

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 3208 and 4403

Part 117 of the Regulations of the Commissioner of Education is amended, effective October 4, 2007, as follows:

117.1 Scope of Part.

The purpose of this Part is to establish standards for the screening of every new entrant to the schools to determine which [pupils] students are possibly gifted, have or are suspected of having a [possible handicapping condition] disability in accordance with subdivision (6) of section 3208 of the Education Law and/or possibly are limited English proficient in accordance with subdivision 2-a of section 3204 of the Education Law.

117.2 Definitions.

As used in this Part:

(a) A [pupil] student who [has a possible handicapping condition] is suspected of having a disability shall mean a [pupil] student who, on the basis of diagnostic screening, shows evidence of being a [pupil with a handicapping condition] preschool student with a disability or student with a disability as defined in section 200.1[(d)] (mm) and 200.1(zz) of this Title respectively.

(b) A [pupil] student who possibly is limited English proficient shall mean a [pupil] student who, on the basis of diagnostic screening, appears to meet the definition of limited English proficiency as contained in section 154.2 of this Title.

(c) A [pupil] student who is possibly gifted shall mean a [pupil] student who, on the basis of diagnostic screening, appears to meet the definition of gifted and talented as contained in section 142.2 of this Title.

(d) New entrant shall mean a [pupil] student entering the New York State public school system, pre-kindergarten through grade 12, for the first time, or reentering a New York State public school with no available record of a prior screening.

(e) [For purposes of paragraph (a) of subdivision (5) of section 3208 of the Education Law, pupils who score below level two on either the third grade reading or mathematics test for New York State elementary schools and pupils who obtain a comparable percentile score on the Regents Preliminary Competency Test in reading or writing shall mean pupils obtaining scores that have been designated by the commissioner as the scores indicating the need for diagnostic screening.] A student with low test scores shall mean a student who scores below level two on either the third grade English language arts or mathematics assessment for New York State elementary schools. Those [pupils] students exempted from testing as non-English-speaking shall be examined in the [pupil's] student's native language through similar procedures, and shall be screened for [possible handicapping conditions] suspected disabilities if resultant scores are comparable to those indicated above.

(f) Diagnostic screening shall mean a preliminary method of distinguishing from the general population those [pupils] students who may possibly be gifted, those [pupils] students who may [possibly have a handicapping condition] be suspected of having a disability and/or those [pupils] students who possibly are limited English proficient.

(g) Health care provider means a duly licensed physician, physician's assistant, or nurse practitioner.

117.3 Diagnostic Screening.

(a) Each school district shall develop a plan for the diagnostic screening of all new entrants [, pupils who score below level two on either the third grade reading or mathematics test for New York State elementary schools and students who obtain a comparable percentile score on the Regents Preliminary Competency Test, and all such new entrants, pupils and students shall receive such screening] and students with low test scores. All new entrants and students with low test scores shall be screened in accordance with the plan.

(b) Such diagnostic screening shall be conducted:

(1) by persons appropriately trained or qualified;

(2) by persons appropriately trained or qualified in the [pupil's] student's native language if the language of the home is other than English;

(3) in the case of new entrants, such screening shall be conducted prior to the school year, if possible, but no later than December first of the school year of entry, or within 15 days of transfer of a [pupil] student into a New York State public school should the entry take place after December first of the school year;

(4) in the case of [pupils who score below level two on either the third grade reading or mathematics test for New York State elementary schools, and students who obtain a comparable percentile score on the Regents Preliminary Competency Test,]

students with low test scores, such screening shall be conducted within 30 days of the availability of the test scores.

(c) Diagnostic screening for new entrants shall include, but not be limited to:

(1) a health examination by a [duly licensed physician] health care provider, or evidence of such in the form of a health certificate, in accordance with sections 903, 904 and 905 of the Education Law;

(2) certificates of immunization or referral for immunization in accordance with section 2164 of the Public Health Law;

(3) [a determination of receptive and expressive language development, motor development, articulation skills and cognitive development;] vision, hearing and scoliosis screenings as required by section 136.3 of this Title;

(4) a determination of development in oral expression, listening comprehension, written expression, basic reading skills and reading fluency and comprehension, mathematical calculation and problem solving, motor development, articulation skills, and cognitive development using recognized and validated screening tools; and

(5) a determination [that] whether the [pupil] student is of foreign birth or ancestry and comes from a home where a language other than English is spoken as determined by the results of a home language questionnaire and an informal interview in English and the native language.

(d) Diagnostic screening for students with low test scores shall include, but not be limited to:

(1) vision and hearing screenings to determine whether a vision or hearing impairment is impacting the student's ability to learn; and

(2) a review of the instructional programs in reading and mathematics to ensure that explicit and research validated instruction is being provided in reading and mathematics.

(i) Students with low test scores shall be monitored periodically through screenings and on-going assessments of the student's reading and mathematic abilities and skills. If the student is determined to be making sub-standard progress in such areas of study, instruction shall be provided that is tailored to meet the student's individual needs with increasingly intensive levels of targeted intervention and instruction.

(ii) School districts shall provide written notification to parents when a student requires an intervention beyond which is provided to the general education classroom. Such notification shall include: information about the performance data that will be collected and the general education services that will be provided; strategies for increasing the student's rate of learning; and the parents' right to request an evaluation by the Committee on Special Education to determine whether the student has a disability.

[(d)] (e) The results of the diagnostic screening shall be reviewed and a written report of each [pupil] student screened shall be prepared by appropriately qualified school district staff. Such report shall include a description of diagnostic screening devices used, the [pupil's] student's performance on those devices and, if required, the appropriate referral.

[(e)] (f) A [pupil who may have a handicapping condition] student who is suspected of having a disability shall be referred to the committee on special education or the committee on preschool special education, as appropriate, no later than 15 calendar days after completion of such diagnostic screening. Such referral shall be accompanied by the report of such screening.

[(f)] (g) A [pupil] student identified as possibly gifted shall be reported to the superintendent of schools and to the parent or legal guardian of such child no later than 15 calendar days after completion of such screening. Such referral shall be accompanied by the report of such screening.

[(g)] (h) A [pupil] student identified as possibly being limited English proficient shall be assessed in accordance with Part 154 of this Title.