



United Federation of Teachers
A Union of Professionals

February 12, 2018

Christopher Suriano, Assistant Commissioner for Special Education
New York State Education Department
89 Washington Street, Room 309 EB
Albany, NY 12234

RE: Proposed Amendments to Section 100.5 of the Commissioner's Regulations Relating to the Superintendent Determination Option for Certain Students with Disabilities to Graduate with a Local Diploma

Dear Assistant Commissioner Suriano,

I am writing on behalf of the United Federation of Teachers to provide comments regarding the proposed amendment to Section 100.5 of the Commissioner's Regulation creating a new safety net diploma option for students with disabilities. Eligibility for this new option is predicated on completion of the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. Eligible students are able to receive a local diploma if they are unable to earn a minimum score of 55 on the ELA and/or mathematics Regents examinations or did not initiate an appeal of a score between 52 and 54 to meet the ELA and/or mathematics Regents examinations eligibility conditions for the superintendents determination option initiated in June 2016. The proposed new option allows the superintendent to award a local diploma to a student with a disability if the superintendent determines that the student has otherwise demonstrated proficiency in ELA, mathematics or any other subject area where the student was not able to pass a required Regents examination.

We are pleased that the Regents continue to explore non-examination based pathways for students to earn a diploma. Students with disabilities who exit with a local diploma awarded through this new superintendent determination option will have doors opened to employment and educational opportunities that have been closed to them for decades. Getting in the door, however, does not necessarily mean that they will meet the often test-based eligibility requirements for community college, the military, civil service, skilled trades and large number of less skilled jobs. The Regents are committed to college and career readiness, as are we. Parents expect no less. To that end, we make the following recommendations which we believe will strengthen the credential and ensure that students with disabilities who exit with a local diploma under the new option have the knowledge and skills to succeed in today's economy.

Recommendation # 1: Allow school districts, including but not limited to the City School District of the City of New York, to delay implementation of the new graduation option until the 2019-20 school year.

It is our understanding and belief that, with the exception of students enrolled in CTE courses where instruction in CDOS standards is embedded, instruction required to earn the CDOS Commencement Credential is not available in most schools in New York City.¹ The CDOS Commencement Credential is not mentioned as a diploma endorsement in the New York City High School Directory nor do high schools indicate in their profiles whether they offer programming and work based learning opportunities leading to the credential. For all intents and

¹ While we do not know how well other school districts are doing in implementing the CDOS Commencement Credential, we do know that it is being used as an exit credential by very few students statewide.



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purposes the learning experiences required to satisfy the requirements for the CDOS Commencement Credential are not available to students with disabilities in the New York City schools. For this reason, we urge the Regents to allow school districts to postpone implementation of the new superintendent's determination option until schools are prepared.

While we believe this graduation option should not be offered in any school district where it is not available to all students with disabilities, if the Regents decline to adopt our recommendation, we believe that students should only be deemed eligible for the credential in limited circumstances. Given the general unavailability of CDOS programming, we believe that the school recommending a student for this credential should be required to provide the superintendent with a schedule or other evidence demonstrating that free-standing courses or integrated learning opportunities in CDOS learning standards 1, 2 and 3a are offered in the school, together with evidence that the student has successfully completed relevant instructional and work-based learning activities at the commencement level. Recording this evidence on a document that lists the standard and the key ideas, high school performance indicators and example tasks that relate to the standard would give superintendents information needed to judge the rigor of the evidence and students and families a clear picture of what they have accomplished. In our view, the evidence should be of equal or greater rigor than the task examples.

Recommendation #2: Engage with the New York City Department of Education to identify and address funding, staffing and programming issues impeding successful implementation of CDOS learning standards and work based learning experiences in the New York City schools.

The CDOS Commencement Credential is barely on the radar in New York City. As previously stated, it is not mentioned in the High School Directory. Nor is it mentioned on the Department's Career and Technical Education website. Clearly there is a disconnect between the expectations of the Regents and the State Education Department and the leadership and program implementation staff of the New York City schools. We don't presume to know where the breakdown is, but we do know that students with disabilities and their families will not be able to take advantage of the new superintendent's determination option until it is addressed.

Recommendation #3: Offer endorsements to the local diploma reflecting subject areas in which the student has passed a Regents exam with a score of 65 or greater.

We make this recommendation for several reasons.

First, under the current framework, all safety net options lead to the same local diploma. Absent some incentive, there is no reason for a student to attempt to pass a Regents examination once they have failed one of the required exams.

