



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

**TO:** Full Board

**FROM:** Ken Slentz

**SUBJECT:** Proposed Amendment of Sections 100.5, 100.6, 100.9 and 200.5 of the Regulations of the Commissioner of Education Relating to a Skills and Achievement Commencement Credential for Students with Severe Disabilities

**DATE:** December 27, 2011

**AUTHORIZATION(S):**

### **SUMMARY**

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

Should the Board of Regents adopt the proposed amendment of sections 100.5, 100.6, 100.9 and 200.5 of the Regulations of the Commissioner of Education to replace the current individualized education program (IEP) diploma with a Skills and Achievement Commencement Credential for students with severe disabilities who have taken the New York State Alternate Assessment (NYSAA)?

#### **Reason for Consideration**

Review of policy.

#### **Proposed Handling**

The proposed amendment will be submitted to the Full Board for adoption at the January 2012 meeting.

#### **Procedural History**

In 1984, the Regulations of the Commissioner of Education were amended to authorize school districts to award a high school IEP diploma to a student with a

disability. In 1999, the Regulations of the Commissioner of Education were further amended to provide that the award of the IEP diploma be based on the student's achievement of the educational goals based on the appropriate level of the learning standards as specified in the student's IEP.

The proposed amendment was discussed by the P-12 Education Committee at the September 2011 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on October 5, 2011. Public comment on the proposed amendment was accepted for 45 days from the date of publication in the State Register (i.e., until November 21, 2011).

### Background Information

The proposed policy recommendation to replace the IEP diploma emerged from a series of public discussions conducted by the Regents and the Department beginning in 2008. At their January 2010 meeting, the Board of Regents supported the development of a credential that would document a student's achievement against the Career Development and Occupational Studies (CDOS) Learning Standards and be available to all students as a supplement to the regular high school diploma, and, for some students with disabilities, replace the current IEP diploma. Department staff from P-12's Office of Special Education and Office of Career and Technical Education continued their review of other states' exiting credentials and sought further public comment to draft a proposed policy framework, including comment from representatives from ACCES-VR.

In consideration of public comment, the Regents supported policy development in two phases:

- Phase I: Replace the IEP diploma with an alternate credential designed specifically for students with severe disabilities who have taken the NYSAA.
- Phase II: Defer development of an optional credential that documents attainment of CDOS standards and acknowledges a student's successful completion of academic and career and technical education programs and coursework for other students until the Regents reach decisions on any changes to the high school graduation requirements.<sup>1</sup>

### Proposed Policy

The proposed amendment would, effective beginning with the 2013-14 school year, establish a new credential to replace the current IEP diploma option.

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<sup>1</sup> Based on the stakeholder comment to move forward quickly on Phase II recommendations regarding an optional credential for non-NYSAA students, an item will be brought to the P-12 Committee in March for discussion. In addition, the P-12 Committee is discussing next steps for developing additional Safety Net options to allow students with disabilities to earn a regular diploma at the January meeting.

- Only students with disabilities who have been instructed and assessed on the alternate performance level for the State learning standards are eligible for this credential award.
- The credential may be awarded any time after such student has attended school for at least 12 years, excluding kindergarten or received a substantially equivalent education elsewhere; or at the end of the school year in which a student attains the age of 21.
- The credential would not be considered a regular high school diploma in accordance with State standards or for federal accountability purposes.
- The credential must be issued together with a summary of the student's academic achievement and functional performance (i.e., the Student Exit Summary) and must include documentation of the student's level of achievement and independence against the CDOS Learning Standards; the student's level of academic achievement as measured by the NYSAA; and the student's skills, strengths, interests and, as appropriate, other student achievements and accomplishments.
- Procedural safeguards are proposed to ensure that parents are properly notified prior to the award of the credential that the student continues to be eligible for a free appropriate public education until the end of the school year in which the student turns age 21.

Since publication of a Notice of Proposed Rule Making in the State Register on October 5, 2011, the Department received approximately 270 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.

