




TO: P-12 Education Committee

FROM: Ken Slentz 

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

DATE: April 24, 2014

AUTHORIZATION(S):

SUMMARY

Issues for Decision

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

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

Reason(s) for Consideration

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

Proposed Handling

This item will come before the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action at the April 2014 Regents meeting, effective April 29, 2014. A copy of the proposed amendment and a statement of the facts and circumstances which necessitate emergency action are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

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

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

Background Information

In September 2011, President Obama announced an ESEA regulatory flexibility initiative based upon the Secretary of Education’s authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the USDE during the second round of submissions in mid-February 2012 and designated five members of the Board to help lead the work. On May 29, 2012, USDE approved New York State’s ESEA Flexibility Waiver Request.

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

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

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

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

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

Recommendation

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

VOTED: That paragraph (2) of subdivision (i) and subdivision (j) of section 100.18 of the Regulations of the Commissioner of Education be amended, as submitted, effective April 29, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Commissioner's Regulations to:

- timely implement New York State's approved ESEA Flexibility Waiver with respect to the methodology for setting the Annual Measurable Objectives (AMOs) for elementary-middle level ELA and mathematics; and
- allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools,

so that school districts and charter schools may timely meet school/school district accountability requirements for the 2013-14 school year and beyond.

Timetable for Implementation

If adopted at the April Regents meeting, the emergency rule will become effective April 29, 2014 and will remain in effect for 90 days. It is anticipated that the proposed

amendment will be presented for adoption as a permanent rule at the July 2014 Regents meeting, after publication of a Notice of Emergency Rule Making and Proposed Rule Making in the State Register on May 14, 2014 and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

8 NYCRR §100.18(f),(i),(j)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

At its February 2014 meeting, the Board of Regents directed the State Education Department (SED) to submit a an ESEA Flexibility Waiver Renewal Request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology used to determine elementary-middle level English language arts and mathematics annual measurable objectives (AMOs).

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

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

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

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

Because the Board of Regents meets at scheduled intervals, the July 10-11, 2014 meeting is the earliest the proposed rule could be presented for adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July meeting, would be July 30, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to immediately conform the Commissioner's Regulations to: (1) timely implement New York State's approved ESEA Flexibility Waiver with respect to the methodology for setting the AMOs for elementary-middle level ELA and mathematics, and (2) allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools, so that school districts may timely meet school/school district accountability requirements for the 2013-2014 school year and beyond.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its July 10-11, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Paragraph (2) of subdivision (i) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, as follows:

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

(i)

(ii)

(iii)

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

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

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

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

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

(a) . . .

(b) . . .

2. Subdivision (j) of section 100.18 of the Regulations of the Commissioner is amended, effective April 29, 2014, as follows:

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

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

(2) . . .

(3) . . .

(4) . . .