



TO: P-12 Education Committee

FROM: Angelique Johnson-Dingle *Angelique Johnson-Dingle*

SUBJECT: Proposed Amendment of Section 100.3 of the Regulations of the Commissioner of Education Relating to Evidence-based and Scientifically Based Reading Instruction

DATE: November 27, 2024

AUTHORIZATION(S): *Dom N. B. Bellotti*

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment of section 100.3 of the Regulations of the Commissioner of Education relating to evidence-based and scientifically based reading instruction?

Reason(s) for Consideration

Required by State Statute (Education Law §818, as added by Part B of Chapter 56 of the Laws of 2024).

Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its December 2024 meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are included.

Procedural History

If adopted as an emergency rule at the December 2024 meeting, a Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on December 24, 2024, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

The Enacted State Budget for the 2024-25 fiscal year (Part B of chapter 56 of the Laws of 2024) added a new section 818 to the Education Law, effective April 1, 2024, which requires that, on or before January 1, 2025, the Commissioner provide school districts with evidence-based and scientifically based instructional best practices for the teaching of reading to students in prekindergarten through grade three. Education Law §818 requires that instructional best practices focus on reading competency in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, and comprehension, and that instructional best practices align with the Department's culturally responsive-sustaining education framework. This section also requires that the Commissioner define certain terms in regulation.

Education Law §818 requires that, on or before September 1, 2025, all school districts must verify to the Commissioner that their curriculum and instructional practices in reading for prekindergarten through grade three align with all elements of instructional best practices provided by the Commissioner. Districts will be able to submit this verification to the Department through the Department's Business Portal. School districts must also annually review their curriculum and instructional practices to ensure continued alignment with the reading instructional best practices.

Consistent with Education Law §818, the Department proposes to add a new subdivision (c) to section 100.3 of the Commissioner's regulations to implement this new legislation as described above.

Moreover, after presentation to the Board of Regents at the December 2024 meeting, the Department will issue the evidence-based and scientifically based instructional best practices for the teaching of reading to students in prekindergarten through grade three on or before January 1, 2025.

Related Regents Items

Not applicable.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 100.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective December 10, 2024, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately implement and conform the Commissioner's regulations to Education Law §818, which became effective April 1, 2024.

Timetable for Implementation

If adopted as an emergency rule at the December 2024 Regents meeting, the emergency rule will become effective December 10, 2024. It is anticipated that the proposed amendment will be presented for permanent adoption at the April 2025 Regents meeting, after publication of the proposed amendment in the State Register

and expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency action will expire before the April 2025 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the February 2025 meeting. If adopted at the April 2025 meeting, the proposed amendment will become effective as a permanent rule on April 23, 2025.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, and 818 of the Education Law, and Part B of Chapter 56 of the Laws of 2024.

1. Section 100.3 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (c) to read as follows:

(c) Additional program requirements for prekindergarten through grade three.

(1) On or before September 1, 2025, all school districts shall verify to the commissioner that their curriculum and instructional practices in reading for students in prekindergarten through grade three align with all elements of instructional best practices provided by the commissioner pursuant to Education Law §818. Such instructional best practices for the teaching of reading shall be evidence-based and scientifically based, focusing on reading competency in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, comprehension, including background knowledge, oral language and writing, oral skill development, and align with the department's culturally responsive-sustaining education (CRSE) framework.

(2) Every school district shall annually review their curriculum and instructional practices in the subject of reading to ensure that they align with instructional best practices provided by the commissioner, and to ensure that all early reading instructional practices and interventions are part of an aligned plan designed to improve student reading outcomes in prekindergarten through grade three.

(3) For purposes of this subdivision, the following terms shall have the following meanings:

(i) *phonemic awareness* means the ability to notice, think about, and work with phonemes (sounds) in spoken words;

(ii) *phonics* means the relationship between graphemes (letters) and the phonemes they represent;

(iii) *vocabulary development* means the acquisition of knowledge about the meanings, uses, and pronunciation of words;

(iv) *reading fluency* means the ability to read out loud accurately at an appropriate rate, and with appropriate expression (including proper phrasing, intonation, and pausing);

(v) *comprehension* means the understanding of the meaning of texts (in print or other forms) and the context in which words occur;

(vi) *culturally responsive-sustaining education (CRSE) framework* means a view of learning and human development in which multiple expressions of diversity are recognized and regarded as assets for teaching and learning. The CRSE Framework was published by the State Education Department in 2018, and is available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234;

(vii) *evidence-based* means an activity, strategy, or intervention that demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on: (1) strong evidence (e.g., experimental studies), (2) moderate evidence (e.g., quasi-experimental studies), or (3) promising evidence (e.g., correlational studies; or (4) a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes, and includes ongoing efforts to examine the effects of such activity, strategy, or intervention; and

(viii) scientifically based means that the instructional method or practice is based on research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH
NECESSITATE EMERGENCY ACTION

The Enacted State Budget for the 2024-25 fiscal year (section 1 of Part B of Chapter 56 of the Laws of 2024) added section 818 to the Education Law, effective April 1, 2024, which requires that, on or before January 1, 2025, the Commissioner shall provide school districts with the instructional best practices for the teaching of reading to students in prekindergarten through grade three. Additionally, it requires that, on or before September 1, 2025, all school districts are required to verify to the Commissioner that their curriculum and instructional practices in reading for prekindergarten through grade three align with all elements of instructional best practices provided by the commissioner. School districts must also annually review their curriculum and instructional practices to ensure continued alignment with the reading instructional best practices.

Therefore, the Department proposes to add a new subdivision (c) to section 100.3 of the Commissioner's regulations to implement this new legislation.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative procedure Act (SAPA) section 202(1) and (5) would be the April 2025 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the April meeting, would be April 23, 2025, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the December meeting, effective December 10, 2024, for the preservation of the general welfare to immediately

implement and conform the Commissioner's regulations to Education Law §818, which became effective April 1, 2024.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the April 2025 Regents meeting, after publication of the proposed amendment in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency action will expire before the April 2025 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the February 2025 meeting.