



Deputy Commissioner
Office of Instructional Support
89 Washington Avenue – Room 875 EBA
Albany, New York 12234

Tel: (518)474-5915
Fax: (518)486-2233

Superintendent Determination Option for Graduation with a Local Diploma Questions and Answers (Updated August 2018)

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. In addition, changes made in December 2017 to permit students with disabilities to meet the English language arts (ELA) and/or Mathematics Regents examinations eligibility condition(s) for the superintendent determination option by completing the requirements for the New York State (NYS) Career Development and Occupational Studies (CDOS) Commencement Credential are also reflected in this guidance.

- 1. Must a student take the Regents examinations in the subject area(s) under review more than once to be eligible for the superintendent determination option?**

No.

- 2. Must a student pass both the ELA and Mathematics Regents examinations in order to be eligible for the superintendent determination option?**

No. On or after December 12, 2017, a student who was unable to achieve a minimum score of 55 or did not initiate an appeal of a score of between 52 and 54 on the ELA and/or Mathematics Regents examinations may be considered an eligible student for the superintendent determination option, provided that the student has completed the requirements for the NYS CDOS Commencement Credential.

- 3. Can a student who earned the CDOS Commencement Credential by successfully passing one of the Commissioner's approved Nationally Recognized Work Readiness Assessments (Option 2) use this to meet the ELA and/or Mathematics Regents examination eligibility conditions to be considered for the superintendent determination option?**

Yes. On or after December 12, 2017, a student who was unable to achieve a minimum score of 55 or did not initiate an appeal of a score of between 52 and 54 on the ELA and/or Mathematics Regents examinations may use the NYS CDOS Commencement Credential requirements, earned through either Option 1 or 2, to be considered an eligible student for the superintendent determination option.

4. **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 option?**

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

5. **For a Regents subject area(s) under review, must the student use the appeal option in order to be considered eligible for the superintendent determination option?**

No.

6. **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 superintendent, in consultation with the school principal and, whenever possible, the student's teacher for the subject area in which the student did not receive a passing score on the Regents examination, must 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.

7. **Must the school principal sign the *Superintendent Determination Option for Graduation with a Local Diploma (Updated January 2018)* form?**

No. Consistent with the section 100.5(d)(12) of the Regulations of the Commissioner of Education, the superintendent of a school district (or the principal, head of school, or their equivalent, of a charter school or nonpublic school, as applicable) must certify that the information provided is accurate by signing the form prescribed by the Commissioner of Education.

8. **Must the superintendent submit the form to the New York State Education Department (NYSED) if, based upon a review of the documentation, the superintendent determines that the student should not be awarded a local high school diploma?**

Yes.

9. How will the State ensure consistent implementation of the superintendent determination option?

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 Option for Graduation with a Local Diploma*** forms and all records considered in review of the determination.

10. Does the superintendent determination option 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.

11. 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 option?

Yes. A student with a disability who has not yet earned a diploma may reenroll in school, per district policy, until the end of the school year in which the student turns age 21 and be considered for the superintendent determination upon parent request, provided the student:

- has a current IEP;
- is receiving special education programs and services; and
- is participating in 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.

12. May a student with a disability who exited school with a CDOS Commencement Credential as his/her only exiting credential reenroll in school and be considered for the superintendent determination option?

Yes. As indicated in Question #10, a student with a disability who has exited school with a CDOS Commencement Credential as his/her only exiting credential 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 coursework at the time the superintendent determination is made. In addition, on or after December 12, 2017, if such student was unable to achieve a minimum score of 55 or did not initiate an appeal of a score of between 52 and 54 on the ELA and/or Mathematics Regents examinations, he/she may use the NYS CDOS Commencement Credential to meet the ELA and/or Mathematics Regents examination eligibility condition(s) to be considered for the superintendent determination option.

13. 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 but passes the corresponding Regents Competency Test (RCT), is a superintendent determination option 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.

- 14. 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.

