





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

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

**FROM:** Jason Harmon 

**SUBJECT:** Proposed Amendment of Sections 100.19 and 100.21 of the Regulations of the Commissioner of Education Relating to Restarting the Accountability System using 2021–2022 School Year Results

**DATE:** December 1, 2022

**AUTHORIZATION(S):** 

#### **SUMMARY**

#### **Issue for Decision (Consent)**

Should the Board of Regents approve the proposed amendment of sections 100.19 and 100.21 of the Regulations of the Commissioner of Education relating to restarting the accountability system using 2021–2022 school year results?

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

Review of State policy.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the December 2022 Regents meeting. A copy of the proposed amendment is included (Attachment A), and a Statement of Facts and Circumstances which necessitate emergency action is included (Attachment B).

#### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its October 2022 Board of Regents meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on October 19, 2022, for a 60-day public comment period.

Because the October emergency action will expire on January 1, 2023, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the February 2023 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on January 18, 2023. Supporting materials are available upon request of the Secretary to the Board of Regents.

## **Background Information**

### **Generally:**

In June 2021, the United States Department of Education (USDE) approved the Department's application for a one-year waiver from provisions of the Elementary and Secondary Education Act (ESEA), as recently amended by the Every Student Succeeds Act (ESSA), pertaining to school and district accountability determinations due to the ongoing impact of the COVID-19 crisis.

On December 22, 2021, due to the continuing challenges faced by schools and districts due to the COVID-19 pandemic, the Department submitted another one-year accountability waiver request to USDE that would have allowed the Department to not use the 2021–2022 school year results to newly identify schools for Comprehensive Support and Improvement (CSI) and schools for Targeted Support and Improvement (TSI). On December 30, 2021, USDE denied the Department's application for a one-year waiver and informed the Department that it must make new identifications for CSI, Additional Targeted Support and Improvement (ATSI), and TSI using the 2021–2022 school year results.

However, USDE has been accepting requests to modify approved ESEA consolidated State plans based on results from the 2021–2022 school year. To amend accountability determinations based on results from the 2021–2022 school year and school identifications and status exits in fall 2022, states could submit to USDE a "2021–2022 Template for Addendum to the ESEA Consolidated State Plan due to the COVID-19 National Emergency" (ESSA Accountability State Plan Addendum). In response to USDE guidance and statutory requirements, the Department consulted with assessment experts, educational leaders, and stakeholders, and performed extensive modeling to develop an ESSA Accountability State Plan Addendum that was submitted to USDE on August 29, 2022.

On September 26, 2022, USDE approved amendments to the New York State Consolidated State Plan under the ESEA for the 2021–2022 school year.

To align with the approved state plan addendum and with provisions related to the restart of the accountability system, the Department is proposing emergency regulatory amendments as follows:

### **Accountability:**

- Section 100.21 of the Commissioner's regulations is amended to provide that the Commissioner shall conduct the review of school and district performance for the

2022–2023 school year based on 2021–2022 school year results using modified procedures as specified in the new subdivision (n) added to this section. The Commissioner may also, upon finding of good cause, modify from the 2019–2020 through 2023 –2024 school years any timelines pertaining to notifications, plans, reports, or implementation of activities required by this section.

- New subdivision (n) of section 100.21 of the Commissioner’s regulations describes the modified procedures for the review of school and district performance for the 2022–2023 school year using 2021–2022 school year results as follows:
  - For all indicators except for determining the progress of English language learners toward English Language Proficiency (ELP) and Graduation Rate, accountability determinations will be based only on 2021–2022 school year results. Prior year data will not be used to make determinations. For the ELP indicator, a student’s results in the 2021–2022 school year on the New York State English as a Second Language Achievement Test (NYSESLAT) will be compared to their NYSESLAT results from prior years. The Graduation Rate indicator will be based on lagged 2020-2021 Graduation Rates so that students who graduated in August 2021 can also be included in the indicator.
  - The student growth in English language arts (ELA) and mathematics; academic progress; and College, Career, and Civic Readiness indicators, which require the use of prior year data, will not be used to assign accountability levels and will not be used to make accountability determinations based on 2021–2022 school year results.
  - In order to use results from the 2021–2022 school year only, accountability levels for the Graduation Rate and Chronic Absenteeism indicator will be assigned based on percentile rank rather than performance in relation to state goals and Measures of Interim Progress (MIPs).
  - A new high school Core Subject Performance Index based only on those students who have participated in Regents Examinations, Department-approved alternative assessments, and the New York State Alternate Assessment (NYSAA) will be used. This is intended to take into account that many students have received exemptions from graduation requirements.
  - The accountability measures for elementary and middle schools will be Academic Achievement in ELA, mathematics, and science; Chronic Absenteeism; and progress towards and acquisition of English Language Proficiency by English language learners. At the high school level, the accountability measures will be Academic Achievement in ELA,

