



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

TO: VESID Committee

FROM: Rebecca H. Cort

SUBJECT: Proposed Amendment to section 100.5 of the Regulations of the Commissioner of Education Relating to Diploma Requirements for Students with Disabilities

DATE: November 27, 2009

STRATEGIC GOAL: Goals 1 and 2

AUTHORIZATION(S):

### Summary

#### Issue for Approval

Should the Board of Regents adopt the proposed amendment of section 100.5 of the Regulations of the Commissioner of Education to extend the existing Regents Competency Test (RCT) Safety Net to all eligible students with disabilities entering grade 9 prior to the 2011-12 school year?

#### Reason for Consideration

Review of policy.

#### Proposed Handling

The proposed amendment will be submitted to the VESID Committee for approval and the Full Board for Adoption at the December 2009 meeting.

#### Procedural History

The proposed amendment was discussed by the VESID Committee at the October 2009 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on September 30, 2009. The public comment period for the proposed rule closed on November 16, 2009.

## Background Information

Under current regulations, there are two options available to students with disabilities to meet testing requirements for a local high school diploma: the RCT Safety Net and the 55-64 passing score on Regents examinations. The RCT safety net allows students with disabilities who fail one or more of the required Regents examinations (i.e., English, Mathematics, Science, Global History and U.S. History) to meet the testing requirements for the local diploma by passing the corresponding RCT(s) or its equivalent. The RCTs are available to these students until they graduate or until the end of the school year in which they turn 21. The existing RCT safety net is, by regulation, only available to students with disabilities entering grade 9 prior to September 2010.

The 55-64 passing score option provides an additional safety net for all students with disabilities. Under this safety net, students with disabilities may meet the local diploma requirements by achieving a passing score of 55-64 on the five required Regents examinations. The 55-64 passing score option will continue to be available to students with disabilities who entered grade 9 in 2005 and thereafter.

Given the major policy decisions that the Regents will need to make this fall concerning graduation rates, the Department proposes to extend the RCT safety net for an additional year to make it available to all students with disabilities entering grade 9 in the 2010-11 school year. Extending the RCT safety net will allow enough time for the Regents and Department to fully analyze all of the policy issues concerning graduation rates, including additional policy implications for students with disabilities.

Attached is the full text of the proposed terms of the rule and the Assessment of Public Comment. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

## Timetable for Implementation

If adopted at the December Regents meeting, the proposed amendment will become effective January 7, 2010.

## Recommendations

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

VOTED: That section 100.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 7, 2010.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305, 308 and 309

1. Section 100.5 of the Regulations of the Commissioner of Education is amended, effective January 7, 2010, as follows:

§100.5 Diploma requirements.

(a) General requirements for a Regents or a local high school diploma. Except as provided in paragraph (d)(6) of this section, the following general requirements shall apply with respect to a Regents or local high school diploma. Requirements for a diploma apply to students depending upon the year in which they first enter grade nine. A student who takes more than four years to earn a diploma is subject to the requirements that apply to the year that student first entered grade nine. Students who take less than four years to complete their diploma requirements are subject to the provisions of subdivision (e) of this section relating to accelerated graduation.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) State assessment system. (i) Except as otherwise provided in subparagraphs (ii), (iii) and (iv) of this paragraph, all students shall demonstrate attainment of the New York State learning standards:

(a) English:

(1) . . .

(2) . . .

(3) for students with disabilities who first enter grade nine in or after September 1996 and prior to September [2010] 2011 and who fail the Regents comprehensive examination in English, the English requirements for a local diploma may be met by passing the Regents competency test in reading and the Regents competency test in writing or their equivalents. For students with disabilities who first enter grade nine in September 2005 and thereafter, the English requirements for a local diploma may also be met by passing the Regents comprehensive examination in English with a score of 55-64. This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5);

(4) . . .

(b) Mathematics:

(1) . . .

(2) . . .