Comments in support of the proposed Skills and Achievement Commencement Credential indicated that it will provide students participating in the NYSAA with a more meaningful credential that focuses on the CDOS Learning Standards and greater opportunities for living, learning and employment. Comments supporting the elimination of the IEP diploma indicated that the IEP diploma: does not provide necessary credentials for students to graduate high school; limits students' postsecondary education options; and creates confusion for parents and districts who think it is a regular diploma.

Comments in opposition indicated that the credential is not a high school diploma and therefore would not provide students with the same postsecondary and employment opportunities as would a regular diploma. Others commented that, because the credential would be available only to NYSAA students, other students with disabilities who are unable to meet the requirements for a local or Regents diploma may not be motivated to remain in school. Some recommended that both phases of the proposed policy be implemented simultaneously so that no students are left without an exiting credential. Comments opposing the elimination of the IEP diploma included: students with disabilities have earned the right to receive an IEP diploma that publicly

acknowledges their accomplishments, and the IEP diploma allows a focus on basic skill development and provides students an incentive to “graduate.”

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

#### Timetable for Implementation

If adopted at the January Regents meeting, the proposed amendment will become effective February 1, 2012.

#### Recommendation

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

VOTED: That subparagraph (iii) of paragraph (7) of subdivision (b) of section 100.5 and subparagraph (iii) of paragraph (5) of subdivision (a) of section 200.5 of the Regulations of the Commissioner of Education be amended, that section 100.6 be repealed and a new section 100.6 be added, and that a new subdivision (g) be added to section 100.9, as submitted, effective February 1, 2012.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 305, 4402 and 4403

1. Subparagraph (iii) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective February 1, 2012, as follows:

(iii) Earning a Regents or local high school diploma shall be deemed to be equivalent to receipt of a high school diploma pursuant to Education Law, section 3202(1) and shall terminate a student's entitlement to a free public education pursuant to such statute. Earning a high school equivalency diploma [or], an Individualized Education Program diploma or a skills and achievement commencement credential as set forth in section 100.6 of this Part shall not be deemed to be equivalent to receipt of a high school diploma pursuant to Education Law, section 3202(1) and shall not terminate a student's entitlement to a free public education pursuant to such statute.

2. Section 100.6 of the Regulations of the Commissioner of Education is repealed, effective February 1, 2012.

3. A new section 100.6 of the Regulations of the Commissioner of Education is added, effective February 1, 2012, as follows:

§100.6. Skills and achievement commencement credential.

Beginning with the 2013-14 school year and thereafter, the board of education or trustees of a school district shall, and the principal of a nonpublic school may, issue a skills and achievement commencement credential to a student who has taken the State assessment for students with severe disabilities, as defined in section 100.1(t)(2)(iv) of this Part, in accordance with the following provisions:

(a) Prior to awarding the skills and achievement commencement credential, the governing body of the school district or nonpublic school shall ensure that:

(1) the student has been recommended by the committee on special education to take the alternate assessment in lieu of a required State assessment;

(2) such student meets the definition of a student with a severe disability as defined in section 100.1(t)(2)(iv); and

(3) the student has been afforded appropriate opportunities to participate in community experiences and development of employment and other instructional activities to prepare the student for post-secondary living, learning and employment .

(b) The credential may be issued at any time after such student has attended school for at least 12 years, excluding kindergarten, or has received a substantially equivalent education elsewhere, or at the end of the school year in which a student attains the age of 21.

(c) The credential shall be similar in form to the diploma issued by the school district or nonpublic school, except that there shall appear on such credential a clear annotation to indicate that the credential is based on achievement of alternate academic achievement standards.

(d) The credential shall be issued together with a summary of the student's academic achievement and functional performance, as required pursuant to section 200.4(c)(4) of this Title, that includes documentation of:

(1) the student's level of achievement and independence for each of the career development and occupational studies learning standards set forth in section 100.1(t)(1)(vii)(a), (b) and (c) of this Part including, but not limited to: career

development; integrated learning; universal foundation skills that include basic skills in reading, writing, listening, speaking, math and functional math; thinking skills; personal qualities; interpersonal skills; use of technology; managing information and resources; systems skills;

(2) the student's academic skills, as measured by the State assessment for students with severe disabilities; and

(3) the student's strengths and interests and, as appropriate, other student achievements and accomplishments.

