



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

TO: The Honorable the Members of the Board of Regents
FROM: Cosimo Tangorra, Jr. *Cosimo Tangorra Jr.*
SUBJECT: Graduation Requirements for English Language Learners
DATE: April 6, 2015

AUTHORIZATION(S):

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SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents readopt as a second emergency action the amendment to section 100.5(d)(7) of the Commissioner's Regulations to:

- extend the ability to graduate with a Local Diploma via appeal to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. to include additional students who entered grade 9 prior to the 2010-11 school year not currently covered by the regulation); and
- clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal?

Reason(s) for Consideration

Implementation of Policy.

Proposed Handling

The proposed amendment is being presented to the full Board for adoption as an emergency action at the April 2015 Regents meeting. A Statement of the Facts and Circumstances Which Necessitate Emergency Action is attached.

Procedural History

The proposed amendment was discussed by the P-12 Education Committee and adopted as an emergency rule at the February 2015 Regents meeting, effective February 10, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on February 25, 2015.

The February emergency rule will expire on May 10, 2015. A second emergency action is necessary at the April Regents meeting to ensure that the rule remains continuously in effect until it can be presented for adoption and take effect as a permanent rule. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

At its October 2014 meeting, the Board of Regents adopted emergency amendments to Commissioner's Regulation section 100.5(d)(7), effective October 21, 2014, to allow additional graduation options for ELLs who enter the United States in 9th grade or above. Pursuant to these amendments, ELLs who first entered the United States in 9th grade or above in the 2010-11 school year and thereafter, and who fail, after at least two attempts, to attain a score of 65 or above on the Regents Exam in English, became eligible to receive the Local Diploma via appeal if they meet all other conditions of appeal AND:

- Successfully appeal the Regents Exam in English AND score at least 65 on each of the four remaining required Regents exams; OR
- Successfully appeal the Regents Exam in English AND score at least 65 on three other required Regents exams AND score between 62 to 64 on one other required Regents exam and successfully appeal that exam.

At its January 2015 meeting, the Board of Regents adopted these amendments as a permanent rule.

At its January 2015 meeting, the Board of Regents also adopted amendments to Commissioner's Regulations sections 100.2 and 100.5 to establish a 4+1 pathway to graduation for all students. The 4+1 pathway option applies beginning with students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter. The amendment creates graduation pathways assessments in the Humanities, STEM, Biliteracy (languages other than English [LOTE]), CTE and the Arts and requires that, in addition to the four Regents Exams or Department-approved alternative assessments required of all students in each of the areas of English, mathematics, science, and social studies, students may pass any one of the following to meet the fifth assessment requirement:

1. one additional social studies Regents examination or Department-approved

- alternative (Humanities Pathway); or
2. one additional Regents examination in a different course in mathematics or science or a Department-approved alternative (STEM Pathway); or
 3. a pathway assessment approved by the Commissioner in accordance with §100.2(f) of the Commissioner's regulations (which could include a Biliteracy [LOTE] Pathway); or
 4. a career and technical education (CTE) pathway assessment, approved by the Commissioner in accordance with §100.2(mm), following successful completion of a CTE program approved pursuant to §100.5(d)(6) of the regulations (CTE Pathway); or
 5. an arts pathway assessment approved by the Commissioner in accordance with proposed §100.2(mm) (Arts Pathway).

Over the past 10 years, New York State ELL student enrollment has increased by 20%. According to the U.S. Department of Education, ELL student enrollment has increased by 18% nationally. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. Their linguistic diversity makes up over 140 languages spoken in New York State; 61.5% for whom Spanish is the home language. In addition, 41.2% were born in another country.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. Therefore, the Board of Regents adopted this pathway for ELLs to graduate with a Local Diploma pursuant to appeal if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score.

Public comment in response to the January 2015 amendments to section 100.5(d)(7) recommended also making this option for graduation available to ELLs who are in their 6th year of high school. These ELLs are currently excluded from this option because they entered high school prior to the 2010-11 school year. Public comment also highlighted the need to clarify that the appeal option is available to ELLs who satisfy graduation assessment requirements through the 4+1 pathway option discussed above. After considering these policy concerns, the Department agrees that 6th year ELLs as well as ELLs who satisfy graduation requirements via the 4+1 pathway would benefit from the ability to utilize this graduation option.

