

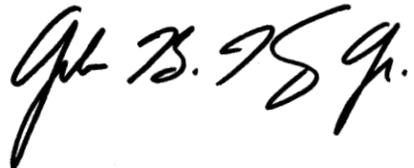


**TO:** The Honorable the Members of the Board of Regents

**FROM:** Cosimo Tangorra, Jr. 

**SUBJECT:** Graduation Requirements for English Language Learners

**DATE:** October 21, 2014

**AUTHORIZATION(S):**  

### **SUMMARY**

#### **Issue for Decision**

Should the Board of Regents amend section 100.5(d)(7) of the Commissioner's Regulations to allow English Language Learners (ELLs) who enter the United States in 9<sup>th</sup> grade or above in the 2010-11 school year and thereafter to graduate with a Local Diploma pursuant to an appeal process if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score?

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

Implementation of Policy.

#### **Proposed Handling**

A prior version of the proposed amendment was presented at yesterday's P-12 Education Committee meeting and recommended by the Committee for adoption as an emergency action at the October 2014 Regents meeting. However, nonsubstantial revisions were subsequently made to the prior version and the attached revised proposed amendment is now being presented to the Full Board for action in substitution of the Committee's recommendation. A copy of the proposed amendment and a Statement of the Facts and Circumstances Which Necessitate Emergency Action are

attached. Supporting materials are available upon request from the Secretary to the Board of Regents. It is anticipated that a Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on November 5, 2014.

### **Procedural History**

At its December 2011 meeting, the Board of Regents initiated a three-year process by which Department staff engaged with the field to develop recommendations for consideration by the Board of Regents regarding how Commissioner's Regulations Part 154 should be revised or enhanced to better serve the needs of ELL students and to ensure stronger outcomes for this student population.

At the September 2014 Regents meeting, the Board of Regents amended Part 154 of the Commissioner's Regulations as a result of this three-year process, and directed Department staff to propose amendments to Commissioner's Regulations Part 100 to allow additional graduation options for ELLs who enter the United States in 9<sup>th</sup> grade or above.

Consistent with discussions conducted by the Board of Regents at their meetings in April, May, and June 2014, Department staff is recommending that the Board of Regents take emergency action to provide late arriving English language learners an additional option to meet the graduation assessment requirements in English language arts.

### **Background Information**

Over the past 10 years, New York State ELL student enrollment has increased by 20%. According to the U.S. Department of Education, ELL student enrollment has increased by 18% nationally. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. Their linguistic diversity makes up over 140 languages spoken in New York State; 61.5% for whom Spanish is the home language. In addition, 41.2% were born in another country.

Throughout the process that resulted in the Regents taking action to amend Part 154, stakeholders raised concerns regarding the graduation rate of ELLs. While former ELLs generally achieve graduation rates almost equal to that of all non-ELLs, the graduation rate of current ELLs lags well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of the ELLs who are not graduating on time first entered school in the United States in high school. Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process.

Commissioners Regulation Part 100 currently allows for all students, ELLs and

non-ELLs, to be eligible to apply for the Local Diploma via appeal if they:

- Score 65+ on three Regents exams; AND
- Score 62-64 on two Regents exams.

In addition, this proposal would create the following additional ELL-specific pathway to graduation for qualifying students. ELL students would remain eligible for the current appeals process as well.

### **Summary of Proposed Amendments**

Under the proposed amendment, ELLs who entered the United States in 9<sup>th</sup> grade or above in the 2010-11 school year and thereafter, and who score between 55-61 on the Regents Exam in English after two attempts at attaining a score of 65 or above,<sup>1</sup> are also eligible to receive the Local Diploma via appeal if they:

- Successfully appeal the Regents Exam in English AND score at least 65 on each of the four remaining required Regents exams; OR
- Successfully appeal the Regents Exam in English AND score at least 65 on three other required Regents exams AND score between 62 to 64 on one other required Regents exam and successfully appeal that exam.

To be eligible to appeal a score on the Regents Exam in English, ELLs would also have to meet these conditions:

- The student has received academic intervention services in English language arts; AND
- The student has an attendance rate of at least 95 percent for the school year during which the student last took the Regents examination in English; AND
- The student 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
- The student is recommended for an exemption to the passing score on the Regents examination by his or her teacher or department chairperson.

Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other Regents appeals.

