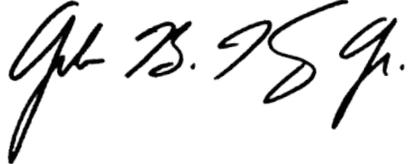




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents
FROM: Ken Slentz 
SUBJECT: Amendment of Section 8.3 of the Rules of the Board of Regents Relating to State Assessments
DATE: June 10, 2013

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment of Section 8.3 of the Rules of the Board of Regents as a second emergency action?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the June Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

The proposed amendment was adopted as an emergency rule at the April 2013 Regents meeting, effective April 23, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 8, 2013. The April emergency rule will expire on July 21, 2013. A second emergency action is necessary

at the June Regents meeting in order to ensure that the emergency rule remains continuously in effect until it can be adopted as a permanent rule. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

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. 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 were 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.

Recommendation

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

VOTED: That the Title of Part 8 of the Rules of the Board of Regents be amended and that section 8.3 of the Rules of the Board of Regents be amended, as submitted, effective July 22, 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 ensure that the emergency rule adopted at the April 2013 Regents meeting remains continuously in effect until the effective date of its adoption as an emergency rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the April 2013 Regents meeting, effective April 23, 2013, and will expire on July 21, 2013. If adopted at the June Regents meeting, the second emergency action will take effect on July 22, 2013. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the July Regents meeting, after expiration of the 45-day public comment period for proposed rule makings.

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 July 22, 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 July 22, 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.

PROPOSED AMENDMENT OF SECTION 8.3 OF THE RULES OF THE BOARD OF
REGENTS PURSANT TO EDUCATION LAW SECTIONS 101, 207, 208 AND 209,
RELATING TO STATE STUDENT ASSESSMENTS
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 were 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.

The proposed amendment was adopted as an emergency rule at the April 22-23, 2013 Regents meeting, effective April 23, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 8, 2013.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for permanent 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 July 22-23, 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the July meeting, would be August 7, 2013, the date a Notice of Adoption would be published in the State Register. However, the April emergency rule will expire on July 21, 2013, 90 days from its filing with the Department of State on April 23, 2013. A lapse in the effective date of the rule may disrupt administration of State Assessments, other than Regents examinations, for elementary and secondary education.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the April 22-23, 2013 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption on a permanent basis at the July 22-23, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA.