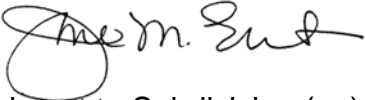






**TO:** P-12 Education Committee

**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:** June 1, 2017

**AUTHORIZATION(S):**  

**SUMMARY**

**Issue for Decision**

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 for recommendation and to the Full Board for adoption as an emergency rule at the June 2017 Regents meeting. A copy of the proposed amendment is included as Attachment B.

**Procedural History**

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on July 5, 2017. 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 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 2016-17 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 2017-18 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. However, because such standards have not yet been adopted by the Board of Regents, and the corresponding assessments have yet to be developed, the Department recommends delaying until the 2019-20 school year the establishment of the standard setting panel to ensure appropriate alignment with the Next Generation English Language Arts and Mathematics Learning Standards.

## **Recent Amendments to AIS**

Prior to 2016, Commissioner's regulation §100.2(ee) required school districts to provide AIS to students who scored below the State designated performance level on the grades 3–8 State assessments for ELA and mathematics and/or who were at risk of not achieving the State learning standards.

The four designated performance levels for the State assessments for grades 3-8 in ELA and mathematics commencing with the 2014-15 school year assessment results are:

Level 1: Students performing at this level are well below proficient in standards for their grade.

Level 2: Students performing at this level are below proficient in standards for their grade.

Level 3: Students performing at this level are proficient in standards for their grade.

Level 4: Students performing at this level excel in standards for their grade.

In the past, all students who scored at Levels 1 and/or 2 on the grades 3-8 ELA or mathematics assessments had been eligible to receive AIS. In 2013, the Department, for the first time, administered assessments in grades 3-8 that were based on the New York State P-12 Common Core Learning Standards (CCLS).

In September 2013, the Regents adopted amendments to Commissioner's regulation §100.2(ee) that provided flexibility to districts in the provision of AIS for the 2013-14 school year, in recognition of the fact that the new State assessments were the first administered to New York students that measured the progress of students in meeting the expectations of the CCLS. In the 2013-14 school year, pursuant to Commissioner's regulation §100.2(ee), districts were required to establish a policy to determine what services, if any, to provide to students who scored at or above transitional cut scores established by the Department, but below proficiency levels on the 2013 assessments.

Specifically, §100.2(ee) set forth the following requirements for the 2013-14 school year:

- Students who scored below the specified cut scores for Grades 3-8 ELA and mathematics must receive AIS;
- Students who scored at or above the specified cut scores, but below the 2013 Level 3/proficient cut scores, would not be required to receive AIS and/or student support services unless the school district deemed it necessary;
- Each school district was required to develop and maintain on file a uniform process by which the district determined whether to offer AIS to students who scored at or above the specified cut scores but below Level 3/proficient on grades 3-8 ELA or mathematics assessments; and
- By November 1, 2013, each school was required to either post a description of this process to its website or distribute a written description of such process to parents.

For the 2014-15 and the 2015-16 school years, the Regents took action to extend these provisions to continue flexibility in the provision of AIS. However, in September 2015, the Board also directed the Department to establish a committee to examine the effectiveness of AIS and to make recommendations to the Board, in early 2016, about amending the AIS regulations beginning with the 2016-17 school year. At the February 2016 Board meeting, the Department presented several options for amending Commissioner's regulations and shared feedback received from key stakeholders. In addition, the Board heard presentations from two school districts (Liverpool Central School District and the NYC Department of Education) on strategies used to implement AIS as well as resources used and challenges that districts face in implementing AIS.

### **Feedback from Key Stakeholders on Implementation of AIS in 2015-2016**

During the 2015-16 school year, the Department hosted several meetings and conference calls that were attended by the New York State Council of School Superintendents, the School Administrators Association of New York State, Superintendents, District Superintendents, Assistant Superintendents, AIS instructors, Curriculum Directors and teachers trained in the Response to Intervention (RTI) framework from 13 school districts.<sup>1</sup> Participants in these meetings informed the Department regarding how AIS is implemented in their respective districts, and how decisions are made regarding the types of AIS a student would receive.

Throughout the discussions with districts and key stakeholders, the Department heard that the four main areas of concern relating to identification of students under the current AIS requirements were:

- Identification of students for AIS services should not be based upon a single measure;
- Some districts voiced concern that the current process for determining which students must receive AIS resulted in the over identification of students needing AIS services;
- Many districts would prefer an RTI approach rather than an AIS approach but need additional resources and/or training to make this transition; and
- Many districts questioned the utility of having to provide AIS in science or social studies or to certain students who may be better served by more supports within the classroom, such as English Language Learners (ELL) in ELA or students with severe disabilities or students who need as many periods of their schedule as possible to be dedicated to taking credit-bearing high school courses in order to graduate.