mathematics, science, and social studies; unweighted average of 4, 5, and 6-year Graduation Rates; Chronic Absenteeism; and progress towards and acquisition of English Language Proficiency by English language learners.

- Academic Achievement at the elementary/middle and high school levels will be measured based on:
  - the federally mandated methodology in which the denominator is the greater of the number of tested students or 95% of those students (i.e., Weighted Average Achievement Index) for elementary/middle schools.
  - the count of the “all students” subgroup in the accountability cohort for high schools (i.e., high school Weighted Average Achievement Index).
  - at both the elementary/middle and high school levels the results from only those students who participated in State assessments (i.e., the Core Subject Performance Index).
- The “scenario tables” used to identify schools for CSI, ATSI, and TSI have been modified. New York State is still required to identify a minimum of 5% of the State’s schools that receive Title I funds for CSI. For accountability determinations, only subgroups that were identified for Potential Targeted Support and Improvement (PTSI) based on 2018-2019 school year results will be eligible to be newly identified for TSI using 2021-2022 school year results. The revised scenario tables are presented below:

**Elementary and Middle School Scenario Table**

<b>Scenarios</b>	<b>Weighted</b>	<b>Core</b>	<b>ELP</b>	<b>Chronic Absenteeism</b>
1	Both Level 1		Any Level (None, 1-4)	
2	Level 2	Level 1	Both NOT Level 3 or 4	
3	Level 1	None	Both NOT Level 3 or 4	
4	Level 1	Level 2	Both NOT Level 3 or 4	
5	Level 3	Level 1	Both NOT Level 3 or 4	
6	Level 1	Level 3	Both NOT Level 3 or 4	

**High School Scenario Table**

Scenarios	Weighted	Core	Grad Rate	ELP	Chronic Absenteeism
1	Both Level 1		Level 1	Any Level (None, 1-4)	
2	Level 2	Level 1	Level 1	Both Not Level 3 or 4	
3	Level 1	None	Level 1	Both Not Level 3 or 4	
4	Level 1	Level 2	Level 1	Both Not Level 3 or 4	
5	Both Level 1		Level 2	Both Not Level 3 or 4	
6	Level 1	Level 2	Level 2	Both Not Level 3 or 4	
7	Level 2	Level 1	Level 2	Both Not Level 3 or 4	

- Schools previously identified for CSI that are not identified for CSI using the revised identification criteria and meet the modified exit criteria may exit identification status. Schools previously identified for ATSI that are not identified using the revised TSI identification criteria and meet modified ATSI exit criteria may exit identification status. The modified exit criteria are as follows:
  - Weighted Average Achievement Index or Core Subject Performance Index is higher than at the time of identification (2017–2018 school year).
  - Graduation Rate (unweighted average of 4,5, and 6-year graduation rates) is higher than at the time of identification (2017–2018 school year).
- Schools previously identified for TSI that do not meet the revised TSI identification criteria may exit identification status.
- Districts that have one or more schools identified for CSI, ATSI, or TSI will continue to be identified as Target Districts. Districts that had been identified as Target Districts solely for the districtwide performance of accountability groups will be removed from that designation. Districts that have subgroups at the district level that meet the criteria for identification for CSI and/or TSI based on 2021–2022 school year results will become Potential Target Districts. If the district has a subgroup that meets the criteria for identification for a second consecutive year based on 2022–2023 school year results, the district will become a Target District for districtwide performance.
- A new subdivision (o) is added to section 100.21 of the Commissioner’s regulations to modify the following definitions to align with the definitions under the ESEA: “CSI School(s)” and “school(s) identified as CSI” to “school(s) identified for Comprehensive Support and Improvement (or CSI)”; “ATSI school(s)” and “school(s) identified as ATSI” to “school(s) identified for Additional

Targeted Support and Improvement (or ATSI)”; “TSI School(s)” and “school(s) identified as TSI” to “school(s) identified for Targeted Support and Improvement (or TSI)”; and Good Standing School(s) and schools identified as Good Standing shall hereafter be referred to in this Part as “school(s) identified for Local Support and Improvement (or LSI).”