Summary of Proposed Amendments

Under the proposed amendment, all ELLs otherwise eligible to graduate in January 2015 or thereafter, and who score between 55-61 on the Regents Exam in English after two attempts at attaining a score of 65 or above,¹ are also eligible to

¹ Students who score between 62-64 on a Regents exam already are eligible under current regulations to appeal that result.

receive the Local Diploma via appeal if they:

- Successfully appeal the Regents Exam in English AND score at least 65 on each of the four remaining required Regents exams (or satisfy the corresponding graduation requirement via an available alternative pathway); OR
- Successfully appeal the Regents Exam in English AND score at least 65 on three other required Regents exams (or satisfy the corresponding graduation requirement via an available alternative pathway) AND score between 62 to 64 on one other required Regents exam and successfully appeal that exam.

To be eligible to appeal a score on the Regents Exam in English, ELLs would also have to meet these conditions:

- The student has received academic intervention services in English language arts; AND
- The student has an attendance rate of at least 95 percent for the school year during which the student last took the Regents examination in English; AND
- The student has attained a course average in English language arts 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
- The student is recommended for an exemption to the passing score on the Regents examination by his or her teacher or department chairperson.

Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other Regents appeals.

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 May 11, 2015, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the February 2015 Regents meeting remains continuously in effect until the proposed rule can be presented for adoption and take effect as a permanent rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the February 2015 Regents meeting, effective February 10, 2015, and will expire on May 10, 2015. If adopted at the April Regents meeting, the second emergency action will become

effective on May 11, 2015 for a 60-day period. It is anticipated that the proposed rule will be presented for permanent adoption at the May 18-19, 2015 Regents meeting, after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act. If adopted at the May meeting, the proposed amendment will take effect as a permanent rule on June 3, 2015.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305, 308, 309 and 3204

Paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective May 11, 2015, 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) . . .

(b) A student who first enters school in the United States (the 50 States and the District of Columbia) in grade nine, ten, eleven or twelve [in September 2010 or thereafter] 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) has scored between 55 and 61 on the required Regents examination in English language arts under appeal;

(2) provides evidence that he or she has received academic intervention services by the school in English language arts;

(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) has attained a course average in English language arts 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) is recommended for an exemption to the passing score on the required Regents examination in English language arts by his or her teacher or department chairperson in English language arts.

[(c)] (ii) An appeal may be initiated by the student, the student's parent or guardian, or the student's teacher, and shall be submitted in a form prescribed by the commissioner to the student's school principal.

[(d)] (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). 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 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.

[(e)] (iv) The school superintendent or, in the City School District of the City of New York, the chancellor of the city school district or his/her designee, shall make a

final determination to accept or deny the appeal. The school superintendent or chancellor or chancellor's designee may interview the student making the appeal to determine that the student has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(f)] (v) Diplomas.

[(1)] (a) A student whose appeal is accepted for one required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations (or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part), shall earn a Regents diploma.

[(2)] (b) A student whose appeal is accepted for two required Regents examinations pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regent examinations (or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part), shall earn a local diploma.

[(3)] (c) A student whose appeal is accepted for the required Regents examination in English language arts pursuant to clause (b) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations (or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part), shall earn a local diploma.

[(4)] (d) A student whose appeal is accepted for the required Regents examination in English language arts pursuant to clause (b) of subparagraph (i) of this paragraph and for one other required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regents examinations (or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part), shall earn a local diploma.

[(g)] (vi) Each school shall keep a record of all appeals received and granted and report this information to the State Education Department on a form prescribed by the commissioner. All school records relating to appeals of scores on required Regents examinations shall be made available for inspection by the State Education Department.

8 NYCRR§ 100.5(d)(7)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment would extend the English Language Learner (ELL) specific pathway to graduate with a Local Diploma via appeal to ELLs who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter, and clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

The proposed amendment was adopted as an emergency action at the February 9-10, 2015 Regents meeting, effective February 10, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on February 25, 2015. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the May 18-19, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the May meeting, would be June 3, 2015, the date a Notice of Adoption would be published in the State Register. However, the February emergency rule will expire on May 10, 2015, 90 days from its filing with the Department of State on February 10, 2014. A lapse in the rule's effective date could disrupt appeals pursuant to section 100.5(d)(7) which provides a specific pathway for English Language Learner (ELL) students who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and

thereafter to graduate with a Local Diploma. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the February 2015 Regents meeting remains continuously in effect until the rule can be adopted and take effect as a permanent rule.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the May 18-19, 2015 Regents meeting, which is the first meeting scheduled after expiration of the 45-day period for public comment pursuant to the State Administrative Procedure Act.