



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: P-12 Education Committee

FROM: Jason Harmon 

SUBJECT: Proposed Amendment of Sections 100.19 and 100.21 of the Regulations of the Commissioner of Education Relating to Restarting the Accountability System using 2021–2022 School Year Results

DATE: February 2, 2022

AUTHORIZATION(S):



SUMMARY

Issue for Decision

Should the Board of Regents approve the proposed amendment of sections 100.19 and 100.21 of the Regulations of the Commissioner of Education relating to restarting the accountability system using 2021–2022 school year results?

Reason(s) for Consideration

Review of State policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the February 2023 Regents meeting. A copy of the proposed amendment is included (Attachment A).

Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its October 2022 Board of Regents meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on October 19, 2022, for a 60-day public comment period.

Because the October emergency action was set to expire on January 1, 2023, a second emergency action was necessary at the December 2022 Regents meeting to ensure the emergency rule remained continuously in effect until it could be permanently adopted at the February 2023 Regents meeting. A Notice of Emergency Adoption was published in the State Register on January 18, 2023.

Following publication in the State Register, the Department received comments on the proposed amendment. An Assessment of Public Comment is included (Attachment B). No changes to the proposed amendment are recommended at this time. A Notice of Adoption will be published in the State Register on March 1, 2023. Supporting materials are available upon request of the Secretary to the Board of Regents.

Background Information

Generally:

In June 2021, the United States Department of Education (USDE) approved the Department's application for a one-year waiver from provisions of the Elementary and Secondary Education Act (ESEA), as recently amended by the Every Student Succeeds Act (ESSA), pertaining to school and district accountability determinations due to the ongoing impact of the COVID-19 crisis.

On December 22, 2021, due to the continuing challenges faced by schools and districts due to the COVID-19 pandemic, the Department submitted another one-year accountability waiver request to USDE that would have allowed the Department to not use the 2021–2022 school year results to newly identify schools for Comprehensive Support and Improvement (CSI) and schools for Targeted Support and Improvement (TSI). On December 30, 2021, USDE denied the Department's application for a one-year waiver and informed the Department that it must make new identifications for CSI, Additional Targeted Support and Improvement (ATSI), and TSI using the 2021–2022 school year results.

However, USDE has been accepting requests to modify approved ESEA consolidated State plans based on results from the 2021–2022 school year. To amend accountability determinations based on results from the 2021–2022 school year and school identifications and status exits in fall 2022, states could submit to USDE a "2021–2022 Template for Addendum to the ESEA Consolidated State Plan due to the COVID-19 National Emergency" (ESSA Accountability State Plan Addendum). In response to USDE guidance and statutory requirements, the Department consulted with assessment experts, educational leaders, and stakeholders, and performed extensive modeling to develop an ESSA Accountability State Plan Addendum that was submitted to USDE on August 29, 2022.

On September 26, 2022, USDE approved amendments to the New York State Consolidated State Plan under the ESEA for the 2021–2022 school year.

To align with the approved state plan addendum and with provisions related to the restart of the accountability system, the Department is proposing emergency regulatory amendments as follows:

Accountability:

- Section 100.21 of the Commissioner’s regulations is amended to provide that the Commissioner shall conduct the review of school and district performance for the 2022–2023 school year based on 2021–2022 school year results using modified procedures as specified in the new subdivision (n) added to this section. The Commissioner may also, upon finding of good cause, modify from the 2019–2020 through 2023 –2024 school years any timelines pertaining to notifications, plans, reports, or implementation of activities required by this section.
- New subdivision (n) of section 100.21 of the Commissioner’s regulations describes the modified procedures for the review of school and district performance for the 2022–2023 school year using 2021–2022 school year results as follows:
 - For all indicators except for determining the progress of English language learners toward English Language Proficiency (ELP) and Graduation Rate, accountability determinations will be based only on 2021–2022 school year results. Prior year data will not be used to make determinations. For the ELP indicator, a student’s results in the 2021–2022 school year on the New York State English as a Second Language Achievement Test (NYSESLAT) will be compared to their NYSESLAT results from prior years. The Graduation Rate indicator will be based on lagged 2020-2021 Graduation Rates so that students who graduated in August 2021 can also be included in the indicator.
 - The student growth in English language arts (ELA) and mathematics; academic progress; and College, Career, and Civic Readiness indicators, which require the use of prior year data, will not be used to assign accountability levels and will not be used to make accountability determinations based on 2021–2022 school year results.
 - In order to use results from the 2021–2022 school year only, accountability levels for the Graduation Rate and Chronic Absenteeism indicator will be assigned based on percentile rank rather than performance in relation to state goals and Measures of Interim Progress (MIPs).
 - A new high school Core Subject Performance Index based only on those students who have participated in Regents Examinations, Department-approved alternative assessments, and the New York State Alternate Assessment (NYSAA) will be used. This is intended to take into account that many students have received exemptions from graduation requirements.

