

Know Your Educational Rights: Required Services for Students Struggling Academically

Drawing on state statutes, regulations, and court mandates based on the state constitution, the Center for Educational Equity (CEE) has compiled the specific education resources, services, and supports to which students are entitled under New York State law. This handout, part of a series, describes the right of New York students to extra services and support when they are not meeting academic standards or when they are at risk of low academic achievement.

New York Constitutional Requirements for Expanded Services for Students at Risk of Low Academic Achievement



Many students need extra instructional time and additional supports in order to meet academic standards and succeed in school. The New York State constitution, which guarantees all students “the opportunity for a sound basic education,” requires that these students receive an “expanded platform of services,” including “more time on task” for students at risk of low academic achievement. All schools must have adequate resources to provide these services for the students who need them.

In spite of this requirement, research by CEE and others indicates that students’ rights to these services are being violated in many schools throughout the state. Particularly in districts serving large numbers of students in need of extra support, schools may provide some extra instruction and support to some struggling students, but very few schools are providing the full set of services to all students who, by law, are supposed to receive them.

Students’ right to an “expanded platform of services” begins with access to quality prekindergarten and kindergarten, particularly for students living in or near poverty.¹ It also includes the extra services and supports that all students who are struggling academically need for a meaningful opportunity to meet New York State Learning Standards,² progress at grade level, and graduate from high school prepared for both capable civic participation and competitive employment, as provided under the state constitution.

New York State requires that school districts provide these extra services and supports to K-12 students primarily through two initiatives: *Academic Intervention Services (AIS)* and *Response to Intervention (RTI)* programs.

What Is the Constitutional Right to a Sound Basic Education?

See page 4.

Access all of the

Know Your Educational Rights Handouts:
[www.centerforeducationalequity.org/publications/
know-your-educational-rights/](http://www.centerforeducationalequity.org/publications/know-your-educational-rights/)

1. For CEE’s research and recommendations in this area, go to www.centerforeducationalequity.org/publications/universal-prekindergarten-in-ny/
2. For more information about the New York State Learning Standards, go to www.p12.nysed.gov/ciai/standards.html.

Academic Intervention Services

Academic Intervention Services (AIS) must be provided to 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 proficiency on state tests. Elementary and middle school students who are not achieving at grade level (including those who score 1s and 2s on state tests)³, and high school students not passing or at risk of not passing required Regents exams in these subjects, are entitled to AIS.

Students struggling academically have a right to additional instruction that supplements the instruction provided generally to all students and/or student support services that are needed to improve academic performance. AIS must be provided by qualified and appropriately certified staff. Teacher aides cannot be used to provide AIS.

Additional Instruction and Student Support Services

Additional instruction may be provided through one-on-one tutoring, small-group instruction, extra class time, or in other ways. The number of times per week, the amount of time per session, and the degree of individualization should be determined by individual student needs. These services may be provided during the regular school day or through extended-day, after-school, Saturday school, and/or extended-year or summer programs.

Double-period courses *do not* count as AIS unless additional help to succeed in the course also is provided for those students requiring AIS. Having a student repeat a course is not an acceptable way to provide AIS.

Students are also entitled to nonacademic services and supports to address barriers to student progress in the four subject areas requiring AIS. Examples of such barriers include disciplinary problems, family-related issues, health-related issues, nutritional, or problems that arise as a result of student mobility or transferring to new schools. Services to address such barriers should include guidance and counseling services, coordination with services from external agencies, and/or services to improve attendance and study skills.

AIS for English Language Learners (ELLs). For qualifying ELLs, AIS must be *in addition to* the bilingual or English as a Second Language instruction.

AIS for Students with Disabilities. For qualifying students with disabilities, AIS must be provided on the same basis as their general education peers and *in addition to* special education services. During AIS sessions, such services are provided to students with disabilities, who must receive the accommodations and supports called for in their individualized educational programs (IEPs).

Family Outreach and Communication

Parents must be notified in writing that a student will be receiving AIS. The notice must explain the services being provided, the reason the student needs the services, and the consequences of the student not meeting expected performance levels.

For all students receiving AIS, schools must also provide families with:

- at least twice a year, opportunities to communicate with students' regular classroom teachers and other professional staff providing AIS;
- quarterly, personalized reports on students' progress; and
- information on ways for families to work directly with their children, and in collaboration with educators, to improve achievement and monitor progress.

3. The New York State Board of Regents, responsible for all educational activities within the state, has enacted a temporary measure that allows local school districts to decide whether to offer AIS to students who scored at or above the specified cut scores but below proficiency ("Level 3") on grade 3-8 English language arts or mathematics state assessments.

