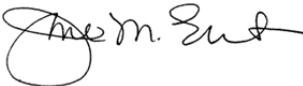




**TO:** P-12 Education Committee

**FROM:** Jhone M. Ebert 

**SUBJECT:** Proposed Emergency Adoption of Amendments to Sections 100.2(ff), 100.2(m), 100.18, 100.19, and Part 120 of the Commissioner's Regulations and the Addition of a new Section 100.21 of the Commissioner's Regulations Relating to the implementation of the State's Approved Every Student Succeeds Act (ESSA) Plan

**DATE:** June 6, 2018

**AUTHORIZATION(S):**



## SUMMARY

### Issue for Decision

Should the Board of Regents adopt, as an emergency action, the proposed amendments to §100.2(ff), §100.2(m), §100.18, §100.19 and Part 120 of the Commissioner's Regulations and the new §100.21 of the Commissioner's Regulations for the purpose of conforming Commissioner's Regulations with New York State's Every Student Succeeds Act (ESSA) plan that was approved by the United States Department of Education (USDE) in January 2018?

### Reason(s) for Consideration

Amendments and additions to Commissioner's Regulations are necessary to implement New York's USDE-approved ESSA plan and to comply with the provisions of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. §6301 et seq. (Public Law 114-95, 129 STAT. 1802).

### Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the June 2018 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts

and circumstances justifying the emergency are included as Attachments A and B, respectively.

### **Procedural History**

At its April 2018 meeting, the Board of Regents was presented with a detailed summary of the proposed amendment and the Board of Regents voted to authorize Department staff to publish the proposed amendment in the State Register for the 60-day public comment period so that the Department had an opportunity to receive as much public comment as possible before adoption as an emergency rule for the 2018-2019 school year, as required under ESSA. A Notice of Proposed Rulemaking was published in the State Register on May 9, 2018. An Assessment of Public Comment of the comments received to date on the proposed amendment is included as Attachment C.

Based on feedback from the field since publication of the proposed regulations in the State Register in May, two additional changes are being proposed for this section as described below. As a result, a Notice of Emergency Adoption and Revised Rulemaking will be published in the State Register on July 18, 2018. In accordance with the 30-day public comment period required under the State Administrative Procedure Act for revised rule makings, public comment and will be received until August 16, 2018. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

On December 10, 2015, ESSA was signed into law by President Obama. This bipartisan measure reauthorized the 50-year-old Elementary and Secondary Education Act (ESEA), which 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 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. New York State receives approximately \$1.6 billion annually in funding through ESSA.

After an extensive, 18-month long public engagement process, the Department, with Board approval, submitted New York State's ESSA plan to the USDE for review on September 17, 2018. Subsequently, the Department met regularly with the USDE to provide clarifications on the plan. On January 17, 2018, the USDE approved the State's plan. In January 2018, the Department provided the Board of Regents with an update on the approved plan and in March 2018, the Department provided an update regarding the financial transparency requirements related to ESSA.

### **Overview of Proposed Regulations**

In order to conform the Commissioner's Regulations to the State's USDE approved ESSA Plan and to prepare for implementation of the plan beginning with the

2018-19 school year, the Department is proposing several regulatory amendments. The attachment to this item includes the express terms referenced in this overview.

The proposed amendment to subdivision 100.2(ff) relates to the enrollment of youth released or conditionally released from residential facilities. This amendment clarifies the existing requirement that districts designate an employee(s) to be the transition liaison(s) with residential facility personnel, parents, students, and State and other local agencies for the purpose of facilitating a student's effective educational transition into, between, and out of such facilities to ensure that each student receives appropriate educational and appropriate supports, services, and opportunities; and this amendment also provides an overview of the duties of the liaison(s).

The proposed amendment to subdivision 100.2(m) relates to requirements for the New York State report card for schools and districts. This amendment updates the information to be provided in report cards to align with the provisions of ESSA and requires local educational agencies (LEAs) to post the local report cards on their website, where one exists, to satisfy ESSA's local report card requirements. If an LEA does not operate a website, the LEA must provide the information to the public in another manner determined by the LEA.

The proposed amendments to 100.18 clarify that this section, which contains provisions relating to implementation of New York's approved ESEA flexibility waiver, only applies to accountability designations made prior to July 1, 2018, except as otherwise provided in the new §100.21.

In order to implement the State's approved ESSA plan, the proposed amendments to §100.19 clarify that Failing Schools means schools that have been identified as Priority Schools and/or Comprehensive Support and Improvement Schools (CSI) for at least three consecutive years. These amendments also clarify that beginning with the 2018-19 school year, removal from receivership will be based upon a school's status as a CSI School rather than as a Priority School.

The proposed creation of §100.21 implements the new accountability and support and interventions of the State's approved ESSA plan commencing with the 2018-2019 school year. Such provisions shall include, but not be limited to, the following:

- Subdivision (a) sets forth an applicability clause which says that §100.21 supersedes paragraphs (p)(1) through (11) and (14) through (16) of § 100.2 and §100.18, which are the provisions of Commissioner's Regulations that were in place under the No Child Left Behind Act (NCLB) and the Department's Elementary and Secondary Education Act (ESEA) flexibility waiver, and that the new §100.21 shall apply in lieu of such provisions during the period of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, and any revisions and extensions thereof, except as otherwise provided in §100.21. If a provision of §100.2(p) or of §100.18 conflicts with §100.21, the provisions of §100.21 shall prevail.

- Subdivision (b) defines various terms, which are divided into general definitions, definitions related to school and district accountability, definitions related to school and district accountability designations, and definitions related to interventions for designated schools and districts to implement the new accountability system in New York State’s approved ESSA plan.
- Subdivision (c) outlines the procedures and requirements for registration of public schools, which remain the same as under the previous accountability regulations.
- Subdivision (d) relates to the requirements for the registration of public schools.
- Subdivision (e) provides that, commencing with the 2017-2018 school year results, the Commissioner will annually review the performance of all public schools, charter schools, and school districts in the State. The Commissioner shall determine whether such public school, charter school or school district shall be identified for Comprehensive Support and Improvement (CSI), Targeted Support and Improvement (TSI), or identified as a Target District in accordance with the criteria set forth in subdivision (f) of the regulation.

Subdivision (f) specifies the differentiated accountability methodology by which schools will be identified as either CSI (which will be identified every three years beginning with the 2018-2019 school year using 2017-2018 school year results) or TSI (which will be identified annually beginning with the 2018-2019 school year), and the methodology for identifying Target Districts. This section describes how six indicators (composite performance, student growth, combined composite performance and growth, English language proficiency, academic progress, and chronic absenteeism) are used in the methodology for identification of elementary and middle schools. This section also details how seven indicators (composite performance; graduation rate; combined composite performance and graduation rate; English language proficiency; academic progress; chronic absenteeism; and college, career, and civic readiness) are used in the methodology for identifying high schools. This subdivision also explains how each of these indicators is computed, how these computations are converted into a Level 1-4 for each accountability group for which a school or district is accountable, and how these levels assigned to the accountability groups are used to determine whether a school will be identified as in Good Standing, TSI, or CSI, and whether a district will be identified as a District in Good Standing or a Target District. This subdivision also contains provisions regarding the identification of high schools for CSI based on graduation rates below 67% beginning with 2017-18 school year results. In addition, this subdivision contains provisions regarding the identification of TSI schools for additional support as required by ESSA if an accountability group for which a school is identified performs at a level that would have caused the school to be identified as CSI if this had been the performance of the “all students” group. Please note: Based on feedback from the field since publication of the proposed regulations in the State Register in May, two additional changes are being proposed for this

section, specifically related to the College, Career, and Civic Readiness Index. First, the Department proposes changing from 1.5 to 2.0 the weighting for students who take a dual credit course and receive high school credit. Second, the Department proposes changing from 0 to 2.0 the weighting for ELLs who earn a Regents Diploma and Seal of Biliteracy after 4 years.

- Subdivision (g) provides that preliminarily identified CSI and TSI schools and Target Districts shall be given the opportunity to provide the Commissioner with any additional information concerning extenuating or extraordinary circumstances faced by the school or district that should be cause for the Commissioner to not identify the school as CSI or TSI or the district as a Target District.
- Subdivision (h) establishes the public notification requirements upon receipt of a designation of CSI or TSI school or a Target District.
- Subdivision (i) specifies the interventions that must occur in schools identified as CSI or TSI, as well as districts identified as Target Districts. This section describes the requirements for identified schools as they relate to parental involvement, participatory budgeting, school comprehensive improvement plans, and school choice. This subdivision also describes the increased support and oversight that schools that fail to improve will receive. This subdivision also outlines the interventions for schools that, beginning with 2017-18 and 2018-19 school year results, fail for two consecutive years to meet the 95% participation rate requirement for annual state assessments for the same accountability group for the same accountability measure and are not showing improvement in the participation rate for that accountability group. This subdivision also specifies the support that districts must provide to a school that is not CSI or TSI but has performed at Level 1 for an accountability group for an accountability measure.
- Subdivision (j) establishes the criteria for a school's or a district's removal from an accountability designation.
- Subdivision (k) provides the criteria for the identification of schools for public school registration review. Under this subdivision, the Commissioner may place under preliminary registration review any school identified for receivership; any school that is identified as CSI for three consecutive years; and any school that has been identified as a poor learning environment. Also, under this subdivision, a school under registration review shall also be identified as a CSI school, and subject to all the requirements of that designation.
- Subdivision (l) specifies the process by which the Commissioner will place a school under registration review; and the required actions of the district and the school related to the designation. This subdivision also describes the requirements for receivership schools that have also been identified for registration review.

- Subdivision (m) specifies the criteria and process for removal of schools from registration review, school phase-out or closure.

The proposed amendments to Part 120 update provisions in the existing regulations pertaining to the sunseting of No Child Left Behind requirements regarding highly qualified teachers and provide for the continuation under ESSA of provisions pertaining to persistently dangerous schools and unsafe school choice and updates to public school choice provisions.

Based on comments received during the 60-day public comment period required under the State Administrative Procedure Act, the Department recommends making the following changes to the proposed amendment:

- First, the Department proposes changing from 1.5 to 2.0 the weighting for students who take a dual credit course and receive high school credit in the College, Career, and Civic Readiness Index.
- Second, the Department proposes changing from 0 to 2.0 the weighting for ELLs who earn a Regents Diploma and Seal of Biliteracy after 4 years in the College, Career, and Civic Readiness Index.
- The Department also proposes modifying the requirement that a new school replace a closed and restructured SURR/CSI school with staff who consist “primarily” of experienced teachers (at least three years) who have been rated Effective/Highly Effective in each of the past three years, to clarify that this provision is subject to collective bargaining as required under article 14 of the Civil Service Law, and require that any successor collective bargaining agreement authorize such appointments unless otherwise prohibited by law.

As a result of these changes to the proposed amendment, a Notice of Revised Rulemaking will be published in the State Register on July 18, 2018.

**Related Regents Items:**

October 2016: [Every Student Succeeds Act State Plan Development Activities](#)

November 2016: [Development of New York’s Every Student Succeeds Act State Plan](#) and [ESSA State Plan High Concept Ideas](#)

December 2016: [Development of New York’s Every Student Succeeds Act State Plan](#)

January 2017: [Development of the New York State Every Student Succeeds Act Plan](#) and [ESSA State Plan High Concept Ideas](#) and [Proposed “High Concept Idea” Summaries -- Supports and Improvements for Schools 12/1/2016](#) and [Survey of School Quality and Student Success Indicators](#)

March 2017: [ESSA Public Retreat](#)

April 2017: [April 4 Board of Regents Meeting on ESSA](#)

May 2017: [Every Student Succeeds Act Draft State Plan for Public Comment](#)

June 2017: [Every Student Succeeds Act State Plan: Update on Public Hearings and Public Comment](#)

July 2017: Board of Regents Public Retreat, with [Proposed Changes to Final draft plan for submission](#); [State Dashboards Presentation](#); [Next Generation Assessments Presentation](#); [Social, Emotional, Health and Mental Health, and Attendance Issues Presentation](#); [Stakeholder Feedback Analysis Presentation](#)

September 2017: [Revised Draft Every Student Succeeds Act State Plan and Associated waivers](#)

January 2018: [USDE Review and Approval of New York's Every Student Succeeds Act State Plan](#)

March 2018: [Every Student Succeeds Act Financial Transparency](#)

April 2018: [Proposed Amendments to §100.2\(ff\), 100.2\(m\), 100.18, 100.19, and Part 120 of the Commissioner's Regulations and the Addition of a new §100.21 of the Commissioner's Regulations Relating to the implementation of the State's Approved Every Student Succeeds Act \(ESSA\) Plan](#)

### **Recommendation:**

Department staff recommends that the Board of Regents take the following action:

VOTED: That §100.2(ff), 100.2(m), 100.18, 100.19 and Part 120 of the Commissioner's Regulations be amended and that §100.21 be added to Commissioner's Regulations, as submitted, effective July 1, 2018, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of general welfare to ensure that the State's USDE approved ESSA plan can be implemented beginning with the 2018-2019 school year, consistent with the requirements set forth by the United States Department of Education.

### **Timetable for Implementation:**

If adopted at the June 2018 Regents meeting, the proposed amendment will become effective as an emergency measure on July 1, 2018. It is anticipated that the proposed amendment will be presented for permanent adoption at the September 2018 Board of Regents meeting after publication of a Notice of Emergency Adoption and

Revised Rulemaking in the State Register on July 18, 2018 and expiration of the 30-day public comment period for revised rulemakings. If adopted at the September 2018 Regents meeting, the proposed amendment will be effective as a permanent rule on October 3, 2018.



**Attachment A**

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 112, 207, 210, 215, 305, 309 and 3713 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. Subdivision (ff) of section 100.2 of the Regulations of the Commissioner of Education is amended, as follows:

(ff) Enrollment of youth released or conditionally released from residential facilities.

(1) It shall be the duty of the board of education and the superintendent of schools of each school district to ensure:

(i) that any youth presented for enrollment who is entitled to attend the schools of such district pursuant to Education Law, section 3202 and who is released or conditionally released from a residential facility operated by or under contract with the Office of Children and Family Services, the Department of Corrections and Community Supervision, the Office of Alcoholism and Substance Abuse Services, the Office of Mental Health, the Office [of Mental Retardation and] for People with Developmental Disabilities, [or] a local department of social services or a local county correctional facility, is promptly enrolled and admitted to attendance in such district, and that school district personnel cooperate with such facilities and agencies in facilitating such prompt enrollment;

(ii) that the youth's educational records are requested from the school or educational program such student attended while in the residential facility; and

(iii) where applicable, that the educational plan for such student's release or conditional release, as submitted to the family court pursuant to Family Court Act section 353.3(7)(c), is implemented.

(2) Each school district shall designate one or more employees or representatives to [facilitate the prompt enrollment of students who are released or conditionally released and whose] serve as a transition liaison(s) with residential facility personnel as such facility is defined in subparagraph (i) of paragraph (1) of this subdivision, parents, students, and State and other local agencies for the purpose of facilitating a student's effective educational transition into, between, and out of such facilities to ensure that each student receives appropriate supports, services, and opportunities. The transition liaison's duties shall include, but are not limited to[, the receipt of student records and serving as a district contact person with residential facilities and State and local agencies.]:

(i) ensuring that the district has complied with the requirements of this subdivision, Parts 116 and 118 of the Commissioner's regulations and Education Law §112, as applicable;

(ii) coordinating the timely transmission, receipt, and review of a student's educational records (including but not limited to, report cards, transcripts, progress notes and Individualized Educational Plans) from the previous school and/or any educational program placements;

(iii) collaborating with staff in such facilities to ensure a student is appropriately enrolled in required educational and support services; and

(iv) ensuring that parents or guardians of students are informed of educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children.

2. Paragraph (m) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2018, as follows:

(1) The New York State report card for each public school, charter school, and school district, except the New York City school district, shall [consist of the following reports] be prepared by the Education Department[:

(i) the New York State report card;

(ii) the New York State accountability report; and

(iii) for public school districts, the fiscal supplement].

The chancellor of the New York City School District shall produce a New York City report card, as approved by the [c]Commissioner.

(2) The superintendent of each public school district, except the New York City School District, shall present [all three parts of] the New York State report card to the board of education of such district at a public meeting within 30 calendar days of the commissioner's release of [each] the report. In New York City, the chancellor shall present, in this same time period, the New York City report card to the New York City Board of Education. In a charter school, the charter school leader shall present, in this same time period, the charter school report card to the charter school board of trustees.

(3) . . .

(4) To satisfy the local report card requirements under section 1111(h)(2) of the [No Child Left Behind Act] Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. section 6311(h)(2),

each report card for a local educational agency, as defined in 100.21(b)(1) shall be placed on the website of the local educational agency or, in any case in which a local educational agency does not operate a website, provided to the public in another manner determined by the local educational agency. Each public school principal and each [principal] school leader of a charter school receiving Federal funding under title 1 shall also distribute, within 30 calendar days of the commissioner's release of such reports, copies of the New York State report card [and the New York State accountability report] for the school and the district, or, in the New York City School District, the New York City report card to the parent of each student. A district or charter school may add any other appropriate information. Such additional information also must be distributed to the parent of each student and must be made widely available through public means, such as posting on the Internet, distribution through the media, and distribution through public agencies. To the extent practicable, the district or charter school shall provide the reports and additional information in a language that the parents can understand.

(5) The comprehensive [assessment] information report for each nonpublic school will include the following information, for each school building[,for the three school years immediately preceding the school year in which the report is issued]:

(i) student test data on the New York State elementary and middle-level ELA, [and] mathematics, and science assessments [in the New York State Testing Program, the Regents competency tests], all Regents examinations, New York State English as a Second Language Achievement test [the second language proficiency examinations as defined in this Part];

(ii) student enrollment by grade, racial/ethnic group and English language learner status;

(iii) [number of students transferred into the alternative high school and high school equivalency preparation programs as set forth in section 100.7 of this Part];

[(iv)] data, as required by the commissioner, on diplomas and certificates awarded;

[(v)] (iv) any additional information prescribed by the commissioner on educational equity and other issues; and

[(vi)] (v) any additional information which the chief administrative officer of the nonpublic school believes will reflect the relative assessment of a school building or district. The chief administrative officer of each nonpublic school shall initiate measures designed to improve student results wherever it is warranted. The chief administrative officer of each nonpublic school shall be responsible for making the comprehensive [assessment] information report accessible to parents.

3. Subdivision (a) of section 100.18 of the Regulations of the Commissioner of Education is amended, as follows:

(a) Applicability. Notwithstanding the provisions of section 100.2(p)(1) through (11) and (14) through (16) of this Part, this section shall apply to school districts and charter schools in lieu of such provisions during the period of the Elementary and Secondary Education Act (ESEA) waiver, and any revisions and extensions thereof, except as otherwise provided in this section for all accountability designations made prior to July 1, 2018 and to the corresponding interventions for such schools and/or school districts for the 2018-2019 school year, except as otherwise provided in section 100.21 of this Part. If a provision of section 100.2(p) of this Part conflicts with this

section, the provisions of this section shall prevail and the provision of section 100.2(p) of this Part shall not apply.

4. Section 100.19 of the Regulations of the Commissioner of Education is amended as follows:

§100.19. Takeover and restructuring of failing and persistently failing schools.

(a) Definitions. As used in this section:

(1) . . .

(2) . . .

(3) Priority school shall mean a school identified as a priority school pursuant to section 100.18(g) of this Part prior to July 1, 2018. On or after July 1, 2018, a priority school shall mean a school identified as a comprehensive support and improvement school pursuant to section 100.21 of this Part.

(4) School district in good standing shall mean a school district that has not been identified pursuant to section 100.18(g) of this Part as a focus district prior to July 1, 2018. On or after July 1, 2018, a school district in good standing shall mean a school district that has not been identified pursuant to section 100.21 of this Part as a Target District.

(5) . . .

(6) . . .

(7) ...

(8) ...

(9) ...

(10) . . .

(11) ...

(12) Department-approved intervention model or comprehensive education plan shall mean, for school years prior to the 2019-2020 school year, a comprehensive education plan pursuant to section 100.18(h)(2)(iii), a plan for a School Under Registration Review pursuant to section 100.18(l)(3) or a school phase out or closure plan pursuant to section 100.18(m)(5) of this Part. For school years commencing on or after July 1, 2019, Department-approved intervention model or comprehensive education plan shall mean a school comprehensive education plan as defined in section 100.21(b)(4)(viii) of this Part, a plan for a School Under Registration Review pursuant to section 100.21(l) of this Part, or a school phase out or closure plan pursuant to section 100.21(l) of this Part.

(13)...

(14) ...

(15) ...

(16) ...

(17) ...

(18) ...

(b) ...

(c) ...

(d) School District Receivership.