- The accountability measures for elementary and middle schools will be Academic Achievement in ELA, mathematics, and science; Chronic Absenteeism; and progress towards and acquisition of English Language Proficiency by English language learners. At the high school level, the accountability measures will be Academic Achievement in ELA, mathematics, science, and social studies; unweighted average of 4, 5, and 6-year Graduation Rates; Chronic Absenteeism; and progress towards and acquisition of English Language Proficiency by English language learners.
- Academic Achievement at the elementary/middle and high school levels will be measured based on:
 - the federally mandated methodology in which the denominator is the greater of the number of tested students or 95% of those students (i.e., Weighted Average Achievement Index) for elementary/middle schools.
 - the count of the “all students” subgroup in the accountability cohort for high schools (i.e., high school Weighted Average Achievement Index).
 - at both the elementary/middle and high school levels the results from only those students who participated in State assessments (i.e., the Core Subject Performance Index).
- The “scenario tables” used to identify schools for CSI, ATSI, and TSI have been modified. New York State is still required to identify a minimum of 5% of the State’s schools that receive Title I funds for CSI. For accountability determinations, only subgroups that were identified for Potential Targeted Support and Improvement (PTSI) based on 2018-2019 school year results will be eligible to be newly identified for TSI using 2021-2022 school year results. The revised scenario tables are presented below:

Elementary and Middle School Scenario Table

Scenarios	Weighted	Core	ELP	Chronic Absenteeism
1	Both Level 1		Any Level (None, 1-4)	
2	Level 2	Level 1	Both NOT Level 3 or 4	
3	Level 1	None	Both NOT Level 3 or 4	
4	Level 1	Level 2	Both NOT Level 3 or 4	
5	Level 3	Level 1	Both NOT Level 3 or 4	
6	Level 1	Level 3	Both NOT Level 3 or 4	

High School Scenario Table

Scenarios	Weighted	Core	Grad Rate	ELP	Chronic Absenteeism
1	Both Level 1		Level 1	Any Level (None, 1-4)	
2	Level 2	Level 1	Level 1	Both Not Level 3 or 4	
3	Level 1	None	Level 1	Both Not Level 3 or 4	
4	Level 1	Level 2	Level 1	Both Not Level 3 or 4	
5	Both Level 1		Level 2	Both Not Level 3 or 4	
6	Level 1	Level 2	Level 2	Both Not Level 3 or 4	
7	Level 2	Level 1	Level 2	Both Not Level 3 or 4	

- Schools previously identified for CSI that are not identified for CSI using the revised identification criteria and meet the modified exit criteria may exit identification status. Schools previously identified for ATSI that are not identified using the revised TSI identification criteria and meet modified ATSI exit criteria may exit identification status. The modified exit criteria are as follows:
 - Weighted Average Achievement Index or Core Subject Performance Index is higher than at the time of identification (2017–2018 school year).
 - Graduation Rate (unweighted average of 4,5, and 6-year graduation rates) is higher than at the time of identification (2017–2018 school year).
- Schools previously identified for TSI that do not meet the revised TSI identification criteria may exit identification status.
- Districts that have one or more schools identified for CSI, ATSI, or TSI will continue to be identified as Target Districts. Districts that had been identified as Target Districts solely for the districtwide performance of accountability groups will be removed from that designation. Districts that have subgroups at the district level that meet the criteria for identification for CSI and/or TSI based on 2021–2022 school year results will become Potential Target Districts. If the district has a subgroup that meets the criteria for identification for a second consecutive year based on 2022–2023 school year results, the district will become a Target District for districtwide performance.
- A new subdivision (o) is added to section 100.21 of the Commissioner’s regulations to modify the following definitions to align with the definitions under the ESEA: “CSI School(s)” and “school(s) identified as CSI” to “school(s) identified for Comprehensive Support and Improvement (or CSI)”; “ATSI school(s)” and “school(s) identified as ATSI” to “school(s) identified for Additional Targeted Support and Improvement (or ATSI)”; “TSI School(s)” and “school(s) identified as

TSI” to “school(s) identified for Targeted Support and Improvement (or TSI)”; and Good Standing School(s) and schools identified as Good Standing shall hereafter be referred to in this Part as “school(s) identified for Local Support and Improvement (or LSI).”

Receivership:

- Section 100.19 of the Commissioner’s regulations is amended to provide that:(1) the Commissioner shall not use 2021–2022 school year results to newly identify any schools as struggling or place any schools under independent receivership for the 2022–2023 school year, and (2) all schools that operated under a school district superintendent receiver in the 2021–2022 school year shall continue to operate under a school district superintendent receiver in the 2022–2023 school year. Consistent with current regulations, schools that are removed from CSI status based on 2021–2022 school year data shall be removed from receivership at the end of the 2022–2023 school year.

Related Regents Items

February 2021: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80- 1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154- 2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and Addition of Section 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/221brca6.pdf)
(<https://www.regents.nysed.gov/common/regents/files/221brca6.pdf>)

July 2021: [Proposed Amendment to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19, and 151-1.3 and the addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/721brca17.pdf)
(<https://www.regents.nysed.gov/common/regents/files/721brca17.pdf>)

September 2021: [September 2021 P-12 Education Committee - Proposed Amendment of Section 100.21 of the Regulations of the Commissioner of Education Relating to Providing Flexibility for Accountability Requirements in Response to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/921p12a3.pdf)
(<https://www.regents.nysed.gov/common/regents/files/921p12a3.pdf>)

October 2022: [Proposed Amendment of Sections 100.19 and 100.21 of the Regulations of the Commissioner of Education Relating to Restarting the Accountability System using 2021–2022 School Year Results - P-12](https://www.regents.nysed.gov/common/regents/files/1022p12a3.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1022p12a3.pdf>)

December 2022: [Proposed Amendment of Sections 100.19 and 100.21 of the Regulations of the Commissioner of Education Relating to Restarting the Accountability System using 2021–2022 School Year Results](https://www.regents.nysed.gov/common/regents/files/1222brca2.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1222brca2.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That sections 100.19 and 100.21 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 1, 2023.

