



**TO:** The Honorable Members of the Board of Regents

**FROM:** Angelique Johnson-Dingle *Angelique Johnson-Dingle*  
Jason Harmon *Jason Harmon*

**SUBJECT:** Proposed Amendment of Section 100.5(b) of the Regulations of the Commissioner of Education Relating to Posthumous High School Diplomas

**DATE:** July 3, 2024

**AUTHORIZATION(S):** *Dom [Signature] Bell [Signature]*

### SUMMARY

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendment to section 100.5(b) of the Regulations of the Commissioner of Education related to posthumous high school diplomas?

#### **Reason(s) for Consideration**

Review of policy.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the July 2024 Regents meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are attached.

#### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its May 2024 meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 22, 2024, for a 60-day public comment period.

Because the May emergency action will expire on August 4, 2024, a second emergency action is necessary to ensure the emergency rule remains continuously in

effect until it can be permanently adopted at the September 2024 Regents meeting. If adopted, a Notice of Emergency Adoption will be published in the State Register on August 21, 2024. Supporting materials are available upon request to the Secretary of the Board of Regents.

### **Background Information**

In November 2023, the Blue Ribbon Commission on Graduation Measures presented its recommendations to the Board of Regents. This was an unprecedented effort that brought together student voices along with a diverse range of stakeholders, including parents, educators, administrators, school support staff, representatives of higher education, and the business community. The Blue Ribbon Commission created a roadmap for learning-centered education that best meets the needs of every student in New York State and incorporates a competency-based approach to teach the practical skills needed for the dynamic demands of tomorrow's workforce.

As leaders in education, the Blue Ribbon Commission members were mindful of individual student circumstances and needs. As such, one of the Commission's recommendations was to pursue regulatory changes to allow discretion for local New York State schools and districts in posthumously conferring high school diplomas. Based on this recommendation, the Department now proposes to amend the Regulations of the Commissioner of Education to provide such discretion.

### **Proposed Amendment**

The Department proposes to amend section 100.5(b)(7) of the Regulations of the Commissioner of Education to allow school districts, registered nonpublic schools, and charter schools, at the request of the student's parent or person in parental relation, the ability to confer a high school diploma on a deceased student if the student was enrolled in the school or district at the time of death.

### **Related Regents Item(s)**

May 2024: [Proposed Amendment of Section 100.5\(b\) of the Regulations of the Commissioner of Education Relating to Posthumous High School Diplomas](https://www.regents.nysed.gov/sites/regents/files/524p12a1revised.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/524p12a1revised.pdf>)

November 2023: [New York State Graduation Measures Initiative: Recommendations from the Blue Ribbon Commission](https://www.regents.nysed.gov/sites/regents/files/FB%20Monday%20-%20New%20York%20State%20Graduation%20Measures%20Initiative.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/FB%20Monday%20-%20New%20York%20State%20Graduation%20Measures%20Initiative.pdf>)

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That section 100.5(b) of the Regulations of the Commissioner of Education be amended, as submitted, effective August 5, 2024, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general

welfare to immediately permit school districts, registered nonpublic schools, and charter schools to immediately confer posthumous diplomas for the 2024 graduation season and to ensure that the emergency action taken at the May 2024 meeting remains continuously in effect.

### **Timetable for Implementation**

If adopted at the July 2024 Regents meeting, the emergency rule will become effective on August 5, 2024. It is anticipated that the proposed amendment will be presented for permanent adoption at the September 2024 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the September 2024 meeting, the proposed amendment will become effective as a permanent rule on September 25, 2024.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 309, and 3204 of the Education Law.

1. Paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (xii) to read as follows:

(xii) Posthumous high school diplomas.

(a) A school district, registered nonpublic school, or charter school may issue a high school diploma for a deceased student if a request is made by the student's parent or person in parental relation, or where the student's parent or person in parental relation is deceased, the student's next of kin, and such student was enrolled in such school or district at the time of death.

(b) Nothing in this subparagraph shall:

(1) obligate school districts, registered nonpublic schools, or charter schools to issue a posthumous diploma at the same ceremony or event as other graduating students; or

(2) limit school districts, registered nonpublic schools, or charter schools from issuing high school diplomas to students who died before the effective date of this subparagraph, provided that the requirements of this subparagraph have been met.

(c) Diplomas issued under this subparagraph shall not be applied toward student graduation counts or for any other purpose of federal and state accountability data collection.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH  
NECESSITATE EMERGENCY ACTION

In November 2023, the Blue Ribbon Commission on Graduation Measures presented its recommendations to the Board of Regents. This was an unprecedented effort that brought together student voices along with a diverse range of stakeholders, including parents, educators, administrators, school support staff, representatives of higher education, and the business community. The Blue Ribbon Commission created a roadmap for learning-centered education that best meets the needs of every student in New York State and incorporates a competency-based approach to teach the practical skills needed for the dynamic demands of tomorrow's workforce.

As leaders in education, the Blue Ribbon Commission members were mindful of individual student circumstances and needs. As such, one of the Commission's recommendations was to pursue regulatory changes to allow discretion for local New York State schools and districts in posthumously conferring high school diplomas. Based on this recommendation, the Department now proposes to amend the Regulations of the Commissioner of Education to provide such discretion.

The Department proposes to amend section 100.5(b)(7) of the Regulations of the Commissioner of Education to allow school districts, registered nonpublic schools, and charter schools, at the request of the student's parent or person in parental relation, the ability to confer a high school diploma on a deceased student if the student was enrolled in the school or district at the time of death.

The proposed amendment was presented to the P-12 Committee for recommendation to the Full Board for adoption as an emergency rule at the May 2024 meeting of the Board of Regents, effective May 7, 2024. Since the Board of Regents

meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the September 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 25, 2024, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire August 4, 2024. Therefore, a second emergency action is necessary at the July 2024 meeting, effective August 5, 2024, for the preservation of the general welfare to immediately permit school districts, registered nonpublic schools, and charter schools to immediately confer posthumous diplomas for the 2024 graduation season and to ensure that the emergency action taken at the May 2024 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the September 2024 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.