

Questions and Answers (Updated February 2017)

Superintendent Determination of Graduation with a Local Diploma

The following questions and answers are premised on the requirement that on or after October 18, 2016, a 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.

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

No. Students are not required to take a Regents examination in the subject area that is under review more than once to be eligible for the superintendent determination option. However, to be eligible for the superintendent determination option, a student must have received a minimum score of 55 on both the Regents ELA and mathematics examinations or a successful appeal of a score between 52 and 54. In order to successfully appeal the ELA or mathematics Regents examinations, a student would need to have taken the examination at least two times.

- 2. Must a student pass both the ELA and mathematics Regents examinations in order to be eligible for the Superintendent Determination of Graduation with a Local Diploma?**

Yes. A student must have received a minimum score of 55 on both the ELA and mathematics Regents examinations or a successful appeal of a score between 52 and 54 on the ELA and mathematics in order to be eligible for the superintendent determination option.

- 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 of Graduation with a Local Diploma?**

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

- 4. For a Regents subject area(s) under review, must the student use the appeal option prior to consideration of the Superintendent Determination of Graduation with a Local Diploma?**

No.

5. **Must the student's teacher(s) 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 examination(s) required for graduation?**

The superintendent must, in consultation with the school principal and whenever possible the student's teacher(s) from the Regents course(s) under review, review documentation of evidence that the student has otherwise met the standards for graduation with a local diploma. The superintendent must certify, on a form prescribed by the 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 school principal sign the "*Superintendent Determination of Graduation with a Local Diploma (Updated February 2017)*" form?**

No. The form was revised consistent with the section 100.5(d)(12) of the Regulations of the Commissioner of Education to require that the superintendent of a school district (or the principal of a registered nonpublic school or charter school, as applicable) certify that the information provided is accurate by signing the form prescribed by the Commissioner.

7. **Must the superintendent submit the form to NYSED if, based upon a review of the documentation, the superintendent determines that the student should not be awarded a local diploma?**

Yes.

8. **How will NYSED ensure consistent implementation of the Superintendent Determination of Graduation with a Local Diploma?**

NYSED will conduct periodic audits of the superintendent 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.

9. **Does the Superintendent Determination of Graduation with a Local Diploma apply to students who have a Section 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 option.

10. 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 of Graduation with a Local Diploma?

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 be considered for the superintendent determination option upon parent request, provided the student has a current IEP, is receiving special education programs and services and is participating in required coursework at the time the superintendent determination is made. 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.

11. If a student who entered grade 9 prior to September 2011, and is otherwise eligible to graduate in June 2016 and thereafter, does not pass a required Regents examination in a subject area(s) under review (e.g., science, United States history, global studies or an additional math Regents examination) but passes the corresponding Regents Competency Test (RCT), is a Superintendent Determination of Graduation with a Local Diploma needed for that subject area(s)?

Yes. In this case, the student would not have received a passing score on the required Regents examination and a superintendent determination would be needed for that subject area. The superintendent may consider whether the student passed the RCT as one component of the evidence that demonstrates that the student has otherwise met proficiency standards in that subject area.

12. 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 evidence that the student attained a grade that meets or exceeds the required passing grade by the school for the subject area(s) under review. Such evidence may include 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. The superintendent must review whatever evidence is necessary to make a determination. Whether the superintendent requires the review of work completed throughout the school year as well as any interim grades for a particular student is a decision that must be made at the local level.

13. **Is there any other documentation that needs to be submitted to NYSED with the "Superintendent Determination of Graduation with a Local Diploma (Updated February 2017)" form (i.e., appeal forms, transcripts, teacher letters etc.)?**

No.

14. **Can the "Superintendent Determination of Graduation with a Local Diploma (Updated February 2017)" form prescribed by the Commissioner be adapted for local use?**

No. School districts must use the "Superintendent Determination of Graduation with a Local Diploma (Updated February 2017)" form prescribed by the Commissioner. This form may not be altered in any way.

15. **Can a student be considered for a Superintendent Determination of Graduation with a Local Diploma 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 or social studies)?**

Yes. A superintendent determination option 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.

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

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 option, a student must have taken the English and mathematics **Regents examinations** and received a minimum score of 55 on both examinations or a successful appeal of a score between 52 and 54.

17. **Can a student who uses the compensatory safety net option and the low pass safety net option also use the Superintendent Determination of Graduation with a Local Diploma?**

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 option.

- 18. If, upon parent request, the superintendent determines that a student meets the requirements for a local diploma through the Superintendent Determination of Graduation with a Local Diploma, can that student 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 his/her score(s) on a Regents examination(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 option.

