



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 Commissioner's Regulation, relating to Academic Intervention Services (AIS)
DATE: July 14, 2010

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Regents adopt as an emergency action the proposed amendment of 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

This item will be presented to the P-12 Education Committee for approval and to the Full Board for adoption as an emergency action at the July 2010 Regents meeting. 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 anticipated 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 will not be announced to the field until late July or early August; 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:

- 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.
- 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.

A Notice of Proposed Rule Making will be published in the State Register on August 4, 2010. 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 July 27, 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 immediately establish modified requirements for the provision of Academic Intervention Services for the 2010-2011 school year, for purposes of minimizing the potential fiscal impact on school districts of an anticipated change in cut scores for the grades 3-8 assessments in English language arts and mathematics, and thereby ensure the timely implementation of the modified AIS requirements by school districts in the 2010-2011 school year.

Timetable for Implementation

If adopted as an emergency action at the July Regents meeting, the proposed amendment will become effective July 27, 2010. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the October 2010 Regents meeting.

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 will not be announced to the field until late July or early August; 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.

Since the Board of Regents meets at monthly intervals, and does not meet in August, the earliest the proposed amendment could be adopted by regular action, after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202, would be the October 18-19, 2010 Regents meeting. Because SAPA provides that an adopted rule may not become effective until a Notice of Adoption is published in the State Register, the earliest the proposed amendment could become effective if adopted at the October Regents meeting, is November 10, 2010. However, school districts need to know now what the modified requirements for AIS will be so that they may plan and timely implement AIS for the 2010-2011 school year.

Emergency Action is necessary for the preservation of the general welfare to immediately establish modified requirements for the provision of Academic Intervention Services for the 2010-2011 school year, for purposes of minimizing the potential fiscal impact on school districts of an anticipated change in cut scores for the grades 3-8 assessments in English language arts and mathematics, and thereby ensure the timely implementation of the modified AIS requirements by school districts 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 July 27, 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) . . .