



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

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

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

**SUBJECT:** Proposed Technical Amendment of Section 100.2(ee)(2)  
of the Regulations of the Commissioner

**DATE:** April 26, 2011

**AUTHORIZATION(S):**

### **SUMMARY**

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

Should the Regents adopt the proposed technical amendment of section 100.2(ee)(2) of the Commissioner's Regulations?

#### **Reason for Consideration**

To enact a technical amendment to resolve inconsistencies in the regulation.

#### **Proposed Handling**

This item will be presented to the Full Board for adoption as a permanent rule at the May Regents meeting. An emergency action is also necessary in May to ensure that the rule remains continuously in effect until the effective date of its permanent adoption. A statement of the facts and circumstances which necessitate emergency action is attached.

#### **Procedural History**

The proposed amendment was adopted as an emergency rule, effective February 15, 2011, at the February Regents meeting.

#### **Background Information**

The amendments concerning diploma credit for languages other than English (LOTE) and State assessments in Social Studies, that were adopted at the December

2010 Regents meeting, inadvertently omitted language in section 100.2(ee)(2), concerning Academic Intervention Services, that was previously adopted by the Regents in July and October 2010. The proposed amendment is necessary to clarify and resolve this inconsistency by re-inserting the inadvertently omitted language.

A Notice of Proposed Rule Making was published in the State Register on March 2, 2011. 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 paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner be amended as submitted, effective June 1, 2011; and it is further

VOTED: That paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner be amended as submitted, effective May 17, 2011, 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 February 2011 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

### Timetable for Implementation

If adopted at the May Regents meeting, the permanent adoption will become effective June 1, 2011, and the emergency adoption will become effective on May 17, 2011.

PROPOSED AMENDMENT OF SECTION 100.2(ee)(2) 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 amendments concerning diploma credit for languages other than English (LOTE) and State assessments in Social Studies, that were adopted at the December 2010 Regents meeting (EDU-40-10-00022-P), inadvertently omitted language in section 100.2(ee)(2) that was added in a prior, separate amendment concerning Academic Intervention Services, that was permanently adopted at the October 2010 Regents meeting (EDU-31-10-00004-P). The proposed amendment is necessary to clarify and resolve this inconsistency by including the omitted language.

The proposed amendment was adopted as an emergency action at the February 7-8, 2011 Regents meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 2, 2011.

The proposed amendment has now been adopted as a permanent rule at the May 16-17, 2011 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest the permanent rule may become effective is after its publication in the State Register on June 1, 2011. Since the February 2011 emergency adoption will expire on May 16, 2011, 90 days after its filing with the Department of State on February 15, 2011, there would be a lapse in the rule's effectiveness. Another emergency adoption is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the February 2011 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective May 17, 2011, as follows:

(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:

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

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

(2) 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;

and/or

(b) the State designated performance level on a State elementary assessment in social studies administered prior to the 2010-2011 school year; provided that beginning

in the 2010-2011 school year, at which time a State elementary assessment in social studies shall no longer be administered, a school shall provide academic intervention services when students are determined to be at risk of not achieving State learning standards in social studies pursuant to clause (iii) of this paragraph;

(ii) . . .

(iii) . . .

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