- 19. Are registered nonpublic high schools and charter schools required to conduct a Superintendent Determination of Graduation with a Local Diploma upon parent request?**

Yes. In accordance with section 100.5(d)(12) of the Regulations of the Commissioner of Education, 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.

- 20. How does the review for the superintendent determination option for eligibility for a local diploma occur for a student with a disability placed by his/her committee on special education in an approved private school?**

If the approved private school is not a registered high school, the superintendent determination option must be made by the superintendent of the student's school district of residence. The private school should have a mechanism for communicating back to the district of residence what courses, curricula and examinations 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 option.

If the approved private school is a registered high school, the chief school officer of the approved private school would be responsible for conducting the superintendent determination option for a student with a disability enrolled in that school.

21. Who is responsible for conducting the superintendent determination and signing the "Superintendent Determination of Graduation with a Local Diploma" form for a student placed in a board of cooperative educational services (BOCES) program?

If the parents of a student in a BOCES program request that their child be considered for the superintendent determination option, such determination must be made by the superintendent of the student's school district of residence, in consultation with the principal of the high school of attendance. The superintendent of the district in which the student resides would be responsible for signing the "Superintendent Determination of Graduation with a Local Diploma (Updated February 2017)" form, which describes the evidence reviewed and the decision rendered by the superintendent. The BOCES should have a mechanism for communicating back to the district of residence what courses, curricula and State assessments 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 option.

22. Is there a required form parents must use in making a request for a Superintendent Determination of Graduation with a Local Diploma?

No. However, NYSED has developed a model form to assist parents in requesting the superintendent determination option (see *Parent Request for Superintendent Determination of Graduation with a Local Diploma – Model Form*). Parents are not required to use this form. If a parent chooses not to use this form, the written request should indicate that the parent wishes to have his/her child considered for the superintendent determination option and have his/her academic records reviewed to determine if he/she meets the conditions for the superintendent determination option, and has otherwise met the standards for graduation with a local diploma.

23. Can a Superintendent Determination of Graduation with a Local Diploma be requested by a student who is over the age of majority (age 18)?

No. The Individuals with Disabilities Education Act permits states to decide whether procedural rights transfer from parents to students with disabilities when they reach the age of majority. NYS law does not currently allow such transfer of rights. Therefore, a student in NYS may not request a Superintendent Determination of Graduation with a Local Diploma, which may result in a change of placement due to graduation with a local diploma, unless the student is an emancipated minor in accordance with NYS law.

24. **If a parent submits a written request for a Superintendent Determination of Graduation with a Local Diploma mid-semester (e.g., October), when should the review be conducted and the diploma awarded if it is determined that the student should be awarded a local diploma?**

The superintendent (or principal, head of school or their equivalent of a charter school or nonpublic school, as applicable) must, as soon as practicable, document the evidence reviewed and make a determination as to whether a student has met the requirements for issuance of a local diploma through the superintendent determination option. However, a diploma may only be awarded at the end of the semester (i.e., January, June and August) in which the superintendent determination was made and may not be awarded in anticipation that requirements will be met.

25. **Where can school districts find written information for parents explaining the graduation requirements and safety net options, including the process for requesting a Superintendent Determination of Graduation with a Local Diploma for their son/daughter?**

General information regarding graduation requirements, including a **Summary Diploma/Credential Requirements** is available at the Office of Curriculum and Instruction website <http://www.p12.nysed.gov/ciai/gradreq/intro.html>. A chart of the **Safety Net Options Available To Students With Disabilities To Graduate With A Local Diploma**, including the superintendent determination option, can be found at the Office of Special Education website <http://www.p12.nysed.gov/specialed/gradrequirements/home.html>.

26. **May a student with a disability who exited school without a local or Regents diploma and who is over age 21 reenroll in school and be considered for the Superintendent Determination of Graduation with a Local Diploma?**

Under NYS Education Law, students with disabilities are entitled to 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. However, because such student's right to FAPE has terminated, the student would no longer be considered a student with a disability and would not be eligible for the superintendent determination option.

27. **What documentation are schools required to maintain for audits of compliance relating to a Superintendent Determination of Graduation with a Local Diploma? How long must this documentation be retained?**

School districts, registered nonpublic high schools and charter schools are required to permanently maintain completed **Superintendent Determination of Graduation with a Local Diploma** forms in a student's education record. Evidence used to make this determination must be retained in accordance with **Records Retention and Disposition Schedule ED-1** for the type of documentation reviewed.