



**Robert J. Reidy, Jr.**  
Executive Director  
[rreidy@nyscoss.org](mailto:rreidy@nyscoss.org)

**Robert B. McClure**  
Superintendent-in-Residence  
[mcclure@nyscoss.org](mailto:mcclure@nyscoss.org)

**Robert N. Lowry, Jr.**  
Deputy Director for  
Advocacy, Research and  
Communications  
[boblowsy@nyscoss.org](mailto:boblowsy@nyscoss.org)

**Kelly O. Masline**  
Senior Associate Director  
[kelly@nyscoss.org](mailto:kelly@nyscoss.org)

**Michele V. Handzel**  
General Counsel  
[michele@nyscoss.org](mailto:michele@nyscoss.org)

**Theresa A. Wutzer**  
Associate Director  
[theresa@nyscoss.org](mailto:theresa@nyscoss.org)

#### 2010-2011 OFFICERS

**Robert W. Christmann**  
President  
Grand Island  
1100 Ransom Road  
Grand Island, NY 14072  
716.773.8801

**Marilyn C. Terranova**  
President-Elect  
Eastchester

**James T. Langlois**  
VP/Treasurer  
Putnam-Northern  
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October 15, 2010

## RE: Temporary AIS Flexibility

### *To the Honorable Members of the New York State Board of Regents:*

The New York State Council of School Superintendents strongly urges you to confirm your emergency action giving school districts additional but limited flexibility to determine which students should be provided Academic Intervention Services.

This action, first approved in July, was taken to assist school districts in adapting to the increase in cut scores for the state's grade 3 through 8 mathematics and English language arts assessments approved after school district budgets were already in place.

To us, these points are key:

1. The discretion granted is temporary.
2. The discretion is limited.
3. There are doubts about the efficacy of AIS in general.
4. The school year has begun; whatever might have been an optimal policy choice at some earlier time, rescinding the flexibility now would result in disruptions for students, including rearranging their schedules more than six weeks into the year.

Our sense from surveying regional leaders is that at least half of all school districts are making use of the flexibility to a greater or lesser extent. Superintendents whose districts are doing so and have communicated with us report efforts to assure that affected students do receive help, as needed. They have also shared examples of difficult trade-offs that would ensue if the flexibility is now rescinded in mid-year.

The overall impression which emerges for us is that the Department responded to a unique problem with a careful solution which school district leaders are using carefully.

Below are more extended comments on our four key points.

#### **1. The discretion granted is temporary**

We did not dispute the justifications for adjusting cut scores for the grades 3 through 8 assessments, but the timing of that action was not ideal. It came after instruction had been delivered, after the tests had been administered, and most pertinent to the issue at hand, after school district budgets had been adopted for 2010-11.

School district fiscal years began on July 1 and the overwhelming majority of districts had their 2010-11 budgets approved through voter referenda on May 18<sup>th</sup>. Plans to change the cut scores did not become widely known until mid-July and the actual changes and their impact did not become clear until after test results were released on July 28<sup>th</sup>. Accordingly, districts did not plan for additional AIS needs in the budgets they asked voters to approve in May.

NEW YORK STATE COUNCIL OF SCHOOL SUPERINTENDENTS

Seven Elk Street, Third Floor • Albany, New York 12207-1002 • 518.449.1063 FAX 518.426.2229 • [www.nyscoss.org](http://www.nyscoss.org)

Since that time, Congress and President Obama did approve the Education Jobs Fund which promises additional one-time aid to schools, but state government has yet to take the actions necessary to commence payment to districts. Also, districts have begun incurring unforeseen reductions in current year School Aid and STAR reimbursements due to the state's August enactment of a plan to accommodate a shortfall in federal Medicaid funding.

Superintendents who are using the flexibility report that they would need to hire additional staff for which they have not budgeted. In some cases this would require laying off current staff to hire AIS personnel, or to redeploy current faculty to deliver AIS, with consequent disruptions in student instruction.

One superintendent writing to us noted,

*School districts, already under extreme financial distress, have not budgeted for the additional teachers necessary to provide these services. In order to hire staff to perform these duties, I would need to layoff staff in other non-mandated areas (such as high school elective classes). This would have the effect of serving some students at the expense of others, who would lose their teachers and their classes.*

*Also, it would be extremely difficult for all the school districts in the state to recruit and hire highly skilled AIS teachers at this point in the year, much less effectively induct them in to our systems.*

This superintendent also observed,

*The school districts in this state are committed to providing all of our students with the services they need to be effective and successful. The accountability systems already in place provide us great incentives to ensure the success of our students. We are working to meet the needs of these children...as we do each and every day with passion and vigor.*

Another superintendent said,

*While we are trying to support all of our at risk learners (those who are eligible for AIS and those on the cusp) it would be a terrible burden on our district because our budget has been set since May and we have laid off over 30 teachers. In addition, it would be a scheduling nightmare because our elementary and middle school AIS program has been set since August. We would have to reprogram.*

