



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** P-12 Education Committee

**FROM:** John B. King, Jr.

**SUBJECT:** Proposed amendment of section 100.2(ee) of the Regulations of the Commissioner of Education, relating to Academic Intervention Services

**DATE:** October 8, 2010

**STRATEGIC GOAL:** Goals 1 and 2

**AUTHORIZATION(S):**

### SUMMARY

#### Issue for Decision

Should the Board of Regents adopt as a permanent rule, and as a second emergency action, the proposed amendment to section 100.2(ee) of the Commissioner's Regulations, to provide flexibility to school districts for one year in the requirement for providing Academic Intervention Services (AIS)?

#### Reason for Consideration

Review of policy.

#### Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for approval and to the Full Board for adoption as a permanent rule at the October 2010 Regents meeting. A second emergency adoption is also necessary at the meeting to ensure that the July 2010 emergency rule remains continuously in effect until the effective date of its adoption as a permanent rule. A statement of the facts and circumstances which necessitate emergency action is attached.

## Background Information

We are proposing modified requirements for the provision of AIS during the 2010-2011 school year based on several factors, including: (1) the change in cut scores for the 3-8 assessments in English language arts and mathematics which determine student proficiency; (2) the fact that such changes were not announced to the field until late July; and (3) the fiscal impact that school districts may experience because of the increase in the number of students required to receive AIS. The proposed requirements would hold districts harmless from the expected fiscal impact of the change in cut scores. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support. The Department strongly encourages districts to indeed provide AIS services to these students where the district is able to do so.

Specifically, the proposed amendment provides that for the 2010-2011 school year only:

- Students scoring at or below a scale score of 650 must receive academic intervention instructional services.
- Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.
- Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10.

A Notice of Proposed Rule Making was published in the State Register on August 4, 2010. The last day for receipt of public comment was September 20, 2010. No comments were received. Supporting materials are available upon request from the Secretary to the Board of Regents.

## Recommendation

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

VOTED: That subdivision (ee) of section 100.2 of the Regulations of the Commissioner be amended as submitted, effective November 10, 2010, and it is further

VOTED: That subdivision (ee) of section 100.2 of the Regulations of the Commissioner be amended as submitted, effective October 25, 2010, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the July 2010 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule, and thereby avoid disruption to the administration of the

modified Academic Intervention Services requirements by school districts in the 2010-2011 school year.

#### Timetable for Implementation

The proposed amendment was adopted at the July Regents meeting as an emergency action, effective July 27, 2010, and will expire on October 24, 2010. If adopted at the October Regents meeting, the second emergency rule will become effective on October 25, 2010 and the permanent rule will become effective on November 10, 2010.

Attachment

PROPOSED AMENDMENT OF SECTION 100.2(ee) OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 101, 207, 305, 308, 309 AND 3204, RELATING TO ACADEMIC INTERVENTION SERVICES

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The State Education Department is proposing modified requirements for the provision of Academic Intervention Services (AIS) during the 2010-2011 school year based on several factors, including: (1) the change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency; (2) the fact that such changes were not announced to the field until late July; and (3) the fiscal impact that school districts may experience because of the increase in the number of students required to receive AIS. The proposed requirements would hold districts harmless from the expected fiscal impact of the change in cut scores. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

Specifically, the proposed amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

(2) Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

The proposed amendment was adopted as an emergency rule at the July 2010 Regents meeting, effective July 27, 2010. A Notice of Proposed Rule Making was published in the State Register on August 4, 2010.

The proposed amendment has been adopted as a permanent rule at the October 2010 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest the adopted rule can become effective is after its publication in the State Register on November 10, 2010. However, the emergency rule which took effect on July 27, 2010 will expire on October 24, 2010. The expiration of the emergency rule would disrupt administration of the modified requirements for Academic Intervention Services in the 2010-2011 school year.

Therefore, a second emergency action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the July 2010 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule, in order to avoid disruption to the administration of the modified requirements for Academic Intervention Services in the 2010-2011 school year.

## AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 309 and 3204

Subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective November 10, 2010, as follows:

(ee) Academic intervention services.

(1) Requirements for providing academic intervention services (AIS) in kindergarten to grade [three] two. Schools shall provide academic intervention services to students in kindergarten to grade [three] two when such students:

(i) are determined, through a district-developed or district-adopted procedure that meets State criteria and is applied uniformly at each grade level, to lack reading readiness based on an appraisal of the student, including his/her knowledge of sounds and letters; or

(ii) are determined, through a district-developed or district-adopted procedure applied uniformly at each grade level, to be at risk of not achieving the State designated performance level in English language arts and/or mathematics. This district procedure may also include diagnostic screening for vision, hearing and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

(2) Requirements for providing academic intervention services in grade [four] three to grade eight. Schools shall provide academic intervention services when students:

(i) score below the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics, social studies or science; provided that for the 2010-2011 school year only, the following shall apply:

(a) those students scoring at or below a scale score of 650 shall receive academic intervention instructional services; and

(b) those students scoring above a scale score of 650 but below level 3/proficient shall not be required to receive academic intervention instructional and/or student support services unless the school district, in its discretion, deems it necessary.

Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and shall no later than the commencement of the first day of instruction either post to its Website or distribute to parents in writing a description of such process.

(ii) are limited English proficient (LEP) and are determined, through a district-developed or district-adopted procedure uniformly applied to LEP students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title; or

(iii) are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State standards in English language

arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

(3) . . .

(4) Description of academic intervention services.

(i) . . .

(ii) The description of academic intervention services shall be approved by each local board of education by July 1, 2000. In the New York City School District, the New York City Board of Education may designate that the plans be approved by the chancellor or his designee or by community school boards for those schools under their jurisdiction. Beginning July 1, 2002 and every two years thereafter, each school district shall review and revise its description of academic intervention services based on student performance results; except that this requirement shall not apply to student performance results for the 2010-2011 school year, which shall be excluded from such review.

(iii) . . .

(iv) . . .

(5) . . .

(6) . . .