



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

**FROM:** Angelica Infante-Green *A. Infante - Green*

**SUBJECT:** Proposed Amendments to Section 100.5 of the Commissioner's Regulations to Require Superintendents to Make a Local Determination as to Academic Proficiency for Certain Students with Disabilities to Graduate with a Local Diploma

**DATE:** September 1, 2016 *Margaret Elin*

**AUTHORIZATION(S):** 

## SUMMARY

### Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment to Section 100.5 of the Commissioner's regulations to require superintendents to make a local determination as to academic proficiency for certain students with disabilities to graduate with a local diploma?

### Reason(s) for Consideration

Implementation of policy.

### Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at its September 2016 meeting. A Notice of Emergency Adoption will be published in the State Register on October 5, 2016. A statement of facts and circumstances is included as Attachment A. A copy of the statement of facts and circumstances justifying the emergency is attached.

## **Procedural History**

At its June 2016 Regents meeting, the Board of Regents adopted the proposed amendment. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 6, 2016. A copy of the proposed amendment is included as Attachment B. Supporting materials are available upon request to the Secretary of the Board of Regents.

Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received several comments on the proposed amendment. In an effort to address the comments received, the Department anticipates coming back to the Board of Regents with recommended revisions to the proposed amendment for the Board of Regents consideration at its October 2016 meeting. However, the emergency measure adopted at the June meeting will expire on September 17, 2016. Therefore, a second emergency adoption is needed at the September 2016 meeting to ensure that the proposed amendment adopted at the June 2016 Regents meeting remains continuously in effect until it can be revised and adopted as a permanent rule.

## **Background Information**

It is essential that we have high expectations for what students with disabilities can learn and to provide reasonable accommodations for them to demonstrate that they have reached the standards. With these high expectations for students, we must also have high expectations for teaching with appropriate opportunities, supports, services and instruction provided to students with disabilities.

### **Safety Net Options for Students with Disabilities**

Over the past several years, the Board of Regents has reviewed and revised the safety net options available to students with disabilities. Currently, there are three safety net options available to students with disabilities to graduate with a local diploma:

1. **Low Pass Rate Safety Net Option:** 5 required Regents exams with a score of 55 – 64.
2. **Low Pass Rate Safety Net Option with Appeal:** Students who score up to three points below a score of 55 on a Regents exam would be eligible to receive the local diploma via appeal if all of the conditions of appeal are met.
3. **Compensatory Safety Net Option:** A student with a disability may receive a local diploma if he/she scores between 45-54 on one or more of the Regents exams required for graduation, other than English language arts (ELA) or mathematics, but achieves a score of 65 or higher on another required Regents exam which can compensate for the lower score. A score of 65 or higher on a

single examination may not be used to compensate for more than one examination for which a score of 45-54 is earned.

## **Summary of Proposed Amendments Adopted at the June 2016 Regents meeting**

### **Superintendent's Review**

At its June 2016 meeting, the Board of Regents adopted the Superintendent Determination pathway option, which is described below. All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the State is providing a superintendent review option for eligible students to graduate with a local diploma.

The amendment adopted at the June 2016 meeting was developed to ensure that students with disabilities have demonstrated that they have met the State's learning standards for graduation. As such, the school principal and superintendent must review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the standards for graduation with a local high school diploma. Because ELA and math are foundation skills for which there must be a standardized measure of achievement, this option does require a minimum score on the ELA and math Regents exams. However, for the other three exams required for graduation, this option allows review of other documentation of proficiency when the student cannot pass one or more of these exams. The conditions of the review are detailed below:

#### *Applicability*

This option is open to students with disabilities with a current Individualized Education Program (IEP) only. It does not apply to students with section 504 accommodation plans or students who have been declassified from special education.

#### *Process*

Beginning with students with disabilities who are otherwise eligible to graduate in June 2016 and thereafter, a school superintendent (or the principal of a registered nonpublic school or charter school, as applicable) has the responsibility to determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on the Regents exams required for graduation.

