





**TO:** P-12 Education Committee

**FROM:** Angelica Infante-Green *A. Infante - Green*

**SUBJECT:** Proposed Amendment of Section 100.18(g) of the Regulations of the Commissioner Relating to the Identification of Local Assistance Plan (LAP) and Focus Schools

**DATE:** June 9, 2017

**AUTHORIZATION(S):**  

### SUMMARY

#### Issue for Decision

Should the Board of Regents amend §100.18(g) of the Commissioner's regulations to remove the requirement that Local Assistance Plan (LAP) and Focus Schools be identified using assessment results from the 2015-16 and subsequent school years?

#### Reason(s) for Consideration

Implementation of Policy.

#### Proposed Handling

The proposed amendment is submitted to the P-12 Education Committee and Full Board for adoption as an emergency measure at the June 2017 Regents meeting. A Notice of Emergency Adoption and Proposed Rule Making will be published on July 5, 2017. A copy of the proposed amendment is included as Attachment B.

#### Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on July 5, 2017. A Statement of Facts and Circumstances Justifying

the Emergency Adoption is included as Attachment A. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

Prior to the passage of ESSA, the State's accountability system was aligned with the requirements of the federal Elementary and Secondary Education Act (ESEA) Flexibility Waiver. Under the ESEA Flexibility Waiver, the Department committed to annually identifying LAP and Focus Schools.

On December 10, 2015, ESSA was signed into law by President Obama. ESSA, a bipartisan measure, reauthorized the 50-year-old ESEA and provides federal funds to improve elementary and secondary education in the nation's public schools and requires states and school districts, as a condition of funding, to take a variety of actions to ensure that all children, regardless of race, income, background, or where they live, receive the education they need to prepare them for success in postsecondary education, careers, and citizenship.

ESSA requires states to identify Comprehensive Support and Intervention and Targeted Support and Intervention Schools, beginning with 2017-2018 school year results. The law does not require the State to identify any additional category of schools for support and intervention. Furthermore, the USDE has issued guidance that clarifies that states are not required to identify new schools pursuant to a state's approved ESEA flexibility waiver for intervention while transitioning to the new accountability system required by ESSA.

Accordingly, the proposed regulatory amendment would remove the requirement that LAP and Focus Schools be identified using assessment results from the 2015-16 and subsequent school years.

### **Related Regents Items:**

<http://www.regents.nysed.gov/common/regents/files/meetings/Jun%202015/615brca7.pdf>

<http://www.regents.nysed.gov/common/regents/files/517brd1.pdf>

### **Recommendation:**

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

VOTED: That subdivision (g) of section 100.18 of the Regulations of the Commissioner of Education are amended, as submitted, effective July 1, 2017, as an emergency action upon a finding by the Board of Regents that such action is necessary to ensure that school districts are aware of the change in identification requirements applicable beginning with the 2017-2018 school year and to ensure seamless transition to the State's ESSA accountability system.

### **Timetable for Implementation**

If adopted as an emergency rule at the June 2017 Regents meeting, the emergency rule would take effect on July 1, 2017. It is anticipated that the proposed rule will be presented for permanent adoption at the September 2017 Regents meeting, after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act. If adopted at the September meeting, the proposed amendment will take effect as a permanent rule on September 27, 2017.

**STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION**

The proposed amendment to section 100.18(g) of the Regulations of the Commissioner of Education is necessary to ensure that school districts are aware of the change in identification requirements applicable beginning with the 2017-2018 school year and to ensure a seamless transition from New York State's Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request in alignment with the State's draft Every Student Succeeds Act (ESSA) school accountability plan.

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on July 5, 2017. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) for a proposed rulemaking, would be the September 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 27, 2017, the date a Notice of Adoption would be published in the State Register.

A delay in the rule's effective date could disrupt the State's transition from the ESEA Flexibility Waiver to the proposed ESSA state accountability system. Emergency action is therefore necessary at the June 2017 Regents meeting for the preservation of the general welfare to ensure that school districts are aware of the change in identification requirements applicable beginning with the 2017-2018 school year and to ensure a seamless transition to the proposed ESSA accountability system. It is

anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its September 2017 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period required by the State Administrative Procedure Act.

**Attachment B**

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 210, 215, 305, 309 and 3713

Subdivision (g) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective July 1, 2017, as follows:

(g) Differentiated accountability for schools and districts. Prior to the commencement of the 2012-2013 school year, the commissioner, based on the 2010-2011 school year results, shall designate focus districts, priority schools and focus charter schools. Prior to the commencement of the 2013-2014 school year, based on the 2011-2012 school year results, and each year thereafter up through and including the 2016-2017 school year, based on the subsequent school year results, the commissioner shall designate public schools requiring a local assistance plan.

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(9) [Identification of local assistance plan schools as focus schools.

(i) Commencing with 2015-2016 school year results, a school that has been identified as a local assistance plan school based on 2013-2014, 2014-2015 and 2015-

2016 school year results and based on each three consecutive school years of results thereafter will be preliminary identified as a focus school.

(ii) School districts and charter schools will be informed of the preliminary status of the school district and schools, and will be provided the opportunity to appeal such preliminary identification, in a format and according to such timeline as prescribed by the commissioner. If the commissioner identifies a local assistance plan school as a focus school in a district in which in the prior school year there were no schools identified as focus or priority, the district shall also be identified as a focus district.

(iii) If a school district or charter school appeals the designation of a transfer high school as a focus school, the commissioner shall give careful consideration to the mission of the school, student performance, and the school's ability to effectively serve its students in a turnaround environment. The commissioner will take into account student performance factors including the age and number of credits that members of the cohort have upon admission to the school and the success of the school in graduating students up to the age of 21.

(10) School requiring a local assistance plan.

(i) [Beginning with] For the 2015-2016 and 2016-2017 school years, using the 2013-2014 and 2014-2015 school year results respectively [and annually thereafter], a school that has not been designated as a priority or focus school shall be designated as a local assistance plan school if the school:

(a) failed to make adequate yearly progress (AYP) for an accountability group for three consecutive years on the same performance criterion in subdivision (j) of this section; provided that such school shall not be designated as a local assistance plan

school if the school has met other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph; or

(b) has gaps in achievement on a performance criterion in subdivision (j) of this section and the school has not shown sufficient progress toward reducing or closing those gaps, or meeting other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph, between students who are members and students who are not members of that accountability group; or

(c) for determinations based on 2013-2014 school year results, the school is located in a district that is not designated as Focus and the school meets the criteria for identification as a focus school pursuant to subparagraph (7)(ii) of this subdivision, and such other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph and for determinations based on 2014-2015 school year results and each school year's results thereafter the school meets the criteria for identification pursuant to paragraph (8) of this subdivision.

(ii) Notwithstanding the provisions of clauses (i)(a) through (c) of this paragraph, the commissioner may consider other measures of progress in determining whether to identify a school as a local assistance plan school using the 2013-2014 school year results and/or the 2014-2015 school year results, including but not limited to:

(a) whether a subgroup has made two consecutive years of AYP;

(b) the subgroup's Student Growth Percentile (SGP) is above State average;

(c) the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the subgroup in other schools in the State;

(d) whether the graduation rate of the subgroup is above State average; and/or



(e) if the subgroup's performance on an accountability measure has changed from year to year.

(iii) The commissioner shall consider the 2015-2016 school year results in determining whether a school designated as a local assistance plan school pursuant to this paragraph shall retain such designation in the 2017-2018 school year.