



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

TO: Full Board

FROM: Johanna Duncan-Poitier

SUBJECT: Proposed Amendment of sections 100.2(p), 120.2, 120.3 and 120.4 of the Regulations of the Commissioner of Education, Relating to Differentiated Accountability

DATE: September 1, 2009

STRATEGIC GOAL: Goals 1 and 2

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt as a second emergency action the revised amendment to the Commissioner's Regulations relating to Differentiated Accountability?

Reason(s) for Consideration

To conform the Commissioner's Regulations with New York State's approval to participate in the No Child Left Behind (NCLB) Differentiated Accountability Pilot Program, as granted by the United States Department of Education (USED) on January 8, 2009.

Proposed Handling

The proposed amendment is being presented to the full Board for adoption as a second emergency action at the September 2009 Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

On March 20, 2008, Secretary Spellings announced that states may apply to participate in an NCLB differentiated accountability model. Approved states are granted

flexibility to modify, within certain constraints, the system of sanctions and interventions that occur when a school is identified as in need of improvement. On October 8, 2008, the Board of Regents endorsed the Department's proposed differentiated accountability model for official submission to the United States Department of Education. On January 8, 2009, former Education Secretary Spellings informed Commissioner Mills that New York had been approved to participate in the USED's differentiated accountability model as a part of its system of interventions under section 1116 of the Elementary and Secondary Education Act of 1965 (ESEA). In March 2009, the Regents received a briefing on efforts being made by the Department to prepare for implementation of pilot in the 2009-2010 school year.

The proposed amendment was discussed by the EMSC Committee and adopted by the Full Board as an emergency rule at the May 2009 Regents meeting.

Background Information

The purpose of the proposed amendment is to implement the NCLB Differentiated Accountability Pilot Program in order to improve our accountability system so that it more accurately affects the status of schools and better focuses interventions. The proposed amendment will:

- Reduce the current number of school accountability categories by eliminating dual Title I and non-Title I streams of improvement, integrating federal and State accountability systems and collapsing identifications for improvement into three simplified phases, each of which provides schools with diagnostic tools, planning strategies, and supports and interventions specific to that phase in the improvement process and the school's category of need.
- Allow for differentiation in the improvement process, permitting schools and districts to prepare and implement school improvement plans that best match a school's designation.
- Better align the SURR and NCLB processes and ensure that schools with systemic and persistent failure fundamentally restructure or close.
- Maximize SED's limited resources and utilize the resources of USNY to assign School Quality Review Teams, Joint Intervention Teams, and Distinguished Educators to schools in improvement.
- Strengthen the capacity of districts to assist schools to improve.
- Empower parents by increasing combined participation in Public School Choice (PSC) and Supplemental Educational Services (SES) by offering SES in the first year of a school's identification for improvement and school choice only after an identified school has failed to make AYP.

A Notice of Proposed Rule Making was published in the State Register on July 1, 2009. The sixty-day public comment period closed on Monday, August 17th. An Assessment of Public Comment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Certain nonsubstantive, technical revisions have been made to the proposed amendment to ensure consistency with the New York City School District governance structure, as set forth in the recently enacted Chapter 345 of the Laws of 2009, and to update certain statutory citations.

Recommendation

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

VOTED: That clause (a) of subparagraph (ii) of paragraph (2) of subdivision (p) of section 100.2 of the Regulations of the Commissioner of Education, subparagraph (vii) of paragraph (5), subparagraph (iii) of paragraph (9), and paragraphs (10) and (11), be amended; that paragraph (6) of subdivision (p) of section 100.2 be repealed and a new paragraph (6) be added; and that subdivisions (g), (h) and (i) of section 120.2, subdivisions (a) and (g) of section 120.3, and subdivisions (b) and (f) of section 120.4 be amended, as submitted, effective September 29, 2009, 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 immediately adopt clarifying and corrective revisions to the rule in response to public comment and to otherwise ensure that the emergency rule adopted at the May 2009 Regents meeting remains continuously in effect until such time as it can be adopted as a permanent rule, and thereby avoid disruption to the administration of the Differentiated Accountability Pilot Program for the 2009-2010 school year.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the May 2009 Regents meeting, effective July 1, 2009, and will expire on September 28, 2009. The second emergency adoption will become effective on September 29, 2009. It is anticipated that the proposed amendment will be presented for permanent adoption at the November 2009 Regents meeting, after expiration of the 30-day public comment period for revised rulemakings required under the State Administrative Procedure Act.