(1) . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) With respect to a performance review conducted in accordance with paragraph (5) of this subdivision:

(i) at the end of a school year in which a school has been removed from priority school status, pursuant to section 100.18(i)(1) of this Part for school years ending prior to July 1, 2018 and for a school that is removed from comprehensive support and improvement status, pursuant to subdivision (j) of section 100.21 of this Part for school years commencing on or after July 1, 2018, the [commissioner] Commissioner shall remove the school's designation as persistently struggling or struggling, except that, for a school that has been placed into independent receivership, the independent receiver shall continue to implement the school intervention plan consistent with subdivision (h) of this section; and

(ii) the [commissioner] Commissioner shall continue a school under district operation with the superintendent vested with the powers of a receiver consistent with this section if a school has made demonstrable improvement as determined by the commissioner in consultation and collaboration with the school district based on performance metrics and goals described in paragraph (2) of this subdivision and shall continue to be subject to annual review by the department as provided in paragraph (5) of this subdivision.

(7) . . .

(8) . .

(9) . . .

(e) . . .

(f) . . .

(g) . . .



(h) . . .

(i) . . .

(j) Phase [out] Out and Closure of Struggling and Persistently Struggling School.

Nothing in this section shall prohibit the [commissioner] Commissioner from directing a school district to phase out or close a school pursuant to paragraph (f)(6) of this section, or section 100.18(l) of this Part prior to July 1, 2018, or subdivision (l) of section 100.21 of this Part on or after July 1, 2018, or prohibit the Board of Regents from revoking the registration of a school pursuant to such paragraph, or prohibit a school district from closing or phasing out a school with the approval of the commissioner.

(k) ...

(l) . . .

5. A new section 100.21 of the Regulations of the Commissioner of Education is added, effective July 1, 2018, as follows:

§100.21. ESSA Accountability System.

(a) Applicability. Notwithstanding the provisions of paragraphs (p)(1) through (11) and (14) through (16) of section 100.2 and section 100.18 of this Part, this section shall apply to school districts and charter schools in lieu of such provisions during the period the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, is effective, except as otherwise provided in this section. If a provision of paragraph (p) of section 100.2 or section 100.18 of this Part conflicts with this section, the provisions of this section shall prevail and the provisions of paragraph (p) of section 100.2 or section 100.18 of this Part shall not apply. Provided that for accountability designations made prior to July 1, 2018, the requirements of section 100.18 shall

continue to apply to the extent that plans and interventions under that section are required to be implemented until the end of the 2018-2019 school year.

(b) Definitions. As used in this section:

(1) General Definitions

(i) ESSA means 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).

(ii) Title I means Title I, part A of Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301-6327 (Public Law 114-95, 129 STAT. 1802).

(iii) Board of education shall mean the trustees or board of education of a school district; provided that in the case of the city school district of the City of New York, such term shall mean the chancellor of the city school district acting in lieu of the board of education of such city school district to the extent authorized by article 52-A of the Education Law and, with respect to community school districts and New York City superintendencies, such term shall mean the community superintendent or other superintendent of schools acting in lieu of the board of education to the extent authorized by article 52-A of the Education Law.

(iv) School district or district shall mean a common, union free, central, central high school or city school district, provided that, in the case of the city school district of the City of New York, such term shall mean a community school district or New York City superintendency to the extent that such entity is the local educational agency for purposes of Title I and a special act school district as defined in subdivision 8 of section 4001 of the Education Law, except as otherwise provided in this section.

(v) Public school shall mean an elementary, middle, or high school operated by a school district or a charter school authorized pursuant to Article 56 of the Education Law, except as otherwise provided in this section.

(vi) Local educational agency (LEA) shall mean a local educational agency as defined in section 8101(30) of ESSA, including a school district, board of cooperative educational services, county vocational education and extension board, or charter school.

(vii) A transfer high school means a high school in which the majority of students upon their first enrollment in the high school had previously attended grade nine or higher in another high school or a high school in which the majority of students attained age 16 or higher in the year in which the students first entered grade 9, or a school in which more than 50 percent of currently enrolled students are English language learners as defined in Part 154 of this Title who have attended school in the 50 United States (excluding Puerto Rico) and the District of Columbia for less than three years.

(viii) Alternate assessment means a New York State Alternate Assessment approved by the Commissioner and recommended by the committee on special education for students with severe disabilities as defined in section 100.1(t)(2)(iv) of this Part, in lieu of a required State assessment.

(ix) Continuously enrolled means, for grades 3-8 and ungraded age equivalent students, students enrolled on BEDS day as defined in this subdivision and enrolled during the test administration period for the subject tested, and for high school, students in the accountability cohort, as defined in paragraph (b)(2) of this section, except that for the English language proficiency indicator continuously enrolled means, for grades 9-

12 and ungraded age equivalent students, students enrolled on BEDS day and enrolled during the test administration period.

(x) Significant medical emergency means an excused absence from school during both the regular and makeup examination period for which a school district has documentation from a medical practitioner that a student is so incapacitated as to be unable to participate in the State assessment given during that examination period.

(xi) Accountability subgroups shall mean the following subgroups: all students; students from major racial and ethnic groups, as set forth in subparagraph (bb)(2)(v) of section 100.2 of this Part; students with disabilities, as defined in section 200.1 of this Title, including students no longer identified as students with disabilities but who had been so identified during the preceding one or two school years; English language learners, as defined in Part 154 of this Title, including students previously identified as an English language learner during the preceding one, two, three, or four school years; and economically disadvantaged students as defined in subparagraph (xii) of this paragraph; except that for the purposes of the accountability and high school graduation cohorts, students who were students with disabilities and students who were English language learners at any time while members of these cohorts shall be included in these subgroups. The school district accountability groups for each grade level shall include any student enrolled in a public school in the district or placed out of the district for educational services by the district committee on special education or a district official who meets the criteria for the accountability subgroup.

(xii) Economically disadvantaged students shall mean students who participate in, or whose family participates in, economic assistance programs, such as the Free or Reduced Price Lunch Programs; Social Security Insurance (SSI); Food Stamps; Foster

Care; Refugee Assistance (cash or medical assistance); Earned Income Tax Credit (EITC); Home Energy Assistance Program (HEAP); Safety Net Assistance (SNA); Bureau of Indian Affairs (BIA); or Family Assistance: Temporary Assistance for Needy Families (TANF). Provided that, if one student in a family is identified as economically disadvantaged, all students from that household may be identified as economically disadvantaged.

(xiii) For elementary and middle-level students, participation rate means the percentage of students enrolled during the test administration period who did not have a significant medical emergency and who received a valid score on the required State assessment in elementary- and middle-level grades. The State assessments that may be used in elementary- and middle-level grades to fulfill the testing requirement for participation in English Language Arts (ELA) and Mathematics are the New York State Testing Program (NYSTP) assessments in ELA and Mathematics in grades 3-8, Regents examinations in Mathematics taken in lieu of the NYSTP assessments for advanced grades 7 and 8 students, the Alternate Assessment for eligible students with disabilities in grades 3-8, and the New York State English as a Second Language Achievement Test (NYSESLAT) for English language learners enrolled in school in one of the 50 States in the United States (excluding Puerto Rico) or the District of Columbia for less than one year as of a date determined by the Commissioner.

(xiv) For high school students, participation rate means the percentage of students in grade 12 during the reporting year who received a valid score on the required high school assessments. 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 New York State Regents examinations in English and

Mathematics, approved alternatives to Regents exams in English and Mathematics, and the New York State Alternate Assessment (NYSAA) for eligible students with disabilities at the secondary level.

(xv) Accountability level means a level from 1 to 4 derived when scores earned on Regents examinations and Regents alternative examinations as defined in this subdivision are converted to four accountability levels based on predetermined accountability cut scores established by the Commissioner. Accountability levels are used for calculating Performance Indices at the secondary level for ELA, Mathematics, Science, and Social Studies as described in paragraph (2) of subdivision (b) of this section.

(xvi) Performance levels shall mean for accountability determinations regarding comprehensive support and improvement schools, targeted support and improvement schools, and target districts made commencing with the 2017-2018 school year assessment results, as follows:

(a) for elementary and middle grades:

(1) Level 1 - basic:

(i) a score of Level 1 on State assessments in ELA, Mathematics, and Science;

(ii) a score of Level 1 on the New York State Alternate Assessment in ELA, Mathematics, and Science;

(iii) a score of Accountability Level 1 on a Regents Mathematics exam for advanced grade 7 or 8 students;

(iv) a score of Level 1 on a Regents Science exam for advanced grade 8 students;

(2) Level 2 - basic proficient:

(i) a score of Level 2 on State assessments in ELA, Mathematics, and Science;

(ii) a score of Level 2 on the New York State Alternate Assessment in ELA, Mathematics, and Science;

(iii) a score of Accountability Level 2 on a Regents Mathematics exam for advanced grade 7 or 8 students;

(iv) a score of Level 2 on a Regents Science exam for advanced grade 8 students.

(3) Level 3 - proficient:

(i) a score of Level 3 on State assessments in ELA, Mathematics, and Science;

(ii) a score of Level 3 on the New York State Alternate Assessment in ELA, Mathematics, and Science;

(iii) a score of Accountability Level 3 on a Regents Mathematics exam for advanced grade 7 or 8 students;

(iv) a score of Level 3 on a Regents Science exam for advanced grade 8 students.

(4) Level 4 - advanced:

(i) a score of Level 4 on State assessments in ELA, Mathematics, and Science;

(ii) a score of Level 4 on the New York State Alternate Assessment in ELA, Mathematics, and Science;

(iii) a score of Accountability Level 4 on a Regents Mathematics examination for advanced grade 7 or 8 students;

(iv) a score of Level 4 on a Regents Science examination for advanced grade 8 students.

(b) for secondary-level grades:

(1) Level 1 - basic:

(i) a score of Accountability Level 1 on a Regents examination in ELA, Mathematics, Science, or Social Studies;

(ii) a score of Level 1 on the New York State Alternate Assessment in ELA, Mathematics, or Science at the secondary level;

(iii) a failing score on a Regents alternative examination in ELA, Mathematics, Science, or Social Studies;

(iv) a cohort member who has not been tested on any of the assessments in (i) through (iii).

(2) Level 2 (basic proficient):

(i) a score of Accountability Level 2 on a Regents examination in ELA, Mathematics, Science, or Social Studies;

(ii) a score of Level 2 on the New York State Alternate Assessment in ELA, Mathematics, or Science at the secondary level.

(3) Level 3 (proficient):

(i) a score of Accountability Level 3 on a Regents examination in ELA, Mathematics, Science, or Social Studies;

(ii) a score of Level 3 on the New York State Alternate Assessment in ELA, Mathematics, or Science at the secondary level;

(iii) a passing score on a State-approved alternative examination to a Regents examination in ELA, Mathematics, Science, or Social Studies; or

(iv) any alternative examination to a Regents examination in ELA, Mathematics, Science, or Social Studies accepted by the State for students covered under the interstate compact on educational opportunity for military children pursuant to 100.20(c).



(4) Level 4 (advanced):

(i) a score of Accountability Level 4 on a Regents examination in ELA, Mathematics, Science, or Social Studies;

(ii) a score of Level 4 on the New York State Alternate Assessment in ELA, Mathematics, or Science at the secondary level.

(c) Advanced middle school Mathematics students:

(1) For students enrolled in grade 7 or 8 and who take a Regents examination in Mathematics but do not take the grade 7 or 8 New York State Testing Program assessment in Mathematics, participation and accountability determinations for the school in which the student is enrolled in grade 7 or 8 shall be based upon such student's performance on the Regents examination in Mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on Mathematics assessments taken after the student first enters grade 9.

(2) For students enrolled in grade 7 or 8 who take both the grade 7 or 8 New York State Testing Program assessment in Mathematics and a Regents examination in Mathematics, participation and accountability determinations for the school in which the student is enrolled in grade 7 or 8 shall be based upon such student's performance on the New York State Testing Program assessment in Mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's highest performance level/score earned on the Regents examination taken in grade 7 or 8 or Regents examinations taken after the student first enters grade 9.

(d) Advanced middle school Science students:

(1) For students enrolled in grade 8 who take a Regents examination in science but do not take the Grade 8 Intermediate Science Test, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the Regents examination in Science. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on Science assessments after the student first enters grade 9.

(2) For students enrolled in grade 8 who take both the grade 8 Science Intermediate-Level Science Test and a Regents examination in Science, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the Grade 8 Intermediate-Level Science Test. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's highest performance level/score earned on the Regents examination taken in grade 7 or 8 or Regents examinations taken after the student first enters grade 9.

(3) For students who took the Grade 8 Intermediate-Level Science Test when they were enrolled in grade 7 and who take a Regents examination in Science when enrolled in grade 8, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the Regents examination in Science.

(4) For students who have taken the grade 8 Science intermediate assessment when enrolled in grade 7 and who do not take a Regents examination in Science when enrolled in grade 8, accountability determinations for the school in which the student is

enrolled in grade 8 shall be based upon the student's performance on the Grade 8 Intermediate-Level Test taken in grade 7.

(xvii) 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 section, the minimum n size is 30 unless otherwise provided. For the Weighted Academic Achievement Index and the Core Subject Performance Index the n size applies to the denominator used to calculate the indices. For English Language Proficiency; Chronic Absenteeism; Graduation Rate; and College, Career, and Civic Readiness, the n size applies to the denominator used to calculate the rates. For Growth, the n size applies to three years of results in ELA and Mathematics combined. For the Weighted Academic Achievement Index, the Core Subject Performance Index; the Composite Performance; Academic Progress; Graduation Rate; and College, Career, and Civic Readiness indices, if there are fewer than 30 results in the current school year, then the results from the current and prior school year shall be combined and used if the results shall be equal to or greater than 30 to meet the minimum n size requirement. If the minimum n size is not sufficient to establish a baseline for a subgroup in order develop a school or district MIP as defined in paragraph (2) of this subdivision, the Commissioner shall not make an accountability determination for an accountability subgroup for the Academic Progress; Graduation Rate; Chronic Absenteeism; or College, Career, Career, and Civic Readiness measures.

(xviii) Self-Assessment Process. For each school year, public schools and school districts in which a self-assessment process is required pursuant to this section shall conduct a self-assessment of their academic program and the school learning

environment, in such format and using such criteria as may be prescribed by the Commissioner. Such self-assessment shall not be required of those schools and school districts for which the Commissioner shall conduct a review of the performance of the school or school district in accordance with subdivision (g) of this section. The superintendent of the school district or principal of the charter school shall review the self-assessment(s) and make a recommendation to the Commissioner, in such format and according to such timeframe as the Commissioner may prescribe, as to whether the accountability group(s) for which the school is accountable within the school or school district shall be considered to have performed at Level 1, 2, 3, or 4 for each accountability measure for which the school is below the minimum n size. The Commissioner shall consider the self-assessment and any other relevant information in determining the levels to assign to the school's accountability group(s) for such measures.

(a) A registered school that has no continuously enrolled students because all students are students with disabilities who attend the school and who have been placed outside of their district of residence (in New York City, outside of their community school district of residence) for educational services by the district committee on special education or a school district official shall participate in a self-assessment process based on the students who are enrolled in the school. Schools in which a majority of the students for which the school is accountable have not been enrolled in the school as the result of a school district placement shall participate in the self-assessment process as described in this subparagraph.

(xix) BEDS day shall mean the basic educational data system reporting deadline or such date as prescribed by the Commissioner.

(xx) Regents alternative examination shall mean a Department-approved alternative examination to a Regents examination pursuant to sections 100.2(f) and (mm) of this Title.

(2) Definitions related to measures of school and district accountability.

(i) 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) Composite Performance; (2) Student Growth; (3) Combined Composite Performance and Student Growth; (4) English Language Proficiency; (5) Academic Progress; and (6) Chronic Absenteeism as described in subdivision (f) of this section. High school accountability measures shall include: (1) Composite Performance; (2) Graduation Rate; (3) Combined Composite Performance and Graduation Rate; (4) English Language Proficiency; (5) Academic Progress; (6) Chronic Absenteeism; and (7) College, Career, and Civic Readiness as described in subdivision (f) of this section.

(ii) Graduates are students in the Graduation Rate Cohort as defined in subparagraph (xvi) of this paragraph who earned a Regents or local diploma by August 31<sup>st</sup> of the reporting year.

(iii) The State baseline means the statewide performance of an accountability subgroup on an accountability measure that is used to establish the State Long-term goals and annual Measures of Interim Progress for that measure. A state baseline shall be established for the following accountability measures: Academic Progress in ELA;

Academic Progress in Mathematics; the Four-Year Graduation Rate; the Five-Year graduation rate; the Six-Year graduation rate; chronic absenteeism; and college, career, and civic readiness.

(iv) School or district baseline mean the school or school district performance of an accountability subgroup on an accountability measure that is used to establish the school or school district's annual measures of interim progress for that subgroup on that measure. School and district baselines shall be established for the following accountability measures: Academic Progress in ELA; Academic Progress in Mathematics; the Four-Year Graduation Rate; the Five-Year Graduation Rate; the Six-Year Graduation Rate; Chronic Absenteeism; and College, Career, and Civic Readiness. Provided that for schools or districts with subgroups that fail to meet the minimum n size requirements, a school and/or district baseline will be established when such subgroup meets the minimum n size requirements, for the purpose of establishing Measures of Interim Progress.

(v) State Measures of Interim Progress (State MIPs). For each accountability measure that a State baseline has been established, the Commissioner shall establish for each accountability subgroup annual State MIPs. Prior to the start of the 2018-19 school year, the Commissioner shall establish State MIPs for the 2017-2018 through the 2021-2022 school years. The Commissioner shall annually establish new State MIPs for the school year next succeeding the last school year for which State MIPs had been previously established.

(vi) School and District Measures of Interim Progress (school and district MIPs). For each accountability measure for which a school or district baseline has been established, the Commissioner shall establish for each accountability subgroup annual

school and district MIPs. Prior to the start of the 2018-2019 school year, the Commissioner shall establish school and district MIPs for the 2017-2018 through the 2021-2022 school years. The Commissioner shall annually establish new school and district MIPs for the school year next succeeding the last school year for which school and district MIPs had been previously established. In the event that a school and/or district undergoes a significant change in student enrollment as determined by the Commissioner, including but not limited to a change in grade configuration or a significant increase or decrease in numbers of students who are members of an accountability subgroup, the district may petition the Commissioner to revise the school and/or district specific MIPs assigned to one or more accountability subgroups for one or more accountability measures in the school.

(vii) State Long-term goal shall mean the amount of progress the State expects each accountability subgroup to make, based on the State baseline, at the end of a five-year period towards achieving the State End-goal. Exceeding Long-term goal is determined by subtracting the Long-term goal from the State-End-goal, dividing by 2, and then adding the result to the Long-term goal. The outcome must be at or above that resulting number.

(viii) State End-goal shall mean the ultimate desired performance at an undetermined future point for an accountability subgroup on an accountability measure for which a State Long-term goal has been established.

(ix) Student growth means the change in student achievement for an individual student between two or more points in time.

(x) The Mean Student Growth Percentile means the result of a statistical model that calculates each student's change in achievement between two or more points in

time on a State assessment and compares each student's performance to that of similarly achieving students.

(xi) The out-of-school suspension rate shall mean the number of students who were suspended from school (not including in-school suspensions) for one full day or longer anytime during the school year divided by the number of students enrolled on BEDS day of that school year commencing with data collected for the 2017-2018 school year, which shall in the future be incorporated into the accountability system within a timeframe prescribed by the Commissioner. A student is counted only once, regardless of whether the student was suspended one or more times during the school year.

(xii) Accountability cohort.

(a) Except as provided in clauses (b) and (c) of this subparagraph, the accountability cohort for each public school for purposes of computing secondary-level composite performance and academic progress for any given school year shall consist of those students who first enrolled in ninth grade anywhere four years prior to the current reporting year and who were enrolled in the school on BEDS day of the reporting year. The district accountability cohort for purposes of computing secondary-level composite performance and academic progress for any given school year shall consist of those students who first enrolled in ninth grade anywhere four years prior to the current reporting year and who were as of BEDS day for the reporting year, enrolled in the school district or placed by the school district committee on special education or by school district officials in educational programs outside the school district on BEDS day of the reporting year. Students with disabilities in ungraded programs shall be included in the district and school accountability cohorts in the fourth school year following the one in which they attained the age of 17.



