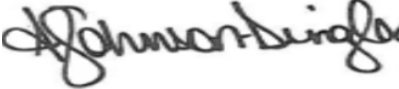






THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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

**FROM:** Angelique Jonson-Dingle   
Jason Harmon 

**SUBJECT:** Proposed Amendment of Section 100.5 of the Regulations of the Commissioner of Education Relating to Requirements for the Issuing of a Special Determination to Graduate with a Local Diploma

**DATE:** June 30, 2022

**AUTHORIZATION(S):** 

### SUMMARY

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

Should the Board of Regents adopt the proposed amendment of section 100.5 of the Regulations of the Commissioner of Education relating to requirements for the issuing of a special determination to graduate with a local diploma?

#### **Reason(s) for Consideration**

Review of Policy.

#### **Proposed Handling**

The proposed amendment is presented to the Full Board for adoption as an emergency rule at its July 2022 meeting. A copy of the proposed amendment is included as (Attachment A) and a statement of facts and circumstances which necessitate emergency action is included as (Attachment B).

#### **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 the June 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and

Proposed Rule Making was published in the State Register on June 29, 2022, for a 60-day public comment period.

Because the June emergency action will expire on September 11, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the October 2022 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on September 28, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

### **Background Information**

All students must be held to high expectations and be provided equitable opportunities to participate and progress in the educational program to prepare them to graduate with a high school diploma. The State Education Department (“Department”) recognizes there may be some students who, because of a disruption to their educational program due to COVID-19, or for other medical reasons, are unable to demonstrate their proficiency on one or more required Regents Examinations.

In May 2022, the Board of Regents expanded the existing appeal provision related to Regents Examinations to provide one measure of flexibility for such students. This [special appeal](https://www.regents.nysed.gov/common/regents/files/522p12a6.pdf) (https://www.regents.nysed.gov/common/regents/files/522p12a6.pdf) 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.

For students who are scheduled to graduate in June 2022 but are unable to earn a diploma because they do not qualify for a special appeal or are unable to participate in a Regents Examination because of illness, including isolation or other restrictions attributable to COVID, the Department is now proposing additional flexibility in the form of a special determination to graduate with a local diploma.

Under this proposal, all students who are unable to graduate in June 2022 due to the above reasons could request a special determination to graduate with a local diploma (“special determination”). This option will ensure that all students who have demonstrated, through local measures, that they have met the State’s learning standards for graduation can earn a local diploma allowing them to exit high school and pursue a post-secondary opportunity.

### **Summary of the Proposed Amendment**

The proposed amendment to section 100.5(d) of the Commissioner’s regulations provides that, for the 2021-2022 school year, a student who is scheduled to graduate in June 2022 but is unable to earn a diploma because he or she did not achieve a passing score or qualify for a special appeal for a required June 2022 Regents Examination may

request a special determination to graduate with a local diploma, provided the student has otherwise met all graduation requirements and:

- the student was enrolled in a course of study or makeup program during the 2021-2022 school year leading to a June 2022 Regents Examination, earned credit in such course of study or makeup program, and participated in such Regents Examination, but did not achieve a passing score on or qualify for a special appeal for such examination; or
- the student was enrolled in a course of study or makeup program during the 2021-2022 school year that was intended to culminate in the student's participation in a June 2022 Regents Examination and the student earned credit in such course of study or make up the program by the scheduled date of such Regents Examination but was unable to participate in the examination due to illness, including isolation or other restrictions attributable to COVID-19.

The proposed amendment sets forth a process for local review. In considering such special determination, the superintendent of a school district or the principal, head of school, or their equivalent, of a charter school or registered nonpublic school, as applicable, must consider evidence demonstrating that the student:

- earned credit in all courses of study required for graduation in accordance with the grading policies of the school district, registered nonpublic high school, or charter school, considering the student's final course grade as well as student work completed throughout the school year and/or interim grades on homework, class work, quizzes, and tests and other measures of proficiency demonstrating the student has met the learning standards for such courses of study; and
- participated in such June 2022 Regents examination or was unable to participate due to documented illness, including isolation or other restrictions attributable to COVID-19.

The superintendent, charter school leader, or chief administrative officer of a registered nonpublic school must document, on a form prescribed by the Commissioner of Education, the evidence reviewed in making such a special determination. The student and the parent or person in parental relation to the student must receive a copy of this documentation and written notification of the determination. Where the superintendent, charter school leader, or chief administrative officer of a registered nonpublic school determines that the student has not met the requirements for a special determination, the notice must inform the student and parent or person in parental relation that the student 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. A student's parent or person in parental relation may refuse a special determination that is granted if the parent or person in parental relation wants their child to remain in school and continue their educational program.

Additionally, the superintendent, charter school leader, or chief administrative officer must sign an assurance on the form that certifies that the information is accurate and attest that the student has or has not met the requirements for a special determination for a local diploma. A copy of the form must be placed in the student's record and for public and charter schools another copy must be submitted to the Department by August 31, 2022.

The special determination may only be used to grant a student a local diploma. If the student wishes to pursue a Regents diploma but was either unable to qualify for a special appeal (i.e. they score below a 50) or unable to take one or more Regents Examination required to graduate because of illness or quarantine, the student may retake the Regents Examination(s) at a later administration.