Attachment

PROPOSED AMENDMENT OF SECTIONS 100.2(p), 120.2(g)-(i), 120.3 (a) and (g),
AND 120.4 (b) and (f) OF THE REGULATIONS OF THE COMMISSIONER OF
EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 101, 207,210, 215, 305,
309 AND 3713, RELATING TO DIFFERENTIATED ACCOUNTABILITY
STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The purpose of the proposed amendment is to conform the Commissioner's Regulations with New York State's approval to participate in the No Child Left Behind (NCLB) Differentiated Accountability Pilot Program, as granted by the United States Department of Education (USED) on January 8, 2009, in order to increase the percentage of schools designated for Improvement that are able to make adequate yearly progress for two consecutive years and be returned to Good Standing. The State and local educational agencies, including school districts, BOCES and charter schools, are required to comply with NCLB as a condition to their receipt of federal funding under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

On January 8, 2009, former Education Secretary Spellings informed Commissioner Mills of New York's approval to participate in the United States Department of Education's (USED) Differentiated Accountability Pilot Program as a part of its system of interventions under section 1116 of the ESEA. The purpose of the proposed amendment is to conform the Commissioner's Regulations with the approved plan and to support the implementation of Differentiated Accountability. The proposed amendment will:

(1) reduce the current number of school accountability categories by eliminating dual Title I and non-Title I streams of improvement, integrating federal and State accountability systems and collapsing identifications for improvement into three simplified phases, each of which provides schools with diagnostic tools, planning strategies, and supports and interventions specific to that phase in the improvement process and the school's category of need;

(2) allow for differentiation in the improvement process, permitting schools and districts to prepare and implement school improvement plans that best match a school's designation;

(3) better align the SURR and NCLB processes and ensure that schools with systemic and persistent failure fundamentally restructure or close; (4) maximize SED's limited resources and utilize the resources of USNY while implementing School Quality Review Teams, Joint Intervention Teams, and Distinguished Educators to schools in improvement:

(5) strengthen the capacity of districts to assist schools to improve; and

(6) empower parents by increasing combined participation in Public School Choice (PSC) and Supplemental Educational Services (SES) by offering SES in the first year of a school's identification for improvement and school choice only after an identified school has failed to make AYP.

The proposed amendment was adopted as an emergency rule at the May 18, 20-21, 2009 meeting of the Board of Regents, effective July 1, 2009. A Notice of Proposed Rule Making was published in the State Register on July 1, 2009.

The proposed rule has been revised in response to public comment. Pursuant to the State Administrative Procedure Act, a revised rule cannot be permanently adopted until after publication of a Notice of Revised Rule Making and expiration of a 30-day public comment period. Because the Board of Regents meets at fixed intervals, the earliest the proposed revised rule could be presented for permanent adoption, after publication of the Notice and expiration of the 30-day public comment period, would be the November 16-17, 2009 Regents meeting. However, the emergency rule which took effect on July 1, 2009 will expire on September 28, 2009. The expiration of the emergency rule could cause disruptions to the administration of the Differentiated Accountability Pilot Program for the 2009-2010 school year. In addition, the revised rule makes clarifies certain provisions in the rule in response to public comment, and updates statutory citations.

Therefore, a second emergency action is necessary for the preservation of the general welfare in order to immediately adopt clarifying and corrective revisions to the rule in response to public comment and to otherwise ensure that the emergency rule adopted at the May 2009 Regents meeting remains continuously in effect until such time as it can be adopted as a permanent rule, in order to avoid disruption to the administration of the Differentiated Accountability Pilot Program for the 2009-2010 school year.

It is anticipated that the proposed revised rule will be presented for permanent adoption at the November 16-17, 2009 Regents meeting, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment

period prescribed for revised rule makings in the State Administrative Procedure Act.

PROPOSED AMENDMENT OF SECTIONS 100.2(p), 120.2(g)-(i), 120.3(a) and (g),
AND 120.4(b) and (f) OF THE REGULATIONS OF THE COMMISSIONER OF
EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 101, 207,210, 215, 305,
309 AND 3713, RELATING TO DIFFERENTIATED ACCOUNTABILITY

ASSESSMENT OF PUBLIC COMMENT

Since publication of Notice of Emergency Adoption and Proposed Rule Making in the State Register on July 1, 2009, the Department received the following comments on the proposed rule.

