



February 2017

**To:** District Superintendents  
Superintendents of Public Schools  
Superintendents of State-Operated and State-Supported Schools  
Public School Administrators  
Charter School Administrators  
Nonpublic School Administrators  
Executive Directors of Approved Private Schools  
Directors of Special Education  
Directors of Pupil Personnel Services  
Chairpersons of Committees on Special Education  
Organizations, Parents and Individuals Concerned with Special Education

**From:** Christopher Suriano 

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

This memorandum is to inform you of important changes to the requirements for superintendents to make a local determination as to the academic proficiency for eligible students with disabilities to graduate with a local diploma. This document supersedes the guidance issued in June 2016 entitled *Superintendent Determination of Graduation with a Local Diploma*, including any previous questions and answers on this topic and the prescribed "Superintendent Determination of Graduation Form." At the June 2016 meeting, the New York State Board of Regents amended section 100.5 of the Regulations of the Commissioner of Education to automatically require superintendents to make a superintendent determination for every student with a disability who did not meet the graduation standards through the existing appeal and safety net options. In response to public comment and questions raised by the field, sections 100.5 and 200.4 of the Regulations of the Commissioner of Education were subsequently revised on an emergency basis at the October Regents meeting, effective October 18, 2016 and adopted on a permanent basis at the December Regents meeting, effective December 28, 2016 (<http://www.regents.nysed.gov/common/regents/files/1216brca17.pdf>). The regulations were revised to:

- Require that on or after October 18, 2016 (the effective date of the revised rule), a superintendent may only make a determination whether an eligible student has met the requirements for graduation through the superintendent determination option **upon receipt of a written request from an eligible student's parent or guardian;**

- Clarify that where the superintendent determines that the student has met the requirements for graduation, the district must provide prior written notice that the student is not eligible to receive a free appropriate public education (FAPE) after graduation with a local diploma;
- Clarify that the definition of superintendent, for purposes of this regulation only, shall include the principal, head of school, or their equivalent, of charter schools or nonpublic schools, as applicable; and
- Ensure provision of appropriate transition services<sup>1</sup> by requiring that the development of transition goals and services at a committee on special education (CSE) meeting include a discussion with the student's parents of the student's progress toward receiving a diploma and that parents be provided with information explaining graduation requirements, including eligibility criteria and process for requesting the superintendent determination option.

## **Information on a Superintendent Determination of Graduation with a Local Diploma**

### **General Information**

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 (i.e., local or Regents diploma). The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, there is the superintendent determination option for eligible students to graduate with a local diploma.

For students with disabilities, otherwise eligible to graduate in June 2016 and thereafter, upon receipt of a written request from an eligible student's parent, a school superintendent (or the principal/head of school of a registered nonpublic school or charter school, as applicable) may make a local determination that 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 proficiency on the Regents examinations required for graduation. Because English Language Arts (ELA) and mathematics are foundation skills for which there must be a standardized measure of achievement, to be eligible for the superintendent determination option, students must achieve a minimum score of 55 on the ELA and mathematics Regents examinations or a successful appeal of a score between 52 and 54. For the other three examinations required for graduation, this option allows review of other documentation of proficiency when the student cannot pass one or more of these examinations. The conditions of the review are as follows:

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<sup>1</sup> Transition services must be provided for those students beginning not later than the first individualized education program (IEP) to be in effect when the student is age 15 (and at a younger age, if determined appropriate) [section. 200.4(d)(2)(ix)]

### **Applicability**

This option is available 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.

### **Superintendent Review**

The superintendent may only consider an eligible student for a local diploma through the superintendent determination option upon receipt of a written request from the student's parent or guardian. Such request must be submitted in writing to the student's school principal or CSE chairperson (see attached **Parent Request for Superintendent Determination of Graduation with a Local Diploma – Model Form**). A written request received by the school principal, CSE chairperson, or any other employee of the school, must be forwarded to the school superintendent immediately upon its receipt.

### **Eligibility Conditions**

The superintendent must certify the following eligibility conditions:

1. The parent/guardian submitted a written request that their child be considered for a superintendent determination;
2. The student has a current IEP and is receiving special education programs and/or related services;
3. The student did not meet the graduation requirements through the low pass (55-64) safety net option or the compensatory option [section 100.5(b)(7)(vi)(c) or section 100.5(d)(7)];
4. The student has earned the required course credits and has passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents examination areas (ELA, mathematics, social studies, and science);
5. The student has earned a minimum score of 55 on both the Regents ELA and mathematics examinations or a successful appeal of a score between 52 and 54;
6. The student has participated in other Regents examinations (science and social studies), but has not passed one or more of these examinations as required for graduation [section 100.5(a)(5)]; and
7. The student has otherwise demonstrated competency in the subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the Regents examination.

### **Review and Documentation**

Upon receipt of a written request from an eligible student's parent or guardian, the superintendent must, in consultation with the school principal, review, document and provide a written certification 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:

- Passed the course(s) required for graduation in the subject area(s) where the student was not able to demonstrate his/her proficiency of the State's learning standards through the corresponding Regents examination, in accordance with the grading policies of the district. Such evidence may include 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
- Actively participated in the Regents examinations required for graduation in the subject area(s) under review.

The superintendent must sign the form prescribed by the Commissioner (see attached **Superintendent Determination of Graduation with a Local Diploma** Updated February 2017), 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. The student and the parent of the student must receive written notice of the determination with a copy of the completed superintendent determination form and, where the superintendent determines that the student has met the requirements for graduation, the district must provide prior written notice that the student is not eligible to receive a FAPE after graduation with a local diploma. Where the superintendent determines that the student has not met the requirements for graduation, the written notice shall inform the student and his/her parent 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.<sup>2</sup> 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 New York State Education Department **no later than August 31<sup>st</sup>**.

### **Audit**

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

### **Transition Planning**

To ensure appropriate transition planning for the student, the development of transition goals and services must include a discussion with the student's parents of:

- the graduation requirements that apply to the student depending upon the year in which he or she first enters grade nine; and
- the progress the student is making toward receipt of a diploma including:
  - the courses the student has passed and the number of credits the student has earned as required for graduation;

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<sup>2</sup> A student with a disability who has not yet earned a regular high school 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.

- the assessments required for graduation that the student has taken and passed; and
- the appeal, safety net and superintendent determination options that may be available to the student to allow the student to meet the graduation examination requirements.

At the CSE meeting in which transition services will be discussed, the student's parents must be provided with written information explaining the graduation requirements. Such information must include the eligibility criteria and processes for seeking an appeal to graduate with a lower score on a Regents examination and for requesting that a student be considered for a local diploma through the superintendent determination option. Parents must also be informed that graduation from high school with a local or Regents diploma will terminate their child's entitlement to a FAPE and their eligibility for special education services.

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

Prior to June 2016, students with disabilities who made use of the compensatory option were not eligible to also make use of the low pass appeal wherein they are able to appeal scores of 52-54. Effective June 13, 2016, the regulations were amended to remove this prohibition and allow students with disabilities to make use of both options in meeting graduation requirements for a local diploma.

#### **Additional Information**

For additional information, see attached **Questions and Answers** (Updated February 2017). Questions regarding the Superintendent Determination of Graduation with a Local Diploma option should be directed to the Office of Special Education by email at [SPECED@nysed.gov](mailto:SPECED@nysed.gov) Attn: *Superintendent Determination* or by calling 518-473-2878.