



June 2016

### **Special Education Field Advisory**

**From:** Patricia J. Geary 

**Subject:** Superintendent Determination of Graduation with a Local Diploma

At the June 2016 meeting, the New York State Board of Regents approved through emergency action an amendment to section 100.5 of the Regulations of the Commissioner of Education to require superintendents to make a local determination as to the academic proficiency for eligible students with disabilities to graduate with a local diploma.

For students with disabilities, otherwise eligible to graduate in June 2016 and thereafter, a school superintendent (or the principal of a registered nonpublic school or charter school, as applicable) has the responsibility to determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on the Regents examinations required for graduation.

#### **Superintendent Determination**

All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation.

To be eligible for the Superintendent Determination, students must achieve a minimum score on the English Language Arts (ELA) and math Regents examinations. The superintendent's determination provides for review of other documentation of proficiency for students with disabilities who, because of their disability, are unable to demonstrate proficiency even with testing accommodations, on one or more of the other three Regents examinations required for graduation. The conditions of the review are as follows:

#### *Applicability*

This option would be open to students with disabilities with a current Individualized Education Program (IEP) only. It does not apply to students with section 504 accommodation plans or students who have been declassified from special education.

### *Automatic Review*

The superintendent must ensure that every student with a disability who does not meet the graduation standards through the existing appeal and safety net options is considered for the Superintendent Determination. This determination does not need to be formally requested by the student or parent.

### *Conditions*

1. The student has a current IEP and is receiving special education programs and/or related services.
2. The student did not meet the graduation requirements through the low pass (55-64) safety net option<sup>1</sup> or the compensatory option<sup>2</sup> [section 100.5(b)(7)(vi)(c) and (d)(7)].
3. The student must have earned the required course credits and have passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents exam areas (ELA, math, social studies, and science).
4. The student must have received a minimum score of 55 on both the Regents ELA and math exams or a successful appeal of a score between 52 and 54.
5. There must be evidence that the student participated in the other exams required for graduation pursuant to section 100.5(a)(5), but has not passed one or more of these as required for graduation.
6. In a subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the assessment required for graduation, there must be evidence that the student has otherwise demonstrated graduation level proficiency in the subject area.

### *Review and Documentation*

The school principal and superintendent must review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the standards for graduation with a local high school diploma. In conducting a review to ensure the student has met the academic standards, the superintendent must consider evidence that demonstrates that the student:

---

<sup>1</sup> A student also has the option to appeal a score of 52-54 on up to two Regents exams pursuant to section 100.5(b)(7)(vi)(c). While the appeal option exists, it is not required in order for a student to be considered for the Superintendent Determination option.

<sup>2</sup> A student also has the option to appeal the ELA and/or math scores pursuant to section 100.5(d)(7). While the appeal option exists, it is not required in order for a student to be considered for the Superintendent Determination option.

1. Passed courses culminating in the exam required for graduation, in accordance with the grading policies of the district. 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, projects, class work, quizzes, tests, etc., that demonstrate that the student has met the learning standards for the course; and
2. Actively participated in the exam required for graduation.

The school principal and superintendent must sign the form prescribed by the Commissioner – “**Superintendent Determination of Graduation with a Local Diploma**”, which documents the evidence reviewed, certifies that the information is accurate and indicates that the superintendent has determined that the student has either met or has not met the requirements for a local diploma. Where the superintendent determines that the student has not met requirements for graduation, the notice must inform the student that he/she 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.<sup>3</sup>

The student and the parent of the student must receive a copy of this documentation and written notification of the superintendent's determination whenever the superintendent determines that the student has or has not meet the requirements to earn a local diploma. A copy of the form must be placed in the student's record. **In addition, a copy of the form must be submitted to the Department no later than by August 31<sup>st</sup>.**

The form prescribed by the Commissioner for this purpose can be found at: [Superintendent Determination of Graduation with a Local Diploma form.](#)

### *Audit*

The Commissioner will periodically audit the determinations granted by superintendents to ensure that conditions described above are being met.

### **Allowance of Low Pass Appeal in Addition to Compensatory Option**

Under current regulations, students with disabilities who make use of the compensatory option described above are not eligible to also make use of the low pass appeal wherein they are able to appeal scores of 52-54. The amendment removes this prohibition and allows these students to make use of both options in meeting graduation requirements.