1. COMMENT:

Replace references in the proposed rule that school improvement, corrective action, and school restructuring plans in New York City be approved by "both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district" with references to approval "by the Chancellor or the Chancellor's designee(s)." In addition, revise similar references elsewhere in the proposed rule to provide for approval or action by "the Chancellor or Chancellor's designee."

DEPARTMENT RESPONSE:

The suggested changes are consistent with the New York City School District governance structure, as set forth in the recently enacted Chapter 345 of the Laws of 2009. Accordingly, the proposed rule has been revised, as further described in the Statement Concerning the Regulatory Impact Statement submitted herewith, to refer to the Chancellor or Chancellor's designee.

2. COMMENT:

Revise provision in section 100.2(p)(6)(iv)(a)(3) to provide that on-site reviews for schools designated as Improvement/Focused or Improvement/Comprehensive shall be "assisted" by school quality review teams, rather than "conducted" by a school quality review team.

DEPARTMENT RESPONSE;

The Department disagrees. The proposed rule is consistent with the Differentiated Accountability plan as approved by the United States Department of Education in January 2009, which provides: "This on-site SQR review is conducted by the SQR team focusing on the accountability measure(s) and student groups identified." Further, this rule was written to best ensure that on-site reviews are conducted in a like manner throughout the State. The on-site reviews result in recommendations that focus on the actions the identified schools must take to improve student achievement in the identified content areas and subgroups that failed to meet AYP.

3. COMMENT:

Revise provision in section 100.2(p)(6)(iv)(b)(1), relating to participation in curriculum audits by schools initially designated for the Corrective Action phase, to provide that such audits shall be in a form and content "approved" by the Commissioner, rather than "prescribed" by the Commissioner.

DEPARTMENT RESPONSE:

The Department disagrees. Once a school has reached the level of Corrective Action in Differentiated Accountability, the Department believes the form and content of the curriculum audit must be prescribed by the commissioner in order to establish a consistent, uniform, State-wide process for conducting the audits and thereby ensure

the alignment of instruction to the NY State Learning Standards and assessments for the accountability measures/student groups identified as failing to make adequate yearly progress (AYP) for four or more years.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Clause (a) of subparagraph (ii) of paragraph (2) of subdivision (p) of section 100.2 is amended, effective September 29, 2009, as follows:

(a) Where a school registered pursuant to this paragraph is in a district in which one or more schools have been [identified] designated as a [school requiring academic progress] school in Improvement, Corrective Action or Restructuring, the commissioner shall determine the accountability status of the newly registered school based upon his 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.

2. Subparagraph (vii) of paragraph (5) of subdivision (p) of section 100.2 is amended, effective September 29, 2009, as follows:

(vii) The school accountability status 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 by contract, the grade three State assessment results for each feeder school student will be attributed to the feeder school as well as to the school or charter 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 the date prescribed by the commissioner on which the BEDS forms are required to be completed until the end of the school year in the highest grade served by the feeder

school. In a district, if all schools serving grade three make adequate yearly progress in a given year, all feeder schools served by the district will be deemed to have made adequate yearly progress. If one or more schools enrolling students from a feeder school fail to make adequate yearly progress on a criterion set forth at subparagraphs (14)(iii) and (vi) of this subdivision, the commissioner will aggregate the district's grade three results on that criterion by feeder school and determine whether each feeder school made adequate yearly progress on that criterion. If a feeder school fails to make adequate yearly progress on the same criterion for two consecutive years, the school will be [identified] designated as a school [requiring academic progress] in Improvement (year 1).

3. Paragraph (6) of subdivision (p) of section 100.2 is repealed, effective September 29, 2009.

4. A new paragraph (6) of subdivision (p) of section 100.2 is added, effective September 29, 2009, as follows:

(6) Differentiated Accountability for Schools.

(i) Except as provided in subparagraph (ii) of this paragraph, beginning with the 2009-2010 school year and thereafter, public schools, and charter schools that receive funds under title I, that failed to make adequate yearly progress (AYP) pursuant to this subparagraph shall be designated into accountability phases and phase categories as follows:

(a) Accountability phases.

(1) Improvement phase.

(i) A school that fails to make AYP for two consecutive years on the same accountability performance criterion in paragraph (14) of this subdivision or the same accountability indicator in paragraph (15) of this subdivision shall be designated in the next school year as a school in Improvement (year 1) for that accountability performance criterion/accountability indicator.