#### *Automatic Review*

The superintendent must ensure that every student with a disability who does not meet the graduation standards through the existing appeal and safety net options is

considered for the superintendent determination. This option does not need to be formally requested by the student or parent.

### *Conditions*

1. The student has a current IEP and is receiving special education programs and/or related services.
2. The student did not meet the graduation requirements through the low pass (55-64) safety net option<sup>1</sup> or the compensatory option<sup>2</sup> [section 100.5(b)(7)(vi)(c) and (d)(7)].
3. The student must have earned the required course credits and have passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents exam areas (ELA, math, social studies, and science).
4. The student must have received a minimum score of 55 on both the Regents ELA and math exams or a successful appeal of a score between 52 and 54.
5. There must be evidence that the student participated in the other exams required for graduation pursuant to section 100.5(a)(5), but has not passed one or more of these as required for graduation.
6. In a subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the assessment required for graduation, there must be evidence that the student has otherwise demonstrated graduation level proficiency in the subject area.

### *Review and Documentation*

In conducting a review to ensure the student has met the academic standards, the superintendent must consider evidence that demonstrates that the student:

1. Passed courses culminating in the exam required for graduation, in accordance with the grading policies of the district. In making this determination, the superintendent must consider the student's final course grade as well as student work completed throughout the school year and/or interim grades on homework, projects, class work, quizzes, tests, etc., that

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<sup>1</sup> A student also has the option to appeal a score of 52-54 on up to two Regents exams pursuant to section 100.5(b)(7)(vi)(c). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

<sup>2</sup> A student also has the option to appeal the ELA and/or math scores pursuant to section 100.5(d)(7). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

demonstrate that the student has met the learning standards for the course;  
and

2. Actively participated in the exam required for graduation.

The school principal and superintendent must sign a document, on a form prescribed by the Commissioner, which describes the evidence reviewed and the decision rendered by the superintendent. The student and the parent of the student must receive a copy of this documentation and written notification of the superintendent's determination. Where the superintendent determines that the student has not met requirements for graduation, the notice must inform the student that he/she has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first.<sup>3</sup>

The superintendent must sign an assurance on the form that certifies that the information is accurate and the superintendent attests that the student has met graduation requirements. A copy of the form must be placed in the student's record and a copy must be submitted to the Department no later than by August 31<sup>st</sup> following the student's graduation.

#### *Decision*

A determination by the superintendent is final.

#### *Audit*

The Commissioner shall periodically audit the determinations granted by superintendents to ensure that conditions described above are being met.

#### Allowance of Low Pass Appeal in Addition to Compensatory Option

Under current regulations, students with disabilities who make use of the compensatory option described above are not eligible to also make use of the low pass appeal wherein they are able to appeal scores of 52-54. The amendment removes this prohibition and allows these students to make use of both options in meeting graduation requirements.

Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received several comments on the proposed amendment adopted at the June Regents meeting. See Attachment C for an Assessment of the Public Comment received. The Department anticipates coming back to the Board of Regents with proposed revisions to this amendment for the Board of Regents consideration.

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<sup>3</sup> A student with a disability who has not yet earned a diploma and who has not reached the age of 21 may reenroll in school and graduate through this option, provided the student has a current IEP, is participating in the required coursework and is receiving special education programs and services.

## **Related Regent's Item(s)**

<http://www.regents.nysed.gov/meetings/2016/2016-06/p-12-education>

## **Recommendation**

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

VOTED: That a new paragraph (12) be added to subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education and 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 amended, as submitted, effective September 18, 2016; 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 June 2016 Regents meeting remains continuously in effect so that certain students with disabilities who are graduating from high school are aware that if they do not meet the graduation standards through the existing appeal and safety net options, that the superintendent will make a determination as to whether the student has met the academic standards and is eligible for a diploma; and to further ensure that superintendents are on notice that they must make a determination as to whether certain students with disabilities are eligible for local diploma if the student meets the requirements of the proposed amendment.

