

## 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.