### **Receivership:**

- Section 100.19 of the Commissioner’s regulations is amended to provide that:(1) the Commissioner shall not use 2021–2022 school year results to newly identify any schools as struggling or place any schools under independent receivership for the 2022–2023 school year; and (2) all schools that operated under a school district superintendent receiver in the 2021–2022 school year shall continue to operate under a school district superintendent receiver in the 2022–2023 school year. Consistent with current regulations, schools that are removed from CSI status based on 2021–2022 school year data shall be removed from receivership at the end of the 2022–2023 school year.

### **Related Regents Items**

February 2021: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80- 1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154- 2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and Addition of Section 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/221brca6.pdf>)

July 2021: [Proposed Amendment to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19, and 151-1.3 and the addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/721brca17.pdf>)

September 2021: [September 2021 P-12 Education Committee - Proposed Amendment of Section 100.21 of the Regulations of the Commissioner of Education Relating to Providing Flexibility for Accountability Requirements in Response to the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/921p12a3.pdf>)

October 2022: [Proposed Amendment of Sections 100.19 and 100.21 of the Regulations of the Commissioner of Education Relating to Restarting the Accountability System using 2021–2022 School Year Results - P-12](#)

(<https://www.regents.nysed.gov/common/regents/files/1022p12a3.pdf>)

## **Recommendation**

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

VOTED: That sections 100.19 and 100.21 of the Regulations of the Commissioner of Education be amended, as submitted, as an emergency measure, effective January 2, 2022, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately align the Regulations of the Commissioner of Education with the Department's ESSA Accountability State Plan Addendum, and to ensure the emergency action taken at the October 2022 meeting remains continuously in effect.

## **Timetable for Implementation**

If adopted as an emergency rule at the December 2022 Regents meeting, the emergency rule will become effective on January 2, 2023. It is anticipated that the proposed amendment will be presented for permanent adoption at the February 2023 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the February 2023 meeting, the proposed amendment will become effective as a permanent rule on March 1, 2023.

## Attachment A

### AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 112, 207, 210, 215, 305, 309, and 3713 of the Education Law 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. Paragraphs (1) and (2) of subdivision (m) of section 100.19 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) Notwithstanding any other provision of this section the Commissioner shall not use 2019–2020, [or] 2020–2021, or 2021–2022 school year results to newly identify in the [2021–2022] 2022–2023 school year any schools as struggling, or place any schools under independent receivership [, or remove the designation of any schools as struggling or persistently struggling].

(2) Notwithstanding any other provision of this section, all schools identified as persistently struggling or struggling schools for the 2019–2020 school year shall remain so identified for the 2020–2021 and 2021–2022 school years, and all schools that, pursuant to subdivision (a) of this section, operated under a school district superintendent receiver in the 2019–2020, [and] 2020–2021, and 2021–2022 school years shall continue to operate under a school district superintendent receiver in the [2021–2022] 2022–2023 school year.

2. Paragraph (4) of subdivision (a) of section 100.21 of the Regulations of the Commissioner of Education is amended and a new paragraph (5) is added to read as follows:



(4) Notwithstanding any other provision of this section, the Commissioner may, upon a finding of good cause, modify for the 2019–2020 through [2022–2023] 2023-2024 school years any timelines pertaining to notifications, plans, reports, or implementation of activities required by this section.

(5) Notwithstanding the provisions of this section, the Commissioner shall conduct the review of school and district performance for the 2022–2023 school year based on 2021–2022 school year data using modified procedures as specified in subdivision (n) of this section.

3. Subdivision (n) of section 100.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(n) Accountability system for schools and districts based on 2021–2022 school year results.

(1) Definitions. Notwithstanding the provisions of subdivision (b) of this section, the following definitions shall be used by the Commissioner to review school and district performance based on 2021–2022 school year results.

(i) *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 subdivision, the minimum n size is 30 unless otherwise provided. For the Weighted Average Achievement Index and the Core Subject Performance Index, the minimum n size applies to the denominator used to calculate the indices. For English Language Proficiency (ELP); Chronic Absenteeism (CA); and Graduation Rate, the minimum n size applies to the denominator used to calculate the rates. Provided, however, that where the Weighted Average Achievement

Index student results for an accountability group are equal to or greater than 30, a Core Subject Performance Index shall be computed for that accountability group so long as there are a minimum of 15 student results for the Core Subject Performance Index and the number of student results for the Core Subject Performance Index equals at least 50 percent of the number of results for the Weighted Average Achievement Index.

