



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

TO: P-12 Education Committee

FROM: Charles A. Szuberla, Jr. *Charles A. Szuberla Jr.*

SUBJECT: Proposed Amendment of Section 100.2(ee) of the Commissioner's Regulations, relating to Academic Intervention Services (AIS)

DATE: September 8, 2015

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SUMMARY

Issue for Decision

Should the Regents approve, as an emergency action, the proposed amendment of Commissioner's Regulations section 100.2(ee) to provide continued flexibility to school districts in the provision of Academic Intervention Services through the 2015-16 school year as a continuation of the policy adopted for the 2013-14 and 2014-15 school years for those students who performed below Level 3 on the grade 3-8 ELA and Math assessments but at or above cut scores established by the Regents?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for recommendation and to the full Board for adoption as an emergency rule at the September 2015 Regents meeting. A copy of the proposed amendment and a statement of the facts and circumstances which necessitate emergency action is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

In September 2013 the Regents adopted proposed amendments to Commissioner's Regulations section 100.2(ee) that provided flexibility to districts in the provision of Academic Intervention Services (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 Common Core Learning Standards (CCLS). A subsequent amendment extended similar flexibility in the provision of AIS for the 2014-15 school year.

The proposed amendment would extend flexibility in the provision of AIS for the 2015-16 school year. A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on October 7, 2015.

Background Information

Section 100.2(ee) of the Commissioner's Regulations requires school districts to provide Academic Intervention Services (AIS) to students who score below the State designated performance level on State assessments for English Language Arts and Mathematics and/or who are at risk of not achieving the State learning standards. These requirements have 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 Math assessments had been eligible to receive AIS. In 2013, the State Education Department, for the first time, administered assessments in grades 3-8 that were based on the Common Core Learning Standards (CCLS) and aligned to college- and career-readiness standards. As a consequence, there was a significant decline in the percentage of students who scored at or above proficiency on the grades 3-8 ELA and Math assessments.

In September 2013, the Board of Regents adopted emergency regulations that were designed to ensure that districts would not be required to significantly increase the percentage of students to whom they would be required to provide AIS as a consequence of the implementation of the more rigorous CCLS standards. Pursuant to the regulations, the Department established cut scores for grades 3-8 ELA and Math that resulted in districts being required to provide AIS to approximately the same percentages of students in the 2013-14 school year as received AIS in the 2012-13 school year. This was analogous to the action taken by the Regents in July 2010 to address the raising of the cut scores on the 2010 Grades 3-8 English Language Arts and Mathematics assessments.

In the 2013-14 school year, under the approved 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 above the transitional cut scores established by SED, but below proficiency levels on the 2013 assessments.

Specifically, section 100.2(ee) provided the following for the 2013-14 school year:

- Students who scored below the specified cut scores for Grades 3-8 English Language Arts 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 must 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 English Language Arts or Mathematics NYS 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.

In September 2014, the Regents took action to extend these provisions through the 2014-15 school year to continue flexibility in the provisions of AIS.

Current Promotion Determinations

The Department does not consider retention in grade to constitute an Academic Intervention Service. In addition, Education Law §305(47), as added by Chapter 56 of the Laws of 2014, prohibits school districts from making promotion decisions based solely or primarily on student performance on grades 3-8 ELA or math assessments. However, the statute provides that a school district may consider student performance on the assessments provided it uses multiple measures in addition to the assessments

and the assessments do not constitute the major factor in such determinations. Districts should also establish procedures to ensure that parents/students are involved in and may appeal such determinations.

Recommendation

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

VOTED: That paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education be amended as submitted, effective September 17, 2015, as an emergency measure upon a finding of the Board of Regents that such action is necessary for the preservation of the general welfare to immediately establish modified requirements for the provision of Academic Intervention Services (AIS) for the 2015-16 school year and thereby ensure their timely implementation, for purposes of providing school districts with flexibility to address the change in student rates of proficiency on the 2014-2015 grades 3-8 assessments in English Language Arts and Mathematics, and ensuring that during the 2015-2016 school year districts continue to maintain on file a uniform process by which the district determines whether to offer AIS to students who scored at or above the specified cut scores but below Level 3 on grade 3-8 English Language Arts or Mathematics State assessments.

It is also recommended that a committee be established during the 2015-16 school year to examine the effectiveness of AIS and to make recommendations about revisions to AIS regulations for 2016-17.

Timetable for Implementation

If adopted at the September Regents meeting, the emergency rule will take effect on September 17, 2015, for a 90-day period. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the December Regents meeting, after publication of the proposed rule in the State register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act. If adopted at the December meeting, the proposed amendment will take effect as a permanent rule on December 31, 2015.

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 September 17, 2015, 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 [2014-2015] 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 [2014-2015] 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 [2013-2014] 2014-2015, and shall no later than [November 1, 2014] November 1, 2015 either post to its website or distribute to parents in writing a description of such process;

(3)

(b)

(ii)

(iii)

8 NYCRR §100.2(ee)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment would extend certain of the provisions in section 100.2(ee) of the Commissioner's Regulations through the 2015-2016 school year, in order to provide continued flexibility to school districts in the provision of Academic Intervention Services (AIS) for those students who performed below Level 3 on the grade 3-8 ELA and Math assessments but at or above cut scores established by the Regents.

Since the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular (non-emergency) action, after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202, would be the December 14-15, 2015 Regents meeting. Furthermore, because SAPA section 203(1) provides that an adopted rule may not become effective until a Notice of Adoption is published in the State Register, the earliest the proposed amendment could become effective, if adopted at the December Regents meeting, is December 31, 2015. However, school districts need to know now what the modified requirements for AIS will be so that they may plan and timely implement AIS for the 2015-2016 school year.

Emergency action is necessary for the preservation of the general welfare to immediately establish modified requirements for the provision of Academic Intervention Services for the 2015-2016 school year and thereby ensure their timely implementation, for purposes of providing school districts with flexibility to address the change in student

rates of proficiency on the 2014-2015 grades 3-8 assessments in English Language Arts and Mathematics, and ensuring that during the 2015-2016 school year districts continue to maintain on file a uniform process by which the district determines whether to offer AIS to students who scored at or above the specified cut scores but below Level 3 on grade 3-8 English Language Arts or Mathematics State assessments.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the December 14-15, 2015 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.