




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

TO: P-12 Education Committee

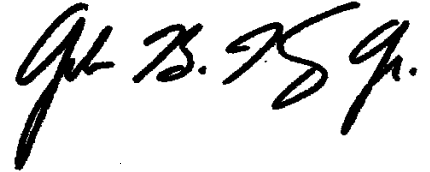
FROM: Ken Slentz 

SUBJECT: Proposed amendment of section 100.18(b)(14) of the Commissioner's Regulations to provide flexibility to school districts and charter schools regarding the administration of Regents Examinations in Mathematics (Common Core) to grade 7 and 8 students

DATE: January 6, 2014

AUTHORIZATION(S):





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SUMMARY

Issue for Decision

Should the Regents adopt as an emergency action the proposed amendment of section 100.18(b)(14) of the Commissioner's Regulations to eliminate the need for "double-testing" so that school districts and charter schools may administer only the Regents Examinations in Mathematics (Common Core) to grade 7 and 8 students without also having to administer the grade level mathematics assessment in the 2013-2014 school year?

Reason for Consideration

Implementation of policy.

Proposed Handling

The proposed amendment will be presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action, effective January 14, 2014, at the January 2014 Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

At the October 2013 meeting, the Board of Regents directed the State Education Department (SED or “the Department”) to submit a request to the United States Department of Education (USDE) to waive provisions of the federal Elementary and Secondary Education Act (ESEA) [Sections 1111(b)(1)(B) and 1111(b)(3)(C)(i)] that require states to measure the achievement of standards in mathematics using the same assessments for all students.

On December 20, 2013, USDE granted SED a one-year waiver (for the 2013-2014 school year) from ESEA §§1111(b)(1)(B) and 1111(b)(3)(C)(i) so that the Department may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. However, the result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

The proposed amendment will conform existing regulations with the newly-granted waiver. A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on January 29, 2014. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Currently, seventh and eighth grade students who are receiving instruction in Algebra I and who take the Regents Examination in Algebra I (Common Core) are also required to take the NYS Common Core Mathematics Test for the grade in which they are enrolled. The same requirement also applies to students who are receiving instruction in Geometry and who take the Regents Examination in Geometry.

Based on the waiver, the proposed amendment to 8 NYCRR §100.18(b)(14) will permit Local Educational Agencies (LEAs) to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 school year, thus eliminating the need for “double-testing” in grades 7 and 8. This provision also applies to students in grades 7 and 8 who receive instruction in Geometry and who take the Regents Examination in Geometry. The waiver serves to relieve students, teachers, and schools from having to prepare students in seventh and eighth grade who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments. The memo that was sent to the field regarding “double testing” can be found at: http://www.p12.nysed.gov/accountability/waivers/documents/DoubleTestingFieldMemo1-25-13_1.pdf

The proposed amendment also reflects the way in which student results will be used for institutional accountability purposes under the waiver:

- If a district opts to have accelerated students take the NYS Grade 7 or 8 Common Core Mathematics Test in addition to one or both Regents Examinations in Algebra, the results from the NYS Grade 7 or 8 Common Core Mathematics Test will be used for institutional accountability purposes rather than the results from a Regents Examination in mathematics. Students who take the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be counted as participants when determining the participation rate in mathematics for the school they attend in grade 7 or 8. The result on the Regents Examination in Algebra I (Common Core) taken in grade 7 or 8 will not count towards the participation rate in mathematics for the high school in which they later enroll. The same rule would apply for any students who take the Regents Examination in Geometry in grade 7 or 8.
- Results for students who take only the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be incorporated into the Performance Index for the school in which the student is enrolled. Grade 7 or 8 students who accelerate and obtain, at a minimum, the score on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will, for the purposes of calculating a school's or a district's Performance Index, be counted at the "full credit" level. Grade 7 or 8 students who do not obtain scores on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will earn the school or district "no credit" for the student's performance. The same rule will apply to seventh and eighth grade students who take another Regents Examination in mathematics (e.g., Geometry).
- The waiver and proposed regulatory amendments pertain to institutional accountability requirements, not to the requirements that individual students must meet in order to graduate from high school. The waiver does not change (i.e., the waiver neither increases nor decreases) the requirements students must currently meet in order to obtain a diploma. However, for institutional accountability, high schools will only get credit in the Performance Index for Regents exams or their equivalents that are taken after a student first enters ninth grade, even if students have taken Regents exams in math or their equivalents in grade 7 or 8.