## **Timetable for Implementation**

If adopted at the September meeting, the emergency rule will become effective on September 18, 2016. It is anticipated that the Department will come back with proposed revisions to the amendment based on public comment for the Board of Regents consideration at the October meeting.

Attachments

**8 NYCRR §100.5**

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

All students with disabilities must be held to high expectations and be provided meaningfully opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the proposed amendment, which was adopted by the Board of Regents at its June 2016 meeting provides a superintendent review option in order for certain students with disabilities to graduate with a local diploma, beginning with students graduating in June 2016.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 30-day public comment period provided for a revised rule making under the State Administrative Procedure Act would be the December 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if revised and adopted at the December meeting, would be December 28, 2016, the date a Notice of Adoption would be published in the State Register. However, the proposed amendment provides a superintendent review option in order for

certain students with disabilities to graduate with a local diploma, beginning with students graduating in June 2016.

Therefore, emergency action is necessary at the September 2016 Regents meeting for the preservation of the general welfare in order to ensure that the emergency rule adopted by the Board of Regents at its June 2016 meeting remains continuously in effect until it can be adopted as a permanent rule so that certain students with disabilities who are graduating from high school are aware that if they do not meet the graduation standards through the existing appeal and safety net options, that the superintendent will make a determination as to whether the student has met the academic standards and is eligible for a diploma if the student meets the requirements of the proposed amendment. It is also necessary to ensure that superintendents are on notice that they must make a determination as to whether certain students with disabilities are eligible for local diploma if the student meets the requirements of the proposed amendment.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the December 2016 Regents meeting, which is the first scheduled meeting after expiration of the 30 day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

A new paragraph (12) shall be added to subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education, effective September 18, 2016, to read as follows:

(12) Superintendent determination pathway for certain students with disabilities for eligibility for a local diploma. School districts, registered nonpublic high schools and charter schools shall ensure that every student who is identified as a student with a disability as defined in Education Law section 4401(1) and section 200.1(zz) of this Title and who does not meet the assessment requirements for graduation through the existing appeal and safety net options available through this section but is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination pathway in accordance with the requirements of this clause, provided that the student:

(i) has a current individualized education program and is receiving special education programs and/or related services pursuant to Education Law section 4402 and section 200.4 of this Title; and

(ii) took the English Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision; and

(iii) took a mathematics Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of

between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision;  
and

(iv) participated in the remaining assessments required for graduation pursuant to clauses (c), (d), (e) and (f) of subparagraph (a)(5)(i) of this section, provided that if the student was unable to achieve a passing score on one or more of the remaining assessments required for graduation or to successfully appeal a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or did not initiate such an appeal pursuant to paragraph (7) of this subdivision, or to use the compensatory score option for one or more such examinations pursuant to clause (b)(7)(vi)(c) of this section, then the superintendent shall determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities measured by the relevant Regents examination(s) and shall document such determination in accordance with the following:

(a) the superintendent shall consider evidence that the student attained a grade for the course 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. Such evidence shall include but need not be limited to the student's final course grade, student work completed throughout the school year and/or any interim grades on homework, projects, class work, quizzes and tests; and

(b) with respect to subparagraph (iv) of this paragraph, the superintendent shall consider the extent to which the student participated in such examination(s); and

(c) the superintendent shall, as soon as practicable, in a form and manner prescribed by the commissioner, document the evidence reviewed for an eligible

student with disability under this paragraph and make a determination as to whether the student met the requirements for issuance of a local diploma pursuant to this clause and certify that the information provided is accurate; and

(d) the superintendent shall, as soon as practicable, provide each student(s) and parent or person in parental relation to the student with a copy of the completed form and must place a copy of the completed form in the student's record; and

(e) the superintendent shall, no later than August 31 of each year, provide the commissioner with a copy of the completed form for each student; and

(f) the commissioner may conduct audits of compliance with the requirements of this clause.