(3) for students with disabilities who first enter grade nine in or after September 1997 and prior to September [2010] 2011 and who fail a Regents examination in mathematics, the mathematics requirements for a local diploma may be met by passing the Regents competency test in mathematics or its equivalent. For students with disabilities who first enter grade nine in September 2005 and thereafter, the mathematics requirements for a local diploma may also be met by passing [the] a Regents examination in mathematics with a score of 55-64. This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5);

(4) . . .

(c) United States history and government:

(1) . . .

(2) . . .

(3) for students with disabilities who first enter grade nine in or after September 1998 and prior to September [2010] 2011 and who fail the Regents examination in United States history and government, the United States history and government requirements for a local diploma may be met by passing the Regents competency test in United States history and government. For students with disabilities who first enter grade nine in September 2005 and thereafter, the United States history and government requirements for a local diploma may also be met by passing the Regents examination in United States history and government with a score of 55-64. This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5);

(4) . . .

(d) Science:

(1) . . .

(2) . . .

(3) for students with disabilities who first enter grade nine in or after September 1999 and prior to September [2010] 2011 and who fail a Regents examination in science, the science requirements for a local diploma may be met by passing the Regents competency test in science. For students with disabilities who first enter grade nine in [or after] September 2005 and thereafter, the science requirements for a local diploma may also be met by passing [the] a Regents examination in science with a score of 55-64. This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5);

(4) . . .

(e) Global history and geography:

(1) . . .

(2) . . .

(3) for students with disabilities who first enter grade nine in or after September 1998 and prior to September [2010] 2011 and who fail the Regents examination in global history and geography, the global history and geography requirements for a local diploma may be met by passing the Regents competency test in global studies. For students with disabilities who first enter grade nine in [or after] September 2005 and thereafter, the global history and geography requirements for a local diploma may also be met by passing the Regents examination in global history and geography with a score of 55-64. This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5);

(4) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(6) . . .

(7) . . .

(8) . . .

(b) Additional requirements for the Regents diploma. Except as provided in paragraph (d)(6) of this section, the following additional requirements shall apply for a Regents diploma.

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) Types of diplomas. (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .

(vi) For students with disabilities who first enter grade nine in or after September 2001 and prior to September [2010] 2011 and who fail required Regents examinations for graduation but pass Regents [Competency Tests] competency tests in those subjects, as provided for in paragraph (a)(5) of this section, a local diploma may be issued by the local school district. For students with disabilities who first enter grade nine in September 2005 and thereafter, a score by such student of 55-64 may be considered as a passing score on any Regents examination required for graduation, and in such event and subject to the requirements of paragraph (c)(6) of this section, the school may issue a local diploma to such student. This provision shall apply only to students with disabilities who are entitled to attend school pursuant to Education Law, section 3202 or 4402(5).

- (vii) . . .
- (viii) . . .

- (ix) . . . .
- (x) . . . .
- (c) . . . .
- (d) . . . .
- (e) . . . .
- (f) . . . .

PROPOSED AMENDMENT OF SECTION 100.5 OF THE REGULATIONS OF THE  
COMMISSIONER OF EDUCATION PURSUANT TO SECTIONS 101, 207, 208, 209,  
305, 308 AND 309 OF THE EDUCATION LAW, RELATING TO DIPLOMA  
REQUIREMENTS FOR STUDENTS WITH DISABILITIES

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on September 30, 2009, the State Education Department (SED) received the following comments on the proposed amendment. Other comments received are unrelated to the proposed rule and are not included in the Assessment of Public Comment.