(b) The following students shall not be included in the school accountability cohort: students whose last regular enrollment record indicates that the student transferred to another high school or alternative high school equivalency preparation program approved pursuant to section 100.7 of this Part, or for which the public school or school district has provided evidence of enrollment in a high school equivalency preparation program on such form as the Commissioner may prescribe, or a prison or juvenile facility, or home schooling by a parent or guardian, or postsecondary school prior to earning a diploma, or who are a prior graduate from outside the United States and enrolled without documentation from their previous school, or who left the United States or its territories, or who are deceased; except that, the following students will be included in the high school cohort of the school they attended before transferring:

(1) students whose last regular enrollment record indicates that the student transferred to an alternative high school equivalency preparation program approved pursuant to section 100.7 of this Part, or for which the public school or school district has provided evidence of enrollment in a high school equivalency preparation program on such form as the Commissioner may prescribe, but leave that program before the end of the third school year after the school year in which they first entered grade 9 without having earned a high school equivalency diploma or without entering a program leading to a high school diploma; and

(c) The following students shall not be included in the district accountability cohort: students whose last regular enrollment record as determined by the Commissioner indicates that he/she transferred to a high school that is not a component of the school district or to an alternative high school equivalency preparation program approved pursuant to section 100.7 of this Part, or for which the public school or school

district has provided evidence of enrollment in a high school equivalency preparation program on such form as the Commissioner may prescribe, or criminal justice facility, or home schooling by a parent or guardian, or postsecondary school prior to earning a diploma, or who are a prior graduate from outside the United States and enrolled without documentation from their previous school, or who left the United States or its territories, or who are deceased; except that the following students will be included in the high school cohort of the school district they attended before transferring:

(1) students whose last enrollment record indicates the student transferred to an alternative high school equivalency preparation program approved pursuant to section 100.7 of this Part or for which the public school or school district has provided evidence of enrollment in a high school equivalency preparation program on such form as the Commissioner may prescribe, but leave that program before the end of the third school year after the school year in which they first entered grade 9 without having earned a high school equivalency diploma or without entering a program leading to a high school diploma.

(xiii) Graduation Rate Cohort.

(a) The Four-Year Graduation Rate Cohort for each public school and school district shall consist of those students (including an ungraded student with a disability in accordance with clause (e) of this subparagraph) whose first date of entry into grade nine (anywhere) was four years previously and whose last enrollment in the school or district (as applicable), did not end because of transfer to another school or district (as applicable), transfer to home schooling by a parent or guardian, transfer to a postsecondary school prior to earning a diploma, or being a prior graduate from outside the United States and enrolled without documentation from their previous school, or

leaving the United States or its territories, or transferred to a prison or juvenile facility, or death. Data for this cohort are captured as of June 30 of the fourth school year after the school year in which the cohort first entered grade nine. Data for this cohort are lagged by a year.

(b) The Five-Year Graduation Rate Cohort for each public school, and school district shall consist of those students (including an ungraded student with a disability in accordance with clause (e) of this subparagraph) whose first date of entry into grade nine (anywhere) was five years previously and whose last enrollment in the school or district (as applicable), did not end because of transfer to another school or district (as applicable), transfer to home schooling by a parent or guardian, transfer to a postsecondary school prior to earning a diploma, or being a prior graduate from outside the United States and enrolled without documentation from their previous school, or leaving the United States or its territories, or transferred to a prison or juvenile facility, or death. Data for this cohort are captured as of June 30 of the fifth school year after the school year in which the cohort first entered grade nine. Data for this cohort are lagged by a year.

(c) The Six-Year Graduation Rate Cohort for each public school and school district shall consist of those students (including an ungraded student with a disability in accordance with clause (e) of this subparagraph) whose first date of entry into grade nine (anywhere) was six years previously and whose last enrollment in the school or district (as applicable), did not end because of transfer to another school or district (as applicable), transfer to home schooling by a parent or guardian, transfer to a postsecondary school prior to earning a diploma, or being a prior graduate from outside the United States and enrolled without documentation from their previous school, or

leaving the United States or its territories, or transferred to a prison or juvenile facility, or death. Data for this cohort are captured as of June 30 of the sixth school year after the school year in which the cohort first entered grade nine. Data for this cohort are lagged by a year.

(d) Graduates are students in the Four-Year, Five-Year, or Six-Year Graduation Rate Cohort who earned a local or Regents diploma by August 31 following the fourth, fifth or sixth school year after the school year in which the cohort first entered grade nine.

(e) Ungraded students with disabilities shall be included in the Accountability Cohort and the Four-Year, Five-Year, and Six-Year Graduation Rate Cohorts in the school year in which they attain the age of 17.

(3) Definitions related to school and district accountability designations.

(i) Comprehensive Support and Improvement (CSI) Schools (elementary and middle schools). The State shall designate elementary/middle schools as CSI schools using the following criteria:

(a) Beginning with the 2018-2019 school year, using 2017-2018 school year results, the State shall identify a minimum five percent of the lowest performing schools as CSI schools and shall identify CSI schools based upon the results from the all students group once every three years thereafter, based on the accountability measures described in subdivision (f) of this section. Provided that, if the accountability measures used to identify CSI schools in subdivision (f) of this section result in the identification of fewer than five percent of Title I public elementary/middle schools in the State, the Commissioner shall identify the lowest performing five percent of Title I public

elementary/middle schools using the rank ordered list for the Combined Composite Performance and Growth Index; and

(b) Any Target Support and Improvement school that has been identified for additional targeted support based on the performance of one or more accountability subgroups and continues, following the designation for additional targeted support, to be identified as a targeted support and improvement school for three consecutive school years for the performance of the same accountability subgroup(s) shall be preliminarily identified as a CSI school.

(ii) CSI (high schools). The State shall designate high schools as CSI schools using the following criteria:

(a) Beginning with the 2018-2019 school year, using 2017-2018 school year results, the State will identify a minimum five percent of the lowest-performing schools as CSI schools based upon the results from the all students group once every three years based on the accountability measures described in subdivision (f) of this section. Provided that, if the methodology pursuant to (f)(1)(i) for elementary/middle schools and (f)(2)(i) for high schools of this section results in the identification of fewer than five percent of Title I public high schools in the State, the Commissioner shall identify the lowest performing five percent of Title I public high schools using the rank ordered list for the Combined Composite Performance and Graduation Rate Index; and

(b) Any targeted support and improvement school that has been identified for additional targeted support based on the performance of one or more accountability subgroups consistent with this section and continues, following the designation for additional targeted support, to be identified as a targeted support and improvement

school for three consecutive school years for the performance of the same accountability subgroup(s) shall be preliminarily identified as a CSI school; and

(c) Any school with a Four-Year Graduation rate below 67 percent and a Five-Year or Six-Year Graduation Rate that is not at or above 67 percent in the years in which school are identified pursuant to clause (a) of this subparagraph shall be preliminarily identified as a CSI school.

(iii) A Targeted Support and Improvement (TSI) School shall mean a school with one or more consistently underperforming accountability subgroups based on the accountability measures described in subdivision (f) of this section. These schools will be identified annually, beginning with the 2019-2020 school year, except that a school identified as a Priority or Focus School during the 2017-2018 school year may be identified, using 2017-2018 school year data only, if such school meets the criteria for identification as a TSI school beginning with the 2018-2019 school year. In addition, a TSI school with any accountability subgroup performing below the threshold for the all students subgroup for the lowest performing five percent of schools shall be identified for additional targeted support in accordance with subdivision (f) of this section. Beginning with the 2018-2019 school year, TSI schools shall be identified for additional targeted support in the same years in which CSI school designations are made based on the performance of the all students group.

(iv) Target District shall mean any school district with one or more CSI and/or TSI schools. A Target District shall also mean any district whose district-wide performance levels would cause a school to be identified as a CSI or a TSI school pursuant to the provisions of this section; provided that, in the city school district of the city of New York, in any borough in which the aggregate performance of all of the high schools in such

borough would cause a school to be identified as a CSI or a TSI high school pursuant to the provisions of this section, such district shall designate one or more high school superintendents in each such borough to carry out the requirements of this section applicable to a Target District within such borough; except that the Chancellor of the city school district of the city of New York may petition the Commissioner to aggregate the performance of transfer high schools citywide and to designate one or more high school superintendents to carry out the requirements applicable to a Target District for such schools.

(v) A school in Good Standing means a school that is not identified as a CSI or TSI school pursuant to the provisions of this section.

(vi) Recognition schools shall mean schools in good standing that exhibit evidence of high performance and/or rapid improvement as determined by the Commissioner.

(vii) Struggling school, persistently struggling school, school district receiver, school intervention plan, school receiver, and consultation and collaboration shall be as defined in section 100.19(a) of this Part.

(4) Definitions related to interventions for designated schools and districts.

(i) Integrated intervention team means a school quality review team or joint intervention team appointed by the Commissioner, which may include a distinguished educator appointed by the Commissioner, to conduct a diagnostic review of a CSI or TSI school or a Target District or a school under registration review.

(ii) A comprehensive needs assessment means a comprehensive assessment of the school or district that includes a review of school or district quality using such form(s) as may be prescribed by the Commissioner, which may include but is not limited

to the diagnostic tool for school and district effectiveness as defined in paragraph (15) of subdivision (a) of section 100.19 of this Part; select state-reported and state-supported data indicators as prescribed by the Commissioner; and a resource audit as defined in this paragraph.

(iii) A progress needs assessment means an annual assessment of the school that includes a progress review of the implementation of the school comprehensive education plan; select State-reported and State-supported data in comparison to other schools and in comparison to prior year performance; a resource audit as defined in this paragraph; and a review of parent, staff, and teacher survey results; provided that a progress needs assessment shall not be conducted in a school year in which a comprehensive needs assessment is conducted.

(iv) Resource audit means an audit that examines the effectiveness of professional development and how schools and districts use their time (e.g., instructional time, length of school day and/or school year), space (facilities), staff, and funds in relation to best practices as determined by Commissioner.

(v) School-level evidence-based intervention means an activity, strategy, or intervention that has met the criteria outlined in section 8101(21)(A) of ESSA by demonstrating either a statistically significant effect on improving student outcomes or other relevant outcomes, or a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes and includes ongoing efforts to examine the effects of such activity, strategy, or intervention; provided that such intervention must be implemented so as to affect such percentage of a school's enrollment or such percentage of classrooms as may be prescribed by the Commissioner for the school.



(vi) School improvement grant means a grant awarded by the U.S. Department of Education to the New York State Education Department as a State Educational Agency (SEA), pursuant to section 1003 of ESSA and awarded by the New York State Education Department to a local educational agency (LEA), as defined in this section, as a subgrant.

(vii) Public school choice shall mean the option for students enrolled in a CSI school to transfer to a public school in good standing at the appropriate grade level within the district pursuant to subdivision (i) of this section; provided that if there are no schools in good standing within the district that serve the grade level of the students, parents of students in the identified schools shall be offered the ability to transfer their child to a TSI school.

(viii) School comprehensive education plan means a school improvement plan, using such form and format as the Commissioner may prescribe, that CSI and TSI schools shall develop in collaboration with stakeholders, in accordance with the district's plan for school-based management and shared decision making pursuant to the requirements of section 100.11 of this Part. The plan must include an analysis of the school's achievement of previous goals; be based upon data from the school, including but not limited to, the results of the comprehensive needs assessment or the progress needs assessment and any additional data collected by the school; specify the accountability measures for which the school has been identified; identify initiatives that will be implemented to positively affect student learning and to address the accountability measures for which the school has been identified; identify resource inequities, which may include a review of school and school district budgeting; explicitly delineate the plan for annually increasing student performance through comprehensive

instructional programs and services as well as enhancement of teacher and leader effectiveness, with a focus on the accountability subgroup(s) and measures for which the school was identified; include evidence-based interventions; and be first implemented no later than the beginning of the first day of regular student attendance in the school year following the school's identification. Schools identified as CSI will submit their plans to the Department for approval, which may reject any plan that does not adhere to the directions provided by the Department and/or provide sufficient evidence in such format as prescribed by the Commissioner that parents and pedagogical staff and in high schools, students, meaningfully participated in the development of the plan.

(ix) Job-embedded professional development means professional development for teachers and leaders that is informed by the results of the comprehensive needs assessment or progress needs assessment of the school and by the teacher or leader evaluation system and any applicable supports, and addresses identified teacher and student needs.

(x) Participatory budgeting process shall mean a process by which CSI schools, beginning with the 2019-2020 school year, must annually set aside and spend a designated amount of allowable funds in such school year, in an amount specified by the Commissioner and not to be less than \$2,000, for the purpose of funding projects that are proposed by and voted on by the students and families of the school through a process determined by the Commissioner. The project proposal period and subsequent final vote must occur annually within each CSI school and be organized in such manner as may be specified by the Commissioner, which shall include, at a minimum, guidance

that the final vote to determine the projects that are funded is open to all students and that the families of each student shall have a minimum of one vote per family.

(xi) Parent, staff, and student surveys means annual surveys of parents, staff, and students conducted by CSI and TSI schools, identified by the district and administered annually in a manner prescribed by the Commissioner that encourages stakeholder participation to provide schools with feedback on each of the following areas: Schoolwide Systems, Organization and Climate, School Leadership, Curriculum and Instruction, Social-Emotional Developmental Health, and Family Engagement for the purpose of providing data to support the development and amendments of the school comprehensive education plan.

(xii) Principal support report means a report to be completed by school districts with at least one CSI school that did not meet its Annual Achievement Progression target as defined in subparagraph (xiv) of this paragraph in which the school district identifies any areas in which the school district determines that it could more effectively support the principal(s) of its CSI school(s) based upon the specific needs of such school(s). The report is intended to provide summary information for the district and the State, and shall be consistent with Education Law sections 3012-c(10) and 3012-d(15) with respect to personally identifiable information.

(xiii) Principal needs assessment means a comprehensive assessment of the capacity of the district to support its principals, that will be an additional required component of the District Needs Assessment in any Target District that has at least one CSI school that fails to meet its Annual Achievement Progression Target for two consecutive years, using such methodology and form as may be prescribed by the Commissioner. The results of such needs assessment shall be submitted to the

Department along with a plan to provide the necessary supports and resources identified by the assessment and the plan for support based upon the assessment.

(xiv) Annual Achievement Progression Target means:

(a) For elementary and middle schools, an increase between the school's performance in the current school year compared to the prior school year on either of the following measures for the all students group:

(1) Core Subject Performance Index as defined in subdivision (f) of this section.

(2) Mean Student Growth Percentile as defined in subparagraph (x) of paragraph (2) of this subdivision, using only the most current school year results compared only to the prior school year results; except that if a school receives a Mean Student Growth Percentile score of 50 or higher, the Annual Achievement Progression for such school shall be deemed an increase.

(b) For high schools, an increase between the school's performance in the current school year compared to the prior school year on either of the following accountability measures for the all students group:

(1) Composite Performance Index computed pursuant to (f)(i)(a)(9) of this section.

(2) Unweighted average of the Four-Year, Five-Year, and Six-Year Graduation Rates computed pursuant to clause (b) of subparagraph (i) of paragraph (2) of subdivision (f) of this section.

(3) Notwithstanding the provisions of this clause, a school identified as a CSI school solely because of a Graduation Rate below 67 percent must show an increase on the Average of the Four-Year, Five-Year, and Six-Year Graduation Rates computed pursuant to subclause (2) of this clause.

(xv) District comprehensive improvement plan means a district improvement plan, in such form and format as the Commissioner may prescribe, that Target Districts shall develop, in collaboration with stakeholders in accordance with the district's plan for shared decision making pursuant to the requirements of section 100.11 of this Part. The plan must include an analysis of the district's achievement of previous goals; be based upon data from the district, including but not limited to, the results of the district-level comprehensive needs assessment or school-level comprehensive needs assessments or progress needs assessments, and any additional data collected by the district; specify the accountability measures for which the district has been identified; identify initiatives that will be implemented to positively affect student learning and to address the accountability measures for which the district has been identified; identify resource inequities, which may include a review of school and school district budgeting; explicitly delineate the plan for annually increasing student performance through comprehensive instructional programs and services as well as enhancement of teacher and leader effectiveness, with a focus on the accountability subgroup(s) and measures for which the district and its schools have been identified; and be first implemented no later than the beginning of the first day of regular student attendance in the school year following the district's identification.

(c) Procedure for registration of public schools.

(1) A school district that seeks to register a public elementary, intermediate, middle, junior high school, or high school shall submit a petition for registration to the Board of Regents, in a form prescribed by the Commissioner and containing such information as the Commissioner may require, no later than March 1 for schools opening in September of the next successive school year or, for those schools opening

during a current school year, at least 90 days prior to the opening of such school, except that the Commissioner may waive this timeline for good cause.

(2) The Commissioner shall review the petition and shall recommend its approval to the Board of Regents if it is satisfactorily demonstrated that the school district has provided an assurance that the school will be operated in an educationally sound manner; is in compliance with applicable statutes, rules, and regulations relating to public schools; and will operate in accordance with applicable building codes and pursuant to a certificate of occupancy. No new public school will be recommended for registration by the Commissioner if, in the Commissioner's judgment, the establishment of such school would conflict with an approved plan for school district reorganization, except where it can be established to the satisfaction of the Commissioner that such school is essential to the educational welfare of the students.

(3) Where a school registered pursuant to this paragraph is in a Target District, the Commissioner shall determine the accountability status of the newly registered school based upon his or her review of the proposed educational program, including but not limited to such factors as: school mission, school administration and staff, grade configurations and groupings of students, zoning patterns, curricula and instruction, and facilities.

(4) In the event that a school district merges two or more schools or transfers organizational responsibility for one or more grades from one school to another, the school district shall inform the Commissioner, in a form prescribed by the Commissioner and containing such information as the Commissioner may require, no later than March 1 for schools opening in September of the next successive school year or, for those schools opening during a current school year, at least 90 days prior to the opening of

such school, except that the Commissioner may waive this timeline for good cause. As a result of such changes, the Commissioner may adjust the accountability status of the affected schools to reflect such organizational changes.

(d) All registrations approved by the Board of Regents pursuant to this subdivision shall continue in effect unless revoked by the Board of Regents upon recommendation of the Commissioner after review of the registration, or the school district closes the school. In the event that a school district closes a registered school, the school district shall inform the Commissioner, in a form prescribed by the Commissioner and containing such information as the Commissioner may require, no later than March 1 for schools that it will not enroll students in September of the next successive school year, except that the Commissioner may waive this timeline for good cause.

(e) System of accountability for student success. Each school year, commencing with the 2017-2018 school year results, the Commissioner shall review the performance of all public schools and school districts in the State. The Commissioner shall determine whether such public schools shall be identified as a CSI or TSI school and/or whether each school district shall be identified as a Target District in accordance with the accountability criteria set forth in subdivision (f) of this section.

(f) Accountability system for schools and districts.

(1) Accountability system for elementary and middle schools.

(i) CSI school. An elementary/middle school shall be preliminarily identified as a CSI school using the following decision table, which combines the following measures of student performance for all students in the school: (1) Composite Performance; (2) Student Growth; (3) Combined Composite Performance and Student Growth; (4)

English Language Proficiency; (5) Academic Progress; and (6) Chronic Absenteeism. A school shall be preliminarily identified as a CSI school if one or more of the rows in the decision table are 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 Combined Composite Performance and Student Growth measure and one or more of the following measures: English Language Proficiency, Academic Progress, and/or Chronic Absenteeism.

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

<b><u>Composite Performance Level</u></b>	<b><u>Student Growth Level</u></b>	<b><u>Combined Composite Performance &amp; Growth Level</u></b>	<b><u>English Language Proficiency Level</u></b>	<b><u>Academic Progress Level</u></b>	<b><u>Chronic Absenteeism Level</u></b>
Both Level 1		Level 1	Any Level	Any Level	
Either Level 1		Level 1	None*	Any One of the Two is Level 1	
Either Level 1		Level 1	Level 1	Any Level	
Either Level 1		Level 1	Level 2	Any Level 1	
Either Level 1		Level 1	Level 3 or 4	Both Level 1	

\*\*None\*\* means there were not enough English language learners to meet the minimum n-size requirement.

(a) Composite Performance Level. For each public elementary/middle school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of subdivision (b) of this section, a Composite Performance Level using the results of ELA and Mathematics assessments in grades 3-8 and Science assessments in grades 4 and 8 shall be computed by the Commissioner in accordance with the following steps:

(1) The Commissioner shall first determine an ELA and a Mathematics Achievement Index for each public school in the State. The ELA and the Math



Achievement Index is a number between 0-250 that is computed separately for ELA and math for a subgroup by summing the number of continuously enrolled students who scored at Level 2, plus the number of continuously enrolled students who scored at Level 3 multiplied by 2, plus the number of continuously enrolled students who scored at Level 4 multiplied by 2.5 (numerator) and dividing this result by the greater of the number of continuously enrolled students in the subgroup with valid test scores or 95% of continuously enrolled students (denominator). The result of this division is then multiplied by 100.

(2) The Commissioner shall then determine a Science Achievement Index, for each public school in the State. The Science Achievement Index is a number between 0-250 that is computed for Science for a subgroup by summing the number of continuously enrolled students who scored at Level 2, plus the number of continuously enrolled students who scored at Level 3 multiplied by 2, plus the number of continuously enrolled students who scored at Level 4 multiplied by 2.5 (numerator), and dividing this result by the greater of the number of continuously enrolled students in the subgroup with valid test scores or 95% of continuously enrolled students (denominator). The result of this division is then multiplied by 100.