Provided further that, where the Weighted Average Achievement Index student results for a high school accountability group are equal to or greater than 30, a graduation rate shall be computed for that accountability group so long as there are a minimum of 15 students in the graduation cohort.

(ii) 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) Weighted Average Achievement Performance; (2) Core Subject Performance; (3) English Language Proficiency; and (4) Chronic Absenteeism as described in this subdivision. High school accountability measures shall include the four preceding factors as well as Graduation Rate.

(iii) Schools identified for comprehensive support and improvement (CSI) (elementary and middle schools). The State shall designate elementary/middle schools for CSI using the following criteria:

(a) for the 2022-2023 school year, using 2021-2022 school year results, the Commissioner shall identify a minimum of five percent of the lowest performing public elementary/middle schools that receive Title I funds for CSI and shall identify schools for CSI based upon the results from the all students subgroup based on the accountability

measures described in this subdivision. The Commissioner shall also identify for CSI those public elementary/middle schools that do not receive Title I funds that meet the criteria used to identify Title I schools for CSI. Provided further that a school that had been identified for CSI during the 2021–2022 school year that does not meet the criteria for exiting CSI status pursuant to paragraph (5) of this subdivision shall remain identified for CSI.

(iv) Schools identified for CSI (high schools). The State shall designate high schools for CSI using the following criteria:

(a) for the 2022-2023 school year, using 2021-2022 school year results, the Commissioner shall identify a minimum five percent of the lowest performing public high schools that receive Title I funds for CSI and shall identify schools for CSI based upon the results from the all students subgroup based on the accountability measures described in this subdivision. The Commissioner shall also identify for CSI those public high schools that do not receive Title I funds that meet the criteria used to identify Title I schools for CSI. Any school with a 2017 Four-Year Graduation Rate below 67 percent and a 2016 Five-Year or 2015 Six-Year Graduation Rate that is not at or above 67 percent shall be preliminarily identified for CSI. Provided further that a school that had been identified for CSI during the 2021–2022 school year that does not meet the criteria for exiting CSI status pursuant to paragraph (5) of this subdivision shall remain identified for CSI.

(v) A School Identified for Targeted Support and Improvement (TSI) shall mean a school with one or more consistently underperforming accountability subgroups based on the accountability measures described in this subdivision. In addition, a school

identified for TSI based upon 2018-2019 school year results with any accountability subgroup that meets the same scenario criteria used to identify schools for CSI pursuant to paragraph (2) of this subdivision based upon 2021-2022 school year results and that failed to meet the modified criteria for exiting identification status in this subdivision shall be identified for additional targeted support and improvement (ATSI). Schools identified for TSI based upon 2017-2018 school year results for which the identified subgroup(s) failed to meet the modified criteria for exiting ATSI status in this subdivision based on 2021-2022 school year results shall remain identified for ATSI.

(vi) *Target District* shall mean any school district with one or more schools identified for CSI, ATSI, or TSI.

(vii) For high school students, *participation rate* shall mean the percentage of students in grade 12 during the reporting year who have a valid score on an approved high school assessment. 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 Regents examinations in English and Mathematics, approved alternatives to Regents examinations in English and Mathematics, examinations accepted to meet graduation and diploma requirements for students covered under the interstate compact on educational opportunity for military children pursuant to section 100.20 of this Part and the NYSAA for eligible students with disabilities at the secondary level. Provided, however, participation rate shall not include students whose only assessment record was an exemption from the 2019-2020 school year spring administration for a Regents examination or approved alternative pursuant to section 100.5(a)(5) of this Part. Provided further, however, that participation rate shall also not

include students whose only assessment record for a subject was an exemption from the 2019-2020 school year spring administration for the NYSAA.

(2) Accountability system for elementary/middle schools.

(i) Identification of elementary/middle schools for CSI.

(a) An elementary/middle school shall be preliminarily identified for CSI using the following decision table, which combines the following measures of student performance for the all students subgroup in the school: (1) Weighted Average Achievement Performance; (2) Core Subject Performance; (3) English Language Proficiency; and (4) Chronic Absenteeism. A school shall be preliminarily identified for CSI if one or more of the scenarios in the decision table is 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 Weighted Average Achievement Performance measure and one or more of the following measures: Core Subject Performance, English Language Proficiency, and/or Chronic Absenteeism.