Timetable for Implementation

If adopted at the February 2023 meeting, the proposed amendment will become effective as a permanent rule on March 1, 2023.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 112, 207, 210, 215, 305, 309, and 3713 of the Education Law and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802).

1. Paragraphs (1) and (2) of subdivision (m) of section 100.19 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) Notwithstanding any other provision of this section the Commissioner shall not use 2019–2020, [or] 2020–2021, or 2021–2022 school year results to newly identify in the [2021–2022] 2022–2023 school year any schools as struggling, or place any schools under independent receivership [, or remove the designation of any schools as struggling or persistently struggling].

(2) Notwithstanding any other provision of this section, all schools identified as persistently struggling or struggling schools for the 2019–2020 school year shall remain so identified for the 2020–2021 and 2021–2022 school years, and all schools that, pursuant to subdivision (a) of this section, operated under a school district superintendent receiver in the 2019–2020, [and] 2020–2021, and 2021–2022 school years shall continue to operate under a school district superintendent receiver in the [2021–2022] 2022–2023 school year.

2. Paragraph (4) of subdivision (a) of section 100.21 of the Regulations of the Commissioner of Education is amended and a new paragraph (5) is added to read as follows:

(4) Notwithstanding any other provision of this section, the Commissioner may, upon a finding of good cause, modify for the 2019–2020 through [2022–2023] 2023-2024 school years any timelines pertaining to notifications, plans, reports, or implementation of activities required by this section.

(5) Notwithstanding the provisions of this section, the Commissioner shall conduct the review of school and district performance for the 2022–2023 school year based on 2021–2022 school year data using modified procedures as specified in subdivision (n) of this section.

3. Subdivision (n) of section 100.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(n) Accountability system for schools and districts based on 2021–2022 school year results.

(1) Definitions. Notwithstanding the provisions of subdivision (b) of this section, the following definitions shall be used by the Commissioner to review school and district performance based on 2021–2022 school year results.

(i) *Minimum n size* shall mean the minimum number of student results that are included within an accountability subgroup to make an accountability determination on a particular accountability measure. For purposes of this subdivision, the minimum n size is 30 unless otherwise provided. For the Weighted Average Achievement Index and the Core Subject Performance Index, the minimum n size applies to the denominator used to calculate the indices. For English Language Proficiency (ELP); Chronic Absenteeism (CA); and Graduation Rate, the minimum n size applies to the denominator used to calculate the rates. Provided, however, that where the Weighted Average Achievement

Index student results for an accountability group are equal to or greater than 30, a Core Subject Performance Index shall be computed for that accountability group so long as there are a minimum of 15 student results for the Core Subject Performance Index and the number of student results for the Core Subject Performance Index equals at least 50 percent of the number of results for the Weighted Average Achievement Index.

Provided further that, where the Weighted Average Achievement Index student results for a high school accountability group are equal to or greater than 30, a graduation rate shall be computed for that accountability group so long as there are a minimum of 15 students in the graduation cohort.

(ii) *An accountability measure* shall mean a measure used for the purpose of implementing the system of accountability for schools and districts in accordance with the provisions of this section and shall include the following measures for elementary/middle schools: (1) Weighted Average Achievement Performance; (2) Core Subject Performance; (3) English Language Proficiency; and (4) Chronic Absenteeism as described in this subdivision. High school accountability measures shall include the four preceding factors as well as Graduation Rate.

(iii) *Schools identified for comprehensive support and improvement (CSI) (elementary and middle schools).* The State shall designate elementary/middle schools for CSI using the following criteria:

(a) for the 2022-2023 school year, using 2021-2022 school year results, the Commissioner shall identify a minimum of five percent of the lowest performing public elementary/middle schools that receive Title I funds for CSI and shall identify schools for CSI based upon the results from the all students subgroup based on the accountability

measures described in this subdivision. The Commissioner shall also identify for CSI those public elementary/middle schools that do not receive Title I funds that meet the criteria used to identify Title I schools for CSI. Provided further that a school that had been identified for CSI during the 2021–2022 school year that does not meet the criteria for exiting CSI status pursuant to paragraph (5) of this subdivision shall remain identified for CSI.

