



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 *Angelique Johnson-Dingle*
Jason Harmon *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: February 2, 2023

AUTHORIZATION(S):

Don M. P. Bellotti

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 a permanent rule at the February 2023 Regents meeting. A copy of the proposed amendment is included (Attachment A).

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 was set to expire on January 1, 2023, a second emergency action was necessary at the December 2022 meeting to ensure the emergency rule remained continuously in effect until it could be permanently adopted at the February 2023 Regents meeting. A Notice of Emergency Adoption was published in the State Register on January 18, 2023.

Following publication in the State Register, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on March 1, 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>)

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>)

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>)

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>)

December 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/1222brca1.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 March 1, 2023.

Timetable for Implementation

If adopted at the February 2023 meeting, the proposed amendment will become effective as a permanent rule on March 1, 2023.

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.