



**TO:** P-12 Education Committee  
**FROM:** Angelica Infante-Green *A. Infante*  
**SUBJECT:** Amendment to Regulations regarding Graduation Requirements to Extend the Appeal Process to include Appeal of Scores for the Safety Net Local Diploma for Students with Disabilities

**DATE:** December 7, 2015

**AUTHORIZATION(S):**

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## SUMMARY

### Issue for Decision

Should the Board of Regents adopt the proposed amendment of section 100.5(d)(7) of the Commissioner's Regulations to extend the ability to graduate with a Local Diploma via appeal of a score of 55 to students with disabilities who meet all other conditions for appeal and are otherwise eligible to graduate in January 2016 and thereafter?

### Reason(s) for Consideration

Implementation of Policy.

### Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for recommendation and to the full Board for action at the December 2015 Regents meeting.

### Procedural History

The proposed amendment was discussed by the P-12 Education Committee at the September 2015 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on October 7, 2015. Public comment on the proposed

amendment was accepted for 45 days from the date of the publication in the State Register (i.e., until November 23, 2015).

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

### **Background Information**

At the September 2015 meeting, the Board of Regents discussed proposed regulations to extend the appeal process in section 100.5 of the Regulations of the Commissioner of Education to include appeal of scores for the safety net local diploma for students with disabilities. Under the proposed amendment, students with disabilities (except for students who make use of the compensatory option to obtain a Local Diploma) who are otherwise eligible to graduate in January 2016 or thereafter, and who score up to three points below a score of 55 on a Regents exam after at least two attempts, would be eligible to receive the Local Diploma via appeal. To be eligible to appeal a score of less than 55, the student must meet all other conditions of appeal as follows:

1. 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;
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;
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
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.

Appeals by students with disabilities of a score of less than 55 under the proposed amendment would be reviewed by the same committee that reviews all other Regents appeals.

Since publication of a Notice of Proposed Rule Making in the State Register on October 7, 2015, the Department received 37 comments on the proposed amendment, including comments from school district administrators, organizations representing public schools, parents and family members of students with disabilities, school personnel, special education advocates/advocacy organizations, and others. The majority of commenters supported the proposed amendment, indicating that it strengthens diploma safety net options; is equitable with the appeal process for Regents examination scores of 62-64; recognizes the challenges for many students with disabilities in demonstrating their knowledge and skills through standardized Regents examinations; assists students struggling to pass Regents examinations to obtain a high school diploma; and affords students the opportunity to pursue postsecondary educational opportunities and career options.

A few commenters expressed concerns in general that students with disabilities are required to pass Regents exams if they are not getting a Regents diploma. Some recommended reducing the attendance requirement for the appeal of a score of 55 from 95 to 90 percent; permitting students to use the compensatory safety net option in conjunction with the option to appeal a score of 55; and allowing an appeal of a score within five rather than three points of a 55. Others recommended exploring other options for students to demonstrate mastery (e.g. hands-on performance-based assessments and project-based assessments).

### **Recommendation**

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

VOTED: That clause (c) of subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education be added, as submitted, effective December 30, 2015.

### **Timetable for Implementation**

If adopted at the December Regents meeting, the proposed amendment will become effective December 30, 2015.

Attachments

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended by adding a new clause (c), effective December 30, 2015, to read as follows:

(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 (2) - (5) of clause (a) of this subparagraph.

Notwithstanding the provisions of this clause, a student with a disability who makes use of the compensatory option in clause (c) of subparagraph (vi) of paragraph (7) of subdivision (b) of this section to obtain a local diploma may not also appeal a score below 55 on the English language arts or mathematics Regents examinations pursuant to this clause.

**8 NYCRR §100.5(d)(7)**

## ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on October 7, 2015, the State Education Department (SED) received the following comments on the proposed amendment.

## 1. COMMENT:

The majority of commenters supported proposed amendment. Reasons for support included: proposal strengthens diploma safety net proposal will help students struggling to pass Regents exams obtain a high school diploma within four years; proposal conveys understanding of challenges many students with disabilities face regarding State assessments - that most students with disabilities have the cognitive ability to earn a diploma but, due to disability factors, may be challenged in demonstrating their knowledge and skills through standardized Regents exams; proposal will assist in making local diploma available to students with disabilities since there are currently no alternative ways for them to demonstrate competence; reluctantly support while Regents consider better solutions that do not hinge on high-stake tests; proposal affords students chance to move forward and pursue post-secondary educational opportunities and career options in line with their interests and capabilities; students giving all in light of their limitations have earned some flexibility in policy for meeting graduation requirements; proposal is step towards providing students with disabilities an additional opportunity to receive a local diploma; proposal is extension of equality for all students and congruent with existing appeal process for Regents exam scores of 62-64; allowing appeal for scores of 52-54 can be viewed as

nondiscrimination and fair equivalent to a general education student appealing a score of 62-64; and students may dropout if they feel they are never going to pass and not worthy of a diploma because of one point on an exam .

