



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

**TO:** Full Board  
**FROM:** John B. King, Jr.  
**SUBJECT:** Amendment to sections 100.1, 100.2, 100.4 and 100.5 of the Regulations of the Commissioner of Education Relating to the Elimination of Certain State Assessments  
**DATE:** December 1, 2010  
**STRATEGIC GOAL:** Goals 1 and 2  
**AUTHORIZATION(S):**

### **SUMMARY**

#### **Issue for Discussion**

Should the Board of Regents amend sections 100.1, 100.2, 100.4 and 100.5 of the Regulations of the Commissioner of Education to eliminate certain State assessment requirements beginning in the 2010-2011 school year and further, to provide that students continue to meet State learning standards and earn diploma credit despite the elimination of these examinations?

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

The proposed amendment implements recent decisions made by the Board of Regents to eliminate certain State assessments as a cost-saving measure in the administration of State assessments and ensures that students have continued opportunity to earn diploma credit in Languages other than English prior to grade 9 and meet State learning standards despite the elimination of these examinations.

#### **Proposed Handling**

The proposed amendment will be presented to the Full Board for permanent adoption at the December 2010 Regents meeting.

#### **Procedural History**

A Notice of Proposed Rule Making was published in the State Registrar on October 6, 2010. Supporting materials for the proposed amendment are available from the Secretary to the Board of Regents.

## Background Information

At the June 2010 Regents meeting, the Board of Regents approved several deficit-reducing actions that impacted the New York State assessment system. Specifically, the Board of Regents approved the elimination of Checkpoint A Second Language Proficiency examinations (SLP) for languages other than English, Checkpoint B Regents comprehensive examinations in Hebrew, Latin and German, and the elementary and intermediate assessments in social studies. To ensure that students continue to meet State learning standards and earn diploma credit despite the elimination of these examinations, the proposed amendment is needed.

Under existing regulations, in order to receive one unit of credit in a language other than English prior to grade 9, students are required to complete two units of study and pass an SLP examination. This amendment will ensure students have continued opportunity to earn one unit of credit in a language other than English prior to grade 9 despite the elimination of SLP examinations by requiring students to successfully complete two units of study and pass a locally developed examination in lieu of such SLP exam. This locally developed test will be required to align with Checkpoint A learning standards for languages other than English.

The proposed amendment is also carefully drafted to ensure that students entering grade 9 may receive diploma credit for SLP examinations successfully completed prior to July 1 of the 2010-2011 school year, as may be applicable.

The proposed amendment will also ensure students continue to meet State learning standards in social studies despite the elimination of the elementary and intermediate State assessments in social studies. Under existing regulations, students are required to take a State assessment in social studies in grade 5 and grade 8. Additionally, schools are required to provide academic intervention services (AIS) to students when such students score below the State designated performance level on one or more of the State assessments in English, math, social studies or science, or when they are determined through a district-developed or district-adopted procedure to be at risk of not achieving State standards in such core subjects. Given the elimination of State assessments in social studies, the proposed amendment provides clarification and assurance that schools will continue to be required to provide AIS services to students when they are determined to be at risk of not achieving State learning standards in social studies through a district-developed or district-adopted procedure.

The proposed amendment is also carefully drafted to provide that students who scored below the State designated performance level on a State assessment in social studies administered prior to July 1 of the 2010-2011 school year will continue to receive AIS services, as may be applicable.

Lastly, the proposed amendment ensures that students will have continued opportunity to earn a Regents diploma with an advanced designation despite the elimination of the Regents comprehensive examinations in Hebrew, Latin and German. Under existing regulations, one way in which a student can earn a Regents diploma with an advanced designation is to complete 3 units of credit in a language other than English and pass the comprehensive Regents examination in that language. The

proposed amendment provides that where a Regents comprehensive examination in such language is not available, the students may pass a locally developed examination in such language to meet the assessment requirement. This locally developed test will be required to align with Checkpoint B learning standards for languages other than English. Therefore, this amendment will ensure that students who successfully complete units of study in Hebrew, Latin, and German will be able to meet the requirements to earn a Regents diploma with an advanced designation.