(iv) Schools identified for CSI (high schools). The State shall designate high schools for CSI using the following criteria:

(a) for the 2022-2023 school year, using 2021-2022 school year results, the Commissioner shall identify a minimum five percent of the lowest performing public high schools that receive Title I funds for CSI and shall identify schools for CSI based upon the results from the all students subgroup based on the accountability measures described in this subdivision. The Commissioner shall also identify for CSI those public high schools that do not receive Title I funds that meet the criteria used to identify Title I schools for CSI. Any school with a 2017 Four-Year Graduation Rate below 67 percent and a 2016 Five-Year or 2015 Six-Year Graduation Rate that is not at or above 67 percent shall be preliminarily identified for CSI. Provided further that a school that had been identified for CSI during the 2021–2022 school year that does not meet the criteria for exiting CSI status pursuant to paragraph (5) of this subdivision shall remain identified for CSI.

(v) A School Identified for Targeted Support and Improvement (TSI) shall mean a school with one or more consistently underperforming accountability subgroups based on the accountability measures described in this subdivision. In addition, a school

identified for TSI based upon 2018-2019 school year results with any accountability subgroup that meets the same scenario criteria used to identify schools for CSI pursuant to paragraph (2) of this subdivision based upon 2021-2022 school year results and that failed to meet the modified criteria for exiting identification status in this subdivision shall be identified for additional targeted support and improvement (ATSI). Schools identified for TSI based upon 2017-2018 school year results for which the identified subgroup(s) failed to meet the modified criteria for exiting ATSI status in this subdivision based on 2021-2022 school year results shall remain identified for ATSI.

(vi) *Target District* shall mean any school district with one or more schools identified for CSI, ATSI, or TSI.

(vii) For high school students, *participation rate* shall mean the percentage of students in grade 12 during the reporting year who have a valid score on an approved high school assessment. The State assessments that may be used at the secondary level to fulfill the testing requirement for participation in English Language Arts (ELA) and mathematics are Regents examinations in English and Mathematics, approved alternatives to Regents examinations in English and Mathematics, examinations accepted to meet graduation and diploma requirements for students covered under the interstate compact on educational opportunity for military children pursuant to section 100.20 of this Part and the NYSAA for eligible students with disabilities at the secondary level. Provided, however, participation rate shall not include students whose only assessment record was an exemption from the 2019-2020 school year spring administration for a Regents examination or approved alternative pursuant to section 100.5(a)(5) of this Part. Provided further, however, that participation rate shall also not

include students whose only assessment record for a subject was an exemption from the 2019-2020 school year spring administration for the NYSAA.

(2) Accountability system for elementary/middle schools.

(i) Identification of elementary/middle schools for CSI.

(a) An elementary/middle school shall be preliminarily identified for CSI using the following decision table, which combines the following measures of student performance for the all students subgroup in the school: (1) Weighted Average Achievement Performance; (2) Core Subject Performance; (3) English Language Proficiency; and (4) Chronic Absenteeism. A school shall be preliminarily identified for CSI if one or more of the scenarios in the decision table is applicable to the school; provided that in order to be preliminarily identified using the decision table below, a performance level must be assigned at a minimum to the Weighted Average Achievement Performance measure and one or more of the following measures: Core Subject Performance, English Language Proficiency, and/or Chronic Absenteeism.

Decision Table for Identification of Comprehensive Support and Improvement Elementary/Middle Schools

Scenarios	Weighted	Core	ELP	Chronic Absenteeism
<u>1</u>	<u>Both Level 1</u>		<u>Any Level (None*, 1-4)</u>	<u>Any Level (None*, 1-4)</u>
<u>2</u>	<u>Level 2</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4 **</u>	
<u>3</u>	<u>Level 1</u>	<u>None</u>	<u>Both NOT Level 3 or 4 **</u>	
<u>4</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Both NOT Level 3 or 4 **</u>	
<u>5</u>	<u>Level 3</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4 **</u>	
<u>6</u>	<u>Level 1</u>	<u>Level 3</u>	<u>Both NOT Level 3 or 4 **</u>	

None means the school does not have enough students (30 results) to assign an accountability level for the indicator.

**To be identified, the Weighted and Core conditions in scenarios 2-6 would have to be met AND both ELP and CA cannot be Level 3 or 4.

(1) Weighted Average Achievement Level. For each public elementary/middle school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of this subdivision, a Weighted Average Achievement Level using the results of ELA and mathematics assessments in grades 3–8 and science assessments for grades 4 and 8 shall be computed by the Commissioner in accordance with the provisions of subdivision (f) of this section.

(2) Core Subject Performance Level. For each public elementary/middle school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of this subdivision, a Core Subject Performance Level using the results of ELA and mathematics assessments in grades 3–8 and science assessments for grades 4 and 8 shall be computed by the Commissioner in accordance with the provisions of subdivision (f) of this section.

(3) English Language Proficiency Level. For each public elementary/middle school meeting the minimum n-size requirements as defined in paragraph (1) of this section, the Commissioner shall compute an English Language Proficiency Level in accordance with subdivision (f) of this section.

(4) Chronic Absenteeism Level. For each public elementary/middle school meeting the minimum n-size requirement pursuant to paragraph (1) of this subdivision, the Commissioner shall compute a Chronic Absenteeism Level as follows:

(i) The Commissioner shall first compute the school's Chronic Absenteeism Rate, in accordance with subdivision (f) of this section.

(ii) The Commissioner shall then rank order schools based on their Chronic Absenteeism rate in descending order.

