





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: Ken Slentz 

SUBJECT: Proposed amendment of section 100.2(ee) of the Regulations of the Commissioner's Regulations, relating to Academic Intervention Services (AIS)

DATE: November 8, 2013

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent Agenda)

Should the Regents adopt as a second 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

The proposed amendment will be presented to the Full Board at the November 2013 Regents meeting for adoption as a second emergency action. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

The proposed amendment was adopted as an emergency action at the September 2013 Regents meeting, effective September 17, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on

October 2, 2013. The September emergency rule will expire on December 15, 2013. A second emergency action is necessary at the November Regents meeting in order to ensure that the emergency rule remains continuously in effect until it can be adopted as a permanent rule. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

At the Board of Regents July 2013 meeting, Department staff discussed with the Board the implications for the provision by school districts of Academic Intervention Services (AIS) as a result of the expected decrease in the percentage of students who demonstrate the knowledge and skills necessary to meet grade-level Common Core Learning Standards (CCLS) relative to the percentage of students demonstrating this against the 2005 standards.

To ensure that existing support services, including Academic Intervention Services (AIS), remain relevant and appropriate as New York implements the CCLS, the Regents directed the Department to develop proposed amendments to Commissioner's Regulations to provide flexibility in the provision of Academic Intervention Services.

Historically, students who have scored below proficient on State assessments in English language arts or mathematics have been required to receive AIS. However, proficiency standards on the 2012 and the 2013 state assessments cannot be directly compared because the 2012 tests were designed to measure different learning standards than the 2013 Common Core tests. However, the Department can determine the scale scores for each respective year that are associated with students who scored at the same percentile rank on the two assessments. The Department proposes using these percentile ranks as the basis for determining which students must be provided Academic Intervention Services during this transition year as this approach ensures that the change in proficiency rates will not result in a significant increase in the percentage of students who must receive AIS. The cut scores that the Department proposes be used will result in districts being required to provide AIS to approximately the same percentages of students Statewide in the 2013-14 school year as received AIS in the 2012-13 school year. This is analogous to the action taken by the Regents in July 2010 to address the raising of the cut scores on the 2010 Grade 3-8 English language arts and mathematics assessments.

Under the proposed regulation, districts would be required to establish a policy to determine what services, if any, to provide in the 2013-14 school year to students who score above the transitional cut scores established by the Department but below proficiency on the 2013 assessments.

Specifically, the proposed amendment provides that for the 2013-2014 school year only:

- Students scoring at or below the specified cut points for Grades 3-8 English Language Arts and mathematics must receive academic intervention instructional services.
- Students scoring at or above the specified cut points but below the 2013 level 3/proficient cut points 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 2013-14 school year to students who scored at or above the specified cut points but below The level 3/proficient on grade 3-8 English Language Arts or mathematics State assessments in 2013-14.
- Each school shall, by November 1, 2013 either post a description of this process to its Website or distribute to parents in writing a description of such process.

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 December 16, 2013, 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 September 16-17, 2013 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the September 2013 Regents meeting, effective September 17, 2013, and will expire on December 15, 2013. If adopted at the November Regents meeting, the second emergency action will take effect on December 16, 2013. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the December Regents meeting, after expiration of the 45-day public comment period for proposed rule makings.

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 proposed amendment modifies the test cut scores for the required provision of Academic Intervention Services (AIS) to students during the 2013-2014 school year. Under the present rule, those students scoring at or below a scale score of 650 must be provided with AIS. The proposed rule would establish, for the 2013-2014 school year only, specific scale scores for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8 that would require the provision of AIS to students scoring below such scale scores.

The proposed amendment was adopted as an emergency action at the September 16-17, 2013 Regents meeting, effective September 17, 2013. Because the Board of Regents meets at monthly intervals, 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 December 16-17, 2013 Regents meeting. Furthermore, because SAPA section 203(1) 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 December Regents meeting, is January 1, 2014.

However, the September emergency rule will expire on December 15, 2013, 90 days after its filing with the Department of State on September 17, 2012. A lapse in the rule's effective date could disrupt implementation of Academic Intervention Services during the 2013-2014 school year. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the September Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the December 16-17, 2013 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

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 December 16, 2013, as follows:

(2) Requirements for providing academic intervention services in grade 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] 2013-2014 school year only, the following shall apply:

(1) those students scoring [at or] below a scale score [of 650] specified in subclause (3) of this clause shall receive academic intervention instructional services; and

(2) those students scoring at or above a scale score [of 650] specified in subclause (3) of this clause 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] 2013-2014 school year to students who scored above a scale score [of 650] specified in subclause (3) of this clause but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in [2009-2010] 2012-2013, and shall no later than [the commencement of the first day of instruction]

November 1, 2013 either post to its Website or distribute to parents in writing a description of such process;

(3) The following scale scores shall be used to determine which students shall receive academic intervention services as specified in subclauses (1) and (2) of this clause:

Grade 3 English language arts, a scale score of 299

Grade 4 English language arts, a scale score of 296

Grade 5 English language arts, a scale score of 297

Grade 6 English language arts, a scale score of 297

Grade 7 English language arts, a scale score of 301

Grade 8 English language arts, a scale score of 302

Grade 3 mathematics, a scale score of 293

Grade 4 mathematics, a scale score of 284

Grade 5 mathematics, a scale score of 289

Grade 6 mathematics, a scale score of 289

Grade 7 mathematics, a scale score of 290

Grade 8 mathematics, a scale score of 293

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 subparagraph (iii) of this paragraph;

(ii) . . .

(iii) . . .