Recommendation

Staff recommends that the Board of Regents take the following action:

VOTED: That paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education be amended as submitted, effective January 14, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that LEAs are given sufficient notice to implement the USDE waiver regarding the administration of Regents Examinations in Algebra I (Common Core) and Geometry to grade 7 and 8 students for the 2013-14 school year.

Timetable for Implementation

If adopted as an emergency rule at the January meeting, the proposed amendment will become effective on January 14, 2014 and will remain in effect for 90 days. It is anticipated that the proposed amendment will be presented for a second emergency action at the March 2014 Regents meeting in order to keep the rule continuously in effect until the effective date of its adoption as a permanent rule at the April 2014 Regents meeting, after publication of a Notice of Emergency Rule Making and Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective January 14, 2014, as follows:

(14) Performance levels shall mean:

(i) for elementary and middle grades:

(a) level 1 (well below proficient)

(1) not on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student does not have a growth percentile target; or a score of level 1 on a State alternate assessment; or a score of 64 or less, or a comparable score as approved by the Board of Regents, on a Regents examination in mathematics for a student in grade 7 or grade 8.

(2) on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 1 on State assessments in science or other State assessments, or a score of level 1 on a State alternate assessment;

(b) level 2 (below proficient)

(1) not on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student

does not have a growth percentile target; or a score of level 2 on a State alternate assessment;

(2) on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 2 on State assessments in science or other State assessments, or a score of level 2 on a State alternate assessment;

(c) level 3 (proficient)

(1) a score of level 3 on State assessments in English language arts, mathematics and science or a score of level 3 on a State alternate assessment;

(2) a score of 65 or higher, or a comparable score as approved by the Board of Regents, on a Regents Examination in science or mathematics for students in grade seven or eight pursuant to subdivision 100.4(d) of this Part;

(d) level 4 (excels in standards): a score of level 4 on State assessments in English language arts, mathematics and science or a score of level 4 on a State alternate assessment;

(ii) for high school:

(a) level 1 (well below proficient)

(1) a score of 64 or less on the Regents comprehensive examination in English or a Regents mathematics examination;

(2) a failing score on a State-approved alternative examination for those Regents examinations.

(3) a score of level 1 on a State alternate assessment;

(4) a cohort member who has not been tested on the Regents comprehensive examination in English or a Regents mathematics examination or State-approved alternative examination for these Regents examinations;

(b) level 2 (below proficient)

(1) a score between 65 and 74 on the Regents comprehensive examination in English or between 65 and 79 on a Regents examination in mathematics.

(2) a score of level 2 on a State alternate assessment;

(c) level 3 (proficient)

(1) a score between 75 and 89 on the Regents comprehensive examination in English or between 80 and 89 on a Regents examination in mathematics; or [passes] a passing score on a State-approved alternative to those Regents examinations;

(2) a score of level 3 on a State alternate assessment;

(d) level 4 (excels in standards)

(1) a score of 90 or higher on the Regents comprehensive examination in English or a Regents mathematics examination;

(2) a score of level 4 on a State alternate assessment;

(iii) Notwithstanding the provisions of this section:

(a) For students who attend grade 7 or 8 and take a Regents examination in mathematics in the 2013-2014 school year, but do not take the Grade 7 or 8 Mathematics Assessment, participation and accountability determinations for the school in which the student attends grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on mathematics assessments taken after the student first enters grade 9. For such students, a score of 65 or above, or a comparable score as approved by the Board of Regents, on a Regents Examination in mathematics taken in grade 9 or thereafter will be credited as level 3 for purposes of calculating the High School Performance Index.

(b) For students who attend grade 7 or 8 and who take both the Grade 7 or 8 Mathematics Assessment and a Regents Examination in mathematics during the 2013-

2014 school year, participation and accountability determinations for the school such students attend in grade 7 or 8 shall be based upon the student's performance on the Grade 7 or 8 Mathematics Assessment.

8 NYCRR §100.18

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

On December 20, 2013, the United States Department of Education (USDE) granted the State Education Department a one-year waiver (for the 2013-2014 school year) from Elementary and Secondary Education Act (ESEA) §§1111(b)(1)(B) and 1111(b)(3)(C)(i) so that the Department may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. However, the result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll. The proposed amendment will conform existing regulations with the newly-granted waiver.

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 April 28-29, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be May 14, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to immediately adopt the proposed rule is necessary for the preservation of the general welfare to ensure that local educational agencies are given sufficient notice to timely implement the USDE waiver regarding the

administration of Regents Examinations in Algebra I (Common Core) and Geometry to grade 7 and 8 students for the 2013-14 school year.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the April 28-29, 2014 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.