(3) The Commissioner shall then compute the Weighted Average Achievement Index, which is a number between 0-250 that is computed as the weighted average of the ELA, Mathematics, and Science achievement indices.

(4) The Commissioner shall then rank order schools based on their performance on the Weighted Average Achievement Index.

(5) Each elementary/middle school will then be assigned a Weighted Average Achievement Level from 1-4 based on such rank ordering using the table below:

<b><u>Weighted Average Achievement Rank</u></b>	<b><u>Weighted Average Achievement Level</u></b>
10% or Less	1
10.1 to 50%	2
50.1 to 75%	3
Greater than 75%	4

(6) The Commissioner shall then compute the Core Subject Performance Index, which is a number from 0-250 that is computed by summing for elementary/middle-level ELA, Mathematics, and Science, the number of continuously enrolled students who scored at Level 2, plus the number of continuously enrolled students who scored at Level 3 multiplied by 2, plus the number of continuously enrolled students who scored at Level 4 multiplied by 2.5 (numerator), and dividing this result by the number of valid test results for continuously enrolled students in ELA, Mathematics, and Science (denominator). The result of this division is then multiplied by 100 to determine the Index.

(7) The Commissioner shall then rank order schools by the Core Subject Performance Index.

(8) Each elementary/middle school will then be assigned a Core Subject Performance Index Level 1-4 based on such rank ordering using the table below:

<b><u>Core Subject Performance Index Rank</u></b>	<b><u>Core Subject Performance Level</u></b>
10% or Less	1
10.1 to 50%	2
50.1 to 75%	3
Greater than 75%	4

(9) The Commissioner shall combine the results of the Weighted Average Achievement Level as calculated in subclause (5) with the Core Subject Performance Index Level as calculated in subclause (8) to create a Composite Performance Index. The Composite Performance Index for elementary/middle schools is a calculation by

which the results of the Weighted Average Achievement Level and the Core Subject Performance Index Level are combined to be used as a measure of academic achievement pursuant to subdivision (f) of this section. Provided that, for elementary/middle schools in the State with the same Composite Performance Index, the Commissioner shall rank order schools using the higher of the Weighted Average Achievement rank order as calculated in subclause (4) or the Core Subject Performance Index rank order as calculated in subclause (7) of this clause.

(10) The Commissioner shall then assign a Composite Performance Achievement Level from 1-4 for all schools based on the Composite Performance Index rank ordering described in subclause (9) of this clause using the table below:

<b>Composite Performance Index Rank</b>	<b>Composite Performance Level</b>
10% or Less	1
10.1 to 50%	2
50.1 to 75%	3
Greater than 75%	4

The resulting Composite Performance Level is then used in the table described in subparagraph (i) of paragraph (1) of subdivision (f) of this section as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(11) If the all students subgroup does not meet the minimum n size, as defined in paragraph (1) of subdivision (b) of this section, then the school shall be identified using the established process for small schools (self-assessment process), as described in paragraph (1) of subdivision (b) of this section.

(b) Student Growth Level. For each public elementary/middle school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1)

of subdivision (b) of this section, a Student Growth Level will be determined in accordance with the following steps:

(1) A Mean Growth Percentile for the all students subgroup in each school shall be calculated by adding the student growth percentile scores for continuously enrolled students in grades 4-8 ELA to the student growth percentile scores for continuously enrolled students in grades 4-8 math for the current and the previous two school years, and dividing the result by the total number of student growth percentile scores in those grades/subjects and years.

(2) The Commissioner shall then create a rank ordered list of school performance based on the school's Mean Student Growth Percentile score.

(3) A Student Growth Level from 1-4 shall then be assigned to each school using the table below:

<b>Mean Growth Percentile</b>	<b>Student Growth Level</b>
45 or less	1
45.1 to 50	2
50.1 to 54	3
Greater than 54	4

(4) The resulting Student Growth Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of student performance to determine whether the school is preliminarily identified as a CSI school.

(c) Combined Composite Performance and Growth Level. For each public elementary/middle school meeting the minimum n-size requirement as defined in paragraph (1) of subdivision (b) of this section, a Combined Composite Performance

and Student Growth Level shall be computed by the Commissioner in accordance with the following steps:

(1) The Commissioner shall generate a combined Composite Performance and Student Growth rank ordered list by summing a school's Composite Performance Index final rank order as described in subclause (7) of clause (a) of this subparagraph and the school's Student Growth rank order as described in clause (b) of this subparagraph.

(2) If there is no Student Growth Level for the school because the all students subgroup did not meet the minimum n size for the Student Growth measure, then the Combined Composite Performance and Student Growth Level shall be determined using the Composite Performance Level only.

(3) A Combined Composite Performance and Student Growth Level from 1-4 shall then be assigned to each school based on the school's placement on a rank ordered list in comparison with other schools in accordance with the following table:

<b><u>Rank Based on Combined Composite Performance and Student Growth</u></b>	<b><u>Level</u></b>
In the lowest 10%	1
Between 10.1% and 50%	2
Between 50.1 and 75%	3
In the highest 75%	4

(4) The resulting Combined Composite Performance and Student Growth Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(d) English Language Proficiency Level. For each public elementary/middle school meeting the minimum n-size requirements as defined in paragraph (1) of

subdivision (b) of this section, the Commissioner shall compute an English Language Proficiency Level in accordance with the following steps:

(1) The Commissioner shall first determine an initial level of proficiency and the corresponding years that the student was identified as an English Language Learner based upon the student's performance on the NYSESLAT in the initial year of identification as an English Language Learner pursuant to Part 154 of this Title.

(2) The Commissioner shall then determine progress rates for each student based on the years that the student has been identified as an English language learner and the level achieved on the NYSESLAT in the first year in which the student was identified as an English Language Learner pursuant to Part 154 of this Title.

(3) The Commissioner shall then calculate each school's success ratio based on all continuously enrolled students' results compared to continuously enrolled students' progress rates, as determined by the Commissioner. Utilizing this information, each school shall then be assigned an English Language Proficiency Level from 1-4 in accordance with the following table:

<b><u>Success Ratio</u></b>	<b><u>English Language Proficiency Level</u></b>
0 - 0.49	1
0.50 - 0.99	2
1.0 - 1.24	3
1.25+	4

(5) The resulting English Language Proficiency Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school shall be preliminarily identified as a CSI School.

(e) Academic Progress Level. For each public elementary/middle school meeting the minimum n-size requirement as defined in paragraph (1) of subdivision (b) of this section, the Commissioner shall compute an Academic Progress Level in accordance with the following steps:

(1) The Commissioner shall calculate separate ELA and Mathematics Academic Achievement Indices from 0-250 for the all students subgroup in the school.

(2) The Commissioner shall then determine a separate State MIP and Long-term goal for ELA and Mathematics.

(3) The Commissioner shall determine a separate school MIP in ELA and in Mathematics.

(4) The Commissioner shall then assign an Academic Progress Level in ELA from 1-4 using the table below based on each of the following: whether or not the school's ELA Academic Achievement Index met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school's MIP.

(5) The Commissioner shall then assign an Academic Progress Level in Mathematics from 1 to 4 using the table below based on each of the following: whether or not the school's Mathematics Academic Achievement Index met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP and/or, (3) the school's MIP.

	<b><u>Did Not Meet Long-Term Goal</u></b>	<b><u>Met Long-Term Goal</u></b>	<b><u>Exceeded Long-Term Goal</u></b>
Did not meet either MIP	Level 1	N/A	N/A
Met lower of State or School MIP	Level 2	Level 3	Level 4
Met higher of State or School MIP	Level 3	Level 4	Level 4

(6) The Commissioner shall then average the ELA Academic Progress Level assigned in subclause (4) of this clause and the Mathematics Academic Progress Level assigned in subclause (5) of this clause. The resulting average Academic Progress Level will be rounded down to the nearest whole number that represents the level that will be used and an Academic Progress Level from 1-4 will be assigned. The resulting Academic Progress Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI School.

(7) Notwithstanding the Academic Progress Level resulting from the table above, using the all students subgroup's baseline performance as measured by the previous school year test results, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but increases the Achievement Index by an amount at least equal to the difference between the higher of the school's current year MIP and prior year MIP or the current year State MIP and prior year State MIP, the all students subgroup will be assigned an Academic Progress Level 2. Provided further that, if the all students subgroup meets either but not both of the school and State MIP for that subgroup and makes progress that is equivalent to at least three times the difference between the lower of the school specific current and prior year MIPs and the State current and prior year MIPs for that subgroup, but if such progress is insufficient for the subgroup to meet the higher of the State or school MIP or the Long-term goal, the all students subgroup will be assigned an Academic Progress Level 3.

(f) Chronic Absenteeism Level. For each public elementary/middle school meeting the minimum n-size requirement pursuant to subparagraph (xvii) of paragraph



(1) of subdivision (b) of this section, the Commissioner shall compute a Chronic Absenteeism Level in accordance with the following steps:

(1) The Commissioner shall first compute the school’s Chronic Absenteeism Rate, which means the number of students enrolled during the school year in a school for a minimum of ten instructional days and in attendance at least one of those days who were absent (excused or unexcused) for at least 10 percent of enrolled instructional days divided by the total number of students enrolled during the school year, expressed as a percentage. Suspensions are not counted as excused or unexcused absences, as suspended students are required to be provided with instruction while they are suspended. At the elementary/middle level, Chronic Absenteeism is calculated for grades 1-8 and ungraded age equivalent students.

(2) The Commissioner shall then determine a State MIP and Long-term goal for Chronic Absenteeism.

(3) The Commissioner shall also determine a school MIP for Chronic Absenteeism.

(4) The Commissioner shall then assign a Chronic Absenteeism Level from 1-4 based on whether the school’s Chronic Absenteeism Rate, as defined in this clause met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP. Utilizing this information, each school shall then be assigned a Chronic Absenteeism Level from 1-4 in accordance with the following table:

	<b><u>Did Not Meet Long-Term Goal</u></b>	<b><u>Met Long-Term Goal</u></b>	<b><u>Exceeded Long-Term Goal</u></b>
Did not meet either MIP	Level 1	N/A	N/A
Met lower MIP	Level 2	Level 3	Level 4
Met higher MIP	Level 3	Level 4	Level 4

(5) The resulting Chronic Absenteeism Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(6) Notwithstanding the Chronic Absenteeism Level generated by the table above, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but decreases the Chronic Absenteeism Rate by an amount equal to the difference between the lower of the school's current year MIP and prior year MIP or the current year State MIP and prior year MIP for the all students subgroup, the all students subgroup will be assigned a Chronic Absenteeism Level 2. Provided further that, if the all students subgroup meets either but not both the school and State MIP for that subgroup and makes progress in decreasing the Chronic Absenteeism Rate that is equivalent to three times the difference between the lower of the school specific current and prior year MIP and the State current and prior year MIP for the all students subgroup, but if such progress is insufficient for the all students subgroup to meet the more rigorous of the State or school MIP or the State Long-term goal, the all students subgroup will be assigned a Chronic Absenteeism Level 3.

(7) Provided further that, notwithstanding the Chronic Absenteeism Level determined pursuant to paragraphs (4), (5) and (6), the Commissioner may assign a Chronic Absenteeism Level 1 to an all students subgroup whose chronic absenteeism rate is below a percent established by the Commissioner and the Commissioner may assign a Chronic Absenteeism Level 2 to an all students subgroup whose chronic absenteeism rate is at or above a percent established by the Commissioner.

(g) For feeder schools: The Weighted Academic Achievement Index and Level, the Core Subject Performance Index and Level, the Composite Performance Index and Level, and the Academic Progress Level of public schools, school districts, and charter schools serving grades 1 and/or 2, but not grade 3 or higher (hereafter referred to as "feeder schools") will be determined using backmapping. In school districts with such feeder schools and in school districts that accept grade 3 students from feeder schools in other school districts by contract, the grade 3 State assessment results for each feeder school student will be attributed to the feeder school as well as to the school in which the student took the assessment. The student's results will be attributed to a feeder school only if the student was continuously enrolled in the feeder school from BEDS day until the end of the school year in the highest grade served by the feeder school. For feeder schools, the Combined Composite Performance and Growth Level will be determined using the Elementary/Middle-Level ELA and Math Composite Performance Level only.

(ii) Targeted Support and Improvement (TSI) Elementary/Middle Schools. An elementary/middle school shall be preliminarily identified as a TSI school if the school meets the criteria for identification outlined in the table below for two consecutive school years for the same accountability subgroup, except that a school identified as a Priority or Focus School during the 2017-2018 school year may be identified, using 2017-2018 school year data only, if such school meets the criteria for identification as a TSI school beginning with the 2018-2019 school year.

(a) The decision table below combines multiple measures of performance for accountability subgroups in the school using the same methodology used to designate

CSI schools pursuant to subparagraph (i) of this paragraph and using the following accountability measures: (1) Composite Performance; (2) Student Growth; (3) Combined Composite Performance and Student Growth; (4) English Language Proficiency; (5) Academic Progress; and (6) Chronic Absenteeism.

(b) The designations for TSI schools 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 accountability subgroup; provided that, in order to be preliminarily identified using the decision table below, a performance level must be assigned to, at a minimum, the Combined Composite Performance and Student Growth measure and one or more of the following measures: English Language Proficiency, Academic Progress, and/or Chronic Absenteeism.

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

<b><u>Composite Performance Level</u></b>	<b><u>Student Growth Level</u></b>	<b><u>Combined Composite Performance &amp; Growth Level</u></b>	<b><u>English Language Proficiency Level</u></b>	<b><u>Academic Progress Level</u></b>	<b><u>Chronic Absenteeism Level</u></b>
Both Level 1		Level 1	Any Level	Any Level	
Either Level 1		Level 1	None*	Any One of the Two is Level 1	
Either Level 1		Level 1	Level 1	Any Level	
Either Level 1		Level 1	Level 2	Any Level 1	
Either Level 1		Level 1	Level 3 or 4	Both Level 1	

\*"None" means there were not enough English Language learners to meet the minimum n size requirement.

(c) If a school meets the identification criteria for both a CSI and TSI school, the school shall be designated as a CSI school; provided however that if in the year in which a CSI school is removed from CSI identification and such school meets the

criteria for a TSI school, the school shall be designated as a TSI school.

(d) When the Commissioner creates a rank ordered list for the racial/ethnic subgroup for purposes of identification of TSI schools, one rank ordered list will be generated for all racial/ethnic groups combined.

(iii) TSI schools identified for additional support.

(a) Beginning with the 2018-2019 school year, for each year in which the Commissioner identifies CSI schools based on the performance of the all students subgroup in accordance with subparagraph (i) of paragraph (1) of subdivision (f) of this section, the Commissioner shall identify for additional targeted support any TSI school with a subgroup whose performance would have caused the school to be identified as a CSI school using the methods for identification specified in subdivision (f) of this section.

(b) Such school shall be identified for additional targeted support only if the school had been identified as a TSI school in the prior school year and remains so identified in the current school year.

(c) Notwithstanding the provisions of clause (a) of this subparagraph, in assigning Performance Levels for the purpose of determining whether the performance of a subgroup in a TSI school would have caused the school to be identified as a CSI school, the Commissioner shall:

(1) Assign to the subgroup the Weighted Average Achievement Level that would have been assigned to the all students subgroup with the same Weighted Average Achievement Index for purposes of identifying CSI schools.

(2) Assign to the subgroup the Core Subject Performance Index Level that would have been assigned to the all students subgroup with the same Core Subject Performance Index for purposes of identifying CSI schools.

(3) Assign to the subgroup the Composite Performance Achievement Level that would have been assigned to the all students subgroup with the same Weighted Average Achievement Level, Weighted Average Achievement Index ranking, Core Subject Performance Index Level and Core Subject Performance Index ranking for purposes of identifying CSI schools.

(4) Assign to the subgroup the Student Growth Level that would have been assigned to the all students subgroup with the same Mean Student Growth Percentile for purposes of identifying CSI schools.

(5) Assign to the subgroup the Combined Composite Performance and Student Growth Level that would have been assigned to the all students subgroup with the same Combined Composite Performance and Growth rank for purposes of identifying CSI schools.

(6) For measures of English Language Proficiency; Academic Progress; and Chronic Absenteeism as defined in subdivision (b) of this section, the Commissioner shall use the State MIP and State Long-term goal applicable to the all students subgroup to determine the subgroup's performance level on these measures.

(2) Accountability system for high schools.

(i) CSI schools. A high school shall be preliminarily identified as a CSI school using the following decision table, which combines multiple measures of performance for all students in the school, as defined in paragraph (1) of subdivision (b) of this section, using the following accountability measures: (1) Composite Performance; (2)

Graduation Rate; (3) Combined Composite Performance and Graduation Rate; (4) English Language Proficiency; (5) Academic Progress; (6) Chronic Absenteeism; and (7) College, Career, and Civic Readiness; provided that in order to be preliminarily identified using the decision table below a performance level must be assigned to, at a minimum, the Combined Composite Performance and Graduation Rate measure and one or more of the following measures: English Language Proficiency; Academic Progress; Chronic Absenteeism; and/or College, Career, and Civic Readiness (“CCCR”). A school shall be preliminarily identified as a CSI school if it meets any of the conditions in the rows of the decision table below. Provided, however, that notwithstanding the table below, beginning with 2017-2018 school year graduation results, any public high school with a Four-Year Graduation Rate below 67 percent and a Five-Year or Six-Year Graduation Rate that is not at or above 67 percent will be preliminarily identified as a CSI school.

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

<u>Composite Performance Level</u>	<u>Grad Rate Level</u>	<u>Combined Composite Performance &amp; Grad Rate Level</u>	<u>ELP Level</u>	<u>Progress Level</u>	<u>Chronic Absenteeism Level</u>	<u>CCCR Level</u>
Both Level 1		Level 1	Any Level	Any Level		
Either Level 1		Level 1	None*	Any One of the Three is Level 1		
Either Level 1		Level 1	Level 1	Any Level		
Either Level 1		Level 1	Level 2	Any Level 1		
Either Level 1		Level 1	Level 3 or 4	Any Two Level 1		

\*“None” means there were not enough English Language Learners to meet the minimum n-size requirement.

(a) Composite Performance Level. For each public high school whose all students group, as an accountability subgroup defined in subparagraph (x) of paragraph

(1) of subdivision (b) of this section, meets the minimum n-size requirements pursuant to paragraph (1) of subdivision (b) of this section, a Composite Performance Level using the results of the ELA, Mathematics, Science, and Social Studies assessments for the Accountability Cohort shall be computed by the Commissioner in accordance with the following steps:

(1) The Commissioner shall first calculate a Performance Index separately for ELA, Mathematics, Science, and Social Studies at the secondary level using the following formula for each subject:

(i) The sum of the number of students in the Accountability Cohort who scored at Level 2, plus the number who scored at Level 3 multiplied by 2, plus the number who scored at Level 4 multiplied by 2.5 (numerator), divided by the number of students in the Accountability Cohort as defined in paragraph (2) of subdivision (b) of this section (denominator). The result of this division is then multiplied by 100 to establish the Performance Index for each subject area.

(2) The Commissioner shall then combine the Performance Indices for ELA, Mathematics, Science, and Social Studies to calculate a Composite Performance Index in accordance with the following formula:

(i) The sum of the ELA Performance Index multiplied by three, plus the result of the Mathematics Performance Index multiplied by three, plus the result of the Science Performance Index multiplied by two, plus the result of the Social Studies Performance Index multiplied by one, divided by the sum of the multipliers used to make this calculation.

(3) The Commissioner shall then rank order schools based on their Composite Performance Index in accordance with subclause (2) of this clause, except that upon a



finding of extenuating or extraordinary circumstances, the Commissioner may in creating the rank ordered list exclude from the rankings those schools that meet the criteria established in subparagraphs (vii) and (viii) of paragraph (b) of this section as well as schools that are implementing a plan for school closure or phase out that has been approved by the Commissioner.

(4) The Commissioner shall then assign a Composite Performance Achievement Level for all schools based on the rank ordering described in subclause (3) of this clause using the table below:

<b><u>Composite Performance Index Rank</u></b>	<b><u>Composite Performance Achievement Level</u></b>
10% or Less	1
10.1 to 50%	2
50.1 to 75%	3
Greater than 75%	4

\*The Commissioner may exclude from the rank ordered list schools defined in subparagraph (vii) of paragraph (1) of subdivision (b) of this section or schools defined in subdivision 8 of section 4001 of the Education Law.

The resulting Composite Performance Achievement Level is then used in the table described in subparagraph (i) of paragraph (2) of this subdivision as one of multiple measures of performance to determine whether the school shall be preliminarily identified as a CSI school.

(5) If the all students subgroup does not meet the minimum n size for the Composite Performance Achievement Level, as defined in paragraph (1) of subdivision (b) of this section, then the school shall be identified using the established self-assessment process, as described in paragraph (1) of subdivision (b) of this section.

