

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.