




**TO:** P-12 Education Committee

**FROM:** Jason Harmon 

**SUBJECT:** Proposed Amendment of Sections 100.19 and 100.21 of the Regulations of the Commissioner of Education Relating to Rebuilding the Every Student Succeeds Act (ESSA) Accountability System using 2022–2023 and 2023–2024 School Year

**DATE:** September 7, 2023

**AUTHORIZATION(S):** 

### SUMMARY

#### **Issue for Decision**

Should the Board of Regents adopt the proposed amendment of sections 100.19 and 100.21 of the Regulations of the Commissioner of Education relating to rebuilding the Every Student Succeeds Act (ESSA) accountability system using 2022–2023 and 2023–2024 school year results?

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

Review of State policy.

#### **Proposed Handling**

The proposed amendment is being presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its September 2023 meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are included.

#### **Procedural History**

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on September 27, 2023, for a 60-day public comment period. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

Generally:

In September 2022, the United States Department of Education (USDE) approved the Department's "2021–2022 Template for Addendum to the ESEA Consolidated State Plan due to the COVID-19 National Emergency" (or Every Student Succeeds Act [ESSA] Accountability State Plan Addendum) under the Elementary and Secondary Education Act (ESEA). At the February 2023 meeting of the Board of Regents, the Board permanently adopted regulations to restart the accountability system for the 2022–2023 school year using 2021–2022 school year results.

On September 8, 2023, USDE approved amendments to the New York State Consolidated State Plan under the ESEA for the 2023–2024 and 2024–2025 school years. To align with the approved state plan addendum from the 2021–2022 school year, the approved amendments to the New York State Consolidated State Plan for the 2023–2024 and 2024–2025 school years, and with provisions related to rebuilding the ESSA accountability system, the Department is proposing emergency regulatory amendments as follows:

Receivership:

- Section 100.19 of the Commissioner's regulations is amended to provide that: (1) the Commissioner shall not use 2022–2023 and 2023–2024 school year results to newly identify any schools as struggling for the 2023–2024 and 2024–2025 school years, (2) the Commissioner shall not use 2019–2020, 2020–2021, or 2021–2022 school year results to place schools under independent receivership in the 2022–2023 school year or any subsequent school year, and (3) the Commissioner may place schools under independent receivership, beginning with the 2022–2023 school year results, in the subsequent school year.

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 2023–2024 school year based on 2022–2023 school year results and the 2024–2025 school year based on 2023–2024 school year results using modified procedures as specified in revisions to subdivision (n) of such section. The proposed amendment also provides that the Commissioner may, upon a finding of good cause, modify from the 2023–2024 through 2025–2026 school years any timelines pertaining to notifications, plans, reports, or implementation of activities required by such section.
- Revisions to subdivision (n) of section 100.21 of the Commissioner's regulations describe the updated procedures for the review of school and district performance for the 2023–2024 school year based on 2022–2023 school year results and the 2024–2025 school year based on 2023–2024 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 2022–2023 and 2023–2024 school year results. Prior year data will not be used to make determinations. For the ELP indicator, a student’s results in the 2022–2023 and 2023–2024 school years 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 2021–2022 and 2022–2023 graduation rates so that students who graduated in August after the school year can also be included in the indicator.
- Due to new assessments and a gap in data, the inclusion of science results in the Science Performance Index calculation for the Weighted Average Achievement and Core Subject Performance indicators will be paused for the 2023–2024 school year based upon the 2022–2023 school year results and the 2024–2025 school year based on the 2023–2024 school year results at the elementary and middle school level.
- Due to the impact of canceled social studies Regents Examinations in the 2019–2020, 2020–2021, and 2021–2022 school years, the inclusion of the Social Studies Performance Index in the calculation of the Weighted Average Achievement and Core Subject Performance indicators will be paused for the 2023–2024 school year based on 2022–2023 school year results and the 2024–2025 school year based on the 2023–2024 school year results at the high school level.
- The accountability measures at the elementary/middle school level will be Academic Achievement in English language arts (ELA) and mathematics; 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, and science; unweighted average of 4-, 5-, and 6-year Graduation Rates; Chronic Absenteeism; and progress towards and acquisition of ELP by English language learners (ELLs).
- Academic Achievement at the elementary/middle and high school levels, will be computed using 2022–2023 and 2023–2024 school year results in the same way as 2021–2022 school year results had been used:
  - 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); and
  - 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 for identifications in the 2022–2023 school year will be used in the 2023–2024 school year based on the 2022–2023 school year results and the 2024–2025 school year based on the 2023–2024 school year results. Schools will not be identified for Comprehensive Support and Improvement (CSI) and Additional Targeted Support and Improvement (ATSI) until the 2025–2026 school year using the 2024–2025 school year results. The scenario tables are presented below.