(b) Graduation Rate Level. For each public high school meeting the minimum n-size requirement pursuant to paragraph (1) of subdivision (b) of this section, the Commissioner shall compute a Graduation Rate Level for the Four-Year, Five-Year, and Six-Year Graduation Rate, as applicable in accordance with the following steps:

(1) The Commissioner shall first determine a State MIP and Long-term goal based on the State Four-Year, Five-Year, and Six-Year Graduation Rate.

(2) The Commissioner shall also determine a school MIP based on the school's Four-Year, Five-Year, and Six-Year Graduation Rate.

(3) The Commissioner shall then assign a Graduation Rate Level from 1 to 4 based on the average of the school's Four-Year, Five-Year and Six-Year Graduation Rates, as available, based on whether or not the school met, exceeded, or failed to meet each of the following: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP for the Four-Year, Five-Year, and Six-Year Graduation Rate in accordance with the following table:

	<u>Did Not Meet Long-Term Goal</u>	<u>Met Long-Term Goal</u>	<u>Exceeded Long-Term Goal</u>
Did not meet either MIP	Level 1	N/A	N/A
Met lower MIP	Level 2	Level 3	Level 4
Met higher MIP	Level 3	Level 4	Level 4

(4) The Commissioner shall then average the Four-Year, Five-Year, and Six-Year Graduation Rate Level, as applicable to the school, and shall rank order each

school based on this average. The resulting average Graduation Rate Level will be rounded to the nearest level for a Graduation Rate Level from 1-4.

(5) The resulting Graduation Rate Level is then used in the table described in subparagraph (i) of paragraph (2) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(6)After the Graduation Rate Level has been assigned to the school, the Commissioner shall create a Graduation Rate rank order list by first rank ordering schools by Graduation Rate Level and then rank ordering schools by their average Graduation Rate within each level.

(7) Provided, however, that notwithstanding the table above, any public high school with a graduation rate of 67 percent or below on the Four-Year Graduation Rate cohort that does not have a Five-Year or Six-Year Graduation Rate Cohort at or above 67 percent shall be preliminarily identified as a CSI school.

(8) Provided further that, notwithstanding the Graduation Rate Level generated by the table above, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but increases the graduation rate by an amount at least equal to the difference between the lower of the school's current year MIP and prior year MIP or the State's current year MIP and prior year MIP for the all students subgroup, the all students subgroup will be assigned a Graduation Rate Level 2. Provided further that, if the all students subgroup meets either but not both of the school and State MIP for the all students subgroup and makes progress that is at least equal to three times the difference between the lower of the school-specific current and prior year MIPs and the State's current and prior year MIPs for the all students subgroup, but if such progress is insufficient for the all students

subgroup to meet the higher of the State or school MIP or the Long-term goal, the all students subgroup will be assigned a Graduation Rate Level 3.

(9) Provided further that, notwithstanding the Graduation Rate Level determined pursuant to paragraphs (7) and (8), the Commissioner may assign a Graduation Level 1 to an all students subgroup whose unweighted average Four-Year, Five-Year, and Six-Year graduation rates are below a percent established by the Commissioner and the Commissioner may assign a Graduation Level 2 to an all students subgroup whose unweighted average Four-Year, Five-Year, and Six-Year graduation rates is at or above a percent established by the Commissioner.

(c) Combined Composite Performance and Graduation Rate Level. For each public high school meeting the minimum n-size requirement as defined in paragraph (1) of subdivision (b) of this section, a Combined Composite Performance and Graduation Rate Level shall be computed by the Commissioner in accordance with the following steps:

(1) The Commissioner shall generate a combined Composite Performance and Graduation Rate rank ordered list by summing a school's Composite Performance Index rank order, as described in clause (a) of this subparagraph, and the school's Graduation Rate rank order as described in clause (b) of this subparagraph.

(2) A Combined Composite Performance and Graduation Rate Level from 1-4 shall then be assigned to each school based on the school's Combined Composite Performance and Graduation Rate ranking in accordance with the following table.

<b><u>Rank Based on Combined Composite Performance and Graduation Rate Rankings</u></b>	<b><u>Combined Composite Performance &amp; Graduation Rate Level</u></b>
In the lowest 10%	1
Between 10.1% and 50%	2

Between 50.1 and 75%	3
In the highest 75%	4

\*The Commissioner may exclude from the rank ordered list schools defined in subparagraph (vii) of paragraph (1) of subdivision (b) of this section or schools defined in subdivision 8 of section 4001 of the Education Law.

(3) The resulting Combined Composite Performance and Graduation Rate Level shall then be used in the table described in subparagraph (i) of paragraph (2) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school; provided that if the all students subgroup does not meet the minimum n size for the Graduation Rate measure, as defined in paragraph (1) of subdivision (b) of this section, then the Combined Composite Performance and Graduate Rate Level will be determined using the Composite Performance Level only.

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

(1) The Commissioner shall first determine an initial level of proficiency and the corresponding years that the student was identified as an English Language Learner based upon the student's performance on the NYSESLAT in the initial year of identification as an English Language Learner pursuant to Part 154 of this Title.

(2) The Commissioner shall then determine progress rates for each student based on the years identified as an English language learner and the level achieved on the NYSESLAT in the first year in which the student was identified as an English Language Learner pursuant to Part 154 of this Title.

(3) The Commissioner shall then calculate each school's success ratio based on all continuously enrolled students' results compared to the continuously enrolled students' progress rates, as determined by the Commissioner. Utilizing this information, each school shall then be assigned an English Language Proficiency Level from 1-4 in accordance with the following table:

<u>Success Ratio</u>	<u>English Language Proficiency Level</u>
0 - 0.49	1
0.50 - 0.99	2
1.0 - 1.24	3
1.25+	4

(4) The resulting English Language Proficiency Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school shall be preliminarily identified as a CSI school.

(e) Academic Progress Level. For each public high school meeting the minimum n-size requirement as defined in paragraph (1) of subdivision (b) of this section, the Commissioner shall compute an Academic Progress Level in accordance with the following steps:

(1) The Commissioner shall calculate separate ELA and Mathematics Academic Achievement Indices from 0-250 for the all students subgroup in the school.

(2) The Commissioner shall then determine a separate State MIP and Long-term goal for ELA and Mathematics.

(3) The Commissioner shall determine a separate school MIP in ELA and Mathematics.

(4) The Commissioner shall then assign an Academic Progress Level in ELA from 1-4 using the table below based on each of the following: whether or not the school's ELA Academic Achievement Index met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school's MIP.

(5) The Commissioner shall then assign an Academic Progress Level in Mathematics from 1-4 using the table below based on whether the school's Mathematics Academic Achievement Index met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP.

	<u>Did Not Meet Long-Term Goal</u>	<u>Met Long-Term Goal</u>	<u>Exceeded Long-Term Goal</u>
Did not meet either MIP	Level 1	N/A	N/A
Met lower of State or School MIP	Level 2	Level 3	Level 4
Met higher of State or School MIP	Level 3	Level 4	Level 4

(6) The Commissioner shall then average the ELA Academic Progress Level assigned in subclause (4) of this clause and the Mathematics Academic Progress Level assigned in subclause (5) of this clause. The resulting average Academic Progress Level will be rounded down to the nearest whole number that represents the level that will be used and an Academic Progress Level from 1-4 will be assigned. The resulting Academic Progress Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(7) Notwithstanding the Academic Progress Level resulting from the table above, using the all students subgroup's baseline performance as measured by the previous school year test results, for purposes of the accountability designation, if the all students

subgroup does not meet the lower of the State or school MIP but increases the Achievement Index by an amount at least equal to the difference between the higher of the school's current year MIP and prior year MIP or the current year State MIP and prior year State MIP, the all students subgroup will be assigned an Academic Progress Level 2. Provided further that, if the all students subgroup meets either but not both of the school and State MIPs for that subgroup and makes progress that is equivalent to at least three times the difference between the lower of the school-specific current and prior year MIPs and the State current and prior year MIPs for that subgroup, but if such progress is insufficient for the subgroup to meet the higher of the State or school MIP or the Long-term goal, the all students subgroup will be assigned an Academic Progress Level 3.

(f) Chronic Absenteeism Level. For each public high school meeting the minimum n-size requirement pursuant to paragraph (1) of subdivision (b) of this section, the Commissioner shall compute a Chronic Absenteeism Level in accordance with the following steps:

(1) The Commissioner shall first compute the school's Chronic Absenteeism Rate, which means the number of students enrolled during the school year in a school for a minimum of ten instructional days and in attendance at least one of those days who were absent (excused or unexcused) for at least 10 percent of enrolled instructional days divided by the total number of students enrolled during the school year, expressed as a percentage. Suspensions are not counted as excused or unexcused absences, as suspended students are required to be provided with instruction while they are suspended. At the high school level, chronic absenteeism is calculated for grades nine-12 and ungraded age equivalent students.



(2) The Commissioner shall then determine a State MIP and Long-term goal for Chronic Absenteeism.

(3) The Commissioner shall also determine a school MIP for Chronic Absenteeism.

(4) The Commissioner shall then assign a Chronic Absenteeism Level from 1-4 based on whether the school's Chronic Absenteeism Rate, as defined in this clause met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP. Each school shall then be assigned a Chronic Absenteeism Level from 1-4 in accordance with the following table:

	<u>Did Not Meet Long-Term Goal</u>	<u>Met Long-Term Goal</u>	<u>Exceeded Long-Term Goal</u>
Did not meet either MIP	Level 1	N/A	N/A
Met lower MIP	Level 2	Level 3	Level 4
Met higher MIP	Level 3	Level 4	Level 4

(5) The resulting Chronic Absenteeism Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(6) Notwithstanding the Chronic Absenteeism Level generated by the table above, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but decreases the Chronic Absenteeism Rate by an amount equal to the difference between the lower of the school's current year MIP and prior year MIP or the current year State MIP and prior year MIP for the all students subgroup, the all students subgroup will be assigned a Chronic Absenteeism Level 2. Provided further that, if the all students subgroup meets either but not both the

school and State MIP for that subgroup and makes progress toward decreasing the Chronic Absenteeism Rate that is equivalent to three times the difference between the lower of the school specific current and prior year MIP and the State current and prior year MIP for the all students subgroup, but if such progress is insufficient for the all students subgroup to meet the higher of the State or school MIP or the State Long-term goal, the all students subgroup will be assigned a Chronic Absenteeism Level 3.

(7) Provided further that, notwithstanding the Chronic Absenteeism Level determined pursuant to paragraphs (4), (5) and (6), the Commissioner may assign a Chronic Absenteeism Level 1 to an all students subgroup whose chronic absenteeism rate is below a percent established by the Commissioner and the Commissioner may assign a Chronic Absenteeism Level 2 to an all students subgroup whose chronic absenteeism rate is at or above a percent established by the Commissioner.

(g) College, Career, and Civic Readiness Level. For each public high school meeting the minimum n-size requirement pursuant to paragraph (1) of subdivision (b) of this section, the Commissioner shall compute a College, Career, and Civic Readiness Index.

(1) The Index is calculated using the number of students in the 4-Year Graduation Rate Cohort as of June 30 of the reporting year plus any members of the English language learner subgroup who earn a Regents Diploma with a Seal of Biliteracy who are not members of the 4-Year Graduation Rate Cohort as the denominator.

(2) The numerator is the number of these students demonstrating success on specific college, career, and civic readiness using specific measures multiplied by the weighting (0.5 to 2.0) assigned to each of these measures in accordance with table

below plus the number of students who earned a High School Equivalency diploma in the current reporting year and students who were members of the English language learner subgroup at the time of graduation who earned a Regents Diploma with a Seal of Biliteracy in the reporting year, regardless of whether or not they were in the 4-year Graduation Rate Cohort.

In accordance with the provisions of Section 100.5 of this Part: Regents Diploma with Advanced Designation Regents or Local Diploma with CTE Technical Endorsement Regents Diploma with Seal of Biliteracy Regents Diploma and score of 3 or higher on an Advanced Placement exam Regents Diploma and score of 4 or higher on an International Baccalaureate exam Regents or Local Diploma and the passage of nationally certified Career and Technical Education (CTE) examination Regents Diploma and high school credit earned through participation in dual enrollment (in high school and accredited college) course Skills and achievement commencement credential as provided in section 100.6(a) of this Part and a Level 4 on the New York State Alternate Assessment for students with disabilities as defined in section 100.1(t)(2)(iv) of this Part. Annual ELL and earned Regents with Seal of Biliteracy in current reporting year and not in 4-year graduation-rate cohort	2.0
In accordance with the provisions of Section 100.5 of this Part: Regents Diploma and high school credit earned through participation in an Advanced Placement course Regents Diploma and high school credit earned through participation in an International Baccalaureate course Regents Diploma with Career Development and Occupational Studies (CDOS) endorsement Skills and achievement commencement credential as provided in section 100.6(a) of this Part and Level 3 on the New York State Alternate Assessment for students with disabilities as defined in section 100.1(t)(2)(iv) of this Part.	1.5
Regents or Local Diploma only in accordance with provisions of section 100.5 of this Part Skills and achievement commencement credential as provided in section 100.6(a) of this Part and an achievement Level 2 on the NYSAA	1.0
Annual high school equivalency diploma recipients (included in numerator but not denominator) New York State career development and occupational studies commencement credential as provided in section 100.6(b) of this Part.	0.5
No high school diploma or high school equivalency diploma.	0

To determine the College, Career, and Civic Readiness Index, the numerator is divided by the denominator, and the result is multiplied by 100.

(3) The Commissioner shall then assign a College, Career, and Civic Readiness Level from 1 to 4 based on the table below and whether or not the College, Career, and

Civic Readiness Index met, exceeded, or failed to meet each of the following: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP.

	<u>Did Not Meet Long-Term Goal</u>	<u>Met Long-Term Goal</u>	<u>Exceeded Long-Term Goal</u>
Did not meet either MIP	Level 1	N/A	N/A
Met lower MIP	Level 2	Level 3	Level 4
Met higher MIP	Level 3	Level 4	Level 4

(4) The resulting College, Career, and Civic Readiness Level is then used in the table described in subparagraph (i) of paragraph (2) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(5) Notwithstanding the College, Career, and Civic Readiness Level generated by the table above, using the all students subgroup’s baseline performance as measured by the previous school year test results, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but increases the College, Career, and Civil Readiness Index by an amount at least equal to the difference between the higher of the school’s current year MIP and prior year MIP or the State current year MIP and prior year MIP, the all students subgroup will be assigned a College, Career, and Civic Readiness Level 2. Provided further that, if the all students subgroup meets either but not both of the school and State MIP for that subgroup and makes progress that is equivalent to at least three times the difference between the lower of the school-specific current and prior year MIPs and the

State current and prior year MIPs for that subgroup, but if such progress is insufficient for the subgroup to meet the higher of the State or School MIP or the Long-Term Goal, the all students subgroup will be assigned a College, Career, and Civic Readiness Level 3.

(6) Provided further that, notwithstanding the College, Career, and Civic Readiness Level determined pursuant to paragraph (3), (4), and (5), the Commissioner may assign a College, Career, and Civic Readiness Level 1 to an all students subgroup whose College, Career, and Civic Readiness Index is below a benchmark established by the Commissioner and the Commissioner may assign a College, Career, and Civic Readiness Level 2 to an all students subgroup whose College, Career, and Civic Readiness Index is at or above a benchmark established by the Commissioner.

(ii) Targeted Support and Improvement High Schools. A high school shall be preliminarily identified as a TSI school if the school meets the criteria for identification outlined in the table below for two consecutive school years for the same accountability subgroup, except that a school identified as a Priority or Focus School during the 2017-2018 school year may be identified, using 2017-2018 school year data only, if such school meets the criteria for identification as a TSI school beginning with the 2018-2019 school year.

(a) The decision table below combines multiple measures for accountability subgroups in the school using the same methodology used to designate CSI schools pursuant to subparagraph (i) of this paragraph and using the following accountability measures: (1) Composite Performance; (2) Graduation Rate; (3) Combined Composite Performance and Graduation Rate; (4) English Language Proficiency; (5) Academic

Progress; (6) Chronic Absenteeism; and (7) College, Career, and Civic Readiness.

(b) The designations for TSI schools 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 accountability subgroup; provided that in order to be preliminarily identified using the decision table below a performance level must be assigned to, at a minimum, the Combined Composite Performance and Graduation Rate measure and one or more of the following measures: English Language Proficiency; Academic Progress; Chronic Absenteeism; and/or College, Career, and Civic Readiness.

**Decision Table for Identification of Targeted Support and Improvement High Schools**

<b>Composite Performance Level</b>	<b>Grad Rate Level</b>	<b>Combined Composite Performance &amp; Grad Rate Level</b>	<b>English Language Proficiency Level</b>	<b>Progress Level</b>	<b>Chronic Absenteeism Level</b>	<b>CCCR Level</b>
Both Level 1		Level 1	Any Level	Any Level		
Either Level 1		Level 1	None*	Any One of the Three is Level 1		
Either Level 1		Level 1	Level 1	Any Level		
Either Level 1		Level 1	Level 2	Any Level 1		
Either Level 1		Level 1	Level 3 or 4	Any Two Level 1		

\*"None" means that there are not a sufficient number of English Language Learners to meet the minimum n-size requirement.

(c) If a high school meets the identification criteria for both a CSI and TSI school, the high school shall be designated as a CSI school; provided however that if in the year in which a CSI school is removed from CSI identification and such school meets the criteria for a TSI school, the school shall be designated as a TSI school.

(d) When the Commissioner creates a rank ordered list for the racial/ethnic subgroup for purposes of identification of a TSI school, one rank ordered list will be

generated for all racial/ethnic groups combined.

(iii) TSI High Schools identified for additional support.

(a) Beginning with the 2018-2019 school year, for each year in which the Commissioner identifies CSI schools based on the performance of the all students subgroup in accordance with subparagraph (i) of paragraph (1) of subdivision (f) of this section, the Commissioner shall identify for additional targeted support any TSI high school with a subgroup whose performance would have caused the school to be identified as a CSI school using the methods for identification specified in subdivision (f) of this section.

(b) Such high school shall be identified for additional targeted support only if the school had been identified as a TSI school in the prior school year and remains so identified in the current school year.

(c) Notwithstanding the provisions of clause (a) of this subparagraph, in assigning Performance Levels for the purpose of determining whether the performance of a subgroup in a TSI school would have caused the school to be identified as a CSI school, the Commissioner shall:

(1) Assign to the subgroup the Composite Performance Level that would have been assigned to the all students subgroup with the same Composite Performance Index for purposes of identifying CSI schools.

(2) Assign to the subgroup the Combined Composite Performance and Graduation Rate Level that would have been assigned to the all students subgroup with

the same Combined Composite Performance and Graduation Rate ranking for purposes of identifying CSI schools.

(3) For the Graduation Rate, Academic Progress, Chronic Absenteeism, and the College, Career, and Civil Readiness measures, the Commissioner shall use the State MIPs and Long-term goals applicable to the all students subgroup to determine the subgroup's levels on these indicators.

(3) Target Districts.

(i) Any school district with one or more CSI or TSI schools identified pursuant to the provisions of this section shall be identified as a Target District.

(ii) Notwithstanding any other provision of this section to the contrary, the Commissioner shall apply the accountability measures for identification as a CSI or TSI school to the school district as a whole, and if such district meets the criteria for identification as a CSI or TSI school, the district shall be identified as a Target District in accordance with the timelines and procedures prescribed in this section for identification of CSI schools and TSI schools.

(g) For each school preliminarily identified as a TSI school or CSI school, and for each school district preliminarily identified as a Target District pursuant to subdivision (f) of this section, the school district or charter school shall be given the opportunity to present to the Commissioner additional data and/or any relevant information concerning extenuating or extraordinary circumstances faced by the school or district that should be cause for the Commissioner not to identify the school as a CSI or TSI school or the district as a Target District.

(h) Public notification of identification as a CSI or TSI school or a Target District.



(1) Upon receipt of a designation as a CSI or TSI school or Target District, the board of education (in New York City, the chancellor or the chancellor's designee) or charter school board of trustees shall take appropriate action to notify the general public of the issuance of such designation. Such action shall include, but not be limited to, direct notification, within 30 days of receipt of the Commissioner's designation, in English and translated, when appropriate, into the recipient's native language or mode of communication, to persons in parental relation of children attending the school that it has been designated as a CSI or TSI school, or Target District and disclosure of such designation by the school district at the next public meeting of the local board of education or by the charter school board of trustees at the next public meeting.

(2) Each school year during which a school remains identified as a CSI or TSI school or Target District, by June 30th or at the time of a student's initial application or admission to the school, whichever is earliest, the board of education or charter school board of trustees shall provide direct notification to parents or other persons in parental relation to children attending the school or district, as applicable, that the school or district remains a CSI or TSI school or Target District, as applicable. Such notification shall include a summary of the actions that the school district and school are taking to improve student results and an explanation of any district programs of choice, magnet programs, transfer policies, or other options that a parent or a person in parental relation may have to place the child in a different public school within the school district. Such notification shall include the timelines and process for parents exercising their rights to school choice.