(ii) A school that is designated as a school in Improvement (year 1) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Improvement (year 2) for that accountability performance criterion/accountability indicator.

(2) Corrective Action phase.

(i) A school that is designated as a school in Improvement (year 2) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified as a school in Improvement (year 2) shall be designated in the next school year as a school in Corrective Action (year 1) for that accountability performance criterion/accountability indicator.

(ii) A school that is designated as a school in Corrective Action (year 1) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Corrective Action (year 2) for that accountability performance criterion/accountability indicator.

(3) Restructuring phase.

(i) A school that is designated as a school in Corrective Action (year 2) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Restructuring (year 1) for that accountability performance criterion/accountability indicator.

(ii) A school that is designated as a school in Restructuring (year 1) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Restructuring (year 2) for that accountability performance criterion/accountability indicator.

(iii) A school that is designated as a school in Restructuring (year 2) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Restructuring (advanced) for that accountability performance criterion/accountability indicator.

(b) Phase categories.

(1) Improvement phase. Schools designated in Improvement shall be assigned to a category upon entry into the phase as follows:

(i) Basic:

(a) schools that fail to make AYP for one accountability group within one accountability performance criterion, but not the all students group; or

(b) schools that fail to make AYP for one of the accountability indicators, but met the accountability performance criterion.

(ii) Focused:

(a) schools that fail to make AYP for more than one accountability performance criterion, but not the all students group; or

(b) schools that fail to make AYP for more than one accountability student group within an accountability performance criterion, but not the all students group;

(iii) Comprehensive:

(a) schools that fail to make AYP for the all students group on any accountability performance criterion; or

(b) schools that fail to make AYP for every accountability group, except the all students group, within an accountability criterion for which there are at least two accountability groups other than the all students group; or

(c) schools that fail to make AYP for an accountability performance criterion and for an indicator.

(2) Corrective Action or Restructuring phase. Schools designated in Corrective Action or Restructuring shall be assigned to a category upon entry into the phase as follows:

(i) Focused:

(a) schools that fail to make AYP for one of the accountability indicators, but met the accountability performance criterion; or

(b) schools that fail to make AYP for more than one accountability performance criterion, but not with the all students group; or

(c) Schools that fail to make AYP for one or more accountability groups within an accountability performance criterion, but not the all students group.

(ii) Comprehensive:

(a) schools that fail to make AYP for the all students group on any accountability performance criterion; or

(b) schools that fail to make AYP for every accountability group, except the all students group, within an accountability performance criterion for which there are at least two accountability groups other than the all students group; or

(c) schools that fail to make AYP for an accountability performance criterion and for an accountability indicator.

(c) The commissioner shall designate a school's overall accountability status as the most advanced phase for which it has been identified on an accountability performance criterion/accountability indicator and, within that designated phase, shall assign the highest category, provided that such category may not be reduced in a subsequent year of a phase.

(d) Upon a finding of exceptional or uncontrollable circumstances, the commissioner may delay for a period of one year the designation of a school under this paragraph.

(ii) Special transition provisions for schools in operation during the 2008-2009 school year and for schools under registration review. Notwithstanding the provisions of subparagraph (i) of this paragraph:

(a) For each public school that was in operation during the 2008-2009 school year and for each charter school that was in operation and received funds under title I during the 2008-2009 school year, the commissioner shall designate the school's accountability phase and phase category for the 2009-2010 school year, based upon

the school's accountability status for the 2008-2009 school year and the school's adequate yearly progress (AYP) status for the 2007-2008 and 2008-2009 school years;

(b) Notwithstanding the provisions of clause (a) of this subparagraph, a school that is identified for registration review pursuant to paragraph (9) of this subdivision during a school year in which it is designated as a school in Improvement or Corrective Action shall, in the next school year, be designated as a school in Restructuring (year 1)/Comprehensive and shall be subject to the requirements of subclause (iv)(c)(2) of this paragraph.

(iii) Removal from accountability designation. A school that makes adequate yearly progress for two consecutive years on the accountability performance criterion/accountability indicator for which it has been identified shall be removed from accountability designation for that accountability performance criterion and/or accountability indicator.

(iv) Interventions.

(a) Improvement phase schools.