(iii) Each elementary/middle school shall then be assigned a Chronic Absenteeism Level from 1-4 based on such rank ordering using the table below:

<u>Chronic Absenteeism Rate Rank</u>	<u>Chronic Absenteeism Level</u>
-	-
<u>10% or Less</u>	<u>1</u>
-	-
<u>10.1 to 50%</u>	<u>2</u>
-	-
<u>50.1 to 75%</u>	<u>3</u>
-	-
<u>Greater than 75%</u>	<u>4</u>
-	-

(b) The Commissioner shall first determine which schools in Scenario 1 shall be identified for CSI. If the identification of schools in Scenario 1 results in fewer than five percent of public elementary/middle schools in the state that receive Title I funds being identified for CSI, the Commissioner shall then determine which schools in Scenario 2 shall be identified for CSI. The Commissioner shall continue to make determinations regarding which schools shall be identified for CSI in descending scenario number order until a minimum of five percent of public elementary/middle schools that receive Title I funds shall be identified. Once a minimum of five percent of public elementary/middle schools that receive Title I funds have been identified, schools in a higher-numbered scenario shall be removed from preliminary identification.

(ii) Identification of Elementary/Middle Schools for Targeted Support and Improvement (TSI). An elementary/middle school shall be preliminarily identified for TSI if an accountability subgroup met the criteria for identification based on 2018–2019 school year results and that same subgroup meets a scenario using the decision table

in subparagraph (i) of this paragraph, provided that only Scenario 1 and any other scenarios with numbers that are lower than the highest numbered scenario for which a school was identified for CSI shall be used to identify schools for TSI.

(a) The designations of schools for TSI shall be based on the performance of accountability subgroups, as defined in paragraph (1) of subdivision (b) of this section and shall not include the performance of the all students subgroup; provided that, in order to be preliminarily identified using the decision table in subparagraph (i) of this paragraph, a performance level must be assigned to, at a minimum, the Weighted Average Achievement measure and one or more of the following measures: Core Subject Performance, English Language Proficiency, and/or Chronic Absenteeism.

(iii) Identification of elementary/middle schools for Additional Targeted Support and Improvement (ATSI).

(a) The Commissioner shall identify for ATSI any school identified for TSI in the 2019-2020 school year based upon 2018-2019 school year results for which the same subgroup meets the same scenario criteria used to identify schools for CSI pursuant to paragraph (2) of this subdivision and that failed to meet the modified criteria for exiting identification status pursuant to paragraph (5) of this subdivision.

(b) Notwithstanding clause (a) of this subparagraph, schools identified for TSI based on 2017-2018 school year results for which the identified subgroup(s) failed to meet the modified criteria for exiting ATSI status in this subdivision based on 2021–2022 school year results shall remain identified for ATSI.

(3) Accountability system for high schools.

(i) Identification of high schools for CSI.

(a) A high school shall be preliminarily identified for CSI using the following decision table, which combines multiple measures of performance for the all students subgroup in the school, as defined in paragraph (1) of subdivision (b) of this section, using the following accountability measures: (1) Weighted Average Achievement Performance; (2) Graduation Rate; (3) Core Subject Performance (4) English Language Proficiency; and (5) Chronic Absenteeism; provided that in order to be preliminarily identified using the decision table below a performance level must be assigned to, at a minimum, the Weighted Average Achievement Performance and Graduation Rate measures and one or more of the following measures: Core Subject Performance, English Language Proficiency, and/or Chronic Absenteeism. A school shall be preliminarily identified for CSI if one or more of the scenarios in the decision table applies to the school. Provided, however, that notwithstanding the table below, any public high school with a 2017 Four-Year Graduation Rate below 67 percent and a 2016 Five-Year or 2015 Six-Year Graduation Rate that is not at or above 67 percent will be preliminarily identified for CSI.

Decision Table for Identification of Comprehensive Support and Improvement for High Schools

<u>Scenarios</u>	<u>Weighted</u>	<u>Core</u>	<u>Grad Rate</u>	<u>ELP</u>	<u>Chronic Absenteeism</u>
<u>1</u>	<u>Both Level 1</u>	<u>Level 1</u>	<u>Level 1</u>	<u>Any Level (None*, 1-4)</u>	
<u>2</u>	<u>Level 2</u>	<u>Level 1</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4**</u>	
<u>3</u>	<u>Level 1</u>	<u>None</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4**</u>	
<u>4</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4**</u>	
<u>5</u>	<u>Level 1</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Both NOT Level 3 or 4**</u>	
<u>6</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 2</u>	<u>Both NOT Level 3 or 4**</u>	
<u>7</u>	<u>Level 2</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Both NOT Level 3 or 4**</u>	

*"None" means the school does not have enough students (30 results) to assign an accountability level for the indicator.

**To be identified, the Weighted and Core conditions in scenarios 2-7 would have to be met AND both ELP and CA cannot be Level 3 or 4.