School districts may use the State model form developed by the commissioner for the summary of academic and functional performance or a locally-developed form that meets the requirements of this subdivision.

(e) If the student receiving a credential is less than 21 years of age, such credential shall be accompanied by a written statement of assurance that the student named as its recipient shall continue to be eligible to attend the public schools of the school district in which the student resides without the payment of tuition until the student has earned a regular high school diploma or until the end of the school year in which such student turns age 21, whichever shall occur first.

4. A new subdivision (g) is added to section 100.9 of the Regulations of the Commissioner of Education, effective February 1, 2012, as follows:

(g) The provisions of this subdivision shall be deemed repealed on June 30, 2013 and no IEP diploma shall be awarded pursuant to this section on or after July 1, 2013.

5. Subparagraph (iii) of paragraph (5) of subdivision (a) of section 200.5 of the

Regulations of the Commissioner of Education is amended, effective February 1, 2012, as follows:

(iii) Prior to the student's graduation with an individualized education program (IEP) diploma or, beginning with the 2013-14 school year, prior to a student's exit with a skills and achievement commencement credential as set forth in section 100.6 of this Title, such prior written notice must indicate that the student continues to be eligible for a free appropriate public education until the end of the school year in which the student turns age 21 or until the receipt of a regular high school diploma.

PROPOSED AMENDMENT OF SECTIONS 100.5, 100.6, 100.9 and 200.5 OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTIONS 101, 207, 208, 305, 4402 AND 4403 OF THE EDUCATION LAW, RELATING TO A SKILLS AND ACHIEVEMENT COMMENCEMENT CREDENTIAL FOR STUDENTS WITH DISABILITIES

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on October 5, 2011, the State Education Department (SED) received the following comments on the proposed amendment.

§100.6 - Skills and Achievement Commencement Credential

COMMENT

Proposed rule presents a meaningful credential for students participating in the New York State Alternate Assessment (NYSAA); allows demonstration of career readiness skills and skills and knowledge for living, learning and employment; recognizes more than student attendance; establishes option for students unable to earn a regular diploma relating to trades/careers. Unlike individualized education program (IEP) diploma, it is aligned with learning standards and alternate performance indicators.

DEPARTMENT RESPONSE

Comments are supportive in nature.

COMMENT

Regulations should be effective prior to 2013-14 school year. Districts need time to build capacity to provide students access to educational programs and experiences.

Provide appropriate time, staff development, and resources. Provide information and outreach to businesses and higher education communities.

#### DEPARTMENT RESPONSE

Proposed 2013-14 timeline is necessary to provide SED with time to develop and deliver guidance to parents, employers and districts; and to provide districts time to adjust instructional programs and make changes to policies/procedures to implement the credential. No new mandates are imposed on districts and delayed implementation date provides districts with sufficient lead time.

#### COMMENTS

Support removing “diploma” given confusion term causes. “Skills credential” is less deceiving as “diploma” indicates academic achievement. Adopt credential, but include language validating and endorsing it with privileges associated with regular diplomas and recognition of students as graduates. Credential is not a regular diploma and will not provide students with same post-secondary and employment opportunities; districts will be penalized in graduation and drop out rate measures. Students may be less motivated to work for credential and to graduate; credential takes away individualization of students’ education; concerned about credential’s potential value to employers; does not serve same breadth of students as IEP and local diplomas; need more information on credential documentation. Term “credential” diminishes students’ accomplishments and employers may not give this same credence as diploma. As majority of jobs require diploma, rename to have diploma in title and provide format similar to typical diploma. Replace “IEP diploma” with “credential diploma” or other label emphasizing “CDOS Standards.”

## DEPARTMENT RESPONSE

Term “credential” distinguishes it from a regular diploma and avoids confusion associated with term “diploma.” Because the credential is based on achievement of alternate achievement standards, it cannot be recognized as a regular diploma and students cannot be counted as graduates for federal accountability purposes. The credential is designed to promote individualized planning and document a student’s level of achievement in areas essential for post-secondary life. Specific credential documentation requirements are established in the proposed rule. SED will issue guidance for implementation, including a sample credential form and exit summary.

## COMMENT

Credential name implies merit and achievement. Revise name to state true function as assessment of skills.