(1) School quality review. Each school upon initial designation for the Improvement phase shall participate in a school quality review, to include at a minimum a self-assessment of the educational program, using quality indicators in a form and content prescribed by the commissioner. The school quality review shall focus on the accountability group(s) for each accountability performance criterion and/or accountability indicator for which the school has been identified.

(2) School improvement plan. A school improvement plan, in such format as may be prescribed by the commissioner, shall be developed based on the school quality review and cover a two year period. The plan shall:

(i) be formally approved by the board of education (in New York City, approved by the Chancellor or Chancellor's designee) no later than three months following the designation of the school in the Improvement phase and shall be subject to the approval of the commissioner, upon request;

(ii) be implemented no later than the beginning of the next school year after the school year in which the school was identified or immediately upon approval of the board of education if such approval occurs after the first day of regular school attendance;

(iii) be updated annually and, as so updated, approved by the board of education and implemented no later than the first day of regular student attendance of each year that the school remains in improvement. If, in the second year of improvement, the school fails to make AYP with a different accountability group for which the school is subsequently designated for improvement or is subsequently designated for improvement for a different accountability performance criterion or indicator, the school shall modify the plan consistent with the highest accountability category and also address the additional group(s), criterion or indicator;

(iv) for a school designated as Improvement/Basic, the plan shall also include a description of activities and timeline for implementation. The district shall be responsible for oversight and support of the plan;

(v) for a school designated as Improvement/Focused, the plan shall, consistent with State law, also include one or more of the actions set forth in section 6316 (b)(3)(A)(i-x) of the NCLB, 20 U.S.C. section 6316(b)(3)(A)(i-x) (United States Code, 2006 Edition, Volume 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234), in accordance with a written report by the school quality review team; and

(vi) for a school designated as Improvement/Comprehensive, the plan shall, consistent with State law, also include all of the actions set forth in section 6316 (b)(3)(A)(i-x) of the NCLB, 20 U.S.C. section 6316(b)(3)(A)(i-x) (United States Code, 2006 Edition, Volume 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234), in accordance with a written report by the school quality review team. Such report may include a recommendation that the school engage the services of a content area consultant.

(3) On-site review. Except as provided in paragraph (9) of this subdivision, in addition to the school quality review and prior to the development of the school improvement plan required under clause (a) of this subparagraph:

(i) for a school designated as Improvement/Focused, the school shall be required to participate in an on-site review that shall be conducted by a school quality review team, with district representation, appointed by the commissioner. The review shall focus on the accountability group(s), accountability performance criterion and/or

indicator for which the school was identified. The district shall be responsible for oversight and support of the plan;

(ii) for a school designated as Improvement/Comprehensive, the school shall be required to participate in an intensive on-site review that shall be conducted by a school quality review team, with district representation, appointed by the commissioner. The review shall focus on the systemic issues at the school that have caused the school to be designated for Improvement. The district shall be responsible for oversight and support of the plan.

(b) Corrective Action phase schools.

(1) Curriculum audit. Except as provided in paragraph (9) of this subdivision, each school, upon initial designation for the Corrective Action phase, shall participate in a curriculum audit to assess the school's educational program. The curriculum audit shall be in a form and content prescribed by the commissioner and shall focus on the accountability group(s) for each accountability performance criterion and/or accountability indicator for which the school was identified. The school shall be assisted by a school quality review team, with district representation, appointed by the commissioner.

(2) Corrective action plan. A corrective action plan, in such format as may be prescribed by the commissioner, shall be developed and cover a two-year period. The district and school quality review team shall provide oversight and support for implementation of a corrective action plan. The plan shall:

(i) be formally approved by the board of education (in New York City, approved by the Chancellor or Chancellor's designee) no later than three months following the

designation of the school in the Corrective Action phase and shall be subject to the approval of the commissioner, upon request;

(ii) be implemented no later than the beginning of the next school year after the school year in which the school was identified or immediately upon approval of the board of education if such approval occurs after the first day of regular school attendance;

(iii) be updated annually and incorporate the findings of the audit and any other action required to be taken by the district pursuant to this subclause and, as so updated, approved by the board of education and implemented no later than the first day of regular student attendance of each year that the school remains in corrective action. If, in the second year of corrective action, the school fails to make AYP with a different accountability group for which the school is subsequently designated for corrective action or is subsequently designated for corrective action on a different accountability performance criterion or indicator, the school shall modify the plan consistent with the highest accountability category and also address the additional group(s), criterion or indicator;

(iv) include, to the extent consistent with State law, at least one of the actions set forth at section 6316(b)(7)(C)(iv)(I-VI) of the NCLB, 20 U.S.C. section 6316(b)(7)(C)(iv)(I-VI) (United States Code, 2006 Edition, Volume 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234). The district shall identify and provide the support(s) required to implement any new curriculum, including professional development;

(c) Restructuring phase schools.