### **Related Regents Items**

June 2022: [Proposed Amendment of Section 100.5 of the Regulations of the Commissioner of Education Relating to Requirements for the Issuing of a Special Determination to Graduate with a Local Diploma](https://www.regents.nysed.gov/common/regents/files/622p12a9.pdf) (<https://www.regents.nysed.gov/common/regents/files/622p12a9.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>)

### **Recommendation**

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

VOTED: That section 100.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 12, 2022, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately provide regulatory flexibility for students who are scheduled to graduate in June 2022 but are unable to earn a diploma because they do not qualify for a special appeal or are unable to participate in a Regents examination because of illness, including isolation or other restrictions attributable to COVID-19, and to ensure that the emergency action taken at the June 2022 meeting remains continuously in effect.

### **Timetable for Implementation**

If adopted as an emergency rule at the July 2022 Regents meeting, the emergency rule will become effective September 12, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the October 2022 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 October 2022 meeting, the proposed amendment will become effective on October 19, 2022.

**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.

Subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (14) to read as follows:

(14) Special determination to meet local diploma requirements. (i) For purposes of this paragraph only, *superintendent* shall mean the superintendent of a school district or the principal, head of school, or their equivalent, of a charter school or registered nonpublic school, as applicable.

(ii) For the 2021-2022 school year, a student who is scheduled to graduate in June 2022, but is unable to earn a diploma because he or she did not achieve a passing score on or qualify for a special appeal pursuant to paragraph (7) of this subdivision for a required June 2022 Regents examination may request a special determination to graduate with a local diploma, provided such student has otherwise met all graduation requirements and one of the following criteria:

(a) the student was enrolled in a course of study or makeup program during the 2021-2022 school year leading to a June 2022 Regents examination, earned credit in such course of study or makeup program by the scheduled date of such Regents examination, and participated in such Regents examination, but did not achieve a passing score on or qualify for a special appeal pursuant to paragraph (7) of this subdivision for such examination; or

(b) the student was enrolled in a course of study or makeup program during the 2021-2022 school year that was intended to culminate in the student's participation in a

June 2022 Regents examination and the student earned credit in such course of study or make-up program by the scheduled date of such Regents examination but was unable to participate in the examination due to illness, including isolation or other restrictions attributable to COVID-19. Such illness must be documented by the student's physician or, in the case of required isolation due to COVID-19, the student must follow Centers for Disease Control and Prevention (CDC) and/or local guidelines for quarantine.

(iii) In considering a special determination to graduate with a local diploma, the superintendent shall consider evidence demonstrating that the student:

(a) earned credit in all courses of study required for graduation in accordance with the grading policies of the school district, registered nonpublic high school, or charter school. 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, class work, quizzes, and tests, and other measures of proficiency demonstrating the student has met the learning standards for such courses of study; and

(b) participated in such June 2022 Regents examination or was unable to participate due to documented illness, including isolation or other restrictions attributable to COVID-19.

(iv) The superintendent shall document, on a form prescribed by the Commissioner, the evidence reviewed, and the special determination made and provide a copy of such to the student and the student's parent or person in parental relation. The superintendent shall sign an assurance on the form that certifies that the

information is accurate and the superintendent attests that the student has or has not met the requirements of this paragraph for a special determination to graduate with a local diploma. A copy of such form must be placed in the student's record and another copy must be submitted to the Department by August 31, 2022.

(v) Where the superintendent determines that the student has not met the requirements for a special determination prescribed in this paragraph, the superintendent shall inform the student and parent or person in parental relation that the student 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.

(vi) A student's parent or person in parental relation may refuse a special determination to graduate with a local diploma granted pursuant to this paragraph if the parent or person in parental relation wishes the student to remain in school and continue their educational program.

(vii) Notwithstanding the provisions of this paragraph, where a student with a disability has an individualized education plan (IEP) and/or other documentation from the Committee on Special Education indicating that the plan/recommendation for the student was to remain in school and continue his or her educational program, a school or district shall not confer a diploma for such student until a parent or person in parental relation confirms in writing that such student should receive a diploma.



STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING  
EMERGENCY ACTION

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In May 2022, the Board of Regents expanded the existing appeal provision related to Regents Examinations to provide one measure of flexibility for such students. This [special appeal](#) provision allows any student who scores between 50 and 64 on a required Regents Examination in the 2021-22 or 2022-23 school year to appeal that score and earn a Regents diploma.

For students who are scheduled to graduate in June 2022, but are unable to earn a diploma because they do not qualify for a special appeal or are unable to participate in a Regents Examination because of illness, including isolation or other restrictions attributable to COVID, the Department is now proposing additional flexibility in the form of a special determination to graduate with a local diploma.

Under this proposal, all students who are unable to graduate in June 2022 due to the above reasons could request a special determination to graduate with a local diploma (“special determination”). This option will ensure that all students who have demonstrated, through local measures, that they have met the State’s learning

standards for graduation can earn a local diploma allowing them to exit high school and pursue a post-secondary opportunity.

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 June 2022 meeting of the Board of Regents. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (non-emergency) 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 October 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the October meeting, would be October 19, 2022, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on September 11, 2022. Therefore, a second emergency action is necessary at the July 2022 meeting, effective September 12, 2022, for the preservation of the general welfare to immediately provide regulatory flexibility for students who are scheduled to graduate in June 2022 but are unable to earn a diploma because they do not qualify for a special appeal or are unable to participate in a Regents examination because of illness, including isolation or other restrictions attributable to COVID-19, and to ensure that the emergency action taken at the June 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 October 2022 meeting, which is the first

scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.