(1) Weighted Average Achievement Level. For each public high school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of subdivision (b) of this section, a Weighted Average Achievement Level shall be assigned by the Commissioner in the same manner as the Composite Performance Level is assigned in accordance with the provisions of subdivision (f) of this section. Notwithstanding the provisions of this subclause, Weighted Average Achievement Index shall not include students whose only assessment record for a subject was an exemption from the 2019-2020 school year spring administration for a Regents examination or approved alternative pursuant to section 100.5(a)(5) of this Part. Provided further that Weighted Average Achievement shall also not include students whose only assessment record was an exemption for a subject from the 2019-2020 school year spring administration for the NYSAA.

(2) Core Subject Performance Level. For each public high school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of subdivision (b) of this section, a Core Subject Performance Level shall be assigned by the Commissioner using the same methodology used to assign a Weighted Average Achievement Level, except that the denominator for computing the Core Subject Performance Index in each subject shall be the members of the accountability cohort who have a valid score on an accountability assessment in the subject.

(3) Graduation Rate. For each public high school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of subdivision (b) of this section, a Graduation Rate Level shall be assigned by the Commissioner.

(i) The Commissioner shall first compute the school's 2017 four-year, 2016 five-year, and 2015 six-year Graduation Rates, in accordance with subdivision (f) of this section.

(ii) The Commissioner shall then rank order schools based on the unweighted average of the four-year, five-year, and six-year Graduation Rates.

(iii) Each high school shall then be assigned a Graduation Rate Level from 1-4 based on such rank ordering using the table below:

<u>Graduation Rate Rank</u>	<u>Graduation Rate Level</u>
-	-
<u>10% or Less</u>	<u>1</u>
-	-
<u>10.1 to 50%</u>	<u>2</u>
-	-
<u>50.1 to 75%</u>	<u>3</u>
-	-
<u>Greater than 75%</u>	<u>4</u>
-	-

(4) English Language Proficiency Level. For each public high school meeting the minimum n-size requirements as defined in paragraph (1) of this section, the Commissioner shall compute an English Language Proficiency Level in accordance with subdivision (f) of this section:

(5) Chronic Absenteeism Level. For each public high school whose all students subgroup meets the minimum n-size requirement pursuant to paragraph (1) of this subdivision, the Commissioner shall compute a Chronic Absenteeism Level as follows:

(i) The Commissioner shall first compute the school's Chronic Absenteeism Rate, in accordance with subdivision (f) of this section.

(ii) The Commissioner shall then rank order schools based on their Chronic Absenteeism rate in descending order.

(iii) Each high school will then be assigned a Chronic Absenteeism Level from 1-4 based on such rank ordering using the table below:

<u>Chronic Absenteeism Rank</u>	<u>Chronic Absenteeism Level</u>
-	-
<u>10% or Less</u>	<u>1</u>
-	-
<u>10.1 to 50%</u>	<u>2</u>
-	-
<u>50.1 to 75%</u>	<u>3</u>
-	-
<u>Greater than 75%</u>	<u>4</u>
-	-

(b) The Commissioner shall first determine which schools in Scenario 1 shall be identified for CSI. If the identification of schools in Scenario 1 results in fewer than five percent of public high schools in the state that receive Title I funds being identified for CSI, the Commissioner shall then determine which schools in Scenario 2 shall be identified for CSI. The Commissioner shall continue to make determinations regarding which schools shall be identified for CSI in descending scenario number order until a minimum of five percent of public high schools that receive Title I funds shall be identified. Once a minimum of five percent of public high schools that receive Title I funds have been identified, schools in a higher-numbered scenario shall be removed from preliminary identification.

(ii) Identification of high schools for TSI.

(a) A high school shall be preliminarily identified for TSI if an accountability subgroup met the criteria for identification based on 2018–2019 school year results and that same subgroup meets a scenario using the decision table in subparagraph (i) of this paragraph, provided that only Scenario 1 and any other scenarios with numbers that are lower than the highest numbered scenario for which a school was identified for CSI shall be used to identify schools for TSI.

(b) The designation of schools for TSI shall be based on the performance of accountability subgroups, as defined in paragraph (1) of subdivision (b) of this section and shall not include the performance of the all students subgroup; provided that, in order to be preliminarily identified using the decision table in subparagraph (i) of this paragraph, a performance level must be assigned to, at a minimum, the Weighted Average Achievement measure and Graduation Rate measures and one or more of the following measures: Core Subject Performance, English Language Proficiency, and/or Chronic Absenteeism.

(iii) Identification of high schools for ATSI.

(a) The Commissioner shall identify for ATSI any school identified for TSI in the 2019-2020 school year based upon 2018-2019 school year results for which the identified subgroup meets the same scenario criteria used to identify schools for CSI pursuant to paragraph (2) of this subdivision and that failed to meet the modified criteria for exiting identification status pursuant to paragraph (5) of this subdivision.

(b) Notwithstanding clause (a) of this subparagraph, schools identified for TSI based on 2017-2018 school year results for which the identified subgroup(s) failed to

meet the modified criteria for exiting ATSI status based on 2021–2022 school year results shall remain identified for ATSI.

(4) Interventions. Notwithstanding the provisions of subdivision (i) of this section, interventions in schools identified for CSI, ATSI, and TSI and interventions in Target Districts shall be modified as follows:

(i) Any school with any accountability measure of Level 1 for any subgroup, as calculated pursuant to subdivision (f) of this section, that is not a school identified for CSI, ATSI, or TSI, shall not require a needs assessment based on Level 1 identifications using 2021–2022 school year results.