(1) Assessment of educational program. Each school shall participate in an assessment of the educational program by a joint intervention team appointed by the commissioner which shall include district representation and may include a distinguished educator. The team shall assess the educational program and make recommendations.

(2) Restructuring plan. A two year restructuring plan shall be developed and implemented by the district, focusing on the subgroup(s) for the accountability performance criterion and/or accountability indicator for which the school was identified. The district shall provide oversight and support for the plan, with the assistance of the Department. Such restructuring plan shall require the school to make fundamental reforms, such as significant changes in the staff, governance, or organization and may include a plan to close or phase out the school, and shall:

(i) be formally approved by the board of education (in New York City, approved by the Chancellor or Chancellor's designee) no later than three months following the designation of the school in the Restructuring phase and also shall be subject to the approval of the commissioner; and

(ii) be implemented no later than the beginning of the next school year after the school year in which the school was identified or, to the extent practicable, immediately upon approval of the board of education if such approval occurs after the first day of regular school attendance.

(3) Distinguished educator. In addition to, and notwithstanding the provisions of, subclauses (1) and (2) of this clause, a school designated as

Restructuring/Comprehensive shall cooperate with a distinguished educator assigned by the commissioner. The distinguished educator shall also provide oversight of the restructuring plan and shall serve as an ex-officio member of the board of education. All plans are subject to review by the distinguished educator who shall make recommendations to the board of education. The board shall implement such recommendations unless it obtains the commissioner's approval otherwise.

(d) Each improvement, corrective action and restructuring plan, and each updated plan, shall be developed, to the extent appropriate, consistent with section 100.11 of this Title.

(e) The commissioner may require that any plan, or subsequent modification of a plan, be submitted for prior approval.

(v) Supplemental educational services. Each local educational agency that receives title I funds shall make supplemental educational services available to eligible students who attend a school designated in Improvement, Corrective Action or Restructuring pursuant to this paragraph, consistent with section 120.4 of this Title.

(vi) Title I public school choice. Each local educational agency that receives title I funds that has a school designated in Improvement (year 2); Corrective Action; or Restructuring pursuant to this paragraph, shall provide public school choice consistent with section 120.3 of this Title.

5. Subparagraph (iii) of paragraph (9) of subdivision (p) of section 100.2 is amended, effective September 29, 2009, as follows:

(iii) For schools required to conduct a self-assessment pursuant to subparagraph [(5)(vii)] (5)(vi) of this subdivision, the commissioner upon review of the self-assessment

may make a determination that the school is most in need of improvement and place such school under registration review.

6. Paragraph (10) of subdivision (p) of section 100.2 is amended, effective, September 29, 2009, as follows:

(10) Public school registration review.

(i) Upon placing the registration of a school under review, the commissioner shall warn the board of education (in New York City, [the New York City Board of Education and any community school board having jurisdiction over the school] the Chancellor) that the school has been identified for 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 subparagraph an explicit delineation of the progress that must be demonstrated in order for a school to be removed from consideration for revocation of registration, except that, if a school has also been designated as Restructuring (advanced) pursuant to item (6)(i)(a)(3)(iii) of this subdivision, the commissioner shall include in such warning that the school will be considered for revocation of registration unless an acceptable plan for closure or phase out of the school is submitted by the board of education to the commissioner. Upon receipt of such warning, the board of education (in New York City, [the New York City Board of Education] 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 need 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 children

attending the school that it has been placed under registration review and is at risk of having its registration revoked, and disclosure by the district at the next public meeting of the local board of education of such warning. Each school year during which a school remains under registration review, 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 shall provide direct notification to parents or other persons in parental relation to children 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 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 district. Such notification shall include the timelines and process for parents exercising their rights to school choice. Following the identification of a school for registration review the commissioner shall appoint a team to undertake a resource, planning, and program audit of the district and the school. The commissioner shall provide to the school district a copy of the audit, which shall include, as appropriate, recommendations for improving instruction; curriculum; assessment; school management and leadership; qualifications and professional development of school staff; parent and community involvement; school discipline, safety, and security; instructional supplies and materials; physical facilities; and district support for the school improvement efforts. For schools also designated in Improvement (year 1) or Corrective Action (year 1) such audit shall be in lieu of the on-site review or curriculum audit required under subparagraph (iv) of paragraph (6) of this subdivision. Based upon