(3) Notwithstanding the provisions of paragraphs (1) or (2) of this subdivision, in the event that a CSI school has been identified as a struggling school or a persistently

struggling school pursuant to section 100.19 of this Part and/or a school under registration review pursuant to this section, the district may use a single notification to fulfill the annual public notification requirements of this section and section 100.19(c)(1)(ii) of this Part.

(i) Interventions. Beginning with accountability designations made on or after July 1, 2018, all CSI and TSI schools and Target Districts shall implement all interventions applicable to such designations under this subdivision. Provided, however, that a charter school identified as a CSI or TSI school shall not be required to implement the interventions applicable to the school accountability designation pursuant to this subdivision and, in lieu of such interventions, such identified charter school shall take such actions as are required by its charter authorizer pursuant to Article 56 of the Education Law consistent with the charter agreement that each charter school has with its charter authorizer. Provided further, however, that any school identified as of June 30, 2018 as a priority or focus school pursuant to section 100.18 of this Part shall implement a school comprehensive education plan in the 2018-2019 school year that meets the requirements for such plan as specified in section 100.18 of this Part. Provided further that any school required to offer public school choice prior to July 1, 2018 pursuant to section 100.18 of this Part shall continue to permit any students to remain in the school to which they have transferred and provide transportation until such students have completed the highest grade level in the school to which such students have transferred, in the manner required by the provisions of section 120.3 of this Part.

(1) Interventions for CSI Schools.

(i) In the first school year in which the school is identified as a CSI school, the school must:

(a) participate in a comprehensive needs assessment conducted in accordance with subparagraph (ii) of paragraph (4) of subdivision (b) of this section;

(b) develop, in consultation with parents, school staff, and other stakeholders pursuant to section 100.11 of this Part, a school comprehensive education plan as defined in subparagraph (viii) of paragraph (4) of subdivision (b) of this section. Such plan shall:

(1) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee) and submitted for approval to the Commissioner by July 1 of the school year in which the plan is required to be implemented;

(2) be implemented no later than the first day of regular student attendance of the next school year after the school year in which the school was identified;

(3) be updated annually and incorporate the findings of the comprehensive needs assessment or progress needs assessment as applicable, and be implemented no later than the first day of regular student attendance of each year that the school remains a CSI school;

(4) be made widely available through public means by either posting on the district's or school's website, if one exists, or displayed conspicuously within the school, according to such timeline as may be prescribed by the Commissioner;

(5) be developed in consultation with parents, school staff, and others pursuant to section 100.11 of this Part; and

(6) include a description of the goals, targets, and activities, and include timelines for the implementation of school-level evidence-based interventions and job-embedded professional development as defined in subparagraphs (v) and (ix) and of paragraph (4) of subdivision (b) of this section.

(c) limit incoming teachers transfers to teachers rated effective or highly effective pursuant to Education Law §3012-d by a school district in the previous school year, subject to collective bargaining as required under article 14 of the Civil Service Law, and require that any successor collective bargaining agreement authorize such transfers unless otherwise prohibited by law;

(d) establish a participatory budgeting process as defined in subparagraph (x) subparagraph (4) of subdivision (b) of this section;

(e) conduct parent, staff, and student surveys as defined in subparagraph (xi) of paragraph (4) of subdivision (b) of this section; and

(f) notify parents and the public of the school's designation as a CSI school in accordance with subdivision (i) of this section.

(ii) In the second school year of identification as a CSI school:

(a) except as otherwise provided in this subparagraph, the school shall continue to implement the requirements established by subparagraph (i) of this subdivision, including the school comprehensive education plan;

(b) obtain prior approval of the Commissioner for any significant modification to the school's approved comprehensive education plan;

(c) the principal must submit to the district on a quarterly basis a report of the leading indicators identified in the comprehensive education plan detailing the progress made toward meeting the goals set forth in the school's comprehensive education plan;

(d) any CSI school that has met or exceeded its Annual Achievement Progression targets, as defined in paragraph (4) of subdivision (a) of this section, in the first set of available annual assessment data following the school's identification will receive a progress needs assessment, which will inform the development and/or any amendments or modifications to the school comprehensive education plan to be implemented in the following school year;

(e) Any CSI school that has not met or exceeded its Annual Achievement Progression targets, as defined in paragraph (4) of subdivision (a) of this section, in the first set of available annual assessment data following the school's identification, will receive either a progress needs assessment or a comprehensive needs assessment, as determined by the Commissioner and based on the needs of the school as exhibited by the most recent performance on the accountability measures. In addition to the needs assessment, as determined by the Commissioner, the district shall also submit a principal support report, as defined in subparagraph (xii) of paragraph (4) of subdivision (b) of this section;

(iii) In the third school year of identification as a CSI school:

(a) except as otherwise provided in this subparagraph, the school must continue to implement the requirements established by subparagraph (ii) of this paragraph, including the school comprehensive education plan;

(b) the principal must continue to submit to the district on a quarterly basis a report of the leading indicators identified in the comprehensive needs assessment detailing the progress made toward meeting the goals set forth in the school comprehensive education plan;

(c) Any CSI school that has met or exceeded its Annual Achievement Progression targets, as defined in paragraph (4) of subdivision (b) of this section, in both the first set of available annual assessment data following the school's identification and the second set of available data following identification, will receive a progress needs assessment, which will inform the development and/or any modifications to the school comprehensive education plan to be implemented in the following school year. Provided that, if such school makes sufficient progress to be removed from the accountability designation as set forth in subdivision (j) of this section, such school shall be removed from the designation as a CSI school;

(d) Any CSI school that did not meet or exceed its Annual Achievement Progression targets as defined in paragraph (4) of subdivision (b) of this section, based on the first set of available annual assessment data following the school's identification, but did meet, or exceeded, its Annual Achievement Progression targets based on the second set of available annual assessment data, will receive either a progress needs assessment, which will inform the development of the comprehensive education plan to be implemented in the following school year.

(e) Any CSI that did not meet or exceed its Annual Achievement Progression target in the first and second set of available assessment data following the release of accountability determinations will receive a progress needs assessment or comprehensive needs assessment, as determined by the Commissioner and based on the needs of the school as exhibited by the most recent performance on the accountability measures. Provided that, if a progress needs assessment was conducted in previous year of identification, a comprehensive needs assessment must

be completed. Any CSI school that did not meet its Annual Achievement Progression target in the first and second set of available assessment data following the release of accountability determinations will also be required to amend the current year's comprehensive education plan, and submit such amendment for the Commissioner's approval, within 60 days of the release of the school's Annual Achievement Progression results to identify how the school will partner with a BOCES, Regional Bilingual Educational Resource Network, Teacher Center, or other Regional Technical Assistance Center, or other technical assistance provider as determined by the Commissioner to support the implementation of its comprehensive education plan. Additionally, a Principal Needs Assessment, as defined in subparagraph (xiii) of paragraph (4) of subdivision (a) of this section, will be added to the District Needs Assessment process for any district with a CSI school that does not reach its Annual Achievement Progression targets for two consecutive years; and

(f) Any CSI school that met, or exceeded, its Annual Achievement Progression target as defined in paragraph (4) of subdivision (a) of this section, based on the first set of available annual assessment data following the school's identification, but did not meet its Annual Achievement Progression target based on the second set of available annual assessment data, will receive either a progress needs assessment or a comprehensive needs assessment, as determined by the Commissioner and based on the needs of the school as exhibited by the most recent performance on the accountability measures. In addition to the needs assessment, as determined by the Commissioner, the district shall also submit a principal support report, as defined in paragraph (4) of subdivision (a) of this section.

(g) In any CSI school that has a decline in its Core Subject Performance Index for elementary/middle schools or its Composite Performance Index for high schools for the all students subgroup, as determined by the Commissioner, for two consecutive years, the school district must provide all students enrolled in the school with public school choice in accordance with section 120.1 and paragraph (4) of subdivision (b) of this section. Provided further that, in instances when there are no schools in Good Standing or TSI schools serving the grade levels served by the CSI school that is required to provide public school choice, the district shall ensure that the CSI school expends for Participatory Budgeting an amount equal to or greater than three times the amount expended by such school during the previous year. In instances when there are schools within the school district that are in Good Standing or TSI but the district is unable to fulfil all of the public school choice transfer requests submitted on behalf of students from the CSI school because there are not enough available seats to accommodate all transfer requests received, then the district must ensure that the CSI school expends for Participatory Budgeting an amount equal to or greater than at least two times the amount set aside at such school during the previous year.

(iv) For any CSI school that is required to offer public school choice or increase the amount expended for Participatory Budgeting as outlined in clause (g) of subparagraph (iii), that school shall continue to provide all students enrolled in the school with public school choice during the time period the school is identified as a CSI school. For schools that were unable to offer to public school choice as outlined in clause (g) of subparagraph (iii), the school shall continue to expend the additional amount identified in clause (g) of subparagraph (iii) toward Participatory Budgeting for each year the school is identified as a CSI school



If a school's designation as a CSI school is removed, the school shall no longer be required to provide all students in the school with public school choice in the following school year; provided further that any student receiving public school choice at the time the CSI designation is removed, shall continue to be provided the opportunity remain in the school to which they have transferred and be provided with transportation until the student has completed the highest grade level in the school to which such students have transferred, in the manner required by the provisions of section 120.3 of this Part.

(v) Notwithstanding the provisions of this paragraph, a school district, on behalf of a transfer high school that has been identified as a CSI school, may petition the Commissioner to differentiate the required interventions for such transfer high school. Such petition may include, but need not be limited to, a request for one or more of the following:

(a) the school comprehensive education plan shall be subject to approval only by the district;

(b) a transfer high school shall not be required to offer public school choice;

(c) a transfer high school shall not be required to amend its school comprehensive education plan to partner with a BOCES, Regional Bilingual Educational Resource Network, Teacher Center, or other Regional Technical Assistance Center or other technical assistance provider as determined by the Commissioner to support the implementation of its school comprehensive education plan.

(vi) CSI Schools Identified as Persistently Struggling Schools, Struggling Schools and/or Schools Under Registration Review.

(a) Notwithstanding the provisions of subdivision (i) of this section, in the event that a CSI school has been identified as a struggling school or a persistently struggling school pursuant to section 100.19 of this Part and/or a school under registration review pursuant to this section, the district may use a single notification to fulfill the annual public notification requirements of this subdivision and section 100.19(c)(1)(ii) of this Part.

(b) For schools designated as struggling or persistently struggling pursuant to section 100.19 of this Part, in creating the school comprehensive education plan or in revising the department-approved intervention model, the school receiver shall ensure that the plan addresses the tenets of the diagnostic tool for school and district effectiveness and include student outcome data pursuant to section 100.19(f)(4) of this Part.

(c) For schools that are identified as persistently struggling or struggling pursuant to section 100.19 of this Part, the requirements for the school comprehensive education plan include, in addition to those required in this section, the requirements specified in section 100.19(d)(1) of this Part related to development of a community engagement plan and inclusion of rigorous performance metrics and goals.

(2) Interventions for TSI Schools.

(i) In the first school year of identification as a TSI school, and for every school year thereafter during which the school remains so identified, the school must:

(a) participate in a comprehensive needs assessment in the first year of identification and a comprehensive needs assessment or a progress needs assessment in subsequent years in which the school is identified;

(b) develop a school comprehensive education plan. Such plan shall:

(1) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee;

(2) be implemented no later than the first day of regular student attendance of the next school year after the school year in which the school was identified;

(3) be updated annually and incorporate the findings of the comprehensive needs assessment or progress needs assessment as applicable, and be implemented no later than the first day of regular student attendance of each school year that the school remains a TSI school;

(4) be made widely available through public means by either posting on the district's or school's website, if one exists, or displayed conspicuously within the school, according to such timeline as may be prescribed by the Commissioner;

(5) be developed in consultation with parents, school staff, and others pursuant to section 100.11 of this Part; and

(6) include a description of the goals, targets, and activities, and include timelines for the implementation of school-level evidence-based interventions and job-embedded professional development.

(3) Interventions for Target Districts.

(i) In the first year of identification as a Target District, and for every school year thereafter during which the district remains so identified, the district must:

(a) participate in a comprehensive needs assessment;

(b) develop a district comprehensive improvement plan. Such plan shall:

(1) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee;

(2) be implemented no later than the first day of regular student attendance of the next school year after the school year in which the district was identified;

(3) be updated annually and incorporate the findings of the comprehensive needs assessment;

(4) be made widely available through public means by either posting on the district's website, if one exists, or displayed conspicuously within the district, according to such timeline as may be prescribed by the Commissioner;

(5) be developed in consultation with parents, school staff, and others, consistent with the district plan pursuant to section 100.11 of this Part; and

(6) include a description of the goals, targets, and activities, and include timelines for the implementation of interventions and professional development that address the needs identified by the district and school needs assessments.

(c) for the second year of identification and each subsequent school year thereafter that the school district is identified as a Target District, obtain prior approval of the Commissioner for any significant modification of the district's comprehensive improvement plan;

(4) Interventions for schools with subgroups performing at Level 1 on an accountability measure.

(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 CSI or TSI school shall:

(a) participate in a needs assessment, in a format as may be prescribed by the Commissioner, to determine the additional support that the school needs to improve performance. Such needs assessment must identify the academic achievement gaps

between accountability subgroups within the school, the root causes for the gaps, and delineate the resources and strategies that the district will use to support the school to address such gaps.

(b) based on the needs assessment, in a format as may be prescribed by the Commissioner, the district, in consultation with parents, school staff, and other stakeholders at the school, consistent with the district plan pursuant to section 100.11 of this Part, shall identify additional resources that the district will provide to the school to assist it to increase performance on the accountability measure for the identified group(s). Provided that in its consolidated application submitted to the Department, the district must identify the additional resources and professional development that the district will provide the school to improve performance.

(ii) Any TSI school that is identified for additional targeted support may be required to implement additional actions, as determined by the Commissioner, including submission of their annual school comprehensive education plan to the Commissioner for approval; partnering with a BOCES, Regional Bilingual Educational Resource Network, Teacher Center, or other Regional Technical Assistance Center, or other technical assistance provider; and/or implementing a participatory budgeting process. Districts with TSI schools identified for additional targeted support may be required to implement additional actions, as determined by the Commissioner, including submitting a principal support report.

(5) Interventions for schools that fail to demonstrate an assessment participation rate of 95 percent.

(i) Pursuant to paragraph (1) of subdivision (b) of this section, the Commissioner shall annually determine the participation rate for each accountability subgroup in each

public school in which the subgroup has 40 or more students. The Commissioner shall determine that the subgroup has met the participation rate requirement if:

(a) the participation rate for the current year equals or exceeds 95 percent; or

(b) the weighted average of the current year and prior year participation rates equals or exceeds 95 percent;

(ii) Beginning with 2017-2018 and 2018-2019 school year results, any public elementary/middle or high school that fails to meet the required 95 percent participation rate for the same subgroup(s), in the same subject (i.e., ELA or math) for two consecutive years, and that fails to improve participation rate as compared to the previous year for the same subgroup(s) and subject(s), as determined by the Commissioner, must conduct a participation rate self-assessment and develop a participation rate improvement plan, in such form and according to such timeline as determined by the Commissioner. Such school participation rate self-assessment and improvement plan shall be developed in collaboration with a committee composed of the school principal or his/her designee(s); school staff, including teachers and student support staff selected by the representative collective bargaining organization(s), and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by school-related parent organizations; except that a school district may designate that a school-based management team established pursuant to section 100.11 of this Part or a community engagement team established pursuant to 100.19 of this Part may serve as the committee required by this paragraph. Such school plan must address participation of students from all subgroups for which the school has failed to meet the required 95 percent participation rate and failed to improve the participation rate as compared to the

previous year. Such school plan must be adopted by the district Board of Education (in New York City, the chancellor or chancellor's designee), after consultation with the committee, no later than 60 days following notification to the district that such a plan is required. The Board of Education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public upon adoption of the school plan; such action shall include, but not be limited to, publishing on the district website, if one exists, or direct notification, within 30 days of adoption, in English and translated, when appropriate, into the recipient's native language or mode of communication.

(iii) Beginning with 2018-2019 and 2019-2020 school year results, for any school that completed a school participation rate self-assessment and improvement plan in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s), as determined by the Commissioner, for which the plan was required, the district shall conduct a participation rate audit and develop an updated participation rate improvement plan. Such district participation improvement plan shall be developed in collaboration with a committee composed of the superintendent or his/her designee(s); the school principal or his/her designee(s); school staff, including teachers and student support staff selected by the representative collective bargaining organization(s); and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by district-related and/or school-related parent organizations. Such district plan must be adopted by the district board of education, no later than 60 days following notification to the district that such a plan is required. The board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general

public upon adoption of the school plan; such action shall include, but not be limited to, publishing on the district website, if one exists, or direct notification to the parents, within 30 days of adoption, in English and translated, when appropriate, into the recipient's native language or mode of communication.

(iv) Beginning with 2019-2020 and 2020-2021 school year results, for any school for which a district audit and district participation rate improvement plan was completed in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s), as determined by the Commissioner, for which the plan was required, the district must partner with a Board of Cooperative Educational Services (BOCES) or other technical assistance center to conduct a participation rate audit and develop an updated participation rate plan. Such participation rate improvement plan shall be developed in collaboration with a committee composed of BOCES staff, the superintendent or his/her designee(s); the school principal or his/her designee(s); school staff, including teachers and student support staff, no more than fifty percent of whom shall be selected by the representative collective bargaining organization(s); and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by district-related and/or school-related parent organizations. Such plan must be adopted by the district board of education no later than 60 days following notification to the district that such a plan is required. The board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public upon adoption of the school plan; such action shall include, but not be limited to, publishing on the district website, if one exists, or direct notification to the parents, within 30 days of adoption, in



English and translated, when appropriate, into the recipient's native language or mode of communication.

(v) Beginning with 2020-2021 and 2021-2022 school year results, for any school for which an audit and participation rate improvement plan was completed pursuant to subparagraph (iv) of this paragraph in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s), as determined by the Commissioner, for which the plan was required, the Department shall conduct an audit of the participation rate and the school may be required by the Commissioner to undertake additional activities to raise student participation in State assessments, which may include requiring that the district set aside a portion of its Title I funds to use on activities to increase student participation in state assessments.

(vi) Beginning with 2017-2018 and 2018-2019 school year results, for any public elementary/middle or high school that is required to develop a participation rate improvement plan and is among the lowest 10 percent of schools within the State for participation rate as determined by the Commissioner, the district must submit such plan for approval by the Commissioner no later than 60 days following notification to the district that such plan is required.

(vii) Notwithstanding the requirements of this subdivision, the Commissioner may make a determination that a school may be excused from development of a self-assessment and participation rate improvement plan if the school demonstrates extenuating or extraordinary circumstances that should cause the school to be so excused as determined by the Commissioner.

(viii) Any school that is required to conduct a self-assessment and develop a participation rate improvement plan shall be required to update such plan annually until

the school is no longer failing to meet the 95 percent participation rate for any subgroup(s) and subject(s) which caused it to be required to conduct such self-assessment and develop such plan.

(j) Removal from accountability designation.

(1) For elementary/middle schools:

(i) To exit CSI status, a CSI elementary/middle school must, for two consecutive years, exceed the levels that would cause it to be identified for CSI status in each such school year.

(ii) Elementary/middle schools may exit CSI status if, for two consecutive years:

(a) The elementary/middle school's Composite Performance Level and Student Growth Level are both Level 2 or higher; or

(b) Both the Composite Performance Index and Mean Growth Percentile are higher than at the time of identification; and the Combined Composite Performance and Student Growth Level is a Level 2 or higher; and none of the following is Level 1: Academic Progress, English Language Proficiency, and Chronic Absenteeism.

(c) Notwithstanding any provision of this subdivision to the contrary, an elementary/middle school may also exit CSI status if such elementary/middle school is not on the new list of identified CSI schools that is created every third year, as a consequence of the school having improved performance on the measures used to identify such schools.

(d) Notwithstanding any provision of this subdivision to the contrary including clause (c) of this subparagraph, an elementary/middle school may not exit CSI status if the school is required to implement a participation rate plan improvement pursuant to paragraph (5) of subdivision (i) of this section.

(iii) To exit TSI status, the performance of a TSI elementary/middle school must, for two consecutive years, be such that it would no longer be identified as a TSI School under the criteria listed in subdivision (f) of this section. For an elementary/middle school to be removed from TSI status, all identified subgroups must meet the specified exit criteria. Provided that to be removed from designation as a TSI elementary/middle school, a school must not be identified for any accountability subgroup and the school may not be among those required to implement a participation rate improvement plan.