(ii) Annual Achievement Progression target shall not be determined using data from the 2021–2022 school year for schools identified for CSI.

(iii) Participation rate self-assessments and participation rate improvement plans shall not be required for any school based on 2021–2022 school year results.

(5) Removal from accountability designation. Notwithstanding the provisions of subdivision (j) of this section, the Commissioner shall use the following procedures to exit schools from identification for CSI, ATSI, TSI, and from Target District status based on 2021–2022 school year results.

(i) For elementary/middle schools:

(a) For schools identified for CSI or ATSI, an increase between the school's performance in the 2021–2022 year compared to the 2017–2018 school year based on either the Core Subject Performance Index or the Weighted Average Achievement Index as defined in subdivision (f) of this section for the identified subgroup. Provided,

however, that an elementary/middle school may not exit CSI or ATSI status if the school is identified for CSI or ATSI using 2021–2022 school year data.

(b) For schools identified for TSI, the school is not identified for TSI using the 2021–2022 school year data.

(ii) For high schools:

(a) For schools identified for CSI or ATSI, an increase between the school's performance in the 2021–2022 school year compared to the 2017–2018 school year based on the Weighted Average Achievement Index as defined in subdivision (f) of this section or the unweighted average of the Four-Year, Five-Year, and Six-Year Graduation Rates computed pursuant to clause (f)(2)(i)(b) of this section for the identified subgroup. Provided, however, that a high school may not exit CSI or ATSI status if the school is identified for CSI or ATSI using 2021–2022 school year data.

(b) For schools identified for TSI, the school is not identified for TSI using the 2021–2022 school year data.

(iii) Notwithstanding the provision of paragraph (j)(4) of this section, the Commissioner shall not preliminarily identify schools identified for CSI that were identified for three consecutive school years as struggling schools, subject to the provisions of section 100.19(m) of this Part.

(iv) Notwithstanding the provision of paragraph (j)(4) of this section, the Commissioner shall not require that any elementary, middle, or high school that continues to be identified for TSI for three consecutive school years after designation for ATSI for the performance of the same accountability subgroup(s) for which the school was identified for ATSI be preliminarily identified for CSI.

(v) Notwithstanding the provision of subparagraph (j)(6)(ii) of this section, a Target District shall no longer be identified as a Target District if there is no school identified for CSI, ATSI, or TSI in the district.

(6) Identification of schools for public school registration review. Notwithstanding the provisions of subdivisions (k) and (l) of this section, the Commissioner shall neither place any schools under preliminary registration review or registration review nor place any school into independent receivership based on 2021–2022 school year results.

4. Subdivision (m) of section 100.21 of the Regulations of the Commissioner of Education is amended to read as follows:

[(m)] (o) Notwithstanding the provisions of paragraph (b)(3) of this section, *CSI School(s) and school(s) identified as CSI shall hereafter be referred to in this Part as school(s) identified for Comprehensive Support and Improvement (or CSI), ATSI school(s) and school(s) identified as ATSI shall hereafter be referred to in this Part as school(s) identified for Additional Targeted Support and Improvement (or ATSI), TSI School(s) and school(s) identified as TSI shall hereafter be referred to in this Part as school(s) identified for Targeted Support and Improvement (or TSI), and Good Standing School(s) and schools identified as Good Standing shall hereafter be referred to in this Part as school(s) identified for Local Support and Improvement (or LSI).*

(p) Severability. If any provision of this section or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this section or the application thereof to other persons and circumstances.

ASSESSMENT OF PUBLIC COMMENT

Since publication of the Notice of Emergency Adoption Proposed Rule Making in the State Register on October 19, 2022, the Department received the following public comment on the proposed rule:

1. COMMENT: A commenter expressed difficulty with relating to schools that the proposed amendments are operating under a one-year addendum due to the term “restart.” The commenter suggested that the term “restart” be changed for better clarification.

DEPARTMENT RESPONSE: The term “restart” is not an official name under the accountability system and is not a defined provision of the regulated amendments proposed in this item. The Department has distributed resources that explain the details of the accountability system under the approved one-year model. The Department will continue to support districts and schools in understanding the accountability system. No changes are necessary.

2. COMMENT: A commenter expressed concern about using Chronic Absenteeism as an accountability indicator, as they stated, “attendance policies are not standardized across districts in New York State.” The commenter suggested replacing Chronic Absenteeism with another metric, such as a School Climate and Safety Survey that every district must administer.

DEPARTMENT RESPONSE: The chronic absenteeism indicator was selected by the Board of Regents as a measure of school quality and student success after extensive stakeholder input, including responses to surveys, that demonstrated strong support for

the use of this measure. Like New York State, most states use chronic absenteeism as part of their Every Student Succeeds Act (ESSA) accountability system. Because the computation of chronic absenteeism does not distinguish between excused and unexcused absences, the fact that districts have different attendance policies does not impact the usefulness of the indicator. The Department recognizes the value of school climate and safety surveys and currently uses them as part of the process for supporting school and district improvement efforts. No changes are necessary.