- 15. Is there any other documentation that needs to be submitted to NYSED with the *Superintendent Determination Option for Graduation with a Local Diploma (Updated January 2018)* form (i.e., appeal forms, transcripts, teacher letters etc.)?**

No.

16. **Can the *Superintendent Determination Option for Graduation with a Local Diploma (Updated January 2018)* form prescribed by the Commissioner of Education be adapted for local use?**

No. School districts must use the *Superintendent Determination Option for Graduation with a Local Diploma (Updated January 2018)* form prescribed by the Commissioner. This form may not be altered in any way and must have all fields completed upon submission.

17. **Can a student be considered for a superintendent determination option if he or she was not successful in passing the Regents pathway assessment (e.g., one additional Regents examination in a different course in math, 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.

18. **Is a student who did not meet the ELA and/or Mathematics Regents examination eligibility condition(s) (i.e., did not receive a minimum score of 55 on both the ELA and Mathematics Regents examinations or successfully appeal a score between 52 and 54) or complete the requirements for the NYS CDOS Commencement Credential but passed the ELA and Mathematics Regents Competency Tests (RCTs) eligible for the superintendent determination option?**

No. In order to be eligible for the superintendent determination option, a student must have taken the ELA and Mathematics **Regents examinations** and received a minimum score of 55 on both examinations or successfully appealed a score between 52 and 54 or, on or after December 12, 2017, completed the requirements for the CDOS Commencement Credential.

19. **Can a student who uses the compensatory safety net option and the low pass safety net option also use the superintendent determination option?**

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. The superintendent would only need to conduct a review of the subject area(s) where the student was unable to meet the assessment requirements for graduation through the other existing safety net options (i.e., the compensatory safety net option, the 55-64 low pass safety net option and the 55-64 low pass safety net option with appeal).

- 20. If, upon parent request, the superintendent determines that a student meets the requirements for a local diploma through the superintendent determination option, 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.

- 21. Are registered nonpublic high schools and charter schools required to conduct a review to determine whether a student has otherwise met the standards for graduation with a local diploma through the superintendent determination option 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, head of school, or their equivalent, of a or charter school or nonpublic 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.

- 22. 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 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 a review to determine whether a student has otherwise met the standards for graduation with a local diploma through the superintendent determination option for a student with a disability enrolled in that school.

- 23. Who is responsible for conducting a review for the superintendent determination option and signing the *Superintendent Determination Option for 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 a 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 school superintendent of the district in which the student resides would be responsible for signing the ***Superintendent Determination Option for Graduation with a Local Diploma (Updated January 2018)*** 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 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.

24. Is there a required form parents must use in making a request for a superintendent determination option?

No. However, NYSED has developed a sample form to assist parents in requesting a superintendent determination (see ***Parent Request for Superintendent Determination Option for Graduation with a Local Diploma (Sample 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.

25. Can a superintendent determination option 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, which may result in a change of placement due to graduation with a local diploma, unless the student is emancipated in accordance with State law.

26. **If a parent submits a written request for a superintendent determination option 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 high school 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 or August) in which the superintendent determination was made and may not be awarded in anticipation that requirements will be met.

27. **Can a superintendent determination option for a local diploma be submitted in anticipation of a student meeting the requirements for graduation?**

No. The *Superintendent Determination Option for Graduation with a Local Diploma (Updated January 2018)* form 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 all the requirements for a local diploma. Therefore, a superintendent should only sign and submit such form after he/she has made a determination as to whether a student has met the requirements and should be awarded a local diploma through the superintendent determination option.

28. **Where can school districts find written information for parents explaining the graduation requirements and safety net options, including the process for requesting the superintendent determination option for their son/daughter?**

General information regarding graduation requirements, including a *Summary Diploma/Credential Requirements* is available at the Office of Curriculum and Instruction's [General Education & Diploma Requirements webpage](http://www.p12.nysed.gov/ciai/gradreq/intro.html) (<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* (<http://www.p12.nysed.gov/specialed/gradrequirements/documents/safety-net-options-available-students-with-disabilities.pdf>), including the superintendent determination option, can be found at the Office of Special Education's [Information Related to Graduation Requirements for Students with Disabilities webpage](http://www.p12.nysed.gov/specialed/gradrequirements/home.html) (<http://www.p12.nysed.gov/specialed/gradrequirements/home.html>).