(2) For high schools:

(i) High schools may exit CSI status if, for two consecutive years:

(a) The high school's Composite Performance Level and Graduation Rate Level are both Level 2 or higher; or

(b) Both the Composite Performance Index and average of the Four-Year, Five-Year, and Six-Year Graduation Rates are higher than at the time of identification; and the Combined Composite Performance and Graduation Rate Level is a Level 2 or higher; and none of the following are Level 1: English Language Proficiency; Academic Progress; Chronic Absenteeism; and College, Career, and Civic Readiness.

(c) Notwithstanding any provision of this subdivision to the contrary, a high school may also exit CSI status if such school is not on the new list of identified CSI schools that is created every third year, as a consequence of the school having improved performance on the measures used to identify high schools.

(d) Notwithstanding any provision of this subdivision to the contrary, a high school may not exit CSI status if the school is required to implement a participation rate improvement plan.

(ii) To exit TSI status, the performance of a TSI high school must, for two consecutive years, be such that it would no longer be identified as a TSI school under subdivision (f) of this section. For a high school to be removed from TSI status, all identified subgroups must meet the specified exit criteria and the school shall not be among those required to implement a participation rate plan pursuant to this section. Provided that to be removed from the designation as a TSI school, a high school shall not be identified for TSI school for any accountability subgroup.

(3) Provided that, any CSI school or TSI school which is identified for both the elementary and middle school, or the middle and high school, each identified grade span level must meet the exit criteria described in this subdivision.

(4) Provided further that, any elementary, middle, or high school that has been identified as a CSI school for three consecutive school years shall be preliminarily identified as a struggling school and subject to the provisions of section 100.19 of this Part.

(5) Provided further that any TSI elementary, middle or high school that continues to be identified for three consecutive school years after designation for additional targeted support for the performance of the same accountability subgroup(s) for which the school was identified for additional targeted support shall be preliminarily identified as a CSI school.

(6) Removal of designation as a Target District. A district may be removed from Target District status if:

(i) all of the schools in the district are in Good Standing; and

(ii) if the district has been identified as a Target District because of district-wide performance, the district's performance must, for two consecutive years, be such that it would no longer be identified as a Target District under subdivision (f) of this section.

(k) Identification of schools for public school registration review.

(1) The Commissioner shall place under preliminary registration review those schools identified for receivership in accordance with section 100.19 of this Title; provided, however, that the Commissioner may also place under preliminary registration review any school identified as a CSI school in accordance with this section for at least three consecutive years.

(2) The Commissioner may also place under preliminary registration review any school that has conditions that threaten the health, safety, and/or educational welfare of students or has been the subject of persistent complaints to the department by parents or persons in parental relation to the student, and has been identified by the Commissioner as a poor learning environment based upon a combination of factors affecting student learning, including but not limited to: high rates of student absenteeism, high levels of school violence, excessive rates of student suspensions, violation of applicable building health and safety standards, high rates of teacher and administrator turnover, excessive rates of referral of students to or participation in special education or excessive rates of participation of students with disabilities in the alternate assessment, evidence that the school does not maintain required programs and services; evidence of failure to appropriately refer for identification and/or provide required programs and services to students with disabilities pursuant to Part 200 of this Title; evidence of failure to appropriately identify and/or provide required programs and services to English language learners pursuant to Part 154 of this Title, excessive

transfers of students to alternative high school and high school equivalency programs and excessive use of uncertified teachers or teachers in subject areas other than those for which they possess certification. Notwithstanding the provisions of subdivision (g) of this section, any school that is identified as a school under registration review pursuant to this paragraph shall also be identified as a CSI school and shall be subject to all of the requirements of this section.

(3) The Commissioner may also place under preliminary registration review any school for which a school district fails to provide in a timely manner the student performance data required by the Commissioner to conduct the annual assessment of the school's performance or any school in which excessive percentages of students fail to fully participate in the State assessment program.

(4) For each school identified for preliminary registration review pursuant to paragraph (1) of this subdivision, the school district shall be given the opportunity to present to the Commissioner additional data and relevant information concerning extenuating or extraordinary circumstances faced by the school that should be cause for the Commissioner to not identify the school for registration review.

(5) For each school identified as a poor learning environment and placed under preliminary registration review pursuant to paragraph (2) of this subdivision, the school district shall be given the opportunity to present evidence to the Commissioner that the conditions in the school do not threaten the health or safety or educational welfare of students and do not adversely affect student performance.

(6) The Commissioner shall review the additional information provided by the school district and determine which of the schools identified for preliminary registration review pursuant to paragraph (1) of this subdivision, or identified as poor learning

environments pursuant to paragraph (2) of this subdivision, shall be placed under registration review.

(l) Public school registration review.

(1) Upon placing the registration of a school under review, the Commissioner shall warn the board of education (in New York City, the chancellor or chancellor's designee) that the school has been placed under registration review, and that the school is at risk of having its registration revoked. The Commissioner shall include in any warning issued pursuant to this paragraph the actions that must be taken and/or the progress that must be demonstrated in order for a school to be removed from consideration for revocation of registration, except that for a school identified as a poor learning environment pursuant to this paragraph the Commissioner need not inform the board of education of the actions that must be taken and/or the progress that must be demonstrated in order for the school to be removed from consideration for revocation of registration until the Commissioner has completed the review of the recommendations of the integrated intervention team.

(i) Upon receipt of such warning, the board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public of the issuance of such warning. Such action shall include, but not be limited to, direct notification, within 30 days of receipt of the Commissioner's warning, in English and translated, when appropriate, into the recipient's native language or mode of communication, to persons in parental relation of students attending the school that it has been placed under registration review and is at risk of having its registration revoked, and disclosure by the school district at the next public meeting of the local board of education of such warning.

(ii) Each school year during which a school remains under registration review, by June 30 or at the time of a student's initial application or admission to the school, whichever is earliest, the board of education shall provide direct notification to parents or other persons in parental relation to students attending the school that the school remains under registration review and is at risk of having its registration revoked. Such notification shall include a summary of the actions that the school district and school are taking to improve student results and an explanation of any school district programs of choice, magnet programs, transfer policies, or other options that a parent or a person in parental relation may have to place the student in a different public school within the school district. Such notification shall include the timelines and process for parents exercising their rights to school choice. Notwithstanding the provisions of this subparagraph, in the event that the Commissioner places a struggling or persistently struggling school pursuant to section 100.19 of this Part under registration review, the district may use a single notification to fulfill the annual public notification requirements of this section and section 100.19(c)(1)(ii) of this Part.

(2) Schools with poor learning environments identified for registration review. Following the placement of a school under registration review pursuant to paragraph (2) of subdivision (k) of this section, an integrated intervention team, which may include a distinguished educator, as appointed by the Commissioner, pursuant to section 100.17(c)(3)(i) of this Part, shall conduct a diagnostic review of the school and recommend to the Commissioner for his or her approval interventions based upon the reason for which the school was identified for registration review, which may include but need not be limited to whether the school should:



(i) continue to implement its current improvement plan or any interventions required under subdivision (h) of this section, as modified by recommendations of the integrated intervention team;

(ii) implement a new intervention plan that addresses the recommendations of the integrated intervention team; or

(iii) be phased out or closed.

The Commissioner shall review the recommendations of the integrated intervention team and may approve, or modify and approve as so modified, such recommendations. Upon such approval, the Commissioner shall direct that the school district submit in a format and according to a timeline prescribed by the Commissioner a revised improvement plan or intervention plan, a new intervention plan, or a plan for phase out or closure that implements the recommendations of the integrated intervention team. Upon approval of the plan by the Commissioner, the school shall be required to implement such plan. If the school district fails to submit an approvable plan, the Commissioner may recommend to the Board of Regents that the registration be revoked and the school be declared an unsound educational environment pursuant to paragraph (7) of this subdivision. If the school fails for two consecutive years to take the actions or make the progress required by the Commissioner, the Commissioner may direct that the district submit a plan to implement one of the following actions:

(a) convert the school to a charter school pursuant to Education Law section 2851(3);

(b) enter into a contract with the State university trustees, subject to the approval of the Commissioner of Education, pursuant to Education Law section 355(n) for the education of the children of the school;

(c) for the city school district of the City of New York, enter into a contract with the city board and the city university of New York pursuant to Education Law section 2590(k) to administer a New York City public high school; or

(d) close or phase out the school.

(ii) In the event that the school district does not submit an acceptable plan in such format and in such timeline as the Commissioner may establish, the Commissioner may direct that the school district close or phase out the school pursuant to a plan approved by the Commissioner.

(3) Receivership schools.

(i) A school that is identified for registration review that has also been identified as a struggling school or persistently struggling school pursuant to section 100.19 of this Part shall implement the school receivership provisions of that section, except that if the school fails to make demonstrable improvement pursuant to section 100.19 of this Part for two consecutive years the Commissioner may direct that the school receivership be terminated and the district submit a plan to take one of the following actions:

(a) convert the school to a charter school pursuant to Education Law section 2851(3);

(b) enter into a contract with the State university trustees, subject to the approval of the Commissioner of Education, pursuant to Education Law section 355(n) for the education of the children of the school;

(c) for the city school district of the City of New York, entering into a contract with the city board and the city university of New York pursuant to Education Law section 2590(k) to administer a New York City public high school or

(d) close or phase out the school.

(ii) In the event that the school district does not submit an acceptable plan in such format and in such timeline as the Commissioner may establish, the Commissioner may direct that the school district close or phase out the school pursuant to a plan approved by the Commissioner.

(4) CSI schools identified for registration review that are not struggling or persistently struggling schools. A school that is identified for registration review that has been identified as a CSI school that is not a struggling or persistently school pursuant to section 100.19 of this Part shall continue to implement its current improvement plan and/or any interventions required under this section. If the school fails for two consecutive years to take the actions or make the progress required by the Commissioner, the Commissioner may direct the district to submit a plan to take one of the following actions:

(i) convert the school to a charter school pursuant to Education Law section 2851(3);

(ii) enter into a contract with the State university trustees, subject to the approval of the Commissioner of Education, pursuant to Education Law section 355(n) for the education of the children of the school;

(iii) for the city school district of the City of New York, entering into a contract with the city board and the city university of New York pursuant to Education Law section 2590(k) to administer a New York City public high school; or

(iv) close or phase out the school.

(v) In the event that the school district does not submit an acceptable plan in such format and in such timeline as the Commissioner may establish, the

Commissioner may direct that the school district close or phase out the school pursuant to a plan approved by the Commissioner.

(5) In the event that a school district seeks to register a new school to replace a school under registration review that is being closed or phased out pursuant to paragraphs (2), (3), or (4) of this subdivision or to close and replace a struggling or persistently struggling school pursuant to section 100.19 of this Part, the Commissioner may direct the school district to provide information in such format and according to such timeline as prescribed by the Commissioner that includes, but is not limited to, the following:

(i) an overview of the instructional design, programs, partnerships, and curriculum for the school that shall be opened and the timeline by which each of these elements shall be put in place, as well as the professional development that shall be provided to the staff members of the school;

(ii) the additional resources that will be provided to any schools to which students from the closing or phasing out school may be reassigned, as well as additional resources to ensure implementation of plans for any new school to be opened;

(iii) evidence that key stakeholder groups were involved in the decisions regarding the plan for the closure and opening of schools;

(iv) the process for identifying and appointing the leadership and staff of the new school, which must result in the selection of school leaders with a track record of success as school leaders and a staff that consists primarily of experienced teachers (i.e., at least three years of teaching experience) who are certified in the subject area(s) they will teach, have been rated Effective or Highly Effective pursuant to Education Law §3012-d in each of the past three years, and are not currently assigned to the school to

be closed or phased out, unless approval has been granted by the Commissioner to waive any of these requirements, subject to collective bargaining as required under article 14 of the Civil Service Law, and require that any successor collective bargaining agreement authorize such appointments unless otherwise prohibited by law;

(v) evidence that the school's enrollment will not increase socio-economic and/or racial/ethnic isolation of students in the new school and the staff of the new school has been trained in culturally responsive-sustaining practices and can meet the needs of all students, including students with disabilities and English language learners/multilingual learners; and

(vi) the Commissioner may further direct that a district that seeks to register a new school to replace a school under registration review or a struggling or persistently struggling school that is being closed or phased out contract with an independent monitor to oversee the closure or phase process and the opening of the new school. The independent monitor shall be appointed by the Commissioner, in consultation with the superintendent of the school district, and shall report to the Commissioner according to such timeframe and in such manner as the Commissioner shall direct. The independent monitor shall be:

(a) a consultant to the school district, which shall pay for such services, but shall report to the Commissioner or her designee.

(b) serve on any committee(s) that are part of the process of hiring school leaders and staff for any school that shall be opened.

(c) shall neither have been an employee of the school district in the past two years, nor be engaged in any other work with the school district while serving as an independent monitor.

(vii) The Commissioner shall forward to the Board of Regents a petition to register a new school to replace a school under registration review or a persistently struggling or struggling school only upon a finding by the Commissioner that the school district has submitted a plan to create a new and satisfactory educational environment for students and has the capacity to implement successfully such plan.

(6) The Commissioner may require a school district to submit such reports and data as the Commissioner deems necessary to monitor the implementation of the improvement plan, school comprehensive education plan, or closure or phase out plan and to determine the degree to which the school has achieved the progress required by the Commissioner. Such reports shall be in a format and in accordance with such timeframe as are prescribed by the Commissioner. The Commissioner may upon a finding of good cause extend the deadline for submission of a required plan.

(7) If the school has not taken the required actions to close or phase out a school as delineated by the Commissioner pursuant to paragraphs (2), (3), (4), or (5) of this subdivision, the Commissioner shall recommend to the Board of Regents that the registration be revoked and the school be declared an unsound educational environment, except that the Commissioner may upon a finding of extenuating circumstances extend the period during which the school must demonstrate progress. The board of education of the school district which operates the school (in New York City, the chancellor or chancellor's designee) shall be afforded notice of such recommendation and an opportunity to be heard in accordance with paragraph (9) of this subdivision.

(8) Upon approval of revocation of registration by the Board of Regents, the Commissioner will develop a plan to ensure that the educational welfare of the students

of the school is protected. Such plan shall specify the instructional program into which students who had attended the school will be placed, how their participation in the specified programs will be funded, and the measures that will be taken to ensure that the selected placements appropriately meet the educational needs of the students. The Commissioner shall require the board of education to implement such plan.

(9) Decisions to revoke the registration of a public school shall be made in accordance with the following procedures:

(i) The Commissioner shall provide written notice of his or her recommendation and the reasons therefore to the board of education, which operates the school (in New York City, both the chancellor and any community school board having jurisdiction over the school). Such notice shall also set forth:

(a) the board of education's right to submit a response to the recommendation and request oral argument pursuant to subparagraph (ii) of this paragraph;

(b) the place, date, and time the matter will be reviewed, and if requested, an oral argument heard by a three-member panel of the Board of Regents for recommendation to the full Board of Regents; and

(c) notification that failure to submit a response will result in the Commissioner's recommendation being submitted to the Board of Regents for determination.

(ii) Within 15 days of receiving notice of the recommendation to revoke registration, the board of education (in New York City, both the chancellor or chancellor's designee and any community school board having jurisdiction over the school) may submit a written response to the Commissioner's recommendation. The response shall be in the form of a written statement which presents the board of education's position, all evidence and information which the board of education believes

is pertinent to the case, and legal argument. If the board of education desires, it may include in its response a request for oral argument. Such response must be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.

(iii) Within 30 days of the date of notice of the Commissioner's recommendation, a panel comprised of three members of the Board of Regents, appointed by the chancellor, shall convene to consider the Commissioner's recommendation, review any written response submitted by the board of education and, if timely requested by the board of education, hear the oral argument.

(m) Removal of schools from registration review, school phase-out or closure.

(1) In the event that a school has demonstrated the progress necessary to be removed from registration review, the superintendent may petition the Commissioner to remove the school from registration review.

(2) A school shall not be removed from registration review if, in the Commissioner's judgment, conditions that may contribute to a poor learning environment, as identified in paragraph (2) of subdivision (k) of this section, remain present in the school.

(3) In the event that a school placed under registration review prior to the 2018-2019 school year demonstrates that it has met its previously established progress targets pursuant to paragraph (p) of section 100.2 or section 100.18 of this Part, but is identified in the 2018-2019 school year as a CSI school pursuant to this section, the school shall remain under registration review and shall follow the intervention requirements pursuant to subdivision (i) of this section and meet the targets for removal



from designation as a CSI school pursuant to subdivision (j) of this section, pursuant to a timeline prescribed by the Commissioner.

(4) In the event that a school placed under registration review prior to the 2018-2019 school year demonstrates that it has met its previously established progress targets pursuant to paragraph (p) of section 100.2 or section 100.19 of this Part, and is not identified in the 2018-2019 school year as a CSI school pursuant to subdivision (g) of this section, the school shall be removed from registration review.

(5) In the event that a board of education either seeks to phase out or close a school under registration review or is required to close or phase out a school pursuant to paragraph (l)(3) of this section, the board of education (in New York City, the chancellor or chancellor's designee) shall submit for Commissioner's approval, a plan identifying the intervention that will be implemented and will result in phase out or closure, in the form and containing such content as prescribed by the Commissioner. The Commissioner will consider the academic impact of such phase out or closure on other schools within the school district and may grant approval of such plan provided that:

(i) official resolutions or other approvals to phase out or close the existing school have been adopted by the local board of education (in New York City, the chancellor or chancellor's designee);

(ii) a formal phase out or closure plan has been developed and approved in accordance with the requirements of the intervention prescribed by the Commissioner pursuant to subdivision (i) of this section; and

(iii) parents, teachers, administrators, and community members have been provided an opportunity to participate in the development of the phase out or closure plan.

(m) 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.

7. Part 120 of the Regulations of the Commissioner of Education is amended, effective July 1, 2018, as follows:

Part 120. [No Child Left Behind Act of 2001] School Choice and Supplemental Educational Service Providers.

§ 120.1. [Purpose. The purpose of this Part is to implement key provisions of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, Public Law, section 107-110 (NCLB). The provisions of this Part shall be construed in a manner consistent with Federal law, and shall not be construed to create greater rights than are conferred under Federal law, except as specifically authorized by State statute.

§120.2. General definitions...

§120.3]. Title I public school choice.

(a) For school years prior to the 2018-2019 school year, [Each] each Title I LEA that has a Title I school in a Priority or Focus designation shall provide all students enrolled in the school the option to transfer to another public school served by the Title I LEA at the same grade level that is not a school identified as a persistently dangerous

school pursuant to section 120.5 of this Part, or that is not a Priority or Focus School pursuant to section 100.18 of this Title, regardless of whether or not such school is receiving title I funds, to the extent required by section 1116(b)(1)(E) of the NCLB, 20 U.S.C. section 6316(b)(1)(E) (Public Law, section 107-110, section 1116(b)(1)(E), 115 STAT. 1479; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234); provided, however, that students enrolled in a school pursuant to public school choice under this section prior to the 2018-2019 school year shall continue to be given the choice to enroll in such school until such student completes the highest grade level of the school to which the student transferred. For school years commencing with the 2018-2019 school year, schools required to provide students enrolled in the school with the option to transfer to another public school served by the Title I LEA at the same grade level pursuant to section 100.21(i) of this Title shall be required to comply with this section. Nothing in this section shall be construed to confer a right to transfer to a magnet school or special focus school having entrance requirements based on academic or other skills without meeting such requirements, or to transfer to a school where such transfer would violate health and safety code requirements or would otherwise be in violation of law. If more than one school served by the Title I LEA meets the requirements of this subdivision, the Title I LEA shall provide the parents or other persons in parental relationship to such students with a choice of more than one such school, and shall take into account the preferences of the parents or other persons in parental relationship among the choices offered by the Title I LEA.

(b) ...

(c) ...

(d) Transportation shall be provided to the school the student attends to the extent required by sections 100.18 100.21 of this Title and the provisions of section 1116(b)(9) and (13), 20 U.S.C. section 6316(b)(9) and (13) or the applicable provisions of the Education Law (Public Law, section 107-110, section 1116(b)(9) and (13), 115 STAT. 1486 and 115 STAT. 1487; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234).

(e) ...

(f) ...

(g) ...

[§120.4]. §120.2. Supplemental educational services...

[§120.5.] §120.3. Unsafe school choice. Each local educational agency shall ensure that any student who attends a persistently dangerous public elementary or secondary school, as determined by the [commissioner] Commissioner pursuant to subdivision (a) of this section, or who is a victim of a violent criminal offense, as defined pursuant to subdivision (b) of this section, that occurred on the grounds of a public elementary or secondary school that the student attends, shall be allowed to attend a safe public school at the same grade level within the local educational agency. For purposes of this section, a safe public school shall mean a public school that has not been designated by the [commissioner] Commissioner as a persistently dangerous public elementary or secondary school.