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

<b>Scenarios</b>	<b>Weighted</b>	<b>Core</b>	<b>ELP</b>	<b>Chronic Absenteeism</b>
<u>1</u>	<u>Both Level 1</u>		<u>Any Level (None*, 1-4)</u>	<u>Any Level (None*, 1-4)</u>
<u>2</u>	<u>Level 2</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4 **</u>	
<u>3</u>	<u>Level 1</u>	<u>None</u>	<u>Both NOT Level 3 or 4 **</u>	
<u>4</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Both NOT Level 3 or 4 **</u>	
<u>5</u>	<u>Level 3</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4 **</u>	
<u>6</u>	<u>Level 1</u>	<u>Level 3</u>	<u>Both NOT Level 3 or 4 **</u>	

\*\*None\*\* means the school does not have enough students (30 results) to assign an accountability level for the indicator.

\*\*To be identified, the Weighted and Core conditions in scenarios 2-6 would have to be met AND both ELP and CA cannot be Level 3 or 4.

(1) Weighted Average Achievement Level. For each public elementary/middle school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of this subdivision, a Weighted Average Achievement Level using the results of ELA and mathematics assessments in grades 3–8 and science assessments for grades 4 and 8 shall be computed by the Commissioner in accordance with the provisions of subdivision (f) of this section.

(2) Core Subject Performance Level. For each public elementary/middle school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of this subdivision, a Core Subject Performance Level using the results of ELA and mathematics assessments in grades 3–8 and science assessments for grades 4 and 8 shall be computed by the Commissioner in accordance with the provisions of subdivision (f) of this section.

(3) English Language Proficiency Level. For each public elementary/middle school meeting the minimum n-size requirements as defined in paragraph (1) of this section, the Commissioner shall compute an English Language Proficiency Level in accordance with subdivision (f) of this section.

(4) Chronic Absenteeism Level. For each public elementary/middle school meeting the minimum n-size requirement pursuant to paragraph (1) of this subdivision, the Commissioner shall compute a Chronic Absenteeism Level as follows:

(i) The Commissioner shall first compute the school's Chronic Absenteeism Rate, in accordance with subdivision (f) of this section.

(ii) The Commissioner shall then rank order schools based on their Chronic Absenteeism rate in descending order.

(iii) Each elementary/middle school shall then be assigned a Chronic Absenteeism Level from 1-4 based on such rank ordering using the table below:

<u>Chronic Absenteeism Rate Rank</u>	<u>Chronic Absenteeism Level</u>
-	-
<u>10% or Less</u>	<u>1</u>
-	-
<u>10.1 to 50%</u>	<u>2</u>
-	-
<u>50.1 to 75%</u>	<u>3</u>
-	-
<u>Greater than 75%</u>	<u>4</u>
-	-

(b) The Commissioner shall first determine which schools in Scenario 1 shall be identified for CSI. If the identification of schools in Scenario 1 results in fewer than five percent of public elementary/middle schools in the state that receive Title I funds being identified for CSI, the Commissioner shall then determine which schools in Scenario 2 shall be identified for CSI. The Commissioner shall continue to make determinations regarding which schools shall be identified for CSI in descending scenario number order until a minimum of five percent of public elementary/middle schools that receive Title I funds shall be identified. Once a minimum of five percent of public elementary/middle schools that receive Title I funds have been identified, schools in a higher-numbered scenario shall be removed from preliminary identification.

(ii) Identification of Elementary/Middle Schools for Targeted Support and Improvement (TSI). An elementary/middle school shall be preliminarily identified for TSI if an accountability subgroup met the criteria for identification based on 2018–2019 school year results and that same subgroup meets a scenario using the decision table

in subparagraph (i) of this paragraph, provided that only Scenario 1 and any other scenarios with numbers that are lower than the highest numbered scenario for which a school was identified for CSI shall be used to identify schools for TSI.

(a) The designations of schools for TSI 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 subgroup; provided that, in order to be preliminarily identified using the decision table in subparagraph (i) of this paragraph, a performance level must be assigned to, at a minimum, the Weighted Average Achievement measure and one or more of the following measures: Core Subject Performance, English Language Proficiency, and/or Chronic Absenteeism.

