



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:** John B. King, Jr. *John B. King, Jr.*

**SUBJECT:** Proposed amendment of Section 100.18 of the Regulations of the Commissioner relating to New York State's ESEA Flexibility Renewal Request, Annual Measurable Objectives, and Removal of Certain Focus Schools From Accountability Designation Without Replacement

**DATE:** July 2, 2014

**AUTHORIZATION(S):** *Richard A. Trentacosta*

#### **SUMMARY**

##### **Issues for Decision (Consent Agenda)**

Should the Board of Regents approve as a permanent rule the proposed amendment of section 100.18(j) of the Regulations of the Commissioner of Education to partially implement New York State's Elementary and Secondary Education Act (ESEA) Flexibility Renewal Request, with respect to resetting the annual measurable objectives (AMOs) for elementary/middle-level English language arts (ELA) and mathematics?

Should the Board of Regents approve as a permanent rule the proposed amendment of section 100.18(i)(2) of the Commissioner's Regulations to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools?

##### **Reason(s) for Consideration**

To conform the Commissioner's Regulations to New York State's approved ESEA Flexibility Waiver Renewal Request, with respect to the methodology for setting the AMOs for elementary/middle-level ELA and mathematics.

##### **Proposed Handling**

The proposed amendment will be presented to the Full Board at the July Regents meeting for adoption as a permanent rule. In addition, a second emergency adoption is

necessary to ensure the emergency rule adopted at the April Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule. A statement of the facts and circumstances which necessitate emergency action is attached.

### **Procedural History**

The proposed amendment was adopted as an emergency rule at the April 2014 Regents meeting, effective April 29, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 14, 2014. 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 USDE during the second round of submissions in mid-February 2012 and designated five members of the Board to help lead the work. On May 29, 2012, USDE approved New York State's ESEA Flexibility Waiver Request.

In November and December 2013, Department staff provided the Board of Regents with an overview of the process by which states can apply to renew their ESEA Flexibility waivers for the 2014-15 school year and presented possible amendments to the waiver for the Regents consideration. After discussion by the Board of Regents at its November 2013, December 2013, January 2014 and February 2014 meetings, the Department submitted New York's ESEA Waiver Renewal Request to the USDE on February 28, 2014. Included in the waiver renewal request were several provisions that the Department requested become effective for use with 2012-13 school year results.

At the February 2014 meeting, the Board of Regents directed the State Education Department (SED or "the Department") to submit an ESEA Flexibility Waiver Renewal Request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request relating to determinations of Adequate Yearly Progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology for setting elementary-middle level English language arts and mathematics Annual Measurable Objectives (AMOs).

On April 22, 2014, the USDE approved SED's request to reset the AMOs. USDE review of the remainder of the Waiver Renewal application is still pending. In addition, the USDE informed SED that the proposed amendment of section 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools would not require an amendment to SED's approved ESEA Flexibility Waiver.

Consistent with the State's approved ESEA Flexibility Waiver Renewal Request regarding AMOs, the proposed amendment amends subdivision 100.18(j) of the

Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to specify that once focus schools are removed from accountability designation, a school district shall not be required to:

- designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to 100.18(g)(5); or
- designate a school as focus that meets the criteria for focus school removal in order to replace a focus school meeting the criteria for removal;

Notwithstanding the above, a school district must identify at least one school as a focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

### Recommendation

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

VOTED: That paragraph (2) of subdivision (i) and subdivision (j) of section 100.18 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 30, 2014, and it is further

VOTED: That paragraph (2) of subdivision (i) and subdivision (j) of section 100.18 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 28, 2014, 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 emergency rule adopted at the April 28-29, 2014 Regents meeting remains continuously in effect until the effective date of the rule's permanent adoption.

### Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the April 28-29, 2014 Regents meeting, effective April 29, 2014 and will expire on July 27, 2014. If adopted at the July Regents meeting, the permanent rule will take effect on July 30, 2014 and the emergency rule will take effect on July 28, 2014.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Paragraph (2) of subdivision (i) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective July 30, 2014, as follows:

(2) Removal of focus district and focus school designation.

(i) . . . .

(ii) . . . .

(iii) . . . .

(iv) If the school district does not meet the criteria for removal but one or more of its focus schools meet the criteria for removal, the school district must, for each focus school it petitions for removal of focus designation, identify school(s) not currently identified as priority or focus to replace the school(s) meeting the criteria for removal, except that a school district is not required to:

(a) designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to paragraph (5) of subdivision (g) of this section; or

(b) designate a school as a focus school that meets the criteria for focus school removal pursuant to subdivision (i) of this section in order to replace a focus school meeting the criteria for removal.

(v) Notwithstanding the provisions of subparagraph (iv) of this paragraph, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

[(iv)] (vi) Removal of focus charter school designation.

(a) . . .

(b) . . .

2. Subdivision (j) of section 100.18 of the Regulations of the Commissioner is amended, effective July 30, 2014, as follows:

(j) Public school, school district and charter school performance criteria. Each school district and school accountability group shall be subject to the performance criteria specified below:

(1) Elementary/middle-level English language arts and mathematics, and high school English language arts and mathematics requirements. An annual measurable objective is a performance index set by the commissioner for 2010-11 school year results for each accountability group and that increases annually in equal increments so as to reduce by half the gap between the performance index for each accountability group in the 2010-11 school year and reach a goal of a performance index of 200 by the 2016-17 school year; except that, beginning with the 2012-13 school year and thereafter, for each accountability group in elementary/middle-level English language arts and mathematics, an annual measurable objective is a performance index set by the commissioner for the 2012-13 school year that increases annually in equal increments so as to reduce by half the gap by the 2016-2017 school year between the performance index of each accountability group in the 2012-13 school year and a performance index of 147.

(2) . . .

(3) . . .

(4) . . .

## **8 NYCRR §§100.18**

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

At its February 2014 meeting, the Board of Regents directed the State Education Department (SED) to submit a an ESEA Flexibility Waiver Renewal 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); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology used to determine elementary-middle level English language arts and mathematics annual measurable objectives (AMOs).

On April 22, 2014, the USDE approved SED's request to reset the AMOs. USDE review of the remainder of the State's Waiver Renewal application is still pending. In addition, the USDE informed SED that the proposed amendment of section 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools, would not be considered to be an amendment to SED's approved ESEA Flexibility Waiver such that USDE approval would be required.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to

be removed from accountability designation without requiring that the removed schools be replaced by other schools.

The proposed amendment was adopted as an emergency action at the April 28-29, 2014 Regents meeting, effective April 29, 2014, and has now been adopted as a permanent rule at the July 8-9, 2014 Regents meeting. Pursuant to SAPA §203(1), the earliest effective date of the permanent rule is July 30, 2014, the date a Notice of Adoption will be published in the State Register. However, the April emergency rule will expire on July 27, 2014, 90 days after its filing with the Department of State on April 29, 2014. A lapse in the rule's effective date could disrupt 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 2013 Regents meeting, and adopted as a permanent rule at the July 2014 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

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(b) designate a school as a focus school that meets the criteria for focus school removal pursuant to subdivision (i) of this section in order to replace a focus school meeting the criteria for removal.

(v) Notwithstanding the provisions of subparagraph (iv) of this paragraph, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

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