



**New York State United Teachers**

## **INFORMATION BULLETIN**

### **Academic Intervention Services and Students with Disabilities**

As of September 1, 2000, school districts are required to provide academic intervention services (AIS) to students who score below the state designated performance level on state assessments and/or who are at risk of not achieving the state learning standards. Students with disabilities must be afforded access to academic intervention services on the same basis as nondisabled students.

This bulletin provides information, in a question and answer format, on the provision of AIS services as it relates to students with disabilities. The information is designed to clarify and enhance guidance provided by the State Education Department in its January 2000 memorandum entitled "Guidelines for Implementing Academic Intervention Services."

#### **Academic Intervention Services**

Academic intervention services are services designed to help students achieve the learning standards in English language arts and mathematics in grades K-12 and social studies and science for students in grades 4-12. These services include two components:

- Additional instruction that supplements the general curriculum (regular classroom instruction); and/or
- Student support services needed to address barriers to improved academic performance.

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**For Further Information, Contact the Division of Research & Educational Services**

New York State United Teachers, 800 Troy-Schenectady Road

Latham, NY 12110-2455

800-342-9810 —(518) 213-6000—Fax: (518) 213-6450—[www.nysut.org](http://www.nysut.org)



## INTRODUCTION

New York State is focused on improving educational achievement and ensuring the success of students with disabilities in the general education curriculum. The State Education Department has determined that the majority of students with disabilities have the ability to achieve the requirements for a high school diploma, based on the learning standards, if they are afforded access to general education curriculum and provided the necessary supports. NYSUT believes that it is very important that, at all levels of schooling, students with disabilities receive instruction aligned with the general education curriculum and participate in district and state-wide assessments.

Over the past few years the performance of students with disabilities on state-wide tests has been improving. In fact, more students are participating in the state-wide testing program and greater numbers of these students are achieving at desired levels. However, a significant percentage of students with disabilities continue to achieve at levels below state standards when compared to their nondisabled peers. Academic Intervention Services will provide the necessary support for many students with disabilities who do not demonstrate a full understanding of the state's learning standards.

The January 2000 memorandum from the State Education Department describes Academic Intervention Services as a supplemental service provided to eligible students who are struggling to meet learning standards. For students with disabilities it is important to distinguish this general education service from a special education service or program. Special education means "specially designed individual or group instruction or special services or programs... to meet the unique needs of students with disabilities". The 1999 Individuals with Disabilities Education Act (IDEA) final regulations (34 CFR 300.26) defines specially designed instruction as – "adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:

- (i) to address the unique needs of the child that result from the child's disability; and
- (ii) to ensure access of the child to the general curriculum so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children."

Academic Intervention Services are additional general education instructional and/or support services that must be made available to eligible students and should not be considered special education when provided to a student with a disability. Consistent with the State Education Department's January 2000 memorandum, *AIS are provided in addition to, and must not supplant, special education services.*

However, according to Section 200.4 of the Regulations, Committees on Special Education (CSE) must indicate on the student's individualized education program (IEP)

how the student's disability affects the involvement and progress in the general education curriculum. For some students with disabilities, involvement and progress in the general curriculum may take place in general education classes with or without support services whereas for other students, a special education program may be necessary to enable a student to achieve the learning standards and satisfactorily pass assessments that have been established for all students.

In planning for implementing AIS, it is critical that CSEs, AIS providers and building principals coordinate their efforts to ensure that these services are accessible to and appropriately provided to eligible students with disabilities. Each school district's plan for implementing AIS should include procedures reflecting this coordination.

The following information is designed to assist NYSUT members in carrying out their responsibilities related to the provision of AIS. Attachment A includes the section of Part 100 of the Regulations of the Commissioner of Education relating to academic intervention services.

**1. Must academic intervention services be provided to students with disabilities?**

Yes. Section 100.1 (g) of the Regulations of the Commissioner of Education states that *academic intervention services must be made available to students with disabilities on the same basis as nondisabled students, provided, however, that such services are provided to the extent consistent with the student's individualized education program.* Like all students, students with disabilities must have access to additional instruction which supplements the instruction provided in the general education curriculum and assists students in meeting the state learning standards and/or student support services including guidance counseling, attendance and study skills which are needed to help improve a student's academic performance. (Support services do not include services provided to students with limited English proficiency or special education services and programs).