(iii) Identification of elementary/middle schools for Additional Targeted Support and Improvement (ATSI).

(a) The Commissioner shall identify for ATSI any school identified for TSI in the 2019-2020 school year based upon 2018-2019 school year results for which the same subgroup meets the same scenario criteria used to identify schools for CSI pursuant to paragraph (2) of this subdivision and that failed to meet the modified criteria for exiting identification status pursuant to paragraph (5) of this subdivision.

(b) Notwithstanding clause (a) of this subparagraph, schools identified for TSI based on 2017-2018 school year results for which the identified subgroup(s) failed to meet the modified criteria for exiting ATSI status in this subdivision based on 2021–2022 school year results shall remain identified for ATSI.

(3) Accountability system for high schools.

(i) Identification of high schools for CSI.



(a) A high school shall be preliminarily identified for CSI using the following decision table, which combines multiple measures of performance for the all students subgroup in the school, as defined in paragraph (1) of subdivision (b) of this section, using the following accountability measures: (1) Weighted Average Achievement Performance; (2) Graduation Rate; (3) Core Subject Performance (4) English Language Proficiency; and (5) Chronic Absenteeism; provided that in order to be preliminarily identified using the decision table below a performance level must be assigned to, at a minimum, the Weighted Average Achievement Performance and Graduation Rate measures and one or more of the following measures: Core Subject Performance, English Language Proficiency, and/or Chronic Absenteeism. A school shall be preliminarily identified for CSI if one or more of the scenarios in the decision table is applicable to the school. Provided, however, that notwithstanding the table below, any public high school with a 2017 Four-Year Graduation Rate below 67 percent and a 2016 Five-Year or 2015 Six-Year Graduation Rate that is not at or above 67 percent will be preliminarily identified for CSI.

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

<b><u>Scenarios</u></b>	<b><u>Weighted</u></b>	<b><u>Core</u></b>	<b><u>Grad Rate</u></b>	<b><u>ELP</u></b>	<b><u>Chronic Absenteeism</u></b>
<u>1</u>	<u>Both Level 1</u>	<u>Level 1</u>	<u>Level 1</u>	<u>Any Level (None*, 1-4)</u>	
<u>2</u>	<u>Level 2</u>	<u>Level 1</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4**</u>	
<u>3</u>	<u>Level 1</u>	<u>None</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4**</u>	
<u>4</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 1</u>	<u>Both NOT Level 3 or 4**</u>	
<u>5</u>	<u>Level 1</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Both NOT Level 3 or 4**</u>	
<u>6</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 2</u>	<u>Both NOT Level 3 or 4**</u>	
<u>7</u>	<u>Level 2</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Both NOT Level 3 or 4**</u>	

\*"None" means the school does not have enough students (30 results) to assign an accountability level for the indicator.

\*\*To be identified, the Weighted and Core conditions in scenarios 2-7 would have to be met AND both ELP and CA cannot be Level 3 or 4.

(1) Weighted Average Achievement Level. For each public high school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of subdivision (b) of this section, a Weighted Average Achievement Level shall be assigned by the Commissioner in the same manner as the Composite Performance Level is assigned in accordance with the provisions of subdivision (f) of this section. Notwithstanding the provisions of this subclause, Weighted Average Achievement Index shall not include students whose only assessment record for a subject was an exemption from the 2019-2020 school year spring administration for a Regents examination or approved alternative pursuant to section 100.5(a)(5) of this Part. Provided further that Weighted Average Achievement shall also not include students whose only assessment record was an exemption for a subject from the 2019-2020 school year spring administration for the NYSAA.

(2) Core Subject Performance Level. For each public high school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of subdivision (b) of this section, a Core Subject Performance Level shall be assigned by the Commissioner using the same methodology used to assign a Weighted Average Achievement Level, except that the denominator for computing the Core Subject Performance Index in each subject shall be the members of the accountability cohort who have a valid score on an accountability assessment in the subject.

(3) Graduation Rate. For each public high school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of subdivision (b) of this section, a Graduation Rate Level shall be assigned by the Commissioner.

(i) The Commissioner shall first compute the school's 2017 four-year, 2016 five-year, and 2015 six-year Graduation Rates, in accordance with subdivision (f) of this section.

(ii) The Commissioner shall then rank order schools based on the unweighted average of the four-year, five-year, and six-year Graduation Rates.

