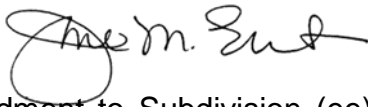




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents

**FROM:** Jhone M. Ebert 

**SUBJECT:** Proposed Amendment to Subdivision (ee) of Section 100.2 of the Regulations of the Commissioner of Education Relating to the Methodology by Which School Districts Shall Identify Students in Grades 3-8 Who Receive Academic Intervention Services

**DATE:** July 5, 2016

**AUTHORIZATION(S):**  

### SUMMARY

#### **Issue for Decision (Consent agenda)**

Should the Board of Regents adopt the proposed amendment of 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**

Review of Policy.

#### **Procedural History**

The proposed amendment was discussed at the April 2016 meeting of the Board of Regents. A Notice of Proposed Rule Making and Emergency Adoption was published on May 4, 2016. Supporting materials are available upon request to the Secretary of the Board of Regents. Following the 45-day public comment period required under the State

Administrative Procedure Act, the Department received no comments on the proposed amendment.

### **Proposed Handling**

This item will come before the Full Board for permanent adoption at the July 2016 Regents meeting. A copy of the proposed rule is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

Subdivision (ee) of section 100.2 of the Commissioner's Regulations requires school districts to provide AIS to students who score below the State designated performance level on the grades 3–8 State assessments for ELA and mathematics and/or who are at risk of not achieving the State learning standards.

The requirement to provide AIS has been in place for more than 20 years.

The State assessments for grades 3-8 in ELA and mathematics have four designated performance levels:

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

Level 2: Students performing at this level are partially 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 New York State Education Department (NYSED or "the Department"), for the first time, administered assessments in grades 3-8 that were based on the NYS P-12 Common Core Learning Standards (CCLS), a set of standards that articulate the knowledge and skills students need to be college and career ready.

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 the 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**

During the 2015-16 school year, the Department has 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, 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

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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 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 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 (ELLs) 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 have 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 is 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 has received over the past few months on the importance of multiple measures in decision-making processes, the Department has asked stakeholders to share their recommendations on how to incorporate multiple measures into the process for deciding which students should receive AIS.

Examples of multiple measures that could be used in conjunction with the ELA and mathematics assessments in grades 3-8 include, but are not limited to:

- Developmental reading assessments for grades K-6;
- NYS English as a Second Language Achievement Test (NYSESLAT);
- Benchmark and lesson-embedded assessments for reading and mathematics in grades K-6, based on teacher-designed or selected assessments;
- Common formative assessments that provide formative assessment information about students' skills;
- Unit and lesson assessments for ELA, mathematics, science, social studies, and Languages Other Than English (LOTE); and
- Results of diagnostic and psychological evaluations based on a variety of assessments and inventories.

## **Recommendations for Revisions to the Current Methodology for Identification of Students for AIS in the 2016-17 School Year and Beyond**

Based upon discussions with school district superintendents, principals, AIS instructors, teachers trained in RTI, and other key stakeholders, the Department is recommending that the Board of Regents take the following action to amend Commissioner's Regulations pertaining to the identification of students eligible for AIS in grades 3 – 8 ELA and mathematics:

For the 2016-17 school year, districts shall identify 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, shall 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, 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 LOTE for grades 7-12; and
  - results of psychoeducational evaluations based on a variety of assessments and inventories and to determine whether a student shall receive AIS.

Beginning with the 2017-18 school year, districts shall identify students for AIS through a two-step process:

- 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 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 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 LOTE for grades 7-8; and
- results of psychoeducational evaluations based on a variety of assessments and inventories and to determine whether a student shall receive AIS.

As is currently the case, districts 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 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.

### **Next Steps**

The Department proposes to provide additional recommendations to the Board later this year relating to AIS:

- the provision of AIS in grades other than 3-8 and in subjects other than ELA and mathematics, including social studies and science in grades 9 – 12;
- how requirements for provisions of services to students who have been identified as students with disabilities and/or English language learners interacts with the requirements for the provision of AIS;
- the provision of AIS to high school students who are under credited and/or overage; and
- options to strengthen AIS services and to promote the use of RTI programs as an effective research-based way to meet the academic needs of students.

### **Recommendation**

It is recommended that the Board of 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 27, 2016.

**Timetable for Implementation:**

If adopted at the July Regents meeting, the proposed rule will become effective as a permanent rule on July 27, 2016 .

## 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 27, 2016, 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 2015-2016 school year only, the following shall apply:

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

(2) those students scoring at or above a scale score 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 2015-2016 school year to students who scored above a scale score 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 2014-2015, and shall no later than November 1, 2015 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) 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.]

(i) For the 2016-17 school year, 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 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) 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.

(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 or possible disability pursuant to Part 117 of this Title.

(ii) Commencing with the 2017-18 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 school year and each school year thereafter no later than September 1, 2017 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) 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

(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 or possible disability pursuant to Part 117 of this Title.