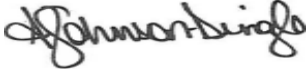
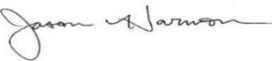





TO: The Honorable Members of the Board of Regents

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: September 1, 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 a permanent rule at its September 2022 meeting. A copy of the proposed rule is included (Attachment A).

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 2022 emergency action was set to expire on August 14, 2022, a second emergency action was necessary at the July 2022 Regents meeting to ensure that the emergency rule remained continuously in effect until it could be permanently adopted. A Notice of Emergency Adoption was published in the State Register on August 31, 2022.

Following publication in the State Register, the Department received comments on the proposed amendment. An Assessment of Public Comment is included (Attachment B). No changes to the proposed amendment are recommended at this time. A Notice of 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

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 was 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 supported 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>)

July 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/722brca14.pdf)
(<https://www.regents.nysed.gov/common/regents/files/722brca14.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 September 28, 2022.

Timetable for Implementation

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.

ASSESSMENT OF PUBLIC COMMENT

Following publication of the Notice of Emergency Adoption and Proposed Rule Making in the State Register on June 1, 2022, the Department received the following comments on the proposed amendment:

1. COMMENT: Two commenters noted that they were “very pleased that the proposed amendment...will open the door to college and career pathways for some students who might otherwise leave high school without a diploma and help more young people to graduate when they have passed Regents-level courses and demonstrated mastery of State standards.” However, they “recommend[ed] a further amendment to strengthen this provision for students with disabilities,” noting that they are “concerned that this emergency regulation is not accessible to many students with disabilities who use a superintendent determination in order to meet high school graduation requirements.” The commenters requested an expansion of the Superintendent Determination option for graduation with a Local Diploma to allow students to meet the eligibility conditions for this option using a Special Appeal granted for a mathematics and/or English language arts Regents Examination score of 50 or 51. One of the commenters noted that “[w]hile students with disabilities...may still be able to graduate with a local diploma in June 2022 pursuant to the recently adopted emergency regulations adding a new ‘special determination’ to graduate with a local diploma (8 NYCRR §100.5(d)(14)), the special determination is only for students graduating in June 2022, so we are concerned about students with disabilities graduating after June 2022.”

DEPARTMENT RESPONSE: The Department appreciates the supportive comments. The Superintendent Determination option for certain students with disabilities for eligibility to graduate with a Local Diploma allows such students to graduate from high school and obtain a Local Diploma without passing the 4+1 exit examinations typically required for a diploma. Students with disabilities are eligible for this pathway if they pass all their required coursework, attempt all required Regents exams, and either:

(1) achieve a minimum score of 55 (or successfully appeal a score between 52 and 54 on both the English language arts and mathematics Regents Examinations required for graduation); or (2) complete the requirements for the New York State career development and occupational studies credential pursuant to section 100.6(b) of the Commissioner's regulations. These comments are outside the scope of the proposed rule as they would require an amendment to the Special Determination option contained in section 100.5(d)(12)(ii) of the Commissioner's regulations. However, as noted by one of the commenters, the Board of Regents adopted emergency regulations at the July 2022 Board of Regents meeting setting forth a new Special Determination option for all students set to graduate in June 2022 that recognizes that there may be some students who, because of a disruption to their educational program due to COVID-19, or for other medical reasons, are unable to demonstrate their proficiency on one or more required Regents Examinations. The Department believes that these regulatory provisions offer sufficient flexibility to all students, enabling them to earn a diploma and exit high school to pursue post-secondary opportunities. Therefore, no changes to the proposed rule are necessary.

2. COMMENT: A commenter noted that while they are "very pleased that this amendment allows more students who have mastered course content to meet

graduation requirements,” they “remain concerned that New York State continues to rely on a complicated framework of exit exam requirements that do little to ensure that students are college or career ready.” The commenter recognizes that “no federal law requires that students pass high-stakes exit exams in order to graduate from high school” and encourages the New York State Education Department and the Board of Regents to “immediately decouple Regents Exam requirements from graduation requirements.”

DEPARTMENT RESPONSE: While this comment is outside the scope of the proposed regulation, the Board of Regents and the Department are currently engaged in a review of high school graduation measures. The goals of this initiative are to explore what it means to obtain a diploma in New York State, what that diploma should represent, and to ensure educational excellence and equity for all students in New York State. No changes to the proposed rule are necessary.

3. COMMENT: A commenter expressed concern that this amendment “is part of a troubling trend of lowered expectations and graduation requirements for NY students.” The commenter states that “[r]ather than lowering graduation requirements, we urge state and local school leaders to invest their record amounts of new federal and state funding to provide extra academic support to students, particularly those struggling to graduate, to ensure they graduate with the skills necessary for success in college and career. It is particularly concerning that this amendment applies to the 2022-23 school year when students will have had ample time to receive extra support from schools to catch up on pandemic-related unfinished learning.” The commenter continues by stating that “[w]hile we support a focus on new graduation pathways and look forward to supporting the Blue Ribbon Commission, the current Regents system is the only

mechanism in place to ensure students are prepared to succeed after high school and it must be maintained until a new system is in place.” The commenter urged the Members of the Board of Regents to vote no to the adoption of the regulatory amendment in September.

DEPARTMENT RESPONSE: The flexibility provided by the proposed amendment is necessary due to widely varied teaching and learning conditions caused by the continued impact of the COVID-19 pandemic. Please see the response to the preceding comment concerning the Department’s ongoing review of graduation measures. The comment regarding the use of state and federal funds is outside the scope of the proposed rule. No changes to the proposed rule are necessary.