29. **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 option?**

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.

30. **What documentation are schools required to maintain for audits of compliance relating to a superintendent determination option? How long must this documentation be retained?**

School districts, registered nonpublic high schools, and charter schools are required to maintain completed ***Superintendent Determination of Graduation with a Local Diploma*** forms in a student's record. This form should be retained permanently in the student's cumulative achievement record equivalent. Evidence used to make this determination must be retained in accordance with ***Records Retention and Disposition Schedule ED-1*** (http://www.archives.nysed.gov/common/archives/files/mr_pub_ed1.pdf) for the type of documentation reviewed.

31. Can the CDOS Commencement Credential requirements be used for both ELA and Mathematics Regents examinations eligibility condition(s) for the superintendent determination option?

Yes. On or after December 12, 2017, a student who was unable to achieve a minimum score of 55 or did not initiate an appeal of a score of between 52 and 54 on the ELA **and/or** Mathematics Regents examinations may use the NYS CDOS Commencement Credential requirements to be considered an eligible student for the superintendent determination option. If a student was unable to meet the ELA and/or Mathematics Regents examination(s) eligibility condition(s), the superintendent must conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge, skills and abilities in that subject area (ELA and/or mathematics), in addition to any other subject areas where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination(s) required for graduation.

32. If a student who has not met all the requirements is awarded the NYS CDOS Commencement Credential under the exception for the 2017-18 or 2018-19 school years, for purposes of eligibility for the superintendent determination option, can he/she use the credential for the 4 + CDOS pathway to earn a local diploma?

No. A student who is awarded the CDOS under the exception for the 2017-18 or 2018-19 school years may not use the credential to meet the requirements for the **CDOS pathway** (<http://www.p12.nysed.gov/ciai/multiple-pathways/memos/cdos-graduation-pathway-option.html>) to a local or Regents diploma. Such student must either pass a +1-pathway assessment or, if the student was not successful at demonstrating his/her proficiency on a Regents pathway examination (e.g., one additional Regents examination in a different course in math, science or social studies), a superintendent review would be needed for that subject area.

33. Is a student who uses the CDOS Commencement Credential to meet the ELA and/or Mathematics Regents examinations eligibility condition(s) but meets all the remaining assessment requirements for graduation eligible to be considered for a local diploma through the superintendent determination option? For example, the student scored a 45 on the ELA Regents examination but achieved passing scores on the Mathematics, Science, and Social Studies Regents examinations and completed the requirements for the CDOS Commencement Credential for the 4+1 CDOS pathway option.

Yes. Upon parent request, a student who uses the CDOS Commencement Credential to meet the ELA and/or Mathematics Regents examinations eligibility condition(s) for the superintendent determination option but has met all the assessment requirements for the remaining Regents examinations required for graduation would be eligible for consideration of a local diploma through the superintendent determination option. For the student in the

example provided, the superintendent would need to conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge, skills and abilities in ELA and has met the requirements for issuance of a local diploma but for no other subject areas.

34. Can a district award the CDOS Commencement Credential under the exception to the minimum requirements for the 2017-18 or 2018-19 school years to a student who is not being considered for a local diploma through the superintendent determination option?

No. The exception to the minimum requirements for an award of the CDOS Commencement Credential is only for purposes of eligibility for the superintendent determination option for students who are otherwise eligible to graduate in either the 2017-2018 school year or the 2018-2019 school year. A district may not use the exception period to award a CDOS Commencement Credential to a student who is not using the CDOS Commencement Credential to meet the ELA and/or Mathematics Regents examination(s) eligibility condition(s) for the superintendent determination option.