2. Clause (c) of subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner is amended, effective June 13, 2016, 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 (a)(2)-(4) of this subparagraph.

[Notwithstanding the provisions of this clause, a student with a disability who makes use of the compensatory option in clause (b)(7)(vi)(c) 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.]

**Attachment B**

**8 NYCRR §§100.5(d)(12)**

**ASSESSMENT OF PUBLIC COMMENT**

Since publication of a Notice of Proposed Rule Making in the State Register on July 6, 2016, the State Education Department(SED) received the following comments on the proposed amendment.

**1. COMMENT:**

Provision of additional graduation pathway for students with disabilities is welcome policy change. Pleased SED and Board of Regents(BOR) continue discussing graduation pathways providing students with disabilities flexibility to satisfy graduation requirements. Appreciate district responsibility for eligibility determinations as families are not aware of different/confusing Regents exam appeal options. Number of commenters supported proposal and multiple pathways, which recognizes some student's inability to demonstrate proficiency on high-stakes tests, but recommended modifications. Proposal creates opportunity for students with individualized education programs(IEPs) to earn local diploma.

**DEPARTMENT RESPONSE:**

Comments are generally supportive; no response necessary.

**2. COMMENT:**

Comments opposing proposal indicate it: endorses lower standards; removes parents/students/committee on special education(CSE), who know child best, from process; removes right of individual with disability to choose path; does not consider student's IEP goals/transition plan; allows superintendent to make subjective

determination; no opportunity for families to review determination and confirm exiting is in student's best interests; does not require CSE review of student's IEP before receiving a diploma [see OSERS Letter to Richards, IDELR 288]. After student is determined eligible, require CSE to review IEP and pertinent documents related to IEP/transition plan prior to determination to ensure needs/goals are considered. CSE is familiar with, and best positioned to assess, student's skills and continued need for special education. CSE discussion informs students/parents of implications of graduation with local versus Regents diploma. Require CSE's recommendation and superintendent's review of recommendation and IEP considering student's transition needs/goals, when making determination. Replace superintendent with CSE recommendation regarding proposed graduation based on proposed regulation standards; allow parent and/or staff initiation. Power rests with uninformed superintendent; forcing early graduation and not allowing students to become independent members of society. Superintendent determination is final; no recourse or appeal mechanism. Depriving students opportunity to earn Regents diploma, a benefit their peers enjoy, is discriminatory and violates Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act.

#### DEPARTMENT RESPONSE:

It is anticipated proposed rule will go back to BOR at their October 2016 meeting. SED will consider whether revisions should be made to proposed rule in response to comments.

#### 3. COMMENT

May inadvertently open door to prematurely push students with disabilities out of system as cost savings or remove challenging students; limits student's work toward IEP goals by denying entitlement to free appropriate public education(FAPE); may impact classification rate and increase due process regarding eligibility or declassification if parents view special education as increasing likelihood of graduation.

DEPARTMENT RESPONSE:

It is anticipated proposed rule will go back to BOR at their October 2016 meeting. SED will consider whether revisions should be made to proposed rule in response to comments.

4. COMMENT:

Proposal undermines objectives for students to leave school prepared for independence, post-secondary education and employment; ignores district's policies for college-readiness. BOR documented lack of college/career readiness of students awarded local diplomas based on higher standards than superintendent determination. Students face remedial courses, tuition debt, reduced chances of completing degree; and minimal employment opportunities. State University of New York predicts college readiness by scores of 75 on English Language Arts(ELA) and 80 on math Regents exams and is proposing to eliminate remedial programs. Reducing passing rate creates situations where students are unable to function in college and will not have access to remedial support.