### Recommendation

VOTED: That subdivision (j) of section 100.1, subparagraph (iv) of paragraph (1) of subdivision (d) of section 100.2, paragraph (3) of subdivision (d) of section 100.2, paragraph (4) of subdivision (d) of section 100.2, paragraph (5) of subdivision (d) of section 100.2, paragraph (5) of subdivision (m) of section 100.2, paragraph (2) of subdivision (ee) of section 100.2, paragraph (3) of subdivision (ee) of section 100.2, paragraph (2) of subdivision (b) of section 100.4, paragraph (4) of subdivision (c) of section 100.4, paragraph (2) of subdivision (d) of section 100.4, paragraph (3) of subdivision (d) of section 100.4, paragraph (3) of subdivision (e) of section 100.4, clause (d) of subparagraph (i) of paragraph (2) of subdivision (h) of section 100.4, clause (d) of subparagraph (ii) of paragraph (2) of subdivision (h) of section 100.4, clause (d) of subparagraph (iii) of paragraph (2) of subdivision (h) of section 100.4, clause (g) of subparagraph (iv) of paragraph (7) of subdivision (b) of section 100.5, clause (c) of subparagraph (v) of paragraph (7) of subdivision (b) of section 100.5, and clause (g) of subparagraph (v) of paragraph (1) of subdivision (d) of section 100.5 of Part 100 of the Commissioner's Regulations be amended, as submitted, as a permanent rule, effective January 5, 2011.

### Timetable for Implementation

If this rule is permanently adopted at the December 2010 Regents meeting, it will take effect on January 5, 2011.

Attachment

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 305, 308, 309 and 3204 of the Education Law.

1. Subdivision (j) of section 100.1 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(j) Second language proficiency examinations means State tests of language skills in modern or classical languages other than English or Native American languages that were administered prior to July 1 of the 2010-2011 school year.

2. Subparagraph (iv) of paragraph (1) of subdivision (d) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(iv) A student may be exempted from such unit of study requirements in a language other than English by passing an approved second language proficiency examination [when such an examination is available] as defined in 100.1(j) of this Part.

3. Paragraph (3) of subdivision (d) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(3) Beginning in May 1989, all students entering grade nine prior to the 2001-2002 school year who [pass] passed an approved second language proficiency examination shall be awarded the first unit of credit in a language other than English, unless the student has already been awarded such first unit of credit in a language other than English, as set forth in section 100.1(b) of this Part.

4. Paragraph (4) of subdivision (d) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(4) Public school students first entering grade nine in the 2001-2002 school year and thereafter shall earn at least one unit of credit in a language other than English, as

defined in section 100.1(b) of this Part, in order to complete the language other than English requirement for a high school diploma. Students may earn one unit of credit by [passing] having passed the State second language proficiency assessment, when available. [In those languages for which no State proficiency assessment is available, a locally developed test, which is determined to be equivalent to the State proficiency assessment pursuant to subdivision (f) of this section, may be administered. At least six months prior to the administration of such test, the proposed test booklet, answer sheet, scoring key, directions and all other auxiliary materials shall be provided to the commissioner for approval, and shall be accompanied by such empirical evidence of the reliability of the test scores and of the comparability of the proposed test to corresponding State assessments with respect to content and difficulty, as is available].

5. Paragraph (5) of subdivision (d) of section 100.2 of the Regulations of the Commissioner of Education is added, effective January 5, 2011, as follows:

(5) Beginning in the 2010-2011 school year, students enrolled in grades eight or earlier may be granted one unit of credit by successfully completing two units of study in a language other than English and passing a locally developed test, both of which are aligned to the Checkpoint A learning standards for languages other than English, which has been approved for high school credit by the public school district superintendent or the chief administrative officer of a registered charter or nonpublic high school.