the results of the audit, the commissioner shall require that [:] the school modify the school's improvement plan or corrective action plan to meet the requirements of a restructuring plan pursuant to subclause (6)(iv)(c)(2) of this subdivision and implement the plan no later than the beginning of the next school year following the school's identification for registration review.

[(a) a corrective action plan be developed by the superintendent of the district (in New York City, the Chancellor or his designee) in consultation with the school staff, persons in parental relation of children attending the school, and members of the community (and in New York City, the community school district superintendent and staff in the case of any school under the jurisdiction of a community school board) to address the findings of the audit;

(b) such corrective action plan be approved by the board of education (in New York City, both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district) and submitted to the commissioner for review and approval; and

(c) such corrective action plan shall be:

(1) in a format prescribed by the commissioner; and

(2) developed in cooperation with department staff and other persons assigned by the commissioner to assist the district in the development of such plan;

(d) any amendment or modification of a corrective action plan by a school district, including a plan to close a school under registration review and/or replace such school with a new or redesigned school, shall require the prior approval of the commissioner.

(ii) In accordance with the district's plan for school-based management and shared decisionmaking developed pursuant to section 100.11 of this Part, the school shall develop a comprehensive education plan or modify its existing comprehensive education plan so that such plan shall be:

(a) in a format prescribed by the commissioner;

(b) coordinated with actions planned and taken as part of the district's corrective action plan;

(c) developed in cooperation with department staff and other persons assigned by the commissioner to assist the school in the development of the education program; and

(d) approved by the board of education of the school district (in New York City, the community school board for schools under its jurisdiction).

(iii) The corrective action plan and the comprehensive education plan shall be submitted to the commissioner no later than July 31st of the school year next following the school year in which the commissioner placed the school under registration review and implemented not later than one month following the commissioner's review. The corrective action plan and the comprehensive education plan shall be revised annually and resubmitted to the commissioner no later than July 31st of each school year in which a school remains under registration review.

(iv) For schools under registration review that receive title I funds, the corrective action plan and comprehensive education plan shall serve in lieu of a school improvement plan, corrective action plan or restructuring plan, as applicable, to the extent such plans comply with the requirements of section 1116(b) of the NCLB, 20

U.S.C. section 6316 (b) (Public Law, section 107-110, section 1116(b), 115 STAT. 1479-1487; 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).]

[(v)] (ii) The department shall periodically monitor the implementation of the [corrective action plan and the comprehensive education] restructuring plan. The commissioner may require a school district to submit such reports and data as the commissioner deems necessary to monitor the implementation of the [corrective action plan and the comprehensive education] restructuring 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 [corrective action plan and a comprehensive education] restructuring plan.

[(vi)] (iii) Unless it is determined by the commissioner that a school identified for registration review should be phased out or closed, or that a shorter period of time shall be granted, a school placed under registration review shall be given [three] two full academic years to show progress. If, after [this period of time] two full academic years of implementing a restructuring plan, the school [under registration review] has not demonstrated progress as delineated by the commissioner in the warning pursuant to subparagraph (i) of this paragraph, 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, [both the New York City Board of Education and any community school board having jurisdiction over the school] the Chancellor) shall be afforded notice of such recommendation and an opportunity to be heard in accordance with subparagraph [(vii)] (iv) of this paragraph. 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 pupils of the school is protected. Such plan shall specify the instructional program into which pupils 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 pupils. The commissioner shall require the board of education to implement such plan.

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

- (a) . . .
- (b) . . .
- (c) . . .

7. Paragraph (11) of subdivision (p) of section 100.2 is amended, effective September 29, 2009, as follows:

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

(i) . . .