**2. What is the role of the Committee on Special Education in regard to AIS?**

Prior to the development of a recommendation, the CSE must ensure that the appropriateness of the resources of the general education program, including educationally related support services, and AIS, has been considered. (Section 200.4 of the Regulations)

When developing the IEP for eligible students, the CSE must examine the student's needs related to the disability and to recommend programs and services to enable the student to be involved in and progress in the general education curriculum and to participate with non-disabled students. The commentary to Part 300 of the federal regulations explains the role of the IEP team (called the CSE in New York State) in facilitating student progress in the general education curriculum. It states: *"the Act requires the IEP team (CSE) to determine and the public agency to provide, the accommodations, supports and supplementary aids*

*and services needed by each child with a disability to successfully be involved in and progress in the general curriculum, achieve the goals of the IEP and successfully demonstrate his or her competencies in state and district-wide assessments. The IEP team's determination of how each child's disability affects the involvement and progress in the general curriculum is a primary consideration in the development of the child's IEP.*

The IEP of each student must be reviewed and, if appropriate, revised at least annually. Specifically, the Committee must revise the IEP as appropriate to address any lack of expected progress toward annual goals and in the general curriculum. Based on the student's disability and its impact on learning, the CSE must determine if the needs of the student could be addressed through the resources of the general education program, including AIS, or through special education programs and services. The school district plan relating to AIS should include procedures to ensure the coordination among AIS providers, the building principal and the Committee on Special Education in making determinations about eligibility for such services.

**3. Does the Committee on Special Education actually determine whether a student with a disability is eligible for AIS?**

According to Part 100 of the Regulations, eligibility for AIS academic intervention services is determined through a district-developed or district-adopted procedure that meets the state criteria and is applied uniformly at each grade level. A CSE is not specifically authorized by Part 100 of the Regulations to determine that a student maybe eligible for AIS. However, only the Committee may legally determine if a student's disability is related to the lack of progress in the general curriculum and whether the student needs general education or special education services or programs. Based upon a student's progress in attaining the learning standards, some students may require AIS (supplemental support) while other students may require more developmental instruction in a subject area(s).

At meetings to determine initial eligibility or continuing eligibility for special education, the CSE must ensure that the appropriateness of the resources of the general education program, including AIS has been considered. The Committee would provide its recommendation concerning the appropriateness of general education resources to the building administrator or other administrator consistent with district procedures.

**4. In the State Education Department's guidelines, AIS is described as a supplemental service. Part 200 of the Regulations requires that the IEP indicate supplementary aids and services. Should AIS be indicated on the IEP?**

No. Supplemental services include a broad range of services either to assist a general education student with learning and behavior difficulties or to enable a student with a disability to meet IEP goals as well as to be educated with

nondisabled students to the maximum extent appropriate. In regard to students with disabilities, supplementary aids and services have generally been understood to be modifications to the general education program made to ensure the satisfactory participation of these students. Examples of supplementary aids and services frequently made available to students with disabilities include curriculum adaptations, special seating arrangements, support services provided by special education personnel and assistive technology devices and services.

In determining the student's need for supplementary aids and services to be indicated on the IEP, the CSE must consider the necessity of the modifications and/or support as it relates to the student's disability. Supplementary aids and services may also be provided "on behalf of the child" which includes services that are provided the teachers(s) of the student with a disability to help the teacher to more effectively work with the student.

Some students with disabilities may require specific general education support services, including academic intervention services or Title I remedial programs, to assist them in attaining the learning standards. While these general education support services address a learning need, such services should not be indicated on the student's IEP.

**5. Can AIS providers access the IEP of a student with a disability enrolled in their class?**

Yes. Each school district must ensure that general education teachers, special education teachers, and other service providers have access to the IEP for each student with a disability in their classes or assigned to their caseload. If AIS providers have students with disabilities in their classes or assigned to their caseloads, then such individuals have the right to review the IEPs of these students. In addition, consistent with federal and State requirements each teacher/service provider must be informed of his or her responsibilities related to implementing the student's IEP and the specific accommodations, modifications and supports that must be provided for the student according to the IEP.

Based on the individual needs of the student, the CSE may determine those special education services and/or programs may be necessary to ensure that the student with a disability benefits from AIS. For example, a student could receive the direct and/or indirect services of a consultant teacher to enable the student to benefit from academic intervention services. A student with a behavior problem may require a paraprofessional to address the student's management needs. These support services must be considered, and if appropriate, recommended by the CSE. As previously stressed, consideration of these issues require a coordinated approach involving the CSE, the general education teacher(s) of the student and appropriate school personnel associated with AIS.

**6. Should students who are eligible for AIS also be referred to the Committee on Special Education?**

Most general education students with learning difficulties, needing AIS, should not be referred to the Committee on Special Education, unless a professional member of the school district suspects that the student has a disability.