DEPARTMENT RESPONSE:

Comments are supportive in nature; no response is necessary.

2. COMMENTS:

The education all children receive in New York is “a joke” and proposal will make it worse; students with disabilities should not be required to take Regents exams if they are not getting a Regents diploma; instead of playing with Regents Exam scores as a way of increasing standards for students with disabilities, provide students with free, appropriate education to which they are entitled; schools are no longer able to teach students things they need to know (e.g., how to get a job, keep a job, pay bills, balance a budget, and live independently) and without a local diploma, capable, hard-working individuals will be unable to support themselves and condemned to a life of poverty and dependence on others.

DEPARTMENT RESPONSE:

The Department disagrees that the amendment will lower education standards for New York students. It is essential that any graduation policy developed by SED ensures high expectations for students with disabilities and that standards for a regular high school diploma are rigorous and represent readiness for employment or postsecondary education. The proposal recognizes particular challenges faced by students with disabilities in passing Regents exams, while representing a rigorous standard indicating the district has appropriately and sufficiently prepared a student for readiness for post-school education or employment. Restoration of a local diploma option is beyond the scope of the current rulemaking.

To graduate with a regular diploma, students with disabilities must be provided meaningful access to participate and progress in general curriculum to assist the student to meet State's learning standards. Further, it is the schools' responsibility to prepare students with disabilities for post-school living, learning and working and provide appropriate transition activities for such students, in accordance with their Individualized Education Programs (IEPs), to meet students' post-secondary goals in the areas of education, training, employment and, as appropriate, independent living.

### 3. COMMENT:

Concerned that students earn passing grades, not based on knowledge or ability but on compliance (e.g., doing homework- often with significant help, following rules in class and not being a problem) and may not have ability to pass a summative assessment. Prefer tiered graduation platform and bringing back RCTs for students with disabilities to allow them to earn a local diploma. Going back to a local and Regents diploma provides a safety net for students and assures a minimum competency level rather compliance.

### DEPARTMENT RESPONSE:

Assessments used to determine if a student with a disability meets graduation requirements must measure student's achievement of the same learning standards as all students. RCTs are not aligned with Regents coursework and use of these assessments was always intended to be an interim measure of student achievement to provide districts adequate time to revise their instructional programs to provide full access to the general education curriculum. The policy allowing use of the RCTs was extended several times and finally repealed after extensive public comment.

Restoration of a local diploma option is beyond the scope of the current rulemaking.

#### 4. COMMENT:

Consider allowing five-point range (i.e., score of 50 or higher) for appeal. Allow students with disabilities to appeal English Language Arts (ELA) or Math exam scores between 45-54 if he/she meets the rest of the stipulations.

#### DEPARTMENT RESPONSE:

The proposed rule, which allows students with disabilities who score within three points of 55 on up to two of the Regents exams required for graduation, including ELA and mathematics exam, after at least two attempts to be eligible to receive Local Diploma via appeal, is consistent with appeals criteria already in place for students who score 62-64 on two Regents exams. The proposed rule merely expands eligibility for existing appeals process to qualifying students with disabilities.

#### 5. COMMENT:

Disagree with condition that if a student with a disability uses compensatory rule they are ineligible to appeal score of 52-54 on ELA or Math exams. Recommend students be afforded every safety net, compensatory strategy and appeal process available.

#### DEPARTMENT RESPONSE:

The compensatory option allows students to compensate for a low score on a Regents exam with a high score on another Regents exam. In approving the Compensatory Safety Net, the Regents determined a local diploma must represent a rigorous standard indicating the school district has appropriately and sufficiently prepared a student with a disability for post-school education and/or employment. Compensatory option was adopted in support of premise that students with disabilities

must demonstrate an appropriate level of knowledge in foundation skills (literacy/ELA and math) which are fundamental to career or postsecondary education or training.

6. COMMENT:

Clarify how many exams a student can appeal and if it is the same as general education appeal process with a maximum of two appeals. Reduce number of required attempts to attain 55 or above from two to one. Multiple attempts causes students and schools to spend time and resources on test preparation instead of learning and mastering new material and may result in students giving up on school.

