



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: Charles A. Szuberla, Jr. *Charles A. Szuberla Jr.*

SUBJECT: Proposed Amendment of Section 100.18 of the Regulations of the Commissioner Relating to New York State's School and District Accountability System

DATE: June 8, 2015

AUTHORIZATION(S): *Richard P. Trachtenberg* *Elizabeth P. Berlin*

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents readopt, as an emergency action, the proposed amendment of section 100.18 of the Regulations of the Commissioner of Education to make technical changes to the definition of how schools and districts are credited with making Adequate Yearly Progress for the "all students" group to align with New York's approved ESEA flexibility waiver and to clarify the methodology for identification of Local Assistance Plan (LAP) Schools?

Reason(s) for Consideration

To conform the Commissioner's Regulations to New York State's ESEA Flexibility Waiver Renewal application (approved by the United States Department of Education on July 31, 2014), and to clarify the process for identifying LAP Schools.

Proposed Handling

This item will come before the Full Board for adoption as an emergency action at the June 2015 Regents meeting. A Statement of the Facts and Circumstances Which Necessitate Emergency Action is attached.

Procedural History

The proposed amendment was adopted as an emergency action at the April 2015 Regents meeting, effective April 14, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 29, 2015.

The April emergency rule will expire on July 12, 2015. A second emergency action is necessary at the June Regents meeting to ensure that the rule remains continuously in effect until it can be presented for adoption and take effect as a permanent rule. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year. At its February 2014 meeting, the Board of Regents directed the Department to submit its ESEA Renewal Application. On July 31, 2014, USDE approved New York State's ESEA Waiver Renewal Request for the 2014-15 school year.

A subsequent review of Commissioner's Regulations has determined that a technical amendment is necessary to conform regulatory language to the approved ESEA Flexibility Waiver Request.

In addition, Department staff convened a workgroup of districts that have or have had schools identified LAP and conducted an online survey of such districts. As a result of this feedback, Department staff is proposing technical changes to the regulations to clarify that the Commissioner will not identify any schools that meet progress criteria established by the Commissioner as LAP Schools.

The proposed amendment will amend subdivision 100.18(f) of Commissioner's Regulations to align it with New York's approved ESEA Flexibility Waiver Renewal Application and 100.18(g) to clarify the methodology for identification of LAP Schools.

The proposed amendments will:

- Give schools and districts credit for making Adequate Yearly Progress (AYP) with the "all students group" when all other accountability groups for which a school or district is accountable make AYP on an English language arts or

mathematics performance criterion, as specified in New York's approved ESEA waiver; and

- Clarify that the Commissioner may consider additional measures in determining whether to identify a school as a LAP, including, but not limited to the following: whether a subgroup has made AYP; the subgroup's Student Growth Percentile (SGP); 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; whether the graduation rate of the subgroup is above state average; and if the subgroup's performance on an accountability measure has changed from year to year.

Recommendation

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

VOTED: That subdivisions (f) and (g) of section 100.18 of the Regulations of the Commissioner of Education are amended, as submitted, effective July 13, 2015, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the April 2015 Regents meeting remains continuously in effect until the proposed rule can be presented for adoption and take effect as a permanent rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the April 2015 Regents meeting, effective April 14, 2015, and will expire on July 12, 2015. If adopted at the June Regents meeting, the second emergency action will become effective on July 13, 2015 for a 60-day period. It is anticipated that the proposed rule will be presented for permanent adoption at the July 2015 Regents meeting, after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act. If adopted at the July meeting, the proposed amendment will take effect as a permanent rule on August 5, 2015.

8 NYCRR §100.18(f) and (g)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The purpose of the proposed rule making is to implement New York State's submitted Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request.

At the February 2014 meeting, the Board of Regents directed the State Education Department (SED or “the Department”) to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP). The proposed rule-making conforms subdivision 100.18(f) of the Commissioner’s Regulations with the submitted ESEA Flexibility Waiver Renewal Request, and addresses the Regents Reform Agenda and New York State's updated accountability system and also clarifies the process by which schools are identified as Local Assistance Plan Schools pursuant to subdivision 100.18(g) of the Commissioner’s Regulations. Adoption of the proposed amendment is necessary to ensure a seamless transition to the revised school and school district accountability plan under the Waiver.

The proposed amendment was adopted as an emergency action at the April 13-14, 2015 Regents meeting, effective April 14, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 29, 2015. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in

State Administrative Procedure Act (SAPA) section 202(1) and (5), is the July 20-21, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the March meeting, would be August 5, 2015, the date a Notice of Adoption would be published in the State Register. However, the April emergency rule will expire on July 12, 2015, 90 days from its filing with the Department of State on April 14, 2015. A lapse in the rule's effective date could disrupt implementation of school and school district accountability pursuant to New York State's approved ESEA Flexibility Waiver renewal and the Regents Reform Agenda and New York State's updated accountability system.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the April 2015 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its July 20-21, 2015 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Subdivisions (f) and (g) of section 100.18 of the Regulations of the Commissioner are amended, effective July 13, 2015, as follows:

(f) Adequate yearly progress.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

(7) . . .

(8) . . .

(9) Effective with 2013-14 school year results and continuing with the results for each school year thereafter, the “all students” accountability group for a public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance criterion specified in paragraph (1) and (2) of subdivision (i) of this section if all the accountability groups, except the “all students” group, for which a public school, charter school or school district is accountable on that performance criterion made adequate yearly progress.

(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 based on the subsequent school year results, the commissioner shall designate public schools requiring a local assistance plan.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) School requiring a local assistance plan.

(i) Beginning with the [2011-2012] 2013-14 school year results 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) 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 (5)(ii) of this subdivision, and such other measures of progress as determined by the Commissioner pursuant to subparagraph (ii) of this paragraph.

(ii) Notwithstanding the provisions of clauses (a) through (c) of subparagraph (i) of this subdivision, the commissioner may consider other measures of progress in determining whether to identify a school as a local assistance plan school, 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.

[(ii)] (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.

[(iii)] (iv) 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.

(7) . . .