6. Paragraph (5) of subdivision (m) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(5) The comprehensive assessment report for each nonpublic school will include the following information, for each school building, for the three school years immediately preceding the school year in which the report is issued:

(i) student test data on the elementary and middle level English language arts and mathematics assessments in the New York State Testing Program, the Regents competency tests, [the program evaluation tests,] all Regents examinations, [the introduction to occupations examinations,]

the second language proficiency examinations as defined in this Part;

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

The chief administrative officer of each nonpublic school shall initiate measures designed to improve student results wherever it is warranted. The chief administrative officer of each nonpublic school shall be responsible for making the comprehensive assessment report accessible to parents.

7. Paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(2) Requirements for providing academic intervention services in grade four to grade eight. Schools shall provide academic intervention services when students:

(i) score below:

(a) the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics [, social studies] or science; and/or

(b) the State designated performance level on a State elementary assessment in social studies administered prior to the 2010-2011 school year; provided that beginning in the 2010-2011 school year, at which time a State elementary assessment in social

studies shall no longer be administered, a school shall provide academic intervention services when students are determined to be at risk of not achieving State learning standards in social studies pursuant to clause (iii) of this paragraph;

(ii) are limited English proficient (LEP) and are determined, through a district-developed or district-adopted procedure uniformly applied to LEP students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title; or

(iii) are determined, through a district-developed or district adopted procedure uniformly applied to be a risk of not achieving State standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

8. Paragraph (3) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(3) Requirements for providing academic intervention services in grade nine to grade twelve. Schools shall provide academic intervention services when students:

(i) score below:

(a) the State designated performance level on one or more of the State intermediate assessments in English language arts, mathematics [, social studies] or science [, or score below the State designated performance level on any one of the State examinations required for graduation]; and/or

(b) the State designated performance level on a State intermediate assessment in social studies administered prior to the 2010-2011 school year; provided that beginning in the 2010-2011 school year, at which time the State intermediate assessment in social studies shall no longer be administered, a school shall provide academic intervention services when students are determined to be at risk of not achieving State learning standards in social studies pursuant to clause (iii) of this paragraph; and/or

(c) the State designated performance level on any one of the State examinations in English language arts, mathematics, social studies or science that are required for graduation.

(ii) are limited English proficient (LEP) and are determined, through a district-developed or district-adopted procedure uniformly applied to LEP students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title; or

(iii) are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

9. Paragraph (2) of subdivision (b) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:



(2) Required assessments. (i) Except as otherwise provided in subparagraphs (iv) and (v) of this paragraph, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy:

(ii) . . .

(iii) for schools years prior to July 1 of the 2010-2011 school year, all students in grade five shall take the social studies elementary assessment;

(iv) . . .

(v) . . .

(vi) . . .

10. Paragraph (4) of subdivision (c) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(4) The unit of study requirements for languages other than English in this subdivision may be initiated in any grade prior to grade eight, pursuant to section 100.2(d)(2) of this Part, provided that in public schools such subject shall be taught by teachers certified in that area.

(i) To receive one unit of high school credit for languages other than English prior to grade nine, pursuant to section 100.2(d) of this Part a student must take and pass the second language proficiency examination when available, or beginning in the 2010-2011 school year, successfully complete two units of study in a language other than English and pass a locally developed test, both of which are aligned to the Checkpoint A learning standards for languages other than English, which has been approved for high school credit by the public school district superintendent or chief administrative officer of a registered charter or nonpublic high school.

11. Paragraph (2) of subdivision (d) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(2) Credit may be awarded for an accelerated course only when at least one of the following conditions has been met:

(i) . . .

