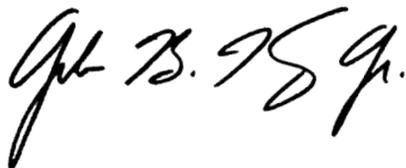




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents  
**FROM:** Ken Slentz   
**SUBJECT:** Amendment to Section 8.3 of the Rules of the Board of Regents Relating to State Assessments  
**DATE:** April 15, 2013

**AUTHORIZATION(S):**

#### **SUMMARY**

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt the proposed amendment to Section 8.3 of the Rules of the Board of Regents?

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

Review of Policy.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as an emergency measure at its April 2013 meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

#### **Procedural History**

The Board of Regents adopted the Common Core State Standards (CCSS) for English Language Arts & Literacy and Mathematics at its July 2010 meeting and incorporated New York-specific additions, creating the Common Core Learning Standards (CCLS), at its January 2011 meeting. The first State assessments to measure student progress on the CCLS are being administered in April 2013 for Grades 3-8 ELA and math. Following the administration of the new tests, the Department will

use a research-based methodology to set cut scores and performance standards for the tests, which must be approved by the Board of Regents. Beginning with ELA and Algebra I in June 2014, Regents Examinations that measure student progress on the CCLS will be phased in during a transition period. Similar performance-standard setting processes will occur after the initial administration of each new Regents Examination.

## **Background Information**

Pursuant to the New York State Constitution and the Education Law, the Board of Regents is responsible for the general supervision of all educational activities within the State. Included among these activities is the authority to, for example, establish “examinations as to attainments in learning” (Education Law §207) and “examinations in studies furnishing a suitable standard of graduation” (Education Law §209).

Currently, the Rules of the Board of Regents and the regulations of the Commissioner do not address the process for approval of State-designated performance levels or cut scores on State assessments in elementary and secondary education other than the Regents examinations. Generally, the Department’s past practice has been to submit the State-designated performance levels or cut scores to the Board of Regents for their review but questions have been raised about the process that will be used for designation of the State-designated performance levels for the 2012-2013 grades 3-8 State assessments that are being administered this month. The proposed amendment to the Rules of the Board of Regents would codify the Department’s past practice by clarifying that the State-designated performance level or cut score for determining proficiency on all State assessments administered to students in the elementary and secondary grades, other than Regents examinations, shall be established by the Commissioner subject to approval by the Board of Regents.

The Board of Regents adopted the Common Core State Standards (CCSS) for English Language Arts & Literacy and Mathematics at its July 2010 meeting and incorporated New York-specific additions, creating the Common Core Learning Standards (CCLS), at its January 2011 meeting. The first State assessments to measure student progress on the CCLS are being administered in April 2013 for Grades 3-8 ELA and math. Following the administration of the new tests, the Department will use a research-based methodology to set cut scores and performance standards for the tests, which must be approved by the Board of Regents. Beginning with ELA and Algebra I in June 2014, Regents Examinations that measure student progress on the CCLS will be phased in during a transition period. Similar performance-standard setting processes will occur after the initial administration of each new Regents Examination.

With respect to Regents examinations, the passing scores are specified in section 100.5 of the Regulations of the Commissioner. The proposed amendment makes needed technical changes to the existing language of Regents Rule 8.3, which currently references section 100.5(a)(5)(i) only, to broaden the cross-reference to capture provisions recently added to section 100.5 related to the special education safety net which specify passing scores for certain students. The amendments also clarify that while 65 remains the minimum passing score on Regents examinations, with the exceptions set forth in section 100.5, it is no longer a percentage. Finally, in order

to reflect the upcoming transition to Regents Exams that measure student progress on the CCLS, which may not be scored on a 0-100 scale, the amendment clarifies that the Board of Regents may prescribe a different minimum passing score.

Adoption of this proposed amendment on an emergency basis is therefore necessary for the preservation of the general welfare in order to clarify the Board of Regents' authority to approve cut scores and performance standards for State assessments prior to the Commissioner's establishment of cut scores and performance standards for the new Grades 3-8 assessments, which are being administered Statewide for the first time in April 2013.

### **Recommendation**

Staff recommends that the Board of Regents take the following action:

VOTED: That section 8.3 of the Rules of the Board of Regents be amended, as submitted, effective April 23, 2013, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to clarify the Board of Regents' authority to approve cut scores and performance standards for State assessments prior to the Commissioner's establishment of cut scores and performance standards for the new Grades 3-8 assessments, which are being administered Statewide for the first time in April 2013.

### **Timetable for Implementation**

If adopted as an emergency measure at the April meeting, the proposed amendment to section 8.3 will take effect on April 23, 2013. It is anticipated that the proposed rule will be presented for permanent adoption at the July 2013 Regents meeting, after publication of the Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

## STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

Pursuant to the New York State Constitution and the Education Law, the Board of Regents is responsible for the general supervision of all educational activities within the State. Included among these activities is the authority to, for example, establish “examinations as to attainments in learning” (Education Law §207) and “examinations in studies furnishing a suitable standard of graduation” (Education Law §209).

The proposed amendment is necessary to clarify the Board of Regents’ authority to approve the State-designated performance levels or cut scores for determining proficiency on State assessments administered to students in the elementary and secondary grades, which are established by the Commissioner.

The Board of Regents adopted the Common Core State Standards (CCSS) for English Language Arts & Literacy and Mathematics at its July 2010 meeting and incorporated New York-specific additions, creating the Common Core Learning Standards (CCLS), at its January 2011 meeting. The first State assessments to measure student progress on the CCLS are being administered in April 2013 for Grades 3-8 ELA and math. Following the administration of the new tests, the Department will use a research-based methodology to set cut scores and performance standards for the tests, which must be approved by the Board of Regents. Beginning with ELA and Algebra I in June 2014, Regents Examinations that measure student progress on the CCLS will be phased in during a transition period. Similar performance-standard setting processes will occur after the initial administration of each new Regents Examination.

Adoption of this regulation on an emergency basis is necessary for the preservation of the general welfare in order to clarify the Board of Regents' authority to approve cut scores and performance standards for State assessments prior to the Commissioner's establishment of cut scores and performance standards for the new Grades 3-8 ELA and math assessments measuring student progress on the CCLS, which are being administered Statewide for the first time in April 2013.

## AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 208 and 209 of the Education Law

1. The Title of Part 8 of the Rules of the Board of Regents is amended, effective April 23, 2013, to read as follows:

### REGENTS EXAMINATIONS AND OTHER STATE ASSESSMENTS

2. Section 8.3 of the Rules of the Board of Regents is amended, effective April 23, 2013, to read as follows:

#### 8.3 Passing mark or State designated performance level

1. Except as [provided ] prescribed in section [100.5(a)(5)(i)] 100.5 of this Title, the minimum passing [mark] score in Regents examinations shall be 65 [percent] or such other minimum passing score as approved by the Board of Regents.

2. The State designated performance level or cut score for determining proficiency on all State student assessments in the elementary and secondary grades, other than Regents examinations, shall be established by the Commissioner subject to approval by the Board of Regents.