

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

A new paragraph (12) shall be added to subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education, effective June 20, 2016, to read as follows:

(12) Superintendent determination pathway for certain students with disabilities for eligibility for a local diploma. 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 and safety net options available through this section but is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination pathway in accordance with the requirements of this clause, provided that the student:

(i) 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; and

(ii) 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; and

(iii) 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;
and

(iv) participated in the remaining assessments required for graduation pursuant to clauses (c), (d), (e) and (f) of subparagraph (a)(5)(i) of this section, provided that if the student was unable to achieve a passing score on one or more of the remaining assessments required for graduation or to successfully appeal a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or did not initiate such an appeal pursuant to paragraph (7) of this subdivision, or to use the compensatory score option for one or more such examinations pursuant to clause (b)(7)(vi)(c) of this section, then the superintendent shall determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities measured by the relevant Regents examination(s) and shall document such determination in accordance with the following:

(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 and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year. Such evidence shall 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, projects, class work, quizzes and tests; and

(b) with respect to subparagraph (iv) of this paragraph, the superintendent shall consider the extent to which the student participated in such examination(s); 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 clause and certify that the information provided is accurate; and

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

2. Clause (c) of subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner is amended, effective June 13, 2016, as follows:

(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) has scored within three points of a score of 55 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; and

(2) has met the criteria specified in subclauses (a)(2)-(4) 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.]