(a) Persistently dangerous schools. Pursuant to guidelines to be developed by the [commissioner] Commissioner in consultation with a representative sample of local

educational agencies, the [commissioner] Commissioner shall determine which public elementary and secondary schools are persistently dangerous. A determination that a school is persistently dangerous shall be based upon objective information including, at a minimum, data submitted through the uniform violent incident reporting system, established pursuant to section 2802 of the Education Law, over a period of two years.

(1) On or before July 1st of each year commencing in 2003, the [commissioner] Commissioner shall annually notify the local educational agencies of those schools which the information described in this subdivision indicate may be persistently dangerous public elementary and secondary schools.

(2) Upon notification that a school has been identified for potential designation as a persistently dangerous public elementary or secondary school, the local educational agency shall be given the opportunity to present evidence to the [commissioner] Commissioner that conditions in the school do not unreasonably threaten the safety of students, that it has taken appropriate action or actions to improve safety at the school, and any other such evidence in support of its position that the school should not be designated as persistently dangerous. The [commissioner] Commissioner shall request local educational agencies to submit, by a date prescribed by the [commissioner] Commissioner, data for the current school year that is reportable under the uniform violent incident reporting system and is deemed necessary to make a final determination that a school should be designated as persistently dangerous. If a local educational agency fails to submit such data by such date, such final determination shall be based on data on file with the [commissioner] Commissioner.

(3) The [commissioner] Commissioner shall consider any evidence presented to him pursuant to paragraph (2) of this subdivision and shall notify the local educational

agency no later than August 1st immediately following his initial notification of the final determination on whether the school has been designated as a persistently dangerous public elementary or secondary school.

(b) ...

(c) ...

(d) ....

(1) Where the [commissioner] Commissioner has determined that a school is a persistently dangerous public elementary or secondary school, the local educational agency shall notify the parents of, or persons in parental relation to, all students attending such school of their right to transfer to a safe public school within the local educational agency and the procedures for such transfer. The local educational agency shall so notify the parents of, or persons in parental relation to, all such students no later than 10 days after such local educational agency has been advised that the [commissioner] Commissioner has determined that a school is a persistently dangerous public elementary or secondary school.

(2) ....

(e) Duration of unsafe school choice.

(1) The transfer of a student to a safe public school from a school that has been designated by the [commissioner] Commissioner as a persistently dangerous public elementary or secondary school pursuant to the provisions of this section may be either temporary or permanent, as determined by the local educational agency, provided, however, that a temporary transfer shall remain in effect at least as long as such student's transferring school continues to be identified as persistently dangerous, unless the parent or other person in parental relationship to the student requests that the

student transfer back to the transferring school pursuant to paragraph (3) of this subdivision. In determining whether a transfer will be temporary or permanent, a local educational agency shall evaluate the educational needs of the student and any other relevant factors affecting such student's ability to succeed if returned to the transferring school, and shall make the transfer permanent if such evaluation indicates that a permanent transfer would be in the best educational interests of the student. For purposes of this subdivision, permanent transfer shall mean a transfer that ends when the student has completed the highest grade level in the school such student has transferred to, or when the parent or other person in parental relationship to the student has requested that the student transfer back to the transferring school pursuant to paragraph (3) of this subdivision.

(2) ...

(3) ...

(f) When the [commissioner] Commissioner has designated a school of a local educational agency as a persistently dangerous public elementary or secondary school, or when a student has been the victim of a violent criminal offense that occurred on the grounds of a public elementary or secondary school that the student attends, it shall be the responsibility of such local educational agency, based on objective criteria, to designate a safe public school or schools within the local educational agency to which students may transfer. Nothing in this subdivision shall be construed to require a local educational agency to designate a safe public school where there are no other public schools within the local educational agency at the same grade level or such transfer to a safe public school within the local educational agency is otherwise impossible or to require a local educational agency that has only one public school within the local

educational agency or only one public school at each grade level to make such a designation.

(g) ...

(h) In the event that a local educational agency fails to comply with the school choice provisions of this section or section 2802 of the Education Law, the parent or person in parental relation to a student attending a school that has been designated as persistently dangerous and the parent, or persons in parental relation to a student who is the victim of a violent criminal offense, may commence an appeal to the [commissioner] Commissioner pursuant to section 310 of the Education Law.

(i) Removal of persistently dangerous public elementary or secondary school designation. In the event that a local educational agency believes that a school has demonstrated the progress necessary to have its designation as a persistently dangerous public elementary or secondary school removed for the next school year, such local educational agency may petition the [commissioner] Commissioner to remove such designation by the date prescribed by the [commissioner] Commissioner. A school's designation as persistently dangerous shall not be removed if, in the [commissioner's] Commissioner's judgment, conditions that may contribute to a dangerous environment remain present at the school.

[§ 120.6. Qualifications of teachers and paraprofessionals.

(a) For the purpose of compliance with the NCLB, a local educational agency shall ensure that its teachers of core academic subjects are highly qualified in accordance with the requirements and definitions prescribed in 34 CFR 200.55, 200.56 (Code of Federal Regulations, revised as of July 1, 2003, title 34, volume 1, Superintendent of Documents, U.S. Government Printing Office, Washington, DC



20402-0001, 2003; available at the NYS Education Department, Office of Higher Education, 2M West Wing, Education Building, 89 Washington Avenue, Albany, NY 12234.) For the purpose of compliance with the Individuals with Disabilities Education Act (IDEA) and the NCLB, a local educational agency shall ensure that special education teachers who teach core academic subjects are highly qualified in accordance with 34 CFR 300.18 (Code of Federal Regulations, 2006 edition, title 34, section 300.18, Federal Register / Vol. 71, No. 156 / August 14, 2006 / pp. 46758-46759—Office of the Federal Register, National Archives and Records Administration, 800 North Capital Street, NW, Suite 700, Washington, DC 20001; available at the Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza, Albany, NY 12234). A local educational agency shall provide a teacher of core academic subjects who is not new to the profession the opportunity to meet the NCLB and IDEA requirements to be highly qualified, in part, through passing the high objective uniform State standard of evaluation (HOUSSE). The HOUSSE shall be an evaluation, prescribed by the department and conducted locally either during a pre-employment review or at the time of an annual professional performance review prescribed in section 100.2(o) of this Title, that enables a teacher who is beyond the first year of the effective date of the teacher's first teaching certificate, or in accordance with the provisions of 34 CFR 300.18, to demonstrate subject matter competency in all core academic

subjects that the teacher teaches. The evaluation shall be based upon objective, coherent information as prescribed by the department, and shall include, but not be limited to, information on the teacher's education, credentials, professional experience, and professional development.

(b) For the purpose of compliance with the NCLB, a local educational agency shall ensure that a paraprofessional who is hired by the LEA and works in a program supported with funds under Title I meets qualifications in accordance with the requirements of 34 CFR 200.58 (*Code of Federal Regulations*, revised as of July 1, 2003, title 34, volume 1, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001, 2003; available at the New York State Education Department, Office of Higher Education, 2M West Wing, Education Building, 89 Washington Avenue, Albany, NY 12234.)]

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

On December 10, 2015, the Every Student Succeeds Act (ESSA) was signed into law by President Obama. This bipartisan measure reauthorized the 50-year-old Elementary and Secondary Education Act, which 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 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. New York State receives approximately \$1.6 billion annually in funding through ESSA.

After an extensive, 18-month long public engagement process, the Department, with Board approval, submitted New York State's ESSA plan to the USDE for review on September 17, 2018. Subsequently, the Department met regularly with the USDE to provide clarifications on the plan. On January 17, 2018, the USDE approved the State's plan. In January 2018, the Department provided the Board of Regents with an update on the approved plan and in March 2018, the Department provided an update regarding the financial transparency requirements related to ESSA. In April 2018, the Department provided Board of Regents with a detailed summary of the proposed amendment and the Board of Regents voted to authorize Department staff to publish the proposed amendment in the State Register for the 60-day public comment period so that the

Department had an opportunity to receive as much public comment as possible before adoption as an emergency rule for the 2018-2019 school year, as required under ESSA.

In order to conform the Commissioner's Regulations to the State's USDE approved ESSA Plan and to prepare for implementation of the plan beginning with the 2018-19 school year, the proposed rulemaking adds a new section 100.21 and amends Commissioner's Regulations sections 100.2(ff), 100.2(m), 100.18, 100.19 and Part 120 to align the Commissioner's Regulations with the approved ESSA plan, relating to New York State's updated accountability system. Adoption of the proposed amendment is necessary to ensure a seamless transition to the new accountability plan under ESSA and will allow school districts the option to demonstrate improvements, by creating improvement plans that address the needs and resource issues found in identified schools.

A Notice of Proposed Rulemaking was published in the State Register on May 9, 2018 and based on comments from the field, revisions were made to the proposed amendment. As a result, a Notice of Emergency Adoption and Revised Rule Making will be published in the State Register on July 18, 2018. Because the Board of Regents meets at scheduled intervals, the September 2018 meeting is the earliest the proposed rule could be presented for adoption, after expiration of the 30-day public comment period required under the State Administrative Procedure Act. However, the 2018-2019 school year begins on July 1, 2018 which is after the expiration of the required 30-day public comment period for revised rule makings and prior to the date which the regulations adopted at the September 2018 meeting could take effect on October 3, 2018. Therefore, emergency adoption is necessary for the preservation of the general welfare to conform the Commissioner's Regulations to timely implement New York

State's approved ESSA plan, so that school districts may timely meet school/school district accountability requirements for the 2018-2019 school year and beyond, consistent with the approved ESSA plan and pursuant to statutory requirements. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its September 17-18, 2018 meeting.

**ASSESSMENT OF PUBLIC COMMENT**  
(COMMENT RECEIVED AS OF June 4, 2018)

Following publication of the Notice of Proposed Rule Making in the State Register on May 9, 2018 through June 4, 2018, the Department received the following comments on the proposed amendment:

1. COMMENT: A student should be credited as achieving Level 2 on the high school Composite Performance Level based on whether the student has met the graduation assessment in the subject as opposed to scoring at least 65 on the examination. This would ensure equal weighting for students with disabilities who are eligible for the safety net provision.

DEPARTMENT RESPONSE: No change necessary. ESSA requires that a uniform standard be applied to all students in computing Academic Achievement. It would be inconsistent with ESSA to define achievement levels differently for different groups of students.

2. COMMENT: The levels assigned to the ELP success ratio should be revised. The threshold would be a more reliable measure if the Success Ratio for Level 2 were 0.50 to 0.85 (or 0.90) and Level 3 were 0.86 to 1.24.

DEPARTMENT RESPONSE: No change necessary. The ELP success ratio has been designed so that schools that have below average performance receive Level 2.

3. COMMENT: The commenter indicates that the proposed regulation allows a single student to be counted multiple times to determine if there are 30 or more students. The commenter recommends that there be a minimum of 80% of the students being counted only once for each of the 3 subject areas. This will prevent the situation

where the results from a very small number of students over two years could result in a school meeting the minimum n-size of 30 for an accountability group.

DEPARTMENT RESPONSE: The computation of minimum n-size in the draft regulations is consistent with the requirements of ESSA and New York's approved ESSA plan. While it is true that a student may be calculated twice over a two-year period, the calculation used for minimum n-size was developed to strike a balance between ensuring reliability of the measure and maximizing the number of students for whom a school is held accountable. The Department does not believe a change is necessary.

4. COMMENT: Those who are at the 40th or 45th percentile should be assigned a Level 3 in the conversion chart so that 55 to 60% of the schools will be at Level 3 or 4 on measures such as Composite Performance or student growth.

DEPARTMENT RESPONSE: These measures have been designed so that schools that have below average performance receive Level 2. The Department does not believe that a school that performing at the 40<sup>th</sup> or 45<sup>th</sup> percentile should be assigned Level 3 because these percentiles mean that on average students in the accountability group have shown less growth than their peers. Therefore, no change is necessary.

5. COMMENT: It seems unfair to expect a newly arrived ELL to graduate within a four-year window. Perhaps there could be some leeway to examine the graduation of newly arrived ELLs within a different cohort for graduation and accountability purposes.

DEPARTMENT RESPONSE: Schools have flexibility to determine the appropriate grade to which to assign a newly arrived ELL. Once a student has been assigned to a high school cohort, ESSA does not allow for different rules to be applied

to how the graduation rate is computed for English language learners. However, New York uses a four-, five-, and six-year graduation rate for accountability purposes in recognition of the fact that some students will need more than four years to graduate from high school. The Department does not believe any change is warranted.

6. COMMENT: The College Career and Civic Readiness Index is based on the four-year graduation rate cohort. Although Skills and Achievement Commencement Credentials are included in the 2.0 weighting and 1.5 weightings, these students typically do not graduate in 4 years. They are most likely to attend school until they are 21. The commenter recommends that students with disabilities on track for a Skills and Achievement Credential should not be held to the four-year graduation criteria.

DEPARTMENT RESPONSE: Ungraded students with disabilities are included in the Accountability Cohort and the Four-Year, Five-Year, and Six-Year Graduation Rate Cohorts in the school year in which they attain the age of 17. The Department does not believe a change is warranted.

7. COMMENT: Several commenters expressed concern with the process by which the draft regulations were presented to the Board of Regents and believe that the Board should have seen and had the opportunity to review and discuss the full text of the proposed regulations prior to their publication as a proposed rulemaking in the State Register.

DEPARTMENT RESPONSE: At its April 2018 meeting, the Board of Regents was presented with a detailed summary of the proposed amendment and the Board of Regents voted to authorize Department staff to publish the proposed amendment in the State Register for the 60-day public comment period so that the Department had an opportunity to receive as much public comment as possible before adoption as an



emergency rule for the 2018-2019 school year, as required under ESSA. On April 24, the Board of Regents was provided with the materials filed with the Department of State for publication in the State Register, and as soon as the full text was finalized and posted on the Department's website on May 9, the text was made available to the Board of Regents. The Board of Regents will be presented with the full text for emergency adoption at the June 2018 meeting.

8. COMMENT: Several commenters expressed the position that the proposed ESSA regulations make a direct frontal assault on the rights of parents to opt-out their children from the state testing system. This is contrary to the intent of ESSA and good public policy. Several commenters stated that all educational factors in a school should be used when assessing its effectiveness rather than primarily focusing on one assessment. Further, a number of these provisions were never discussed in public and were not detailed in the summary provided to the Board of Regents at the April Regents meeting.

DEPARTMENT RESPONSE: ESSA requires that LEAs provide parents upon their request with information on any state or local policy or procedures and parental rights regarding student participation in mandated assessments, where applicable. ESSA also makes clear that it does not preempt any state or local law with regard to a parental decision regarding participation in State assessments. The proposed regulations, therefore, contain no provisions relating to the right of parents to opt their children out of the State assessment system.

ESSA requires that State assessments annually measure the achievement of not less than 95% of all students, and 95% of all students in each subgroup of students. Therefore, the proposed regulations, consistent with the requirements of ESSA and

New York’s approved plan, specify how academic achievement is computed and what the consequences are for schools when, for at least two consecutive years, fewer than 95% of students in an accountability subgroup do not participate in the grades 3-8 English language arts or mathematics assessment.

9. COMMENT: In the plan that New York submitted to the United States Department of Education, Academic Achievement in elementary/middle ELA and math was to be computed using the higher of two ways of ranking performance: one using as the denominator the greater of the number of continuously enrolled students tested or 95% of the number of continuously enrolled students and the other using as the denominator the number of continuously enrolled students tested. However, in the proposed regulations, these two performance scores are added together to calculate the “Composite Performance Index.” This has the effect of lowering the “score” in schools with higher opt-out rates for the Composite Performance Index that is then used to identify schools for CSI and TSI status. The higher score will only be used as a “tie-breaker” when two schools have the identical Composite Performance Index score.

DEPARTMENT RESPONSE: This revision (to add the two performance scores together) was made to the State’s ESSA plan based on discussions with the United States Department of Education that ultimately led to approval of New York’s plan in January 2018. The proposed regulatory provisions conform to the State’s approved ESSA plan.

10. COMMENT: The proposed regulations establish an Academic Progress Index for each school. This Index is based on performance levels on the ELA and Math assessments using continuously enrolled students as the student count. This is a measure used to identify CSI and TSI schools. Several commenters expressed that this

measure penalizes schools with opt-outs since it assumes all students are taking the state assessments.

DEPARTMENT RESPONSE: As indicated in the April summary of the proposed regulations, the Academic Progress Index is computed based upon the State long-term goals and Measures of Interim Progress (MIPs) in the schools. ESSA requires that goals and MIPs be computed using as the denominator for the computations the greater of the number of continuously enrolled students tested or 95% of the number of continuously enrolled students. These long-term goals and MIPs are computed using the above denominator as the baseline, thus taking into account that not all students participate in State assessments.

11. COMMENT: The proposed regulations provide that a school cannot exit CSI or TSI status if the school has a participation rate below 95 percent, regardless of all other indicators. This will block schools from exiting CSI or TSI status which otherwise have met performance targets set by SED.

DEPARTMENT RESPONSE: The proposed regulations provide that a school that is required to implement a participation rate improvement plan may not exit CSI or and may not exit TSI status if it is required to implement a participation rate improvement plan for an accountability group for which it has been identified as CSI. This provision is a modification of the existing more rigorous provisions pertaining to Priority and Focus Schools, which require that, in order to exit Priority or Focus status, the school must meet the 95% participation rate requirement for all groups for which the school is accountable for two consecutive years.

12. COMMENT: Several commenters expressed concern with the provision that permits the Commissioner to place under preliminary registration review (SURRE) any

school with “excessive percentages of students that fail to fully participate in the state assessment program.” This authority does not exist in the current SURR regs. If these regulations are enacted the Commissioner would have the unilateral authority to close schools that have high opt-out rates but are otherwise high performing.

DEPARTMENT RESPONSE: These are not new requirements. Section 100.18(k)(3) of the Commissioner’s regulations currently authorizes the Commissioner to place under registration review any school in “which excessive percentages of students fail to fully participate in the State assessment program,” and a similar provision has existed in §100.2(p) for over a decade.

13. COMMENT: Several commenters expresses concerns with the provisions that permit the Commissioner to impose a financial penalty by requiring districts to set aside Title I funds if the participation rate on state tests do not improve by the third year. This provision was not included in the summary provided to the Regents at the April Regents meeting.

DEPARTMENT RESPONSE: This provision permits, but does not mandate, that the Commissioner require a set aside to increase student participation, is not a financial penalty, but rather represents the possibility of the school district redirecting funds for this purpose. This provision is consistent with New York’s approved ESSA plan and was referenced in the April Regents summary as follows:

“In the third year of identification, for any school for which a district audit and district participation improvement plan was completed in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s) for which the plan was required, the district must work with a Board of

Cooperative Educational Services (BOCES) to conduct a participation rate audit and develop an updated participation rate plan.”

“In the fourth year of identification, for any school for which a BOCES audit and BOCES participation improvement plan was completed in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s) for which the plan was required, the Department will conduct an audit of the participation rate and the school may be required by the Commissioner to undertake additional activities to raise student participation in State assessments.”

14. COMMENT: The proposed regulations require any new collective bargaining agreement to limit teachers transferring into a CSI school to those rated effective/highly effective. Many collective bargaining agreements contain provisions that govern the transfer of teachers. Several commenters expressed concern and believe that this provision of the draft regulations would impair these existing and long standing collective bargaining agreements by requiring that any future agreement preclude certain teacher transfers.

DEPARTMENT RESPONSE: The proposed regulation provides that any such requirement would not affect current CBAs and would only be applicable to the extent permitted by law. Therefore, this provision would not impair existing collective bargaining agreements. No change is warranted.

15. COMMENT: Districts that create a new school to replace a closed and restructured SURR/CSI school must select staff that consists “primarily” of experienced teachers (at least three years) who have been rated Effective/Highly Effective in each of the past three years and are not currently assigned to the school. Several commenters

expressed concern and believe that this is an inappropriate intrusion into collective bargaining.

DEPARTMENT RESPONSE: This provision is consistent with current requirements in Commissioner's regulations §100.18 for implementation of a whole school reform model, which currently requires that districts review "the quality of all staff and retain only those who have the ability to be successful in the turnaround effort." Nevertheless, in an effort to address the commenter's concerns, the Department recommends revising the proposed amendment to make it clear that this provision shall not abrogate any existing collective bargaining agreement and that any new successor agreement shall authorize such appointments.

16. COMMENT: The committee that is established to develop the corrective action plan in schools with high opt-out rates must include teaching and support staff. However, beginning with the third year of a corrective action plan, only half the staff members can be selected by the bargaining unit. All staff should be selected by the respective bargaining units. Several commenters expressed concern and believe that it is inappropriate for the administration to select employees to serve on such committees.

DEPARTMENT RESPONSE: This provision is applicable only after a school has failed to improve its participation rate following two years of implementing a participation rate improvement plan. The intent is to allow districts to select teachers to participate in development of the next plan who may have new ideas for increasing participation rates. Therefore, the Department does not believe any change is warranted.