If a teacher, school psychologist, building administrator or other professional member of the district suspect that the student's learning difficulties are due to a disability, such individuals should follow procedures for referral for special education services pursuant to Section 200.4 of the Commissioner's Regulations. Among other information, the written referral for special education evaluation services must describe the intervention services, programs or instructional methodologies used to remediate the student's performance prior to referral, including any supplementary aids or support services or describe why no attempts have been made. **Each school district must have a plan and policies for implementing school wide preferal interventions. A school district may not establish policies or procedures that would prohibit an eligible individual to make a direct referral to the Committee on Special Education when such individual suspects that a student has a disability.**

**7. What is meant by the phase "to the extent consistent with the individualized education program?"**

This phase has two meanings; one relating to the appropriateness of AIS for the student, and the other relating to accommodations and supports that enable the student to benefit from AIS.

The CSE must consider how the student's disability affects involvement and progress in the general curriculum. Based on the student's present levels of performance as determined by the results of the initial or most recent evaluation, and results of the student's performance on any general state or district wide assessment programs, and other factors, the CSE first considers the appropriateness of general education programs and services, including academic intervention services. For some students, the Committee may determine that the use of general education supplemental support such as AIS, Educationally Related Support Services (ERSS) and Title I programs would not enable the student to benefit from general education class instruction. Therefore, a determination would be made that special education programs and services should be provided to the student consistent with the IEP.

The second meaning refers to the provision of appropriate accommodations and supports to be provided when AIS is implemented for students with disabilities to assure that these students benefit from AIS. For example, if a student's IEP indicates that a specific adaptive material, assistive technology device, or

curriculum modification is to be provided, then these same accommodations or supports must be provided when AIS are delivered.

**8. Are students with disabilities who fail Regents Competency Tests eligible for Academic Intervention Services?**

Yes.

**9. What are some examples of special education teachers providing Academic Intervention Services?**

Certified special education teachers at both elementary and secondary levels may provide academic intervention services. However, if a special education teacher provides AIS to students with or without disabilities, it is not a special education service. For example, a special education teacher could provide:

- After-school tutorials for students needing additional assistance;
- Support services such as those described in the definition of Educationally Related Support Services, including curriculum and instructional modification;
- Supplemental instruction in a general education resource room program that may include students with and without disabilities; and
- Direct support to students enrolled in a general education class who are at risk of not gaining the knowledge and skills needed to meet or exceed designated performance levels on state tests. (This model is similar to the special education consultant teacher model).

## ATTACHMENT “A”

### **Academic Intervention Services: Regulations**

Section 100.1(g) [Definitions] of Commissioner’s Regulations adopted by the Board of Regents in July 1999.

(g) *Academic intervention services* means additional instruction which supplements the instruction provided in the general curriculum and assists students in meeting the State learning standards as defined in subdivision (t) of this section and/or student support services which may include guidance, counseling, attendance, and study skills which are needed to support improved academic performance; provided that such services shall not include services provided to students with limited English proficiency pursuant to Part 154 of this Title or special education services and programs as defined in Education Law section 4401 (1) and (2). Academic intervention services are intended to assist students who are at risk of not achieving the State learning standards in English language arts, mathematics, social studies and/or science, or who are at risk of not gaining the knowledge and skills needed to meet or exceed designated performance levels on State assessments. Academic intervention services shall be made available to students with disabilities on the same basis as nondisabled students, provided, however, that such services shall be provided to the extent consistent with the individualized education program developed for such student pursuant to section 4402 of the Education Law.

Section 100.2 (ee) of Commissioner’s Regulations adopted by the Board of Regents in July 1999.

(ee) Academic intervention services.

(1) Requirements for providing academic intervention services in kindergarten to grade three. Schools shall provide academic intervention services to students in kindergarten to grade three when such students:

(i) are determined, through a district-developed or district-adopted procedure that meets State criteria and is applied uniformly at each grade level, to lack reading readiness based on an appraisal of the student, including his/her knowledge of sounds and letters; or

(ii) are determined, through a district-developed or district-adopted procedure applied uniformly at each grade level, to be at risk of not achieving the State designated performance level in English language arts and/or mathematics. 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.

(2) Requirements for providing academic intervention services in grade four to grade eight. Schools shall provide academic intervention services when students:

(i) score below the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics, social studies or science;

(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.

(3) Requirements for providing academic intervention services in grade nine to grade twelve. Schools shall provide academic intervention services when students:

(i) score below the State designated performance level on one or more of the State intermediate assessments in English language arts, mathematics, social studies or science, or score below the State designated performance level on any one of the State examinations required for graduation; or

(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 learning 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.

