

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. The emergency action taken at the February 2018 Board of Regents meeting to amend paragraph (12) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education, is rescinded, effective April 24, 2018.

2. Paragraph (12) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective April 25, 2018, as follows:

(12) Superintendent determination [pathway] option for certain students with disabilities for eligibility for a local diploma.

(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 nonpublic school, as applicable.

(ii) School districts, registered nonpublic high schools and charter schools shall ensure that every student who is identified as a student with a disability as defined in Education Law section 4401(1) and section 200.1(zz) of this Title and who does not meet the *assessment requirements for graduation through* the existing appeal options, [including] the compensatory score option, and/or the 55-64 low pass safety net option available under this section but who is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination [pathway] option in accordance with the requirements of this paragraph, provided that the student:

(a) has a current individualized education program and is receiving special education programs and/or related services pursuant to Education Law section 4402 and section 200.4 of this Title;

(b) took the English Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision, except as otherwise provided in subparagraph (v) of this paragraph; and

(c) took a mathematics Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision, except as otherwise provided in subparagraph (v) of this paragraph; and

(d) participated in the remaining Regents examinations required for graduation pursuant to clauses (c), (d), (e) and (f) of subparagraph (a)(5)(i) of this section, but was unable to achieve a minimum score of 55 on one or more of the remaining assessments required for graduation or did not initiate an appeal of a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or was unable to use the compensatory score option for one or more such examinations pursuant to clause (7)(vi)(c) of this subdivision; provided that nothing in this clause shall prohibit a student who uses the New York State career development and occupational studies commencement credential to meet requirements of clauses (b) and/or (c) of this subparagraph from requesting a review by the superintendent to determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities only for the subject area(s) of English language arts and/or mathematics; and

(e) has earned the required course credits pursuant to this section and passed, in accordance with district policy, all courses required for graduation.

(iii) For each eligible student under this paragraph, the superintendent shall conduct a review to determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities in the subject area(s) where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination(s) and document such determination in accordance with the following procedures:(a) the superintendent shall consider evidence that the student attained a grade for the course that meets or exceeds the required passing grade by the school for the subject area(s) under review and such grade is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year. Such evidence may include, but need not be limited to, the student's final course grade, student work completed throughout the school year and/or any interim grades on homework, class work, quizzes and tests; and

(b) the superintendent shall consider the evidence that demonstrates that the student actively participated in the Regents examination(s) for the subject area(s) under review; and

(c) the superintendent shall, as soon as practicable, in a form and manner prescribed by the commissioner, document the evidence reviewed for an eligible student with disability under this paragraph and make a determination as to whether the student met the requirements for issuance of a local diploma pursuant to this paragraph and certify that the information provided is accurate; and

(d) the superintendent shall, as soon as practicable, provide each student and parent or person in parental relation to the student with a copy of the completed form and written notification of the superintendent's determination, and place a copy of the completed form in the student's record.

(1) Where the superintendent determines that the student has not met the requirements for graduation pursuant to this paragraph, the written notice shall inform the student and parent or person in parental relation to the student 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.

(2) Where the superintendent determines that the student has met the requirements for graduation pursuant to this paragraph, the parent shall receive prior written notice pursuant to the requirements of section 200.5(a)(5)(ii) of this Title indicating that the student is not eligible to receive a free appropriate public education after graduation with the receipt of the local diploma pursuant to this paragraph; and

(e) the superintendent shall, no later than August 31 of each year, provide the commissioner with a copy of the completed form for each student; and

(f) the commissioner may conduct audits of compliance with the requirements of this paragraph.

(iv) On or after October 18, 2016, a superintendent shall only make a determination under this paragraph upon receipt of a written request from an eligible student's parent or guardian. Such request shall be submitted in writing to the student's school principal or chairperson of the district's committee on special education. A written request received by the school principal, chairperson of the district's committee on special education, or

any other employee of the school as applicable, shall be forwarded to school superintendent immediately upon its receipt.

(v) On or after December 12, 2017, a student who was unable to achieve a minimum score of 55 or did not initiate an appeal of a score of between 52 and 54 on the English and/or mathematics Regents exams shall be considered an eligible student for the superintendent determination option pursuant to this paragraph, provided that the student has completed the requirements for the New York State career development and occupational studies commencement credential pursuant to section 100.6(b) of this Part.

(a) For students with disabilities who are otherwise eligible to graduate in either the 2017-2018 school year or the 2018-2019 school year only, the school district, registered nonpublic high school or charter school may award the career development and occupational studies commencement credential to a student who has not met all of the requirements in section 100.6(b)(3)(ii) of this Part, for purposes of eligibility for the superintendent determination option pursuant to this paragraph, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills relating to the commencement level career development and occupational studies learning standards. The principal must have evidence that the student has successfully completed relevant instructional and work-based learning activities during the student's secondary school years that demonstrate the student has readiness skills for entry-level employment. Students who are awarded the career development and occupational studies commencement credential pursuant to this clause may not use such credential to meet the requirements set forth in section

100.5(d)(11) of this Part for the career development and occupational studies pathway to a local or Regents diploma.

(b) The superintendent shall, in accordance with the requirements of subparagraph (iii) of this paragraph, conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge, skills and abilities in English language arts and/or mathematics, in addition to reviewing any other subject areas required for graduation where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination pursuant to clause (ii)(d) of this paragraph.

3. Subclause (3) of clause (b) of subparagraph (ix) of paragraph (2) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective April 25, 2018, as follows:

(3) the appeal, safety net and superintendent determination [pathway] options that may be available to the student through section 100.5 of this Title to allow the student to meet the graduation assessment requirements.