Parents have a right to request changes in the AIS program being provided to their child. When a student no longer needs AIS, parents must be notified in writing that services will be discontinued and why.

Translation and Interpretation. All AIS reports and notices to parents must be translated into the home language as needed. Additional accommodations for parents who are visually impaired or those with limited literacy skills must be provided.

District AIS Plan. School districts must develop a description of the academic intervention services to be offered in grades K-12 to students in need of such services, including ELLs and students with disabilities. They must review and revise this plan every two years. The plan must include the criteria that will be used to identify students needing AIS, the academic and support services that will be provided and when, and the criteria for ending those services.

Response to Intervention (RTI) Programs

“Response to Intervention” (RTI) is an approach to academic instruction and intervention that helps ensure schools provide necessary strategies, supports, and services for struggling students. It is now required for every public elementary school in New York State. Schools must screen all students to identify those who are not making academic progress at expected rates.

School districts also may choose to provide RTI services instead of academic intervention services for all AIS-eligible students, provided that they meet the needs of such students in all core academic subjects or, if not, that any student not served in the RTI program receives AIS.

RTI is designed to address a wide range of barriers to academic success, including both academic and behavioral problems. Starting in kindergarten, children who are struggling academically must receive “tiered” levels of intervention, geared toward the students’ individual needs. Addressing students’ academic and behavioral issues quickly, with a range of interventions of increasing intensity, may prevent students from slipping further behind and may also help prevent some students from being referred for special education.

RTI is not a replacement for special education services for students who are diagnosed with a disability. Parents have a right to have their children evaluated for special education services at any time.

Three Tiers of Support

In RTI programs, all students start in Tier 1. Students not making satisfactory academic progress are entitled to the increased supports of Tier 2. Some students will require the further supports in Tier 3. Layers of increasingly intense intervention must respond to students’ specific needs.

- Tier 1 includes core instruction aligned with state learning standards, research-based methods that meet the needs of at least 80% of all learners, and differentiated instruction to meet students’ varying needs.
- Tier 2 typically includes small-group supplemental instruction provided in addition to core instruction for 9-30 weeks, depending on progress and other factors. The intensity of intervention must be adjusted based on the student’s response.
- Tier 3 is for students demonstrating insufficient progress in Tier 2 (1-5% of students are expected to need this level of intervention). It involves more intensive and individualized instruction (for example, 1-2 students in a small-group setting for 30-60 minutes at a time, at least four days a week).



What Is the Constitutional Right to a Sound Basic Education?

New York's highest court, the Court of Appeals, ruled in the *Campaign for Fiscal Equity (CFE)* case that the state has a constitutional obligation to provide all students the opportunity for a sound basic education that prepares them for productive civic participation and competitive employment. It further characterized what must be provided as a "meaningful high school education." The New York State Board of Regents has defined that education as one that will allow each student to meet a challenging set of academic standards and will prepare every high school graduate to be "college and career ready."

To provide a sound basic education, the court affirmed that each school in the state must have the following:

- **sufficient numbers of qualified teachers, principals, and other personnel**
- **suitable and up-to-date curricula**
- **an expanded platform of programs to help students who are at risk of academic failure**
- **adequate resources for students with disabilities and English-language learners**
- **appropriate class sizes**
- **sufficient and up-to-date books, supplies, libraries, educational technology, and laboratories**
- **a safe and orderly environment**
- **adequate and accessible school buildings.**


For the specific resource requirements in each of these areas, see Rebell, M.A. (2012). *Essential Resources: The Constitutional Requirements for Providing All Students in New York State with a Sound Basic Education (2nd Edition)*. New York: Center for Educational Equity.

Is a Constitutional Level of Resources Available in All New York Schools?

Over the past few years, studies have confirmed that, in many schools, there are large gaps between the educational opportunities students are guaranteed by law and what they actually receive. See, for example, the following:

- Rebell, M.A, Wolff, J.R., & Rogers, J.R., Jr. (2012). *Deficient Resources: An Analysis of the Availability of Basic Educational Resources in High Needs Schools in Eight New York State School Districts*. New York: Center for Educational Equity.
- Johnson, G., Subramanian, S., & Wilks, A. (2013). *Availability and Distribution of Selected Program Resources in New York City High Schools*. New York: New York City Independent Budget Office.
- New York State Council of School Superintendents. (2014). *Not Out of the Woods: A Survey on School Fiscal Matters*. Albany, NY: NYSCOSS.

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