DEPARTMENT RESPONSE:

SED does not agree proposal results in students not being college and career ready. The proposed rule was developed to ensure students with disabilities meet

State's learning standards for graduation. Because ELA and math are foundation skills for which there must be standardized measures of achievement, this option requires 55 minimum score on ELA and math Regents exams. For other three required exams, superintendent must review, document and provide written certification/assurance of evidence student has otherwise met graduation standards for a local diploma.

5. COMMENT:

Without family's consent, students' rights under Individuals with Disabilities Education Act and to FAPE can be denied. Families should be consulted throughout process and have equal say in child's educational needs and not be decided just by superintendent. Require family notification once potential eligibility is identified, provide student opportunity to accept or forgo/defer this pathway and remain eligible to stay in school until 21. Not having this right is unfair; has long-term impact on student's future. Allow parents to accept diploma but decline termination of special education services. Suggest form contain statement that student accepts determination. Require districts to inform parents/students of this option and that parent and/or student request superintendent's review. Recommend Superintendent's Determination is initiated by student, parent/guardian, teacher/principal, or CSE similar to appeals process. Add limited resolution period to dispute determination and still meet August 31 timeline for submission to SED.

DEPARTMENT RESPONSE:

It is anticipated proposed rule will go back to BOR at their October 2016 meeting. SED will consider whether revisions should be made to proposed rule in response to comments.

## 6. COMMENT:

Procedure to provide parent with prior written notice(PWN) regarding pending change in placement when district intends to graduate student before age 21 [See 34 CFR section 300.102(a)(3)(iii)] not incorporated into regulatory changes. Require legally sufficient PWN be issued to parent regarding all aspects of superintendent determination, providing clear explanation for decision. Due process demands student's right to challenge superintendent's unilateral; subjective determination as graduation with local diploma is change in educational placement. Graduation is subject to stay-put provisions; parent can invoke due process and student remains eligible for special education services until proceedings conclude.

## DEPARTMENT RESPONSE:

In accordance with section 200.5(a)(5)(ii) of Commissioner's Regulations districts are required to provide PWN to parent prior to student's graduation with local or Regents diploma. Such notice must indicate student is no longer eligible to receive FAPE. As with any district proposal to change educational program or placement of a student with a disability, parents may seek to resolve disagreements with proposal to graduate student through all appropriate means, including mediation and due process hearing proceedings.

## 7. COMMENT:

Requiring students only to actively participate in exams may send message students do not have to try to pass exams. Unlikely students will be able to demonstrate graduation level proficiency yet not minimal proficiency on State assessments. Limit range of failing scores acceptable for superintendent determination.

Provide students with extremely low scores (i.e., 0-35) option for continued eligibility for FAPE.

DEPARTMENT RESPONSE:

It is anticipated proposed rule will go back to BOR at their October 2016 meeting. SED will consider whether revisions should be made to proposed rule in response to comments.

8. COMMENT:

Reevaluate students prior to termination of services.

DEPARTMENT RESPONSE:

In accordance with section 200.4(c)(4) of Commissioner's regulations, districts are not required to conduct student reevaluations before termination of student's eligibility due to graduation with local or Regents diploma.

9. COMMENT:

Eliminate requirement that students participate in exams other than ELA and math required for graduation as they can be demoralizing, discouraging and result in undue stress.

DEPARTMENT RESPONSE:

The proposed rule was developed to ensure students with disabilities meet State's learning standards for graduation; therefore, for other three required exams, superintendent must review, document and provide written certification/assurance there is evidence student has otherwise met graduation standards for a local diploma.

10. COMMENT:

Charter schools are only required to meet same health/safety, civil rights, and student assessment requirements applicable to public schools; because superintendent determination does not fit these categories, BOR does not have statutory authority to mandate charter schools consider this option. Charter School Act does not provide BOR regulatory power regarding graduation safety nets; charter schools have option to grant diploma created by BOR but are not required to. Only amendment to Charter Schools Act or schools charter could mandate this. If charter school chooses to utilize new safety net option would it be required to follow procedures outlined in new superintendent determination for each student with a disability? Request that “Charter school” be removed from superintendent determination regulations.

