



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 addition of section 100.2(ee)(7) of the Regulations of the Commissioner of Education, relating to Academic Intervention Services and the Response to Intervention Process

DATE: October 8, 2010

STRATEGIC GOAL: Goals 1 and 2

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents add a new paragraph (7) to section 100.2(ee) of the Commissioner's Regulations to allow a school district to provide a Response to Intervention (RTI) program in lieu of providing academic intervention services (AIS) to eligible students, provided specified conditions are met?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment will be presented to the P-12 Committee for approval and to the Full Board for action at the October 2010 Regents meeting.

Background Information

As discussed at the April and July 2010 Regents meeting, due to ongoing concerns about the quality of the required AIS program, given the strength of the

Response to Intervention (RTI) model that currently exists in regulations, and given the need to identify ways to assist school districts in the current economic environment, the Department is considering regulatory flexibility in general and for provision of Academic Intervention Services specifically. The flexibility reflected in the proposed amendment would allow for a school district to:

- Continue with a current AIS model, or
- Move to or expand on an RTI model, or
- Use a blended approach of AIS and RTI (ex: RTI in lower grades, AIS in upper grades).

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 from the Secretary to the Board of Regents.

Recommendation

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

VOTED: That paragraph (7) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner be added, as submitted, effective November 10, 2010.

Timetable for Implementation

If adopted at the October 2010 Regents meeting, the proposed amendment will become effective on November 10, 2010.

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 October 25, 2010, as follows:

(ee) Academic intervention services.

(1) Requirements for providing academic intervention services (AIS) in kindergarten to grade three. Schools shall provide academic intervention services to students in kindergarten to grade three 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 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 for the English language arts and mathematics assessments:

(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) . . .

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Paragraph (7) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is added, effective November 10, 2010, as follows:

(7) Notwithstanding the provisions of this subdivision, a school district may provide a Response to Intervention (RTI) program in lieu of providing academic intervention services (AIS) to eligible students, provided that:

(i) the RTI program is provided in a manner consistent with subdivision (ii) of section 100.2 of this Part;

(ii) the RTI program is made available at the grade levels and subject areas (reading/math) for which students are identified as eligible for AIS;

(iii) all students who are otherwise eligible for AIS shall be provided such AIS services if they are not enrolled in the RTI program; and

(iv) for the 2010-2011 school year, the school district shall submit to the Department, no later than December 15, 2010, a signed statement of assurance that the services provided in the RTI program meet the requirements of this paragraph; and for each school year thereafter, the school district shall submit to the Department no later than September 1st of such school year, a signed statement of assurance that the services provided under the district's RTI program meet the requirements of this paragraph.