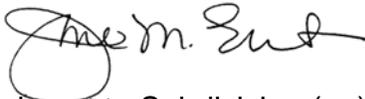


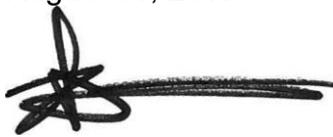


TO: The Honorable the Members of the Board of Regents

FROM: Jhone M. Ebert 

SUBJECT: Proposed Amendment to Subdivision (ee) of Section 100.2 of the Regulations of the Commissioner of Education Relating to Academic Intervention Services

DATE: August 31, 2017

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment to subdivision (ee) of section 100.2 of the Commissioner's regulations relating to the methodology by which school districts shall identify students in grades 3 – 8 who receive Academic Intervention Services (AIS)?

Reason(s) for Consideration

Implementation of Policy.

Proposed Handling

The proposed rule is being presented to the P-12 Education Committee at the September 2017 Regents meeting for adoption as an emergency measure and for adoption as a permanent rule. A copy of the proposed amendment is included as Attachment B.

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 5, 2017. Following the 45-day public comment period required under the State Administrative Procedure Act, no comments were received. A Statement of Facts and Circumstances Justifying the Emergency Adoption is included as Attachment A. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The requirement to provide AIS has been in place for more than 20 years. In 2016, Commissioner's regulation §100.2(ee) was amended to change the methodology for identifying students in grades 3-8 to receive AIS in English Language Arts (ELA) and mathematics, through a two-step identification process. This two-step process includes an initial identification based on the student's performance on the State assessments in ELA or math, and a secondary district-developed procedure to review multiple measures of student performance. This regulatory amendment to include multiple measures of student performance to identify students in need of AIS was based upon recommendations from New York State educators and stakeholders, and was included as Recommendation #19 in the Governor's Common Core Task Force Report released in December 2015.

While the amendments requiring a two-step identification process and multiple measures of student performance were effective for the 2016-2017 school year, Commissioner's regulation §100.2(ee) was further amended to include a timeline for revisions to the AIS identification methodology that would be in effect beginning with the 2017-2018 school year. This required the Department to engage a panel of educators to conduct a standard setting process led by the Department to recommend the level of performance for the grades 3-8 ELA and mathematics assessments for which a student could be considered for AIS. Concurrently with the amendments to the AIS identification methodology, the Department was engaging, and continues to engage, stakeholders as the Board of Regents moves toward adopting the Next Generation English Language Arts and Mathematics Learning Standards, which is anticipated at the September 2017 meeting of the Board of Regents. However, because corresponding assessments have yet to be developed, the Department recommends delaying until the 2019-2020 school year, the establishment of the standard setting panel to ensure appropriate alignment with the Next Generation English Language Arts and Mathematics Learning Standards.

In an effort to ensure that the standard setting process is meaningful within the context of the Next Generation English Language Arts and Mathematics Learning Standards, the Department proposes to amend the regulation to continue the two-step identification process, which includes identification of students who perform below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delay the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards.

Related Regents Items

<http://www.regents.nysed.gov/common/regents/files/617p12a1.pdf>

Recommendation

Staff recommends that the Regents take the following action:

VOTED: That section 100.2(ee) of the Regulations of the Commissioner of Education be amended, as submitted, effective September 18, 2017, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that school districts have sufficient notice of the amendments and are able to implement them, as appropriate, beginning with the 2017-2018 school year and to ensure that the emergency rule adopted by the Board of Regents at its June 2017 meeting remains in effect until it can be adopted as a permanent rule on September 27, 2017.

VOTED: That section 100.2(ee) of the Regulations of the Commissioner of Education be amended, as submitted, effective September 27, 2017.

Timetable for Implementation

If adopted at the September Regents meeting, the proposed amendment will become effective as an emergency rule on September 18, 2017 and as a permanent rule on September 27, 2017.

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING THE EMERGENCY

The proposed amendment to section 100.2(ee) of the Regulations of the Commissioner of Education is necessary to ensure school districts have sufficient notice of the amendments and are able to continuously implement them beginning with the 2017-2018 school year.