(ii) In the event that a board of education, [pursuant to a corrective action plan approved by the commissioner in accordance with paragraph (10) of this subdivision],

seeks to [redesign] phase out or close a school under registration review, the board of education (in New York City, [the City Board of Education] the Chancellor or Chancellor's designee) shall submit a petition to the commissioner requesting that the [redesigned school] phase out or closure plan be approved. The commissioner may grant such petition [, and the redesigned school may be approved] provided that:

(a) official resolutions or other approvals to [replace] phase out or close the existing school [with the redesigned school] have been adopted by the local board of education (in New York City, [both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district] the Chancellor or Chancellor's designee);

(b) a formal [redesign] phase out or closure plan has been developed and approved [by the district superintendent (in New York City, the chancellor and community school district superintendent working in collaboration)] in accordance with the requirements of clause (6)(iv)(c) of this subdivision; and

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

[(d) upon examination of factors including, but not limited to, the school mission, school climate, school administration and staff, grade configurations and groupings of students, zoning patterns, curricula and instruction, professional development programs, facilities, and parent and community involvement in decisionmaking, the commissioner determines that the redesigned school constitutes a new and satisfactory educational program.

(iii) At the time that a redesigned school is approved, the commissioner shall explicitly delineate the student performance results that the school must demonstrate to be removed from registration review. If, after the designated period of time, the school has not demonstrated such results as delineated by the commissioner, the commissioner shall recommend to the Board of Regents that the registration be revoked pursuant to subparagraph (10)(vi) of this subdivision.]

8. Subdivisions (g), (h) and (i) of section 120.2 are amended, effective September 29, 2009, as follows:

(g) School in school improvement status means a title I school that has been identified for school improvement under section 1116(b) of the NCLB, 20 U.S.C. section 6316 (b), and subdivision 100.2(p) of this Title, or was previously identified for improvement and continues in school improvement status pursuant to section 1116(f)(1)(A) of the NCLB, 20 U.S.C. section 6316(f)(1)(A), and has not been removed from such status (Public Law, section 107-110, sections 1116(b) and 1116(f)(1)(A), 115 STAT. 1479-1487 and 115 STAT. 1494-1495; 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).

(h) School in corrective action status means a title I school that has been identified for corrective action pursuant to section 1116(b)(7) of the NCLB, 20 U.S.C. section 6316(b)(7), and subdivision 100.2(p) of this Title, or was previously identified for corrective action and continues in corrective action status pursuant to section 1116(f)(1)(B) of the NCLB, 20 U.S.C. section 6316(f)(1)(B), and has not been removed from such status (Public Law, section 107-110, sections 1116(b)(7) and 1116(f)(1)(B),

115 STAT. 1483-1485 and 115 STAT. 1495; 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).

(i) School in restructuring status means a title I school that has been identified for restructuring under section 1116(b)(8) of the NCLB, 20 U.S.C. section 6316(b)(8), and subdivision 100.2(p) of this Title, and has not been removed from such status (Public Law, section 107-110, section 1116(b)(8), 115 STAT. 1485; 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).

9. Subdivisions (a) and (g) of section 120.3 are amended, effective September 29, 2009, as follows:

(a) Each title I LEA that has a school in school improvement (year 2) status, corrective action status or restructuring status 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 school in school improvement status, corrective action status or restructuring status pursuant to subdivision 100.2(p) 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.) 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.

(g) In accordance with section 1116(b)(6) of the NCLB, 20 U.S.C. section 6316 (b)(6) the title I LEA shall promptly provide parents or other persons in parental relation to students in schools identified for school improvement (year 2), corrective action or restructuring with notice of the student's option to transfer to another public school pursuant to this section (Public Law, section 107-110, section 1116(b)(6), 115 STAT. 1483; 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).

10. Subdivisions (b) and (f) of section 120.4 are amended, effective September 29, 2009, as follows:

(b) A title I LEA shall make supplemental educational services available [pursuant to this section and section 1116(e) of the NCLB, 20 U.S.C. section 6316(e),] to eligible students who attend a school that is in school improvement status [for one year or more], a school in corrective action status or a school in restructuring status [,

including a school that was in school improvement status for two or more consecutive years preceding the date of enactment of the NCLB (Public Law, section 107-110, section 1116(e), 115 STAT. 1491-1494; 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)].

(f) Local educational agency responsibilities. A title I LEA that is required to arrange for the provision of supplemental educational services with an approved provider [pursuant to section 1116(e) of the NCLB, 20 U.S.C. section 6316(e) (Public Law, section 107-110, section 1116(e), 115 STAT. 1491-1494; 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)] shall:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .
- (8) . . .
- (9) . . .
- (10) . . .
- (11) . . .