



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

TO: EMSC Committee

FROM: John B. King, Jr.

SUBJECT: Proposed Amendment of section 100.2(p)(1) of the Regulations of the Commissioner, Relating to Public School and District Accountability

DATE: June 14, 2010

STRATEGIC GOAL: Goals 1 and 2

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Regents approve as an emergency action the proposed amendment to section 100.2(p)(1) of the Regulations of the Commissioner of Education relating to public school and district accountability?

Reason(s) for Consideration

To conform the Commissioner's Regulations with New York State's approved amended accountability plan that includes in the students with disabilities subgroup, students previously identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress (AYP).

Proposed Handling

The proposed amendment is being presented to the EMSC Committee for approval and to the full Board for adoption as an emergency action at the June 2010 Regents meeting.

Procedural History

N/A

Background Information

34 CFR section 200.20(f)(2)(i) provides that, in determining AYP for the subgroup of students with disabilities, a State may include, for up to two AYP determination cycles, the scores of students who were previously identified under section 602(3) of the Individuals with Disabilities Education Act (IDEA) but who no longer receive special education services.

On June 9 , 2010, Thelma Meléndez de Santa Ana, the Assistant Secretary of the Office of Elementary and Secondary Education of the United States Department of Education (USDOE), informed Commissioner Steiner that USDOE had approved New York's request to amend its State accountability plan under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act (NCLB), to include in the students with disabilities subgroup, students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating AYP.

The purpose of the proposed amendment is to conform the Commissioner's Regulations with New York State's approved amended accountability plan. Adoption of the proposed amendment will provide a more accurate representation, commencing with the 2009-2010 school year results, of the academic progress that schools and districts are making with students with disabilities and will make the accountability rules for former students with disabilities consistent with rules currently applied to former limited English proficient students.

A Notice of Proposed Rule Making will be published in the State Register on June 30, 2010. A Statement of Facts and Circumstances Which Necessitate Emergency Action is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Recommendation

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

VOTED: That subparagraph (i) of paragraph (1) of subdivision (p) of section 100.2 of the Regulations of the Commissioner be amended as submitted, effective June 29, 2010, 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 immediately conform the Commissioner's Regulations with New York State's approved amended accountability plan by including in the students with disabilities subgroup, students no longer identified as students with disabilities but who had been so identified during the preceding one or two school years, for purposes of calculating Adequate Yearly

Progress, and thereby provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year.

Timetable for Implementation

If adopted as an emergency action at the June Regents meeting, the proposed amendment will become effective June 29, 2010. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September 2010 Regents meeting.

Attachment

PROPOSED AMENDMENT OF SECTION 100.2(p) OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSANT TO EDUCATION LAW SECTIONS 101, 207, 210, 215, 305, 309 and 3713, RELATING TO PUBLIC SCHOOL AND DISTRICT ACCOUNTABILITY

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

On June 9 , 2010, Thelma Meléndez de Santa Ana, the Assistant Secretary of the Office of Elementary and Secondary Education of the United States Department of Education (USDE), informed Commissioner Steiner that USDE had approved New York's request to amend its State accountability plan under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act OF 2001 (NCLB), Public Law section 107-110, to include in the students with disabilities (SWD) subgroup, students who had previously been identified as SWD during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress.

The purpose of the proposed amendment is to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE. Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year.

Emergency adoption of these regulations is necessary for the preservation of the general welfare in order to immediately conform the Commissioner's Regulations with New York State's approved amended accountability plan by including in the students

with disabilities (SWD) subgroup, students no longer identified as SWD but who had been so identified during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress, and thereby provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year.

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its September 13-14, 2010 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 210, 215, 305, 309 and 3713

Subparagraph (i) of paragraph (1) of subdivision (p) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective June 29, 2010 as follows:

(i) Accountability groups shall mean, for each public school, school district and charter school, those groups of students for each grade level or annual high school cohort, as described in paragraph (16) of this subdivision comprised of: all students; students from major racial and ethnic groups, as set forth in subparagraph (bb)(2)(v) of this section; students with disabilities, as defined in section 200.1 of this Title, including, beginning with the 2009-2010 school year, students no longer identified as students with disabilities but who had been so identified during the preceding one or two school years; students with limited English proficiency, as defined in Part 154 of this Title, including, beginning with the 2006-2007 school year, a student previously identified as a limited English proficient student during the preceding one or two school years; and economically disadvantaged students, as identified pursuant to section 1113(a)(5) of the NCLB, 20 U.S.C. section 6316(a)(5) (Public Law, section 107-110, section 1113(a)(5), 115 STAT, 1469; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234). The school district accountability groups for each grade level will include all students enrolled in a public school in the district or placed out of the district for educational services by the district committee on special education or a district official.