(iii) Each high school shall then be assigned a Graduation Rate Level from 1-4 based on such rank ordering using the table below:

<u>Graduation Rate Rank</u>	<u>Graduation Rate Level</u>
-	-
<u>10% or Less</u>	<u>1</u>
-	-
<u>10.1 to 50%</u>	<u>2</u>
-	-
<u>50.1 to 75%</u>	<u>3</u>
-	-
<u>Greater than 75%</u>	<u>4</u>
-	-

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

(5) Chronic Absenteeism Level. For each public high school whose all students subgroup meets the minimum n-size requirement pursuant to paragraph (1) of this subdivision, the Commissioner shall compute a Chronic Absenteeism Level as follows:

(i) The Commissioner shall first compute the school’s Chronic Absenteeism Rate, in accordance with subdivision (f) of this section.

(ii) The Commissioner shall then rank order schools based on their Chronic Absenteeism rate in descending order.

(iii) Each high school will then be assigned a Chronic Absenteeism Level from 1-4 based on such rank ordering using the table below:

<u>Chronic Absenteeism Rank</u>	<u>Chronic Absenteeism Level</u>
-	-
<u>10% or Less</u>	<u>1</u>
-	-
<u>10.1 to 50%</u>	<u>2</u>
-	-
<u>50.1 to 75%</u>	<u>3</u>
-	-
<u>Greater than 75%</u>	<u>4</u>
-	-

(b) The Commissioner shall first determine which schools in Scenario 1 shall be identified for CSI. If the identification of schools in Scenario 1 results in fewer than five percent of public high schools in the state that receive Title I funds being identified for CSI, the Commissioner shall then determine which schools in Scenario 2 shall be identified for CSI. The Commissioner shall continue to make determinations regarding which schools shall be identified for CSI in descending scenario number order until a minimum of five percent of public high schools that receive Title I funds shall be identified. Once a minimum of five percent of public high schools that receive Title I funds have been identified, schools in a higher-numbered scenario shall be removed from preliminary identification.

(ii) Identification of high schools for TSI.

(a) A high school shall be preliminarily identified for TSI if an accountability subgroup met the criteria for identification based on 2018–2019 school year results and that same subgroup meets a scenario using the decision table in subparagraph (i) of this paragraph, provided that only Scenario 1 and any other scenarios with numbers that are lower than the highest numbered scenario for which a school was identified for CSI shall be used to identify schools for TSI.

(b) The designation of schools for TSI 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 subgroup; provided that, in order to be preliminarily identified using the decision table in subparagraph (i) of this paragraph, a performance level must be assigned to, at a minimum, the Weighted Average Achievement measure and Graduation Rate measures and one or more of the following measures: Core Subject Performance, English Language Proficiency, and/or Chronic Absenteeism.

(iii) Identification of high schools for ATSI.

(a) The Commissioner shall identify for ATSI any school identified for TSI in the 2019-2020 school year based upon 2018-2019 school year results for which the identified subgroup meets the same scenario criteria used to identify schools for CSI pursuant to paragraph (2) of this subdivision and that failed to meet the modified criteria for exiting identification status pursuant to paragraph (5) of this subdivision.

(b) Notwithstanding clause (a) of this subparagraph, schools identified for TSI based on 2017-2018 school year results for which the identified subgroup(s) failed to

meet the modified criteria for exiting ATSI status based on 2021–2022 school year results shall remain identified for ATSI.

(4) Interventions. Notwithstanding the provisions of subdivision (i) of this section, interventions in schools identified for CSI, ATSI, and TSI and interventions in Target Districts shall be modified as follows:

(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 school identified for CSI, ATSI, or TSI, shall not require a needs assessment based on Level 1 identifications using 2021–2022 school year results.

(ii) Annual Achievement Progression target shall not be determined using data from the 2021–2022 school year for schools identified for CSI.

(iii) Participation rate self-assessments and participation rate improvement plans shall not be required for any school based on 2021–2022 school year results.

(5) Removal from accountability designation. Notwithstanding the provisions of subdivision (j) of this section, the Commissioner shall use the following procedures to exit schools from identification for CSI, ATSI, TSI, and from Target District status based on 2021–2022 school year results.