Another said,

*To remove the flexibility in providing AIS to the additional students identified as a result of the change in cut scores would be devastating financially and programmatically at this point in the school year. The budget will not support the additional staff necessary to provide full AIS services to the additional students identified. If we are forced to implement more services, we would have no choice but to draw from teaching time in core classes, resulting in higher student to teacher ratios. This could be counter-productive and actually create secondary issues if students that are borderline proficient, get less teacher time in the regular classroom setting.*

One more said,

*On the budget side, we have lost \$10 million of state aid over the past two years. We eliminated 35.5 full time district positions this year, and we were not able to start our newly revamped elementary summer school this past summer... If we are now or*

*eventually required to provide traditional AIS services we will do so to the elimination of courses, programs, and important educational activities for all students k-12. ... The best remedy for AIS has always been the degree of original learning of students to be maximized by original instruction.*

Here is one last comment from a superintendent on the potential impact of rescinding the flexibility:

*The budget for 2010-11 has been set since the public approved it in May and is very, very tight (over 20 positions were eliminated to achieve the voter approved amount)... What programs should be cut, what other staff should be let go in order to provide the staff required to accommodate the effects of a change by the state that was made after budgets and schedules were set?*

Your action in allowing districts to exercise limited discretion in applying test results to AIS determinations is a reasonable one-time accommodation to the unique problems presented by the timing of this year's cut score adjustment.

## **2. The discretion granted is limited**

Your emergency action gave schools discretion to decide whether students with scores between the old and new cut scores should receive AIS. No student who would have been deemed not meeting standards under the prior measure is denied extra help, while districts can decide to provide that assistance to students in the window between the old and new standard. As noted, by our estimate it appears that about half the districts have elected to provide traditional AIS services, while others are taking alternate steps to meet student needs.

## **3. There are doubts about the efficacy of AIS in general**

Noting "ongoing concerns about the quality of the required AIS program," you have begun contemplating a regulatory amendment to give schools an opportunity to employ the Response to Intervention model instead.<sup>1</sup> In our view, rescinding the flexibility now would cause disruption in student learning and in school budgets with questionable benefits in return. By rescinding the flexibility, you would be forcing districts to adhere to a policy you appear ready to modify.

Several superintendents advise that they are using RTI to address needs of students "in the window" between the old and new cut scores. One wrote that if the flexibility is repealed,

*Student achievement will be lost. We have seen gains in student achievement for all students inclusive of special education students with the RTI model. To overturn our BOE policy and mandate a return to a less effective model of student intervention does not meet the standard of the Regents Reform Agenda.*

Another explained,

*We, too, are utilizing our RTI process. All of the students who were former "3s" and now "2s" are on our radar screen and we are using our "tiered teachers" (those who work with students at tier I and II) to work with these students. So - we are not applying an "official" AIS teacher.*

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<sup>1</sup> See "Proposed addition of section 100.2(ee)(7) of the Commissioner's Regulations, relating to Academic Intervention Services and the Response to Intervention Process," considered by the Regents P-12 Education Committee in July 2010.

Here is one more comment:

*The flexibility allowed us to continue to fully implement RTI. To change at this point will directly impact our kids with schedule changes and staff changes not to mention budget implications.*

#### **4. The school year has begun**

School has begun, classes are in session. Rescinding the flexibility now would cause disruptions for students, those who would be required to receive traditional AIS, but others as well who might have their teachers reassigned. For some middle school and 9<sup>th</sup> grade students, it would be necessary to reconfigure schedules, pulling them out of their current classes to fit in time for AIS.

Here are comments we have received from a few superintendents on this point:

*At middle school and high school, we would have to change student schedules (and increase staff), removing students from fine arts offerings (often the thing that keeps them coming to school) because their schedules are already packed.*

*It would be devastating, not only to add the additional staff it may require, but more importantly, as a disruption to a student's schedule. How could we advise parents that we have some "informal" monitoring and support in place, but we may need to remove your child from a course to "fit" formal AIS in their schedule. In my mind, this would be a dysfunctional move all the way around at this stage of the game!*

#### **Conclusion**

School district superintendents are your partners in the difficult work of raising student achievement across the board and closing gaps in achievement wherever they exist. Superintendents must take the statewide policies you adopt and translate them into practices that can work for schoolchildren in all the diverse communities you and they both serve.

We appreciate the confidence shown in our partnership by your decision to give school districts some discretion in administering Academic Intervention Services during this unusual period. We hope that you will continue to respect our partnership by reaffirming that decision.

Sincerely,



Robert Lowry  
Deputy Director

cc: Commissioner Steiner  
Senior Deputy Commissioner King  
Chief of Staff Baldwin  
Associate Commissioner Slentz  
Secretary Lofrumento