Second, as the most recent data indicates, graduation rates for students with disabilities increase dramatically for students who stay in school for five or six years.² This increase represents additional learning. It cannot be accounted for by students taking advantage of the first superintendent's determination option. And even that portion which is attributable to that option is based on students achieving minimum or greater scores on the

² The graduation rate for the 2011 cohort for students with disabilities increased from 49.8% after four years to 60.5% after six years. Similarly, the graduation rate for the 2012 cohort grew from 52.8% after 4 years to 60.2% after six years.



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Regents ELA and Math exams. This makes sense as the one thing that nearly all students with disabilities benefit from is additional time to master learning standards.

Third, building on the lessons learned from the 5 and 6 year increases in graduation rates, graduation options should encourage schools to create additional programming options for students with disabilities that allow them to take better advantage of the additional years of instruction to which they are entitled. This would include reduced course loads, courses stretched over additional time and academic support classes. Schools have little incentive to create these opportunities if it is easy for students to leave after 4 years with “real” diploma.

Lastly, graduation rates are imperfect measures of student achievement. Among other reasons, this is because the requirements have changed in multiple ways over the past several years. The Regents examinations, which are administered to all students and “graded” based on standardized criteria, are an important measure of equity. Stated another way, it is important for students to take the Regents exams and be eager to do as well as possible as this is the only way we really know if the achievement gap between students with disabilities and their non-disabled peers is closing.

Recommendation #4: Evidence of attainment of New York State learning standards in the subject area where the student was not able to pass an otherwise required Regents examination must consist of more than passing grades and course credit in the subject.

We begin by supporting the Coalition for Multiple Pathways to a Diploma’s recommendation that the language of section 100.5(d)(12) subsections (iii) and (v)(b) be revised from “conduct a review to determine whether the student has otherwise demonstrated *proficiency in the knowledge, skills and abilities in*” the subject areas in which they were not able to pass the Regents examinations to “conduct a review to determine whether the student has otherwise demonstrated *attainment of New York State learning standards in*” these areas. As noted by the Coalition, the recommended language change mirrors the language of 100.5(a)(4) describing the graduation requirements for all students.

One of the strongest reasons to use assessments to measure student achievement is that they are standardized. All students who take the test confront the same questions and the tests are administered and scored in a standardized manner. Grades, on the other hand, are set at the local level and vary in rigor from one school to another and even from one classroom to another. They are supposed to apply equally to all students who participate in standard assessments and they are supposed to measure student attainment of the learning standards for the class or course. Talk to any teacher, however, and you quickly learn that so called “non-mastery measures” such as effort, progress, participation, compliance and conduct play a big part in grading decisions. This is particularly true for students with disabilities. Teachers are loath to fail students who, even with maximum effort, are unable to meet the requirements of the course. For this reason, grades and credit accumulation are imperfect and unreliable measures of student attainment of learning standards. As such, they should not be the exclusive means to determine that a student with disability has met the standards for a course in which the student failed to demonstrate proficiency on a required Regents examination.

There are many ways to add rigor to the proficiency determination. One option would be to require that a course grade used to demonstrate proficiency be, at a minimum, the average grade earned by students who passed the required Regents examination with a minimum score of 65. For this to be effective, school districts would need to issue clear guidance regularly reinforcing that grades reflect attainment of learning standards and not other non-



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mastery measures. Another option would be to require additional evidence that the student has attained the learning standards in the subject. This could include a portfolio of student work or completion of a project or performance based learning task, such as those used in the consortium schools. Performance Level Descriptions are another tool principals and superintendents could use in making decisions regarding student attainment of learning standards. According to NYSED, “Standard setting panelists use the PLDs to determine the threshold expectations for students to demonstrate the knowledge and skills necessary to attain just barely a Level 2, Level 3, Level 4 or Level 5 on the assessment.” Performance Level Descriptions are available for several Regents examinations, including the Regents ELA and Mathematics examinations.

Recommendation #5: Simplify and Streamline the Graduation Requirements for All Students

With the addition of the new superintendent’s option, there are now five safety-net diploma options for students with disabilities. This does not include the RCT based safety net for students who meet the cohort requirement. These options range from earning scores of 55 or more on five required assessments to a superintendent determination option that does not require students to achieve a minimum score on any Regents examination. All of these options lead to a local diploma. The current menu is confusing for schools and even more confusing for families. We question the need for so many options.

None of these options are available to non-safety net eligible students. The superintendent determination is only available to students with IEPs. While we disagree with the Coalition for Multiple Pathways recommendation that the superintendent determination pathway be extended to all students, we agree with their call to avoid “disability only” pathways.

We urge the Regents to move expeditiously to review and simplify the local diploma options for all students.

Sincerely,

Carmen Alvarez
Vice President of Special Education at Large, UFT

cc: Chancellor Betty Rosa
Members of the Board of Regents
Commissioner Mary Ellen Elia
Deputy Commissioner Angelica Infante-Green