## DEPARTMENT RESPONSE

Credential name was selected in consideration of the nature of skills to be documented and recognized.

## COMMENT

Credential documentation should be required beginning at age 14, replace current “Level 1” career assessment and inform transition planning.

## DEPARTMENT RESPONSE

The required documentation to accompany the proposed credential will promote curriculum to support student attainment of the CDOS standards and skills, and better inform transition planning and services. The recommendation to replace the Level 1 assessment with the credential documentation will be considered for future rulemaking.

#### COMMENT

Define “severe cognitive disability”; clarify if this includes students with intelligent quotients (IQs) in the 60s.

#### DEPARTMENT RESPONSE

“Students with severe disabilities” is defined in §100.1(t)(2)(iv) to mean students who have limited cognitive abilities combined with behavioral and/or physical limitations and who require highly specialized education, social, psychological and medical services in order to maximize their full potential for useful and meaningful participation in society and for self-fulfillment. Schools must determine on an individual basis whether a student meets this definition and the criteria for participation in NYSAA.

#### COMMENT

Proposal does not address students whose participation in authentic community opportunities to develop employment skills is limited by their disabilities. May not have intended impact on employability of most severely disabled students who typically require post-secondary placements/supports and do not work competitively.

#### DEPARTMENT RESPONSE

The credential is designed to recognize a range of student achievement for the CDOS standards, including skills achieved through community-based learning and/or in-school experiences and provide all NYSAA students meaningful documentation of skills and achievement.

#### COMMENT

Credential creates unfunded mandate.

#### DEPARTMENT RESPONSE

The credential replaces the current IEP diploma and does not add additional responsibilities to school districts beyond those required by federal and State law.

COMMENT

Credential may result in over reliance on NYSAA; safeguards should be added to ensure students are appropriately recommended for NYSAA.

DEPARTMENT RESPONSE

Current regulations define students with severe cognitive disabilities eligible for NYSAA that CSEs must comply with.

COMMENT

Attaching exit summary to credential will segregate students from other graduates; this information is already provided to adult service providers.

DEPARTMENT RESPONSE:

Federal law requires an exit summary be provided to each student with a disability. It is at each student's discretion as to whether he/she provides this information to employers, adult agencies, or others.

COMMENT

Require ongoing parent education and written and verbal information on credential and its limitations and other diploma options be provided to parents prior to meetings where these will be discussed.

DEPARTMENT RESPONSE

SED will advise districts of necessary actions to ensure parents and students are provided information to understand the differences between a regular diploma and the credential.

## COMMENT

Require standard review process for updating document with new skills or if students return to school; clarify how credential is produced and who should be involved in its development; describe process for resolving disputes about credential content and/or development process. Provide guidance and resources for districts to create implementation plans tailored to needs of students currently enrolled and who will exit with IEP diplomas and those entering high school. Clarify how to provide highly mobile students with meaningful credential.

## DEPARTMENT RESPONSE

Comments will be considered for SED guidance to be provided to the field.

## COMMENT

Revise credential to represent mastery level with respect to soft skills and include in depth and measurable job, work related interpersonal, basic life and independence skills.

## DEPARTMENT RESPONSE

Documentation issued with the credential must include the student's level of achievement and independence for each of the CDOS Learning Standards.

## COMMENT

Credential language must emphasize students' strengths/skills and not highlight deficits (e.g., checklist of skills).

## DEPARTMENT RESPONSE

Proposed amendment requires the related documentation include information describing the student's skills and strengths, interests and, as appropriate, other student achievements and accomplishments.

#### COMMENT

Combine credential with information from NYSAA as work is redundant. Credential based on NYSAA may not permit identification of certain relevant skills. Work back from desired skills sets to ensure there are ample opportunities for all students to develop credential skill sets. Credential should have benchmarks including links to existing CTE and vocational programs.

#### DEPARTMENT RESPONSE

While NYSAA measures a student's performance toward certain academic standards, the proposed credential additionally recognizes a student's level of achievement and independence toward CDOS standards.

