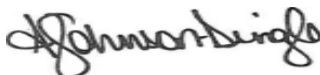
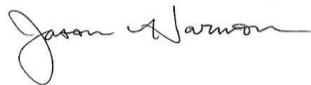





THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson-Dingle 
Jason Harmon 

SUBJECT: Proposed Amendment of Section 100.5(d)(7) of the Regulations of the Commissioner of Education Relating to Requirements for Members of the Standing Committee for the Regents Examination Appeals Process

DATE: December 1, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 100.5(d)(7) of the Regulations of the Commissioner of Education relating to the requirements for members of the standing committee for the Regents Examination appeals process?

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 December 2022 Regents meeting. A copy of the proposed amendment (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are included.

Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its October 2022 meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on October 19, 2022, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

Because the October emergency action will expire on January 1, 2023, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the February 2023 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on January 18, 2023. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

At the September 2022 Board of Regents meeting, the Board adopted regulatory amendments to temporarily expand the existing appeal provision related to Regents Examinations, providing additional flexibility for students adversely impacted by the COVID-19 pandemic. This special appeal provision allows any student who scores between 50 and 64 on a required Regents Examination in the 2021-2022 or 2022-2023 school year to appeal that score and earn a Regents diploma.

Following the September adoption of the special appeal provision, representatives from multiple schools and districts expressed an inability to meet the requirements for the standing committee responsible for reviewing the requests for a special appeal to graduate with a lower score on a Regents Examination. Currently, the standing committee must be comprised of three teachers (not to include the student's teacher in the subject area of the Regents Examination under appeal) and two school administrators (one of whom shall be the school principal).

Proposed Amendment

Therefore, the Department proposes to amend section 100.5(d)(7)(iii) of the Commissioner's regulations to provide that, where a school does not employ the requisite number of teachers and/or administrators required for the standing committee, the superintendent may appoint another school or district personnel who holds a pupil personnel service, teaching, and/or administrative certificate or license to serve on such committee. This proposed amendment will apply to the prior existing appeal provision related to Regents Examinations, as well as the newly added special appeal provision.

Related Regents Items

March 2016: [Amendment of §100.5\(d\)\(7\) of the Commissioner's Regulations to Expand the Eligible Score Band for the Appeal Process on Regents Examinations Passing Scores](https://www.regents.nysed.gov/common/regents/files/316p12a3.pdf)

(<https://www.regents.nysed.gov/common/regents/files/316p12a3.pdf>)

May 2022: [Proposed Amendment of Section 100.5\(d\)\(7\) of the Regulations of the Commissioner of Education Relating to the Special Appeal to Earn Diplomas with a Lower Score on a Regents Examination Taken in the 2021-2022 or 2022-2023 School Year](https://www.regents.nysed.gov/common/regents/files/522p12a6.pdf)

(<https://www.regents.nysed.gov/common/regents/files/522p12a6.pdf>)

September 2022: [Proposed Amendment of Section 100.5\(d\)\(7\) of the Regulations of the Commissioner of Education Relating to the Special Appeal to Earn Diplomas with a Lower Score on a Regents Examination Taken in the 2021-2022 or 2022-2023 School Year](https://www.regents.nysed.gov/common/regents/files/922brca11.pdf)

(<https://www.regents.nysed.gov/common/regents/files/922brca11.pdf>)

October 2022: [Proposed Amendment of Section 100.5\(d\)\(7\) of the Regulations of the Commissioner of Education Relating to Requirements for Members of the Standing Committee for the Regents Examination Appeals Process](https://www.regents.nysed.gov/common/regents/files/1022p12a1revised.pdf)

<https://www.regents.nysed.gov/common/regents/files/1022p12a1revised.pdf>

Recommendation

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

VOTED: That section 100.5(d)(7) of the Regulations of the Commissioner of Education be amended, as submitted, effective January 2, 2023, as an emergency action upon a finding of the Board of Regents that such action is necessary for the preservation of the general welfare to immediately provide regulatory flexibility so that all schools and districts can complete the special appeal process, and to ensure the emergency action taken at the October 2022 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the December 2022 Regents meeting, the emergency rule will become effective on January 2, 2023. It is anticipated that the proposed amendment will be presented for permanent adoption at the February 2023 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the February 2023 meeting, the proposed amendment will become effective as a permanent rule on March 1, 2023.

Attachment A

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 309, and 3204 of the Education Law.

Subparagraph (iii) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(iii) The school principal shall chair a standing committee comprised of three teachers (not to include the student's teacher in the subject area of the Regents examination under appeal) and two school administrators (one of whom shall be the school principal) provided, however, that where a school does not employ the requisite number of teachers and/or administrators, the superintendent may appoint another school or district personnel who holds a pupil personnel service, teaching and/or administrative certificate or license to serve on such committee. The standing committee shall review an appeal within 10 school days of its receipt and make a recommendation to the school superintendent or, in the City School District of the City of New York, to the chancellor of the city school district or his/her designee, to accept or deny the appeal. The standing committee may interview the teacher or a department chairperson who recommended the appeal and may also interview the student making the appeal to determine that he or she has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

At the September 2022 Board of Regents meeting, the Board adopted regulatory amendments to temporarily expand the existing appeal provision related to Regents examinations, providing additional flexibility for students adversely impacted by the COVID-19 pandemic. This special appeal provision allows any student who scores between 50 and 64 on a required Regents examination in the 2021-2022 or 2022-2023 school year to appeal that score and earn a Regents diploma.

Following the September adoption of the special appeal provision, representatives from multiple schools and districts expressed an inability to meet the requirements for the standing committee responsible for reviewing the requests for a special appeal to graduate with a lower score on a Regents exam. Currently, the standing committee must be comprised of three teachers (not to include the student's teacher in the subject area of the Regents examination under appeal) and two school administrators (one of whom shall be the school principal).

Therefore, the Department proposes to amend section 100.5(d)(7)(iii) of the Commissioner's regulations to provide that, where a school does not employ the requisite number of teachers and/or administrators required for the standing committee, the superintendent may appoint another school or district personnel who holds a pupil personnel service, teaching and/or administrative certificate or license to serve on such committee. This proposed amendment will apply to the prior existing appeal provision related to Regents examinations, as well as the newly added special appeal provision.

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the October 2022 meeting of the Board of Regents, effective October 4, 2022. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the February 2023 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the February meeting, would be March 1, 2023, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on January 1, 2023. Therefore, a second emergency action is necessary at the December 2022 meeting, effective January 2, 2022, for the preservation of the general welfare in order to immediately provide regulatory flexibility so that all schools and districts can complete the special appeal process, and to ensure that the emergency action taken at the October 2022 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the February 2023 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.