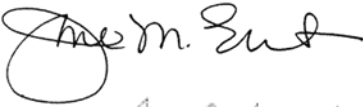





TO: P-12 Education Committee

FROM: Jhone M. Ebert 
Angelica Infante-Green 

SUBJECT: 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

DATE: March 14, 2016

AUTHORIZATION(S):



SUMMARY

Issue for Decision

Should the Board of Regents amend §100.5(d)(7) of the Commissioner's Regulations to expand by two additional points the existing eligible score band for an appeal of Regents examinations passing scores and eliminate the student eligibility requirement related to minimum attendance?

Reason(s) for Consideration

Implementation of policy

Proposed Handling

The proposed amendment will be presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action at the March 2016 Regents meeting. A copy of the proposed amendment and a statement of the facts and circumstances which necessitate emergency action are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Existing diploma requirements allow students to appeal scores of 62-64 on up to two required Regents examinations. The appeal provision calls for a student to meet the following criteria in order to be granted an appeal by their local school district:

Students must:

1. Have taken the Regents examination under appeal at least two times;
2. Present evidence that the student has taken advantage of academic help provided by the school in the subject tested by the Regents Examination under appeal;
3. Have an attendance rate of 95 percent (except for excused absences) for the school year during which the student last took the Regents examination under appeal;
4. Have a course average in the subject under appeal (as evidenced in the official transcript that records grades achieved by the student in each quarter of the school year) that meets or exceeds the required passing grade by the school; and
5. Be recommended for an exemption to the graduation requirement by the student's teacher or Department chairperson in the subject of the Regents examination under appeal.

In January 2015, the Board of Regents extended the appeal process to include a provision to allow eligible English language learners to appeal scores of 55-61 on the English Language Arts Regents Examination and in December 2015 the Board approved regulations to extend the appeal provision to students with disabilities who were seeking the local diploma through the existing safety net options. These students are able to appeal scores of between 52 and 54 on up to two Regents examinations and earn the local diploma.

Summary of Proposed Amendment

Under this proposal, students could appeal scores of 60-64 (expanded from 62-64) on up to two Regents examinations. Students who are granted one appeal by their local superintendent would then earn a Regents diploma. Students who are granted two appeals would earn a local diploma.

In addition, the attached proposed revision would eliminate the requirement that students meet a minimum attendance requirement of 95%, exclusive of excused absences, in the year they last took the examination under appeal. The attendance requirement should be revised for a number of reasons. The rate required exceeds the statewide average attendance rate. In addition, a student's ability to provide documentation for an excused absence may be dependent upon circumstances that are not within the student's control. Finally, a student's attendance in the year they last took the test may not be appropriate or applicable. At times, a student may be returning to school for the sole purpose of attempting to pass the examination, so class

attendance cannot be calculated in the year they last took the exam. No student may submit an appeal unless they have passed the course for which the appeal is being sought. If the student's attendance is adequate to meet course expectations and ultimately pass the course, the appeal should be considered.

Recommendation

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

VOTED: That paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education be amended as submitted, effective March 22, 2016, upon a finding of the Board of Regents that such action is necessary for the preservation of the general welfare to immediately expand by two additional points the existing eligible score band for an appeal of Regents examinations passing scores, and to eliminate the attendance requirement as an appeal criteria, so that school districts and qualifying students are given sufficient notice to prepare for and timely implement such graduation pathway in the 2015-16 school year.

Timetable for Implementation

If adopted at the March 2016 Regents meeting, the emergency rule will take effect on March 22, 2016. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June 2016 Regents meeting, after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on April 6, 2016 and expiration of a 45-day public comment period.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305, 309 and 3204 Paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective March 22, 2016, as follows:

(7) Appeals process on Regents examinations passing score to meet Regents diploma requirements.

(i) School districts shall provide unlimited opportunities for all students to retake required Regents examinations to improve their scores.

(a) A student who first enters grade nine in September 2005 or thereafter and who fails, after at least two attempts, to attain a score of 65 or above on a required Regents examination for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

(1) has scored within [~~three~~] five points of the 65 passing score 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;

(2) provides evidence that he or she has received academic intervention services by the school in the subject area of the Regents examination under appeal;

[[~~(3)~~] has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents examination under appeal;]

[[~~(4)~~] (3) has attained a course average in the subject area of the Regents examination under appeal 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; and

[(5)] (4) is recommended for an exemption to the passing score on the required Regents examination under appeal by his or her teacher or department chairperson in the subject area of such examination.

(b) A student who first enters school in the United States (the 50 States and the District of Columbia) in grade 9, 10, 11 or 12 and is otherwise eligible to graduate in January 2015 or thereafter, is identified as an English Language Learner pursuant to Part 154 of this Title, and fails, after at least two attempts, to attain a score of 65 or above on the required Regents examination in English language arts for graduation, shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no such student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

(1) . . .

(2) . . .

[(3)] has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents examination in English language arts;]

[(4)] (3) . . .

[(5)] (4) . . .

(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)

(2) has met the criteria specified in subclauses [(2) - (5)] (2) – (4) of clause (a) 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.

(ii)

(iii)

(iv)

(v)

(vi)

8 NYCRR §100.5(d)(7)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to implement revisions to policy adopted by the Board of Regents to expand by two additional points the existing eligible score band for an appeal of Regents examinations passing scores. Under the proposed amendment, students could appeal scores of 60-64 (expanded from 62-64) on up to two Regents examinations. Students who are granted one appeal by their local superintendent would then earn a Regents diploma. Students who are granted two appeals would earn a local diploma. In addition, the proposed amendment would eliminate the requirement that in order to be eligible to appeal students must meet a minimum attendance requirement of 95%, exclusive of excused absences, in the year they last took the examination under appeal.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be presented for regular adoption is the June 13-14, 2016 Regents meeting, after publication of the proposed rule in the State Register on April 6, 2016 and expiration of the 45-day public comment period for State agency rule makings. Furthermore, pursuant to the State Administrative Procedure Act (SAPA), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be June 29, 2016, the date a Notice of Adoption would be published in the State Register. However, school districts must start preparations now, in order to timely implement in the 2015-2016 school year the expanded appeals process for Regents examination passing scores.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to immediately expand by two additional points the existing eligible score band for an appeal of Regents examinations passing scores and to eliminate the attendance requirement as an appeal criteria, so that school districts and qualifying students are given sufficient notice to prepare for and timely implement such graduation pathway in the 2015-16 school year.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the June 13-14, 2016 meeting of the Board of Regents, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.