**DEPARTMENT RESPONSE:**

Pursuant to Education Law §2854(1)(b)and(d), charter schools shall meet the same student assessment requirements applicable to other public schools and may grant regents and local diplomas to the same extent as other public schools. In a charter school the “superintendents” equivalent in a district school would be the charter school’s head of school or other such school leader as designated by charter school’s board of trustees. School district superintendent in the charter school’s district of location is not able to make these determinations on behalf of charter or non-public school.

**11.COMMENT:**

To be equitable, extend superintendent determination to students with Section 504 Accommodation Plans, declassified students, multilingual learners and to all students as students with IEPs are not the only students struggling with Regents

exams; no student should be penalized for not demonstrating mastery of NYS standards on high-stakes standardized tests. Superintendent determination pathway operates with one-size-fits-all framework unfairly penalizing students struggling with high-stakes standardized tests. Urge NYS to create multiple instructional/assessment pathways to diploma (e.g., performance-based assessments; project-based assessments) for students unable to demonstrate proficiency on State assessments; hold all students to high expectations. Hold Statewide public hearings/listening tour regarding high-stakes Regents exam graduation requirements and alternative pathways to diploma. Over 60% of states don't require exit exams for graduation. Reevaluate mindset that local diploma is a "less than" diploma. State policy should acknowledge students are able to show achievement in ways besides standardized tests. Overemphasis on passing Regents exams detracts from well-rounded education. Diploma path should not be tied to standardized written exams.

**DEPARTMENT RESPONSE:**

It is anticipated proposed rule will go back to BOR at their October 2016 meeting. SED will consider whether revisions should be made to proposed rule in response to comments.

**12. COMMENT:**

Clarify when parents must receive written notice of superintendent's determination.

**DEPARTMENT RESPONSE:**

Notice of a superintendent's determination should be provided at the same time the district provides prior written notice that the students educational eligibility is

terminating because the student met the requirements for a regular high school diploma. Such notice must be provided in a reasonable timeframe before the district proposes to graduate the student.

13.COMMENT:

Having separate local diploma for students with disabilities is discriminatory [See Letter to White, OSEP, 63 IDELR 230 (7/2/14)] and discloses person's disability to potential colleges/employers. Revise regulations to permit award of local diploma to all students, regardless of disability.

DEPARTMENT RESPONSE:

This is not a separate type of diploma. The local diploma is currently available to all students, not just students with disabilities. Under current regulations, all students who satisfactorily appeal two Regents test scores may earn local diploma.

14.COMMENT:

Concerned that earning a CDOS is not available with the Superintendent Determination.

DEPARTMENT RESPONSE:

Nothing in the proposed rule prohibits students from earning the CDOS credential as supplement to local diploma through superintendent determination pathway or using the credential to meet 5th assessment requirement for local diploma (see 100.5[d][11]).

15.COMMENT:

Proposal was passed without sufficient opportunity for thoughtful review and public comment. SED publicized regulations during summer when stakeholders are

less connected to school issues and did not conduct hearings. Public is largely unaware of proposal; public comment period is very short and should be lengthened.

DEPARTMENT RESPONSE:

Following discussion at the June BOR meeting, in accordance with requirements of the State Administrative Procedure Act (SAPA), proposed rule was published in NYS Register and public comment was accepted for 45 days. Additional guidance for schools/parents on superintendent determination is posted on Office of Special Education's website (<http://www.p12.nysed.gov/specialed/publications/superintendent-determination-of-graduation-with-a-local-diploma.htm>).

It is anticipated proposed rule will go back to BOR at their October 2016 meeting. SED will consider whether revisions should be made to proposed rule in response to these comments.

16.COMMENT:

Reopen application process for consortium schools allowing all high schools to apply to be public consortium schools using authentic project-based assessments, which has been successful model for student success.

DEPARTMENT RESPONSE:

Comment is beyond scope of proposed rulemaking.