#### §100.5 – Repeal of IEP diploma

#### COMMENT

IEP diploma does not provide necessary credentials for students to graduate; is often confused with a regular diploma; is considered substandard; limits students' post-secondary education options; is not recognized by employers as regular diploma and does not enable students to gain employment; is not based on consistent standards; does not adequately indicate career or college readiness or recognize students' vocational skills and training; is not consistent with NY's planned use of student learning objectives and growth goals; is inequitable and may be viewed as discriminatory. Proposed credential would be more accurate and valid credential representative of

students' skills and knowledge. Students who do not have severe disabilities should be given chance to pursue a Regents diploma; decision that a student will earn an IEP diploma is often made too early.

#### DEPARTMENT RESPONSE

Comments are supportive in nature.

#### COMMENTS

IEP diploma was developed to recognize students with severe disabilities achieving milestone and to be on par with the graduation document other students receive; proposal denies students access to a diploma and is discriminatory; IEP diploma is right students have earned for public acknowledgement of their accomplishments; is an incentive to "graduate"; students who work hard deserve a diploma; is an appropriate credential for severely disabled students that require lifelong services/supports and allows focus on basic skill development. Working for a credential versus diploma may negatively impact students' self esteem and increase dropout rate. Benefits of IEP diploma are limited, but it allows some students access to post-secondary opportunities. Only apparent difference between credential and IEP diploma is that the credential is available only to NYSAA students. Instead of eliminating IEP diploma, include more vocational components and skills needed in post-secondary life.

#### DEPARTMENT RESPONSE

The proposed policy addresses public concerns that such students be awarded a credential that meaningfully documents the student's level of achievement and skills for future employment and/or post-secondary training and to address broad public concern that the term diploma was misleading to parents and students. Like the IEP diploma,

the proposed credential must be similar in form to the diploma issued by districts, but must include a clear annotation to indicate that it is based on achievement of alternate academic achievement standards.

## COMMENTS

Some support deferring development of an alternate credential for other students until new policy on graduation requirements is set and multiple pathways to graduation are established. Others support deferring adoption of the proposed rule until a credential option is developed for all students with disabilities. Proposed rule, in combination with the elimination of RCT safety net, will narrow graduation options for students with disabilities, exclude many students with disabilities from accessing an appropriate diploma/credential and limit post-secondary opportunities. Proposal provides no motivation for students not eligible for a credential or regular diploma to remain in school, and could result in more school related behavior issues and increases in suspension, drop out, and incarceration rates. Proposal sets “gray area” students up for failure and will force them into Regents courses, thereby limiting their ability to work on skills to prepare them for post-school life. Proposal will have an impact on curriculum and expectations for Regents bound students and may result in “watered down” courses to ensure “gray area” students pass. Need to focus, not defer, attention on developing a viable and meaningful diploma for this group of students. Both phases should be implemented simultaneously so that no students are left without a graduation credential. Defer implementation of credential and elimination of IEP diploma until decisions are made regarding graduation requirements and other options are in place

for students “gray area” students. Ensure transitional planning period spanning two phases is not harmful to students.

#### DEPARTMENT RESPONSE

In addition to the proposed credential for NYSAA eligible students, prior to the 2013-14 school year, SED will propose an exiting credential that documents attainment of CDOS standards and acknowledges students’ successful completion of academic and CTE programs and coursework.

#### COMMENT

Get broad stakeholder input on intended and potential unanticipated consequences of proposals. Monitor practical benefits of credential, including post-secondary career and educational outcomes, and audit NYSAA participation rates.

#### DEPARTMENT RESPONSE

SED sought extensive stakeholder input on the elimination of the IEP diploma and development of an alternate credential. SED continues to engage key stakeholders in development of guidance and sample forms that will be issued to the field. SED will be collecting and reporting on the percentage of students earning this credential as it currently does for IEP diplomas.

#### COMMENT

Revise graduation requirements, develop a continuum of diploma options; create multiple pathways to earn regular diploma; repeal requirement for high stakes tests; develop diplomas that have value to employers and meaningful links to post-secondary opportunities; allow students to specialize; begin early and connect with middle

school/lower grade curricula; address differentiated needs of students; provide for family choice.

#### DEPARTMENT RESPONSE

Comments are beyond scope of proposed regulations.