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 5, 2017. It is anticipated that the rule will be adopted at the September 2017 Board of Regents meeting and become effective as a permanent rule on September 27, 2017, the date which the Notice of Adoption will be published in the State Register. However, the Emergency Adoption which was published in the State Register on July 5, 2017 will expire on September 17, 2017. In order to have these provisions continuously in effect until they can be adopted as a permanent rule, emergency action is therefore necessary for the preservation of general welfare to ensure that school districts have sufficient notice of the amendments and are able to continuously implement them beginning with the 2017-2018 school year which commenced on July 1, 2017.

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, as follows:

(2) Requirements for providing academic intervention services in grade three to grade eight.

(i) For the 2016-17, 2017-18, and 2018-2019 school years, schools shall provide academic intervention services following a two-step identification process:

(a) First, students who score below a median scale score between a level 2/partially proficient and a level 3/proficient on a grade 3-8 English language arts or mathematics State assessment as determined by the Commissioner, shall be considered for academic intervention services. Students scoring at or above the median scale score determined by the Commissioner but below a level 3/proficient score shall not be required to receive academic intervention services unless the school district, in its discretion, determines that such services are needed.

(b) Districts shall then use a district-developed procedure, to be applied uniformly at each grade level, for determining which students identified in clause (a) shall receive academic intervention services after it considers a student's scores on multiple measures of student performance, which may include, but need not be limited to, one or more of the following measures, as determined by the district:

(1) developmental reading assessments for grades kindergarten through grade 6;

(2) New York State English as a Second Language Achievement Test (NYSESLAT);

(3) benchmark and lesson-embedded assessments for reading and mathematics in grades kindergarten through grade 6 based on teacher designed and selected assessments;

(4) common formative assessments that provide information about students' skills;

(5) unit and lesson assessments for English language arts, mathematics, science, social studies and languages other than English for grades 7 through 8; and/or

(6) results of psychoeducational evaluations based on a variety of assessments and inventories.

(c) Each school district shall develop and maintain its policies for providing academic intervention services [during the 2016-2017 school year] no later than September 1[, 2016] of each school year and shall either post its policies to its website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for academic intervention services.

(d) Schools shall also provide academic intervention services to students who are [limited English proficient (LEP)] English Language Learners and are determined, through a district-developed or district-adopted procedure uniformly applied to [LEP] English Language Learner 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.

(e) Schools shall also provide academic intervention services to students who 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] identification as an English Language Learner or for possible disability pursuant to Part 117 of this Title.

(ii) Commencing with the [2017-18] 2019-20 school year and each school year thereafter, schools shall provide academic intervention services following a two-step identification process:

(a) First, all students performing at or below a certain scale score, established through a standard setting process conducted by the Department, on one or more of the State elementary assessments in English language arts or mathematics shall be considered for academic intervention services. The standard setting process shall include a panel of educators, including teachers, principals and other school personnel. Students scoring at or above the scale score established by the standard setting panel and approved by the Commissioner shall not be required to receive academic intervention services unless the school district, in its discretion, determines that such services are needed.

(b) Districts shall then use a district-developed procedure, to be applied uniformly at each grade level, for determining which students identified in clause (a) shall receive academic intervention services after it considers a student's scores on multiple measures

of student performance, which may include, but need not be limited to, one or more of the following measures, as determined by the district:

(1) developmental reading assessments for grades kindergarten through grade 6;

(2) New York State English as a Second Language Achievement Test (NYSESLAT);

(3) benchmark and lesson-embedded assessments for reading and mathematics in grades kindergarten through grade 6 based on teacher designed and selected assessments;

(4) common formative assessments that provide information about students' skills;

(5) unit and lesson assessments for ELA, mathematics, science, social studies and languages other than English for grades 7 through 8; and/or

(6) results of psychoeducational evaluations based on a variety of assessments and inventories.

(c) Each school district shall develop and maintain its policies for providing academic services during the [2017-2018] 2019-2020 school year and each school year thereafter no later than September 1, [2017] 2019 and each September thereafter and shall either post its policies to its website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for academic intervention services.

(d) Schools shall also provide academic intervention services to students who are [limited English proficient (LEP)] English Language Learners and are determined, through a district-developed or district-adopted procedure uniformly applied to [LEP] English Language Learner 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] disabilities pursuant to Part 117 of this Title; or

(e) Schools shall also provide academic intervention services to students who 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] identification as an English Language Learner or for possible disability pursuant to Part 117 of this Title.