COMMENT:

Of the 75 comments received, over 93 percent supported the proposed amendment to extend the existing Regents Competency Test (RCT) safety net for an additional year. Reasons for support included: the safety net levels the playing field for all students; the safety net allows students with disabilities the opportunity to meet New York State (NYS) learning standards and successfully graduate; safety net provisions have led to an increase in the proportion of students with disabilities earning local and

Regents diplomas and a reduction of individualized education program (IEP) diploma recipients; the safety net results in a meaningful diploma that allows students with disabilities to graduate with their peers and access post-secondary opportunities; eliminating the safety net would limit the options of students with disabilities since IEP certificates are not widely accepted by employers, colleges, the military and some vocational training programs; the RCTs are invaluable to students who understand content area material but have difficulty with the reading level of Regents exams; there are students who can complete the same course of study but are unable to fulfill the requirements for a Regents diploma even with extensive accommodations and specially designed instruction; not all kids fit into the “box” of a Regents’ exam curriculum; the local diploma represents a bridge between the IEP and Regents diplomas that is logical, reasonable, appropriate and proven effective; the local diploma option allows students with academic limitations in one or more subjects to achieve beyond an IEP diploma; failure to extend the safety net would be a step backward relative to issues of equity for students with disabilities; without an extension, NYS’s drop out rate would likely increase or plateau; with no safety net/local diploma option, more students may be tracked toward an IEP diploma and the number of students graduating with an IEP diploma would increase; without the safety net provisions, there will be an increased need for remedial support to assist students in meeting the Regents exam requirements; and it will cost the state more to design programs to support students who do not graduate over the course of their lifetime.

**DEPARTMENT RESPONSE:**

The comments are supportive in nature and no response is necessary.

**COMMENT:**

Individuals that supported extending the safety net an additional year also made a number of recommendations regarding graduation requirements. RCTs are lower level assessments not aligned with the NYS learning standards and should be replaced with an alternate assessment using modified academic achievement standards, as permitted by federal accountability requirements, which provides a better measure of student performance consistent with the standards. Extend the RCT safety net but immediately engage in the development of a long range solution to the issue. Use the one year extension to expand graduation pathways for students with disabilities. Allow districts more flexibility to meet students' unique needs and encourage local district decision-making rather than mandating uniformity. Strengthen general education for all students by providing schools with flexibility to engage students in rigorous and relevant curriculum enabling multiple pathways to meet graduation requirements. Develop diplomas and/or credentials that reflect achievement and are accepted universally by colleges and employers. Develop a local/vocational diploma option for students with different abilities to prepare them for life and career while developing practical, relevant knowledge and skills in core academic areas.

**DEPARTMENT RESPONSE:**

These comments will be taken into consideration as the Regents continue their discussion during the 2009-10 school year of critical policy issues concerning graduation requirements, including alternative proposals for the RCT safety net and whether SED should pursue development of an alternative exiting credential that specifically documents a student's academic and career skills.

**COMMENT:**

Use of the RCTs should be extended indefinitely or not expire at all. Make the safety net permanent. Consider extending the safety net longer than one year to give the Regents and SED time to: develop an alternative to the Regents and IEP diploma options; analyze the policy issues concerning graduation rates and the implications for students with disabilities; allow for a proper gradual phase-out in high school; and assess the implementation of the Response to Intervention process in schools.

DEPARTMENT RESPONSE:

These comments will be taken into consideration as the Regents continue their discussion during the 2009-10 school year of critical policy issues concerning graduation requirements, including alternative proposals for the safety net. While the proposed amendment would only extend the RCT safety net for one additional year, the Regents could adopt a longer extension of the safety net at a later date.