(i) For elementary/middle schools:

(a) For schools identified for CSI or ATSI, an increase between the school's performance in the 2021–2022 year compared to the 2017–2018 school year based on either the Core Subject Performance Index or the Weighted Average Achievement Index as defined in subdivision (f) of this section for the identified subgroup. Provided,

however, that an elementary/middle school may not exit CSI or ATSI status if the school is identified for CSI or ATSI using 2021–2022 school year data.

(b) For schools identified for TSI, the school is not identified for TSI using the 2021–2022 school year data.

(ii) For high schools:

(a) For schools identified for CSI or ATSI, an increase between the school's performance in the 2021–2022 school year compared to the 2017–2018 school year based on the Weighted Average Achievement Index as defined in subdivision (f) of this section or the unweighted average of the Four-Year, Five-Year, and Six-Year Graduation Rates computed pursuant to clause (f)(2)(i)(b) of this section for the identified subgroup. Provided, however, that a high school may not exit CSI or ATSI status if the school is identified for CSI or ATSI using 2021–2022 school year data.

(b) For schools identified for TSI, the school is not identified for TSI using the 2021–2022 school year data.

(iii) Notwithstanding the provision of paragraph (j)(4) of this section, the Commissioner shall not preliminarily identify schools identified for CSI that were identified for three consecutive school years as struggling schools, subject to the provisions of section 100.19(m) of this Part.

(iv) Notwithstanding the provision of paragraph (j)(4) of this section, the Commissioner shall not require that any elementary, middle, or high school that continues to be identified for TSI for three consecutive school years after designation for ATSI for the performance of the same accountability subgroup(s) for which the school was identified for ATSI be preliminarily identified for CSI.

(v) Notwithstanding the provision of subparagraph (j)(6)(ii) of this section, a Target District shall no longer be identified as a Target District if there is no school identified for CSI, ATSI, or TSI in the district.

(6) Identification of schools for public school registration review. Notwithstanding the provisions of subdivisions (k) and (l) of this section, the Commissioner shall neither place any schools under preliminary registration review or registration review nor place any school into independent receivership based on 2021–2022 school year results.

4. Subdivision (m) of section 100.21 of the Regulations of the Commissioner of Education is amended to read as follows:

[(m)] (o) Notwithstanding the provisions of paragraph (b)(3) of this section, *CSI School(s)* and *school(s) identified as CSI* shall hereafter be referred to in this Part as *school(s) identified for Comprehensive Support and Improvement (or CSI)*, *ATSI school(s)* and *school(s) identified as ATSI* shall hereafter be referred to in this Part as *school(s) identified for Additional Targeted Support and Improvement (or ATSI)*, *TSI School(s)* and *school(s) identified as TSI* shall hereafter be referred to in this Part as *school(s) identified for Targeted Support and Improvement (or TSI)*, and *Good Standing School(s)* and *schools identified as Good Standing* shall hereafter be referred to in this Part as *school(s) identified for Local Support and Improvement (or LSI)*.

(p) 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.



## **Attachment B**

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

In August 2022, the Department submitted an Every Student Succeeds Act (ESSA) Accountability State Plan Addendum to the United States Department of Education (USDE) on behalf of all Local Education Agencies (LEAs) in New York State seeking amendments to the State approved Consolidated State Plan in the 2021–2022 school year. The ESSA Accountability State Plan Addendum addresses areas in the Consolidated State Plan that would minimize the use of school year data most impacted by the COVID-19 pandemic, specifically the 2019–2020 and 2020–2021 school years. USDE approved the ESSA Accountability State Plan Addendum, which would amend the New York State consolidated State plan for the 2021–2022 school year only (i.e., amendments that will impact only accountability determinations based on data from the 2021–2022 school year and school identifications and status exits in fall 2022).

As a result, it is necessary for the Department to adopt emergency regulations to be consistent with the plan addendum approval granted by USDE. The approval of the ESSA Accountability State Plan Addendum provides a one-year model that would restart the accountability system for New York State using data from the 2021–2022 school year.

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the October 2022

meeting of the Board of Regents, effective October 4, 2022. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (nonemergency) adoption, after publication in the State Register and expiration of the 60-day public comment period required in the SAPA sections 201(1) and (5), is the February 2023 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the January meeting, would be March 1, 2023, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on January 1, 2023. Therefore, a second emergency action is necessary at the December 2022 meeting, effective January 2, 2022, for the preservation of the general welfare in order to immediately align the Commissioner's regulations with the Department's ESSA Accountability State Plan Addendum.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the February 2023 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rulemakings.