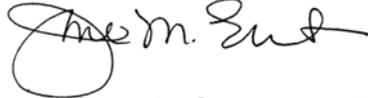




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents

**FROM:** Jhone M. Ebert 

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

**DATE:** August 31, 2017

**AUTHORIZATION(S):**



## SUMMARY

### Issue for Decision (Consent Agenda)

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

### Reason(s) for Consideration

Implementation of Policy.

### Proposed Handling

The proposed rule is being presented to the Full Board at the September 2017 Regents meeting for adoption as an emergency measure and as a permanent rule. A copy of the proposed amendment and a Statement of Facts and Circumstances Justifying the Emergency Adoption are included as Attachments A and B, respectively.

### Procedural History

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 5, 2017. Following the 45-day public comment period required under the State Administrative Procedure Act, no public comments were received.

## **Background Information**

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

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

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

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

## **Related Regents Items:**

<http://www.regents.nysed.gov/common/regents/files/617p12a6revised.pdf>

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

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

## **Recommendation**

Staff recommends that the Regents take the following actions:

VOTED: That section 100.18(g) of the Regulations of the Commissioner of Education be amended, as submitted, effective September 18, 2017, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that the rule adopted at the June 2017 Board of Regents meeting remains continuously in effect until it takes effect as a permanent rule.

VOTED: That section 100.18(g) of the Regulations of the Commissioner of Education be amended, as submitted, effective September 27, 2017.

**Timetable for Implementation**

If adopted at the September Regents meeting, the proposed amendment will become effective as an emergency rule on September 18, 2017 and as a permanent rule on September 27, 2017.

**STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING THE EMERGENCY**

The proposed amendment to section 100.18(g) of the Regulations of the Commissioner of Education is necessary to ensure school districts have sufficient notice of the amendments and are able to continuously implement them beginning with the 2017-2018 school year.

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 5, 2017. It is anticipated that the rule will be adopted at the September 2017 Board of Regents meeting and become effective as a permanent rule on September 27, 2017, the date which the Notice of Adoption will be published in the State Register. However, the Emergency Adoption which was published in the State Register on July 5, 2017 will expire on September 17, 2017. In order to have the proposed amendment remain continuously in effect until they can be adopted as a permanent rule, emergency action is necessary for the preservation of general welfare. Emergency action is also needed to ensure that school districts have sufficient notice of the amendments and are able to continuously implement them beginning with the 2017-2018 school year which commenced on July 1, 2017.

**Attachment B**

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Subdivision (g) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective September 27, 2017, as follows:

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

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

(i) Commencing with 2015-2016 school year results, a school that has been identified as a local assistance plan school based on 2013-2014, 2014-2015 and 2015-2016 school year results and based on each three consecutive school years of results thereafter will be preliminary identified as a focus school.

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

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

(10) School requiring a local assistance plan.

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

(a) failed to make adequate yearly progress (AYP) for an accountability group for three consecutive years on the same performance criterion in subdivision (j) of this

section; provided that such school shall not be designated as a local assistance plan school if the school has met other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph; or

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

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

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

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

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

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

(d) whether the graduation rate of the subgroup is above State average; and/or  
(e) if the subgroup's performance on an accountability measure has changed from year to year.

(iii) For transfer high schools for which a district has submitted alternative high school cohort data, the commissioner shall review such data to determine whether the school shall be designated as requiring a local assistance plan.

(iv) Notwithstanding subparagraphs (i), (ii) and (iii) of this paragraph, commencing with the 2014-2015 school year results a school shall not be identified as a Local Assistance Plan School until the school meets any of the criteria specified in clauses (i)(b) and (c) of this paragraph for two consecutive years.

(v) Districts will be informed of the preliminary status of its schools and will be provided the opportunity to appeal the identification of any preliminarily identified school.

(vi) The commissioner shall remove from Local Assistance Plan status a school that for two consecutive school years does not meet the criteria for identification in clauses (i)(a), (b) and (c) of this paragraph.

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

[(11)] (10) Public notification of identification as a priority or focus school.