3. COMMENT: A commenter stated, “If a school is rated low, a parent should be allowed to easily switch their child to another, better performing school in the district right away.”

DEPARTMENT RESPONSE: This comment is outside the scope of the proposed amendments; therefore, no changes are necessary. Nevertheless, the Department notes that accountability determinations of schools and districts are intended to be a continuum of support and shared responsibility at the local, district, and state level. Within all accountability support models, schools and districts will have opportunities to leverage strengths and identify areas of focus within a system of continuous improvement. The Department encourages school communities to continue their partnership with schools and districts in pursuing academic achievement and safe and healthy learning environments under federal and state requirements.

4. COMMENT: A commenter stated, “I think it is not helpful to change, ‘Good Standing’ to ‘Local Support.’ Changing the terminology may confuse parents about the stark reality of school differences and problems.”

DEPARTMENT RESPONSE: The Department has designed the accountability process to focus on a continuum of shared responsibility and support at the local, district, and state levels. The modification to the terminology aligns with the understanding that all schools and districts use various models of continuous improvement. The Department recognizes and honors this structure by adding the Local Support and Improvement dimension to the differentiated levels of support. Schools identified for Local Support and Improvement can continue with their improvement efforts at the local level and partner with the Department as needed for resources, tools, and technical assistance. No changes are necessary.

5. COMMENT: A commenter expressed concerns with the methodologies used to factor in opt-outs and with the scoring bands of the Performance Levels. The commenter writes, “We recommend that SED adjust the Level 1 and Level 2 scoring bands so that schools that are initially identified are in fact lower performing schools. We further recommend that SED use absolute scores instead of percentile scores for High School graduation.”

DEPARTMENT RESPONSE: To make preliminary Comprehensive Support and Improvement (CSI), Additional Targeted Support and Improvement (ATSI), and Targeted Support and Improvement (TSI) accountability status decisions based on 2021–2022 school year results, the Department used only Scenario 1 of the proposed decision tables. Additionally, the Department identified schools for CSI that did not meet the 4-year graduation rate of 67%, as required by the ESSA statute. To meet Scenario 1 of the decision table, a subgroup must have a Level 1 for both Weighted Average Achievement and Core Subject Performance indicators at the

elementary/middle level. At the high school level, a subgroup must have a Level 1 for Weighted Average Achievement, Core Subject Performance, and Graduation Rate indicators. Under New York’s ESSA accountability system, Level 1 is assigned to subgroups performing at the bottom 10 percent. To identify the bottom 5 percent of schools for CSI, the Department had to start with a pool of the bottom 10 percent of schools, because some schools will be performing at higher than 5 percent (but lower than 10 percent) for one of the aforementioned indicators. Level 2 band was not used to preliminarily identify schools for CSI, ATSI, or TSI based on 2021–2022 school year results. Regarding the Graduation Rate indicator, the percentile methodology is used to identify the lowest 10 percent of schools with the unweighted average Graduation Rate, which an absolute score would not accomplish. If an absolute cut point of 67 percent is used for the Graduation Rate indicator, it will not provide the 5 percent schools required to be identified for CSI. No changes are necessary.

6. COMMENT: A commenter stated, “We ask that SED reconsider excluding a Core Performance Index measure for these schools with less than 50% of the number of weighted student results due to high-opt outs. We further recommend weighting the Core Performance Index more heavily than the Weighted Average Achievement measure as it measures actual student performance. Schools that should be in good standing based on actual performance must devote time, energy, and resources where they may not be most useful.”

DEPARTMENT RESPONSE: For making preliminary elementary/middle CSI, ATSI, and TSI accountability status decisions based on 2021–2022 school year results, the Department used only Scenario 1 of the decision table. To meet Scenario 1 of the

decision table, the subgroup had to be in Level 1 for both Weighted Average Achievement and Core Subject Performance indicators. Therefore, if a Core Subject Performance is suppressed, then the subgroup will not meet Scenario 1 and will not be identified. Both Weighted Average Achievement and Core Subject Performance Indicators carry equal weights in the decision table used to identify schools for CSI, ATSI, and TSI. ESSA requirements prohibit weighting Core Subject Performance more than Weighted Average Achievement, or not making a Weighted Average Achievement determination because students did not test. No changes are necessary.

7. COMMENT: A commenter expressed concerns about how public comments were received. The commenter wrote, “The Emergency Regulations originally adopted in October were extended at the December meeting through the consent agenda, without discussion by the Regents. SED has not proposed an additional comment period with this new action and intends to present Regulations for permanent adoption at the February meeting. The timeline would mean that the Department will not be making any changes to the current Emergency Regulations regardless of any comments received. It is unclear how the Department could predetermine that no substantive changes will be made to Emergency Regulations while a comment period is still open.”

DEPARTMENT RESPONSE: The Department followed the 60-day public comment period requirement under the State Administrative Procedure Act and any comment received within this window was reviewed prior to submission for permanent adoption. The December consent adoption item was to ensure that the emergency action taken at the October meeting remained continuously in effect until the proposed rule could be brought back for permanent adoption. There was no determination at that time that no

substantive changes would be made to the proposed rule. This comment is outside the scope of the proposed amendments; therefore, no changes are necessary.