---

<sup>3</sup> A student with a disability who has not yet earned a diploma may reenroll in school until the end of the school year in which the student turns age 21 and graduate through this option, provided the student has a current IEP, is receiving special education programs and services and is participating in the required coursework.

## **Additional Information**

For additional information, see attached questions and answers. Questions regarding this memorandum may be directed to the Office of Special Education at [SPECED@nysed.gov](mailto:SPECED@nysed.gov) Attn: *Superintendent Determination* or by calling 518-473-2878.

**Attachment  
Revised June 20, 2016**

**Questions and Answers**

**Superintendent Determination of Graduation with a Local Diploma**

- 1. Must a student take the Regents examination more than once to be eligible for the Superintendent's Determination of Graduation with a Local Diploma?**

No. Students are not required to take any Regents examinations more than once to be eligible for the Superintendent Determination.

- 2. Must a student pass both the ELA and math Regents examinations in order to be eligible for the Superintendent Determination?**

Yes. A student must have received a minimum score of 55 on both the ELA and math Regents examinations or a successful appeal of a score between 52 and 54 on the ELA and math in order to be eligible for the Superintendent Determination through this process.

- 3. If the student meets the assessment requirements for graduation using the low pass (55-64) and/or the compensatory safety net options, is the student eligible for consideration of the Superintendent Determination for graduation with a local diploma?**

No. The Superintendent's Determination is used only for students with disabilities who do not meet the assessment requirements for graduation through the existing safety net options.

- 4. Must the student use the appeal option prior to consideration of the superintendent's determination for graduation with a local diploma?**

No.

- 5. Must the student's teacher and school principal be involved in the review of a student's academic proficiency when the student has not been successful, because of his/her disability, in demonstrating proficiency on the Regents examinations required for graduation?**

The school principal and the superintendent, and whenever possible the student's teacher from the Regents course under review, must review documentation of evidence that the student has otherwise met the standards for graduation with a local diploma. The school principal and superintendent must certify, on a form prescribed by the

**Attachment**  
**Revised June 20, 2016**

Commissioner, that the student either did or did not demonstrate academic proficiency in the subject area(s) in which the student did not receive a passing score on the Regents examination(s) and does or does not meet the requirements for award of a local diploma.

- 6. Must the superintendent submit the form to NYSED if, based upon a review of the documentation, the superintendent determines the student did not demonstrate proficiency in the learning standards necessary for graduation?**

Yes.

- 7. How will the State ensure consistent implementation of the Superintendent Determination of Graduation with a Local Diploma?**

NYSED will conduct periodic audits of the superintendent's determinations to ensure consistency with the requirements of section 100.5(d)(12) of the Regulations of the Commissioner of Education. School districts, registered nonpublic high schools and charter schools are required to maintain completed ***Superintendent Determination of Graduation with a Local Diploma*** forms and all records considered in review of the determination.

- 8. Does the Superintendent Determination apply to students who have a 504 Accommodation Plan or who have been declassified from special education?**

No. Only those students with disabilities who have a current individualized education program (IEP) and are receiving special education services can be considered for the Superintendent Determination.

- 9. May a student with a disability who exited school without a local or Regents diploma reenroll in school and be considered for the Superintendent Determination?**

Yes. A student with a disability who has not yet earned a diploma may reenroll in school until the end of the school year in which the student turns age 21 and graduate through this option, provided the student has a current IEP, is receiving special education programs and services and is participating in the required coursework.

- 10. If a student who entered grade 9 prior to September 2011 and has passed a Regents Competency Test (RCT) for one or more of the required Regents, is the student eligible for the Superintendent Determination?**

In this case, the student would not have passed one or more of the required Regents examinations and the superintendent must conduct the Superintendent Determination.

**Attachment**  
**Revised June 20, 2016**

The Superintendent may consider whether the student passed the RCT as one component of evidence that the student has otherwise met proficiency standards in that subject area.

**11. Can the superintendent determine that a student has otherwise demonstrated proficiency in a subject area based solely on a student having attained a grade for the course that meets or exceeds the required passing grade by the school, given that such grade reflects the student's body of work, or must additional documentation be reviewed to make such determination?**

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, projects, class work, quizzes, tests, etc., that demonstrate that the student has met the learning standards for the course.