(4) Description of academic intervention services.

(i) By July 1, 2000, a school district shall develop a description of academic intervention instructional and/or student support services to be provided in schools to students in need of such services pursuant to paragraphs (2), (3) and (4) of subdivision (ee) of this section. The description shall include any variations in services in schools within the district, and shall specifically describe:

(a) the district-wide procedure(s) used to determine the need for academic intervention services;

(b) academic intervention instructional and/or student support services to be provided pursuant to paragraph (5) of subdivision (ee) of this section;

(c) whether instructional services and/or student support services are offered during the regular school day or during an extended school day or year; and

(d) the criteria for ending services, including, if appropriate, performance levels that students must obtain on district-selected assessments.

(ii) The description of academic intervention services shall be approved by each local board of education by July 1, 2000. In the New York City School District, the New York City Board of Education may designate that the plans be approved by the Chancellor or his designee or by community school boards for those schools under their jurisdiction. Beginning July 1, 2002 and every two years thereafter, each school district shall review and revise its description of academic intervention services based on student performance results.

(iii) In lieu of a separate description of academic intervention services, the district may incorporate the description of academic intervention services into a comprehensive district education plan. In this instance, the preparation date for the description of academic intervention services shall conform to the date of the preparation of the comprehensive district education plan.

(iv) Based on performance criteria established by the Commissioner, certain school districts may be required to submit their description of academic intervention services for specific schools to the Department for review and approval.

(5) Provision of academic intervention services.

(i) School districts may use time available for academic intervention instructional and/or student support services during the regular school day.

(ii) School districts may provide students with extended academic time beyond the regular school day and school year.

(iii) In public schools, academic intervention instructional and/or support services shall be provided by qualified staff who are appropriately certified pursuant to Part 80 of this Title.

(iv) Beginning September 1, 2000, academic intervention instructional and/or student support services shall commence no later than the beginning of the semester following a determination that a student needs such services. Services shall continue until a student's performance:

(a) meets or exceeds the State designated performance level on the next State assessment; or

(b) is shown to be likely to meet or exceed the State designated performance level on the next State assessment through achievement on the district-selected assessments of the levels specified in the district description of academic intervention services pursuant to paragraph (4) of subdivision (ee) of this section.

(6) Parental notification and involvement.

(i) Notification of commencement of services. The parent or person in parental relation to a student who has been determined to need academic intervention services shall be notified in writing by the principal. Such notice shall be provided in English and translated, when appropriate, into the native language or mode of communication of the parent. The notice shall include a summary of the academic intervention services to be provided to the student, the reason the student needs such services and the consequences of not achieving expected performance levels.

(ii) Notification of the ending of academic intervention services. Parents or persons in parental relation shall be notified in writing when academic intervention services are no longer needed. Such notice shall be provided in English and translated, when appropriate, into the native language or mode of communication of the parent.

(iii) Ongoing communication with parents or persons in parental relation. Parents or persons in parental relation to students receiving academic intervention services shall be provided with:

(a) an opportunity to consult with the student's regular classroom teacher(s), and other professional staff providing academic intervention services, at least once per semester during the regular school year;

(b) reports on the student's progress at least once each quarter during the regular school year by mail, telephone, telecommunications or other means, in a language or mode of communication understood by the parents or person in parental relation; and

(c) information on ways to work with their child to improve achievement; monitor their child's progress; and work with educators to improve their child's achievement.

Section 100.4(b) (4) [Program requirements for grades seven and eight] of the Commissioner's Regulations adopted by the Board of Regents in July 1999

(4) Students who have been determined to need academic intervention services as set forth in section 100.2(ee)(2)(i) of this Part may have the unit of study requirements for one or more of their subjects reduced, provided that:

(i) academic intervention services shall be coordinated with and supplement instruction in the general curriculum;

(ii) requirements for subjects set forth in paragraph (1) of this subdivision and for languages other than English instruction set forth in section 100.2(d) of this Part may be reduced but not eliminated. Academic intervention services shall be provided in a manner that does not diminish instructional time to a degree that may prevent a student from achieving the State learning standards in any area required for graduation or from meeting local standards for promotion. A principal shall consider a student's abilities, skills and interests in determining the subjects for which the unit of study requirements may be reduced;

(iii) a student's parent or guardian shall be notified in writing, by the principal, of a school's intention to implement the provisions of this paragraph; and

(iv) the reduction of unit of study requirements shall remain in effect only to the extent that the provisions of subparagraph (i) of this paragraph are being met.

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