



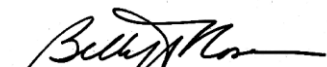


**TO:** The Honorable the Members of the Board of Regents

**FROM:** James N. Baldwin 

**SUBJECT:** Proposed Amendment to Section 100.2(ee) of the Regulations of the Commissioner of Education Relating to Providing Flexibility for the Two-Step Identification Process for Academic Intervention Services (AIS) for Students Who Will Be Enrolled in Grades 3-8 for the 2021-2022 School Year in Response to the COVID-19 Crisis

**DATE:** July 1, 2021

**AUTHORIZATION(S):**  

#### SUMMARY

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

Should the Board of Regents adopt the proposed amendment to section 100.2(ee) of the Regulations of the Commissioner of Education relating to providing flexibility for the two-step identification process for academic intervention services (AIS) for students who will be enrolled in grades 3-8 for the 2021-2022 school year in response to the COVID-19 crisis?

#### **Reason(s) for Consideration**

Review of policy.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the July meeting. A copy of the proposed rule is included as Attachment A and a statement of facts and circumstances which necessitate emergency action is included as Attachment B.

#### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the June 2021 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 23, 2021 for a 60-day public comment period. Because the June emergency action will expire on September 5, 2021

a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the September Regents meeting. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

Ordinarily, schools are required to conduct a two-step identification process to identify those students in need of academic intervention services (AIS). At its December 2020 meeting, the Board of Regents adopted regulations providing that schools were not required to conduct this process during the 2020-2021 school year for grade 3-8 students due to the cancellation of State assessments (due, in turn, to COVID-19).

The Department now proposes to extend similar flexibility to the 2021-2022 school year due to the limited administration of State assessments during the 2020-2021 school year. Specifically, the Department proposes to amend section 100.2(ee) of the Commissioner's regulations to provide that schools may, but are not required to, conduct the two-step identification process for grade 3-8 students during the 2021-2022 school year. Those schools that do not utilize the two-step identification process may make an identification based solely on district-developed procedures applicable to all grade 3-8 students during the 2021-2022 school year.

### **Related Regents Items**

December 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf>)

June 2021: [Proposed Amendment to Section 100.2\(ee\) of the Regulations of the Commissioner of Education Relating to Providing Flexibility for the Two-Step Identification Process for Academic Intervention Services \(AIS\) for Students Who Will Be Enrolled in Grades 3-8 for the 2021-2022 School Year in Response to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/621p12a4.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/621p12a4.pdf>)

### **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 September 6, 2021, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to immediately provide flexibility for the two-step identification process for academic intervention services (AIS) for students who will be enrolled in grades 3-8 for the 2021-2022 school year in response to the COVID-19 crisis.

### **Timetable for Implementation**

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its September 2021 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. If adopted at the September 2021 meeting, the proposed amendment will become effective on September 29, 2021.

**Attachment A**

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 308, 309, and 3204 of the Education Law.

1. Clause (f) of subparagraph (ii) of paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(f) Notwithstanding any other provision of this subparagraph[, schools]:

(i) Schools shall not be required to conduct the two-step identification process prescribed in clauses (a) and (b) of this subparagraph for the 2020-21 school year due to the cancelation of State assessments for the 2019-20 school year [due to]. Schools may, but are not required to, conduct the two-step identification process prescribed in clauses (a) and (b) of this subparagraph for the 2021-22 school year due to the limited administration of State assessments in the 2020-21 school year as a result of the State of emergency declared by the Governor for the COVID-19 crisis.

(ii) For all students who will be enrolled in grades 3 through 8 for the 2020-21 school year, schools shall make such identification based solely on the district-developed procedures prescribed in clauses (b), (d) and (e) of this subparagraph. For schools that opt not to conduct the two-step identification process prescribed in clauses (a) and (b) of this subparagraph for the 2021-22 school year, schools may make such identification based solely on the district-developed procedures prescribed in clauses (b), (d), and (e) of this subparagraph for all students who will be enrolled in grades 3 through 8 for the 2021-22 school year.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

At its December 2020 meeting, the Board of Regents voted to permanently adopt amendments to section 100.2(ee) of the Commissioner's regulations to provide that schools are not required to conduct the two-step identification prescribed for identification of students to receive academic intervention services (AIS) for the 2020-2021 school year due to the cancelation of State assessments for the 2019-2020 school year as a result of the COVID-19 crisis.

Due to the limited administration of State assessments in the 2020-2021 school year as a result of the COVID-19 crisis, the Department now proposes to amend section 100.2(ee) of the Commissioner's regulations to provide that schools may, but are not required to, conduct the two-step identification process for the 2021-2022 school year. For schools that opt not to conduct the two-step identification processes of the 2021-2022 school year, schools may make such identification based solely on the district-developed procedures for all students who will be enrolled in grades 3 through 8 for the 2021-22 school year.

The proposed amendment was presented to the P-12 Committee for recommendation and to the Full Board for adoption as an emergency action at the June 2021 meeting of the Board of Regents, effective June 8, 2021. 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) sections 201(1) and (5) would be the September 2021 Regents meeting. Furthermore, pursuant to SAPA 203(1),

the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 29, 2021, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on September 5, 2021. Therefore, a second emergency action is necessary at the July 2021 meeting for the preservation of the public health and general welfare in order to immediately provide flexibility for the two-step identification process for academic intervention services (AIS) for the 2021-2022 school year in response to the COVID-19 crisis, and to ensure that the emergency action taken at the June meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its September 2021 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for State agency rule making.