**12. Can the "Superintendent Determination of Graduation with a Local Diploma" form prescribed by the commissioner be adapted for local use?**

No. School districts must use the "Superintendent Determination of Graduation with a Local Diploma" form prescribed by the Commissioner. A copy of this form is available at [http://www.p12.nysed.gov/specialed/publications/documents/SupDetofGraduationForm .pdf](http://www.p12.nysed.gov/specialed/publications/documents/SupDetofGraduationForm.pdf) and may not be altered in any way.

**13. How does the review for the superintendent determination pathway for eligibility for a local diploma occur for a student with a disability placed by their Committee on Special Education in an approved private school?**

If the approved private school is not a registered high school, the superintendent determination must be made by the superintendent of the student's school district of residence. The private school should have some mechanism of communicating back to the district of residence what courses, curricula and exams the student has taken so credit can be appropriately awarded and a superintendent can make the determination if the student has met the standards for graduation with a local diploma through the Superintendent Determination pathway.

If the approved private school is a registered high school, the chief school officer would be responsible for ensuring that the students with disabilities enrolled in the school who do not meet the graduation standards through the existing appeal and safety net options are considered for the Superintendent Determination.

**14. Can a student be considered for a superintendent determination if he or she was not successful in passing the Regents pathway assessment (e.g., one additional Regents examination in a different course in mathematics, science, social studies or English Language Arts (ELA))?**

**Attachment**  
**Revised June 20, 2016**

Yes. A superintendent determination may be used for a student with a disability who has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on a Regents pathway examination required for graduation.

**15. Is a student who did not receive a minimum score of 55 on both the ELA and math Regents examinations, or a successful appeal of a score between 52 and 54 on the ELA and math, but passed the ELA and math Regents Competency Tests (RCTs) eligible for the Superintendent Determination?**

No. Pursuant to section 100.5(d)(12)(ii) and (iii) of the Regulations of the Commissioner of Education, to be eligible for the Superintendent Determination, a student must have taken the English and math **Regents examinations** and received a minimum score of 55 on both exams or a successful appeal of a score between 52 and 54.

**16. Can a student that uses the compensatory safety net option and the low pass safety net option also use the Superintendent Determination Pathway?**

Yes. An eligible student with a disability who does not meet all the assessment requirements for graduation through the existing appeal and safety net options, but is otherwise eligible to graduate in June 2016 and thereafter, shall be considered for a local diploma through the Superintendent Determination pathway.

**17. If a student does not meet the graduation requirements for a Regents Diploma, but meets the requirements for a local diploma using a Superintendent Determination, can that student opt to stay in school until age 21 to take the Regents examinations to earn a local diploma through other safety net options or earn a Regents diploma (e.g., the student wants to increase their score(s) on a Regents exam(s) or attempt to pass the Regents to earn a Regents diploma)?**

No. Pursuant to Education Law sections 3202 and 4402.5 a student continues to be eligible for a free appropriate public education (FAPE) until the end of the school year in which the student turns age 21 or until the receipt of a regular (local or Regents) high school diploma, whichever is earlier. A school district has fulfilled its obligation to provide FAPE when a student with a disability graduates with a local diploma through the Superintendent Determination pathway option.

**Attachment**  
**Revised June 20, 2016**

- 18. The June 2016 Special Education Field Advisory *Superintendent Determination of Graduation with a Local Diploma* states “A student with a disability who has not yet earned a diploma may reenroll in school until the end of the school year in which the student turns age 21 and graduate through this option, provided the student has a current IEP, is receiving special education programs and services and is participating in the required coursework.” What is meant by “participating in the required coursework,” if a student who has met all the credit and assessment requirements to be eligible for graduation with a local diploma through the Superintendent Determination pathway option reenrolls in school?**

A student with a disability who reenrolls in school to avail themselves of the Superintendent Determination pathway option must be actively participating in coursework at the time the Superintendent Determination is made. However, this coursework need not be in the subject area(s) in which the student did not receive a passing score on the Regents examination(s) required for graduation.

In making a Superintendent Determination for such a student, 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, projects, class work, quizzes, tests, etc., that demonstrate that the student has met the learning standards for the course.