DEPARTMENT RESPONSE:

Proposal allows a student with a disability to appeal a score of 52-54, after at least two attempts, on up to two of the required Regents examinations for graduation, consistent with the appeals process and criteria already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams.

7. COMMENT:

Reduce attendance requirement to 90% as 95% attendance rate is unduly onerous and does not take into account illness or other life circumstances that may prevent students from maintaining 95% in a given year.

DEPARTMENT RESPONSE:

The required attendance rate of at least 95 is consistent with the appeals process and criteria already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams and is necessary to ensure that student's score is due to disability related factors rather than lack of attendance. The proposal merely expands eligibility to this same appeals process to qualifying students with disabilities

who score within 3 points below a score of 55 and who meet all other existing conditions for appeal.

8. COMMENT

Clarify that final average for waived Regents exam may be excluded in calculation for final class average if it will bring that score below a passing grade.

DEPARTMENT RESPONSE:

SED neither requires nor encourages practice of using scores from Regents exams to calculate a student's final course average. Whether a school uses Regents exam scores in determining final course grades is a local district decision. When developing grading practices and policies, districts should consider extent to which Regents examination scores are used to calculate final course averages and impact it has on students passing that course.

9. COMMENT:

SED should turn the suggestion of exploring feasibility of other State assessment option(s) (e.g., use of Project-Based Assessments) into an actual proposal. Proposal regarding other State assessment option(s) will help students earn a high school diploma. Many students with disabilities have challenges in reading/writing and math and these exams can keep them from getting a diploma. For some students, real-world hands-on performance assessments is a much better indicator of attainment and mastery. Support proposal for exploring other options allowing students with disabilities to demonstrate proficiency other than through standardized testing. Support Project-Based Assessment option for students who have difficulty with testing. Standardized testing geared toward average neurotypical student, not challenged or gifted students. The Regents need to realize each student is unique and learns and tests

differently. Clarify if Regents will pursue alternative options and still allow for appeal or if proposals are mutually exclusive.

DEPARTMENT RESPONSE:

SED is in the process of exploring feasibility of other State assessment option(s) (e.g., the use of Project-Based Assessments) to ensure students are held to same standards, but are provided more than one means to demonstrate proficiency in same State standards assessed through Regents exams. These comments will be considered as the Regents continue to discuss broader policy on alternate graduation pathways for all students. The proposal allowing student with a disability to appeal of score of 55 is not mutually exclusive of any future State assessment options adopted by the Regents.

10. COMMENT

Clarify data on 2010 cohort indicating there were only 258 students with disabilities who did not graduate who received a score between 52-54 as students still had the RCT option available.

DEPARTMENT RESPONSE:

The 258 students include students who did not have a passing score on the RCT. These 258 students either took Regents exams only or did not pass the RCT. For students in 2010 cohort who turn 21 on or before June 30, there would be no option to take the RCT after the school year ends.

11. COMMENT:

Grandfather students in and continue to put out Algebra Regents for students who were not instructed in the common core.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed regulations.

## 12. COMMENT:

Support a wider “safety net” for students with disabilities to obtain a local diploma. Compensatory Option has not been an adequate replacement for Regents Competency Tests (RCTs). However, the proposal is isolated action indicative of disjointed policy decision-making. Address impact of Regents’ College and Career Readiness agenda on students with disabilities in a comprehensive, systemic and responsible fashion with coordinated set of proposals. Establish range of comparable alternatives providing multiple pathways to a diploma and adequate Safety Net for students with disabilities, as well as demonstrate attainment of learning standards at commencement level. Examine implications of aspirational benchmarks for students with disabilities, as narrowly defined proxy measures for determining college/career readiness could potentially affect access to post-secondary opportunities for students. Proposal would not be necessary if Regents heeded call of stakeholders for diverse and differentiated assessments that reflect what students should know and be able to do to transition from high school to college/work.

## DEPARTMENT RESPONSE:

The compensatory option has provided many students with disabilities the opportunity to graduate with a regular diploma and the rate of graduation of students with disabilities with a regular high school diploma has been steadily increasing. In the 2006 cohort, 46% of students with disabilities graduated with a regular high school diploma; in the 2010 cohort, 53% graduated with a regular diploma. After five years, this rate increased to 57%. The Regents continue to discuss multiple pathways to a diploma for all students and alternative ways to assess students’ proficiency toward the State’s learning standards for purposes of graduation with a regular diploma.

