure that the emergency action taken at the May 2022 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the July 2022 Regents meeting, the emergency rule will become effective on August 15, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the September 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 September 2022 meeting, the proposed amendment will become effective as a permanent rule on September 28, 2022.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(7) Appeals process on Regents examinations passing score to meet Regents diploma requirements.

(i) School districts shall provide unlimited opportunities for all students to retake required Regents examinations to improve their scores.

(a) A student who first enters grade nine in September 2005 or thereafter and who fails, after at least two attempts, to attain a score of 65 or above on a required Regents examination for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

(1) has scored within five points of the 65 passing score 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;

(2) provides evidence that he or she has received academic intervention services by the school in the subject area of the Regents examination under appeal; and

(3) has attained a course average in the subject area of the Regents examination under appeal 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[; and

(4) is recommended for an exemption to the passing score on the required Regents examination under appeal by his or her teacher or department chairperson in the subject area of such examination].

(b) A student who first enters school in the United States (the 50 States and the District of Columbia) in grade 9, 10, 11, or 12 and is otherwise eligible to graduate in January 2015 or thereafter, is identified as an English language learner pursuant to Part 154 of this Title, and fails, after at least two attempts, to attain a score of 65 or above on the required Regents examination in English language arts for graduation, shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no such student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

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

(2) provides evidence that he or she has received academic intervention services by the school in English language arts; and

(3) has attained a course average in English language arts 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[; and

(4) is recommended for an exemption to the passing score on the required Regents examination in English language arts by his or her teacher or department chairperson in English language arts].

(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)] (a)(2)-(3) of this subparagraph.

(d) In considering appeals pursuant to clause (a)-(c) of this subparagraph, superintendents may consider the recommendations of the standing committee, a recommendation from the student's teacher or any other evidence presented or collected related to the student's attainment of the learning standards for the corresponding course of such Regents Exam.

(ii) ...

(iii) ...

(iv) ...

(v) Diplomas.

(a) ...

(b) ...

(c) ...

(d) ...

(vi) Each school shall keep a record of all appeals received and granted and report this information to the State Education Department on a form prescribed by the Commissioner. All school records relating to appeals of scores on required Regents examinations shall be made available for inspection by the State Education Department.

(vii) Special appeal to earn a diploma with a lower score on a Regents Examination taken in the 2021-2022 or 2022-2023 school year.

(a) Any student who meets the following eligibility conditions may appeal to earn a diploma with a lower score on a Regents Exam provided that the student has:

(1) taken the Regents examination during the June 2022, August 2022, January 2023, June 2023, or August 2023 test administration periods;

(2) earned a score of 50-64 on the Regents examination that is the subject of the appeal; and

(3) attained a course average in the corresponding course of such Regents examination 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.

(b) A student need only take the Regents examination under appeal one time during the specific administrations listed above to be eligible to appeal pursuant to this subparagraph.

(c) A student does not need to take advantage of academic assistance provided by the school in the subject tested by the Regents examination under appeal to be eligible to appeal pursuant to this subparagraph.

(d) Such special appeals may be applied towards a local, Regents or Regents with an Advanced Designation diploma.

(e) Special appeals granted pursuant to this subparagraph for lower scores earned during these specific administrations shall not count towards the maximum number of appeals that can be applied to a local, Regents, or Regents with Advanced Designation diploma.

(e) In considering such special appeals, superintendents may consider the recommendations of the standing committee, a recommendation from the student's teacher or any other evidence presented or collected related to the student's attainment of the learning standards for the corresponding course of such Regents examination.

(f) A student's parent or person in parental relation may refuse an appeal granted to the student pursuant to this subparagraph if the parent wishes the student to remain in school and receive additional instruction. Such appeal may be considered again at any time before the student graduates.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The COVID-19 pandemic has resulted in the limited administration of Regents examinations since Spring 2020. In response, the Department has adopted regulatory amendments exempting students from the diploma, credential, and endorsement requirements related to the passing of such examinations.

In March 2022, the Department determined that Regents examinations could be administered safely and equitably across the State in June and August 2022. The Department believes it is important for schools and districts to offer these exams as one of multiple measures of student achievement in the 2021-2022 school year. Assessing our students at the state level provides a valuable opportunity to determine the extent to which individual students are achieving the New York State learning standards and informs steps the Department can take to foster equity to improve the educational opportunities for every student in New York.

While the Department supports the administration of the Regents examinations, students continue to be impacted by the COVID-19 pandemic during the 2021-2022 school year. To reduce the potential impact of the Regents Examinations on a student's ability to earn a diploma, the Department now proposes amendments to section 100.5(d)(7) of the Commissioner's regulations to provide a temporary expansion of the process to file an appeal and graduate with a lower score on a Regents examination taken in the 2021-2022 or 2022-2023 school years provided certain criteria are met.

The proposed amendment to section 100.5(d)(7) of the Commissioner's regulations provides that students who have passed a course of study leading to a

Regents examination and who have scored a 50-64 during the June 2022, August 2022, January, June or August 2023 examination administration periods may file a special appeal to apply such scores as passing scores toward a diploma. In order to be eligible to appeal, a student must have: (1) taken the Regents examination during the June 2022, August 2022, January 2023, June 2023, or August 2023 test administration periods; (2) earned a score of 50-64 on the Regents examination that is the subject of the appeal; and (3) attained a course average in the corresponding course of such Regents examination 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.

A student does not have to take advantage of academic assistance provided by the school in the subject tested by the Regents examination, or take the examination a second time, to be eligible. Superintendents may consider the recommendations of a local school standing committee, a recommendation from the student's teacher, or any other evidence presented or collected related to the student's attainment of the learning standards for the course that corresponds to the Regents examination. Appeals granted could be applied toward a Local, Regents, or Regents with Advanced designation diploma earned in any subsequent year. An unemancipated student's parent or person in parental relation may refuse an appeal granted to their child if the parent wishes the student to remain in school and receive additional instruction. Such appeal may be considered again at any time before the student graduates. The outcome of an such appeal may then be appealed to the Commissioner of Education pursuant to Education Law §310.

Additionally, the proposal amends the current requirements for appeals under section 100.5(d)(7) to remove the requirement that a student must be recommended for an exemption to the passing score on the required Regents examination by his or her teacher or department chairperson in the subject area of the examination.

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 May 2022 meeting of the Board of Regents, effective May 17, 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 September 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2022, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on August 14, 2022. Therefore, a second emergency action is necessary at the July 2022 meeting for the preservation of the general welfare to immediately provide regulatory flexibility so that students can meet the diploma requirements related to the passing of Regents Examinations administered during the 2021-2022 and 2022-2023 school years, and to ensure the emergency action taken at the May 2022 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 September 2022 meeting, which is the first

scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.