



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

TO: Full Board

FROM: John B. King, Jr.

SUBJECT: Proposed Amendment of Section 100.2(p)(1) of the Regulations of the Commissioner, Relating to Public School and District Accountability

DATE: August 26, 2010

STRATEGIC GOAL: Goals 1 and 2

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Regents adopt as a permanent rule, and as a second emergency action, the proposed amendment to section 100.2(p)(1) of the Regulations of the Commissioner of Education relating to public school and district accountability?

Reason(s) for Consideration

To conform the Commissioner's Regulations with New York State's approved amended accountability plan that includes in the students with disabilities subgroup, students previously identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress (AYP).

Proposed Handling

The proposed amendment will be submitted to the Full Board for adoption as a permanent rule at the September 2010 Regents meeting. A second emergency adoption is also necessary at the meeting to ensure that the June 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.

Procedural History

The proposed amendment was discussed by the EMSC Committee and adopted by the full Board as an emergency rule at the June 2010 Regents meeting.

Background Information

34 CFR section 200.20(f)(2)(i) provides that, in determining AYP for the subgroup of students with disabilities, a State may include, for up to two AYP determination cycles, the scores of students who were previously identified under section 602(3) of the Individuals with Disabilities Education Act (IDEA) but who no longer receive special education services.

On June 9 , 2010, Thelma Meléndez de Santa Ana, the Assistant Secretary of the Office of Elementary and Secondary Education of the United States Department of Education (USDOE), informed Commissioner Steiner that USDOE had approved New York's request to amend its State accountability plan under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act (NCLB), to include in the students with disabilities subgroup, students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating AYP.

The purpose of the proposed amendment is to conform the Commissioner's Regulations with New York State's approved amended accountability plan. Adoption of the proposed amendment will provide a more accurate representation, commencing with the 2009-2010 school year results, of the academic progress that schools and districts are making with students with disabilities and will make the accountability rules for former students with disabilities consistent with rules currently applied to former limited English proficient students.

A Notice of Proposed Rule Making was published in the State Register on June 30, 2010. An Assessment of Public Comment is attached. 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 subparagraph (i) of paragraph (1) of subdivision (p) of section 100.2 of the Regulations of the Commissioner be amended as submitted, effective October 6, 2010, and it is further

VOTED: That subparagraph (i) of paragraph (1) of subdivision (p) of section 100.2 of the Regulations of the Commissioner be amended as submitted, effective September 26, 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 June 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 New York's amended accountability plan.

Timetable for Implementation

If adopted as at the September Regents meeting, the emergency rule will become effective on September 26, 2010 and the permanent rule will become effective on October 6, 2010.

Attachment

ATTACHMENT

PROPOSED AMENDMENT OF SECTION 100.2(p) OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 101, 207,210, 215, 305, 309, AND 3713, RELATING TO PUBLIC SCHOOL AND DISTRICT ACCOUNTABILITY

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on June 30, 2010, the State Education Department received the following comment.

COMMENT:

While support was expressed for the proposed amendment, it was urged that the Department establish modified achievement standards leading to alternate assessments for students with disabilities, and that the Department advocate for inclusion of fairer and more valid assessment policies for measuring the learning of special needs students in the reauthorization of the federal Elementary and Secondary Education Act (ESEA).

DEPARTMENT RESPONSE:

The Department concurs with the support expressed for the proposed amendment as a means to provide a more accurate account of the academic progress that schools and districts are making with students with disabilities, by including recently declassified students with disabilities in the calculation of Adequate Yearly Progress.

The comment's suggestions with respect to modified achievement standards and alternate assessment for students with disabilities, and ESEA reauthorization, are beyond the scope of the proposed amendment. However, the Department concurs that

fairer and more valid assessment policies for measuring the learning of special needs students should be included in the reauthorization of the federal Elementary and Secondary Education Act (ESEA), and the Regents have put forward recommendations to Congress in this regard.

PROPOSED AMENDMENT OF SECTION 100.2(p) OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 101, 207, 210, 215, 305, 309 and 3713, RELATING TO PUBLIC SCHOOL AND DISTRICT ACCOUNTABILITY

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

On June 9 , 2010, Thelma Meléndez de Santa Ana, the Assistant Secretary of the Office of Elementary and Secondary Education of the United States Department of Education (USDE), informed Commissioner Steiner that USDE had approved New York's request to amend its State accountability plan under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act OF 2001 (NCLB), Public Law section 107-110, to include in the students with disabilities (SWD) subgroup, students who had previously been identified as SWD during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress.

The purpose of the proposed amendment is to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE. Adoption of the proposed amendment will provide a more accurate account of

the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year.

The proposed amendment was adopted as an emergency rule at the June 2010 Regents meeting, effective June 29, 2010. A Notice of Proposed Rule Making was published in the State Register on June 30, 2010.

The proposed amendment has been adopted as a permanent rule at the September 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 October 6, 2010. However, the emergency rule which took effect on June 29, 2010 will expire on September 26, 2010. The expiration of the emergency rule would disrupt administration of New York's amended accountability plan.

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 June 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 New York's amended accountability plan .

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 210, 215, 305, 309 and 3713

Subparagraph (i) of paragraph (1) of subdivision (p) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective September 26, 2010 as follows:

(i) Accountability groups shall mean, for each public school, school district and charter school, those groups of students for each grade level or annual high school

cohort, as described in paragraph (16) of this subdivision comprised of: all students; students from major racial and ethnic groups, as set forth in subparagraph (bb)(2)(v) of this section; students with disabilities, as defined in section 200.1 of this Title, including, beginning with the 2009-2010 school year, students no longer identified as students with disabilities but who had been so identified during the preceding one or two school years; students with limited English proficiency, as defined in Part 154 of this Title, including, beginning with the 2006-2007 school year, a student previously identified as a limited English proficient student during the preceding one or two school years; and economically disadvantaged students, as identified pursuant to section 1113(a)(5) of the NCLB, 20 U.S.C. section 6316(a)(5) (Public Law, section 107-110, section 1113(a)(5), 115 STAT, 1469; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234). The school district accountability groups for each grade level will include all students enrolled in a public school in the district or placed out of the district for educational services by the district committee on special education or a district official.

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