COMMENT:

A few commenters opposed the extension of the current safety net indicating that: the RCTs do not provide true assessment of student achievement; the RCTs have not been upgraded, and are not aligned with curriculum and instruction; the tests are sealed and do not allow teachers and students to determine areas of remediation; past tests are not publicly available to allow a meaningful review program; component retesting of the RCTs is not available; and there is no appeal process for the RCTs. Graduation rate data from the past 13 years, while the safety net has been in place, demonstrate a need for revision not extension, as there has been no significant progress for students with disabilities, English language learners (ELL), Black and Latino students; and the significant gaps between the graduation rates of white students without disabilities and those of Black, Latino, ELL and students with disabilities

subgroups raises the need for a safety net for all students. Instead of extending the safety net commenters recommended: creating a Regents diploma based on Career and Development Occupational studies with multiple pathways to make it accessible for all students; using only the current Regents exams as an assessment tool, but in the long term, recommended that SED consider limiting the number of Regents exams required for a local diploma; using a minimum combined score or average of all Regents examinations, and using a minimum combined score or average graduation requirement to include class attendance, course work and Regents examination scores; using “portfolio review” as an authentic method of assessment; revising graduation requirements/diploma options to ensure universal, accessible, unified and safe graduation requirements for all students; and developing alternative pathways to graduation for students who have the required credits and course sequences but are unable to pass all the Regents exams.

**DEPARTMENT RESPONSE:**

Extending the RCT safety net for an additional year will allow the Regents and SED enough time to fully analyze all of the policy issues concerning graduation rates, including additional policy implications for students with disabilities. The Regents will be discussing alternative proposals for the RCT safety net for adoption prior to the end of the 2009-10 school year.

**COMMENT:**

The RCT safety net for a local diploma option should be made available to all students in grades 9-12, as students that are unable to satisfy the demands of a Regents diploma may end up dropping out or pursuing a high school equivalency diploma. Not allowing general education students to work towards a local diploma is

unacceptable and discriminatory. The legality of having a safety net only for students with disabilities is questioned since the proposed extension will result in two NYS diplomas only for students with disabilities, which would be discriminatory identification markers for potential employers, colleges and the military. Unless the safety net includes all students, the local diploma will be as meaningless as an IEP diploma.

DEPARTMENT RESPONSE:

The proposed amendment extends the RCT safety net only for students with disabilities. However, these comments will be taken into consideration as the Regents continue their discussion during the 2009-10 school year of critical policy issues concerning graduation requirements, including whether or not to continue the phase-out of the local diploma for general education students and alternative proposals for the safety net.

COMMENT:

If the safety net is eliminated, SED will need to rethink cohort requirements for students with disabilities and increase the acceptable number of students earning an IEP diploma.

DEPARTMENT RESPONSE:

This comment will be taken into consideration as the Regents continue their discussion during the 2009-10 school year of critical policy issues concerning graduation requirements, including the alternative proposals for the safety net. However, the current cohort definition is consistent with federal requirements.

COMMENT:

Clarify if SED is still planning on terminating the RCT and, if so, when the RCT will no longer be accepted by students with disabilities and the date for its termination.

DEPARTMENT RESPONSE:

SED is proposing to extend the RCT safety net for an additional year to make it available to students with disabilities entering grade 9 in the 2010-11 school year. The Regents will be discussing alternative proposals for the safety net for adoption prior to the end of the 2009-10 school year.

COMMENT:

Work with stakeholders to develop a new diploma system which offer diplomas/credentials that reflect achievement and are accepted by colleges and employers. Use parent centers to educate parents on the graduation requirements and to collect input from stakeholders.

DEPARTMENT RESPONSE:

SED takes the input of stakeholders very seriously in its policy making process and these comments will be taken into consideration as the Regents continue their discussion during the 2009-10 school year of critical policy issues concerning graduation requirements.

COMMENT:

State mandates regarding services to students with disabilities far exceed federal requirements (e.g. class size mandates) and should be more closely aligned with federal law and regulation.

DEPARTMENT RESPONSE:

The comments are beyond the scope of the proposed regulations.

COMMENT:

Recommend that the State develop alternate assessments for students with severe orthopedic and communication disorders.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed regulations.

COMMENT:

Conduct independent research to determine the impact of NYS' two track education system on students over the past 13 years and possible educational recovery programs that could be developed for those that were not successful, and the long-term impact cost-benefit of extended high school to 5 or 6 years.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed regulations.