(ii) the student passes the course and the associated State proficiency examination or Regents examination, when [where] available. The credit must be accepted as a transfer credit by all registered New York State high schools; or

(iii) in cases where no [State proficiency examination or other] appropriate state assessment is available, the student passes a course in the middle, junior high or intermediate school [which] that has been approved for high school credit by the public school district superintendent(s), or his or her designee(s), of the district(s) where the middle, junior high or intermediate school and the high school are located.

12. Paragraph (3) of subdivision (d) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(3) Such opportunity shall be provided subject to the following conditions:

(i) . . .

(ii) A student shall be awarded high school credit for such courses only if such student passes a Regents examination, a second language proficiency examination when available, or a career and technical education proficiency examination, or, if no such examinations are available, a locally developed examination [which] that establishes student performance at a high school level as determined by the principal.

13. Paragraph (3) of subdivision (e) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(3) The program evaluation test in social studies in grade eight, beginning in May 1989. Beginning with the school year 2000-2001 through the 2009-2010 school year, the social studies intermediate assessment shall replace the program evaluation test and shall be administered in grade eight.

14. Clause (d) of subparagraph (i) of paragraph (2) of subdivision (h) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(d) Compliance requirements. A Model A middle-level education program shall meet the requirements of this section and all other applicable sections of this Title, and shall also meet the following requirements:

(1) districts shall administer required middle grade State assessments in English language arts, mathematics [, social studies] and science;

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

15. Clause (d) of subparagraph (ii) of paragraph (2) of subdivision (h) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(d) Compliance requirements. A Model B middle-level education program shall meet the requirements of this section and all other applicable sections of this Title, except that the prescribed time requirements for units of study in courses where there are no required State assessments as set forth in paragraph (c)(1) of this section shall

be met subject to such modifications as set forth in the approved application and plan, and shall also meet the following design principles:

(1) districts shall administer required middle grade State assessments in English language arts, mathematics [, social studies] and science;

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

(e) . . .

16. Clause (d) of subparagraph (iii) of paragraph (2) of subdivision (h) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(d) Compliance requirements. A Model C middle-level education program shall meet the requirements of this section and all other applicable sections of this Title, subject to any modifications of such requirements as provided for in the district's approved application and plan, and shall also meet the following design principles:

(1) districts shall administer required middle grade State assessments in English language arts, mathematics, [social studies] and science;

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

17. Clause (g) of subparagraph (iv) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(g) Languages other than English, one unit of commencement-level credit [which can be earned by passing the State second language proficiency examination pursuant to section 100.2(d) of this Title]. A student identified as having a disability which adversely affects the ability to learn a language may be excused from the language other than English requirement set forth in this subparagraph if such student's individualized education program indicates that such requirement is not appropriate to the student's special educational needs. Such a student need not have a sequence in a language other than English but must meet the requirements for the total number of credits required for a diploma.

18. Clause (c) of subparagraph (v) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(c) two additional units in a language other than English for a total of three units and the Regents comprehensive assessment in that language when available. In those languages for which no Regents comprehensive assessment is available, a locally developed test, which is aligned to the Checkpoint B learning standards for languages other than English, may be administered. A student identified as having a disability [which] that adversely affects the ability to learn a language may be excused from the language other than English requirement set forth in this subparagraph if such student's individualized education program indicates that such requirement is not appropriate to the student's special educational needs. Such a student need not have a sequence in a language other than English but must meet the requirements for the total number of

credits required for a diploma. Students completing a five-unit sequence in career and technical education or the arts (visual arts, music, dance, and theatre) are not required to complete the additional two units of the language other than English requirement for the Regents diploma with advanced designation but must still meet the requirements for the total number of units of credit.

19. Clause (g) of subparagraph (v) of paragraph (1) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective January 5, 2011, as follows:

(g) A student who, prior to the commencement of the 2010 - 2011 school year, earns a score of at least 85 on the State second language proficiency examination in accordance with 100.2(d)(3) and meets the requirements of subparagraphs (i), (iii) and (iv) of this paragraph shall receive one unit of credit.