### **Recommendation**

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<sup>1</sup> Students who score between 62-64 on a Regents exam already are eligible under current regulations to appeal that result.

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

VOTED: That paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education be amended as submitted, effective October 21, 2014 upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately create an additional English Language Learner (ELL) specific pathway to graduation for qualifying students who are otherwise eligible to graduate but for their score on the English Language Arts (ELA) Regents examination, so that school districts and such students are given sufficient notice to prepare for and timely implement such graduation pathway in the 2014-15 school year.

### **Timetable for Implementation**

If adopted at the October Regents meeting, the emergency rule will take effect on October 21, 2014 for a ninety day period. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the January 12-13, 2015 Regents meeting. If adopted at the January meeting, the permanent rule would take effect on January 28, 2015.

## AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305, 308, 309 and 3204

Paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective October 21, 2014, 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:

[(a)] (1) has scored within three 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;

[(b)] (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;

[(c)] (3) has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents examination under appeal;

[(d)] (4) 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

[(e)] (5) 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 nine, ten, eleven or twelve in September 2010 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 Regents comprehensive examination in English or the Regents examination in English language arts (common core), as required by this section 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 and 61 on the required Regents comprehensive examination in English or Regents examination in English language arts (common core) under appeal;

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

(3) has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents comprehensive examination in English or Regents examination in English language arts (common core);

(4) 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

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

[(ii)] (c) An appeal may be initiated by the student, the student's parent or guardian, or the student's teacher, and shall be submitted in a form prescribed by the commissioner to the student's school principal.

[(iii)] (d) The school principal shall chair a standing committee comprised of three teachers (not to include the student's teacher in the subject area of the Regents examination under appeal) and two school administrators (one of whom shall be the school principal). The standing committee shall review an appeal within 10 school days of its receipt and make a recommendation to the school superintendent or, in the City School District of the City of New York, to the chancellor of the city school district or his/her designee, to accept or deny the appeal. The standing committee may interview the teacher or department chairperson who recommended the appeal, and may also interview the student making the appeal to determine that he or she has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(iv)] (e) The school superintendent or, in the City School District of the City of New York, the chancellor of the city school district or his/her designee, shall make a

final determination to accept or deny the appeal. The school superintendent or chancellor or chancellor's designee may interview the student making the appeal to determine that the student has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(v)] (f) Diplomas.

(1) A student whose appeal is accepted for one required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations, shall earn a Regents diploma.

(2) A student whose appeal is accepted for two required Regents examinations pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regent examinations, shall earn a local diploma.

(3) A student whose appeal is accepted for the required Regents comprehensive examination in English or Regents examination in English language arts (common core) pursuant to clause (b) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations, shall earn a local diploma.

(4) A student whose appeal is accepted for the required Regents comprehensive examination in English or Regents examination in English language arts (common core) pursuant to clause (b) of subparagraph (i) of this paragraph and for one other required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining

required Regents examinations shall earn a local diploma.

[(vi)] (g) 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.

## **8 NYCRR §100.5(d)(7)**

### STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment would create an additional English Language Learner (ELL) specific pathway to graduation for qualifying ELL students who are otherwise eligible to graduate but for their score on the English Language Arts (ELA) Regents examination. Under the proposed amendment, ELLs who entered the United States in 9<sup>th</sup> grade or above in the 2010-11 school year and thereafter, and who score between 55-61 on the Regents Exam in English after two attempts at attaining a score of 65 or above, are also eligible to receive a local diploma via an appeal process if they:

- Successfully appeal the Regents Exam in English AND score at least 65 on each of the four remaining required Regents exams; OR
- Successfully appeal the Regents Exam in English AND score at least 65 on three other required Regents exams AND score between 62 to 64 on one other required Regents exam and successfully appeal that exam.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the January 12-13, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the January meeting, would be January 28, 2015, the date a Notice of Adoption would be published

in the State Register. However, in order to provide for implementation in the 2014-2015 school year, school districts and affected students need to know now what the criteria will be for obtaining a local diploma under the new ELL specific pathway to graduation.

Emergency action is therefore necessary for the preservation of the general welfare to immediately create an additional ELL specific pathway to graduation for qualifying students who are otherwise eligible to graduate but for their score on the English Language Arts (ELA) Regents examination, so that school districts and such students are given sufficient notice to prepare for and timely implement such graduation pathway in the 2014-2015 school year.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the January 12-13, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.