Many school districts and stakeholders asserted that the determination of whether a student would benefit from AIS should be based on multiple measures rather than being entirely based on the results of a single State assessment. This view was consistent with Recommendation #19 of the Governor's Common Core Task Force Report released in December 2015 that specifically states, "Prevent students from being mandated into Academic Intervention Services based on a single test." Given the Task Force's recommendation regarding AIS and the feedback that the Department received on the importance of multiple measures in decision-making processes, the Department asked stakeholders to share their recommendations on how to incorporate multiple measures into the process for deciding which students should receive AIS. As a result, Commissioner's regulation §100.2(ee) was amended by the Regents in April 2016 to include such recommendations.

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<sup>1</sup> Participating school Districts included: New York City Department of Education, Buffalo City School District, Syracuse City School District, Yonkers City School District, Rochester City School District, Corinth Central School District, Schalmont Central School District, Penfield Central School District, Chenango Forks Central School District, Elmira Central School District, Liverpool Central School District, Wappinger Falls Central School District, and Arlington Central School District.

In accordance with the amended regulations, districts would use a two-step process when identifying students to receive AIS for the 2016-17 and the 2017-18 school years, which are as follows:

For the **2016-17 school year**, districts identified students for AIS through a two-step process:

- First, all students performing at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner, were considered for AIS.
- Upon identification of a student for consideration for AIS, districts then used a district-developed procedure to be applied uniformly at each grade level, for determining which students shall receive AIS after the district considers a student's scores on multiple measures of student performance, which may include, but not be limited to, the following measures as determined by the district:
  - developmental reading assessments for grades K-6;
  - NYS English as a Second Language Achievement Test (NYSESLAT);
  - benchmark and lesson-embedded assessments for reading and math in grades K-6 based on teacher designed and selected assessments;
  - common formative assessments that provide information about students' skills;
  - unit and lesson assessments for ELA, mathematics, science, social studies and languages other than English (LOTE) for grades 7-12; and
  - results of psychoeducational evaluations based on a variety of assessments and inventories.

For the **2017-18 school year**, the amended regulations also required districts to identify students for AIS through a two-step process, but used a standard setting process to determine the cut score. The two-step process is as follows:

- First, all students performing at or below a cut score established through a standard setting process shall be considered for AIS. The standard setting process shall be conducted by a panel of educators led by the Department that would meet to recommend the level of performance for the grades 3-8 ELA and mathematics assessments for which a student could be considered for AIS.
- Upon identification of a student for consideration for AIS, districts shall then use a district-developed procedure, to be applied uniformly at each grade level, to determine which students shall receive AIS after the district considers a student's scores on multiple measures of student performance which may include, but not be limited to, the following measures as determined by the district:
  - developmental reading assessments for grades K-6;
  - NYS English as a Second Language Achievement Test (NYSESLAT);
  - benchmark and lesson-embedded assessments for reading and math in grades K-6 based on teacher designed and selected assessments;

- common formative assessments that provide information about students' skills;
- unit and lesson assessments for ELA, mathematics, science, social studies, and LOTE for grades 7-8; and
- results of psychoeducational evaluations based on a variety of assessments and inventories.

As is currently the case, districts continue to have the flexibility to make a determination that a student who scores above the cut score for eligibility for AIS should receive this service. As is also currently the case, districts must by September 1 each year develop and maintain their policies for providing AIS and either post the district's policies to the district's 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 AIS.

In an effort to ensure a meaningful process within the context of the Next Generation English Language Arts and Mathematics Learning Standards, the Department is proposing to amend the regulation to continue the two-step identification process, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-18 and 2018-19 school years, and move the standard setting process until the 2019-20 school year to ensure accuracy and consistency among the assessments and the learning standards.

### **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 July 1, 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 2017-18 school year.

### **Timetable for Implementation**

If adopted at the June Regents meeting, the proposed amendment will become effective as an emergency rule on July 1, 2017. Following the 45-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at the September 2017 Regents meeting. If adopted at the September Regents meeting, the proposed amendment will become effective 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 implement them beginning with the 2017-2018 school year.

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on July 5, 2017. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) for a proposed rulemaking, would be the September 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 27, 2017, the date a Notice of Adoption would be published in the State Register. In order to have these provisions in effect prior to the next school year, 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 implement them beginning with the 2017-2018 school year which commences 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, effective July 1, 2017, 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.