**Elementary and Middle School Scenario Table**

Scenarios	Weighted	Core	ELP	Chronic Absenteeism
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 meet the exit criteria and do not meet identification criteria may exit identification status. Schools previously identified for ATSI that meet ATSI exit criteria for all subgroups for which the school was identified, and do not meet identification criteria for any subgroup, may exit identification status. The exit criteria are as follows:

- Weighted Average Achievement Index or Core Subject Performance Index is higher than at the time of identification (2021–2022 school year results); and
  - Graduation Rate (unweighted average of 4-, 5-, and 6-year graduation rates) is 67% or higher for schools identified for CSI. For schools identified for ATSI, the graduation rate must be higher than at the time of identification (2021–2022 school year results).
- Schools identified for CSI or ATSI that do not meet exit criteria based on 2022–2023 school year results may thereafter exit identification status upon showing two years of progress provided they do not meet CSI/ATSI identification criteria.
  - Schools previously identified for Targeted Support and Improvement (TSI) in the 2022–2023 school year based on 2021–2022 school year results that do not meet TSI identification criteria based on 2022–2023 school year results may exit identification status. If the school does not meet the exit criteria based on 2022–2023 school year results, the school must show two years of progress for identified subgroups to be eligible for removal from TSI.
  - Schools identified for TSI based on 2022–2023 or 2023–2024 school year results may exit identification status if the identified subgroups do not meet TSI identification criteria for two consecutive years.
  - Districts that have one or more schools identified for CSI, ATSI, or TSI will continue to be identified as Target Districts. If a district has a subgroup that meets the criteria for identification for a second consecutive year based on 2023–2024 or 2024–2025 school year results, the district will become a Target District for districtwide performance.

### **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)

(<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)

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

September 2021: [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)  
(<https://www.regents.nysed.gov/common/regents/files/921p12a3.pdf>)

February 2023: [Proposed Amendments 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](https://www.regents.nysed.gov/sites/regents/files/223p12a1.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/223p12a1.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, effective September 12, 2023, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately align the Regulations of the Commissioner of Education with New York’s ESSA Accountability State Plan.

### **Timetable for Implementation**

If adopted as an emergency rule at the September 2023 Regents meeting, the proposed amendment will become effective on September 12, 2023. It is anticipated that the proposed amendment will be presented for permanent adoption at the January 2024 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 (SAPA). Because the emergency action will expire before the January Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2023 meeting. If adopted at the January 2024 meeting, the proposed rule will become effective as a permanent rule on January 24, 2024.

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. Paragraph (1) of subdivision (m) of section 100.19 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) Notwithstanding any other provision of this section the Commissioner shall not use 2019–2020, 2020–2021, [or] 2021–2022, 2022-2023, or 2023-2024 school year results to newly identify in the 2021–2022, 2022–2023, 2023–2024, and 2024–2025 school [year] years any schools as struggling, [or place any schools under independent receivership].

2. Paragraphs (2) and (3) of subdivision (m) of section 100.19 of the Regulations of the Commissioner of Education are renumbered paragraphs (3) and (4) and a new paragraph (2) is added to read as follows:

(2) Notwithstanding any other provision of this section the Commissioner shall not use 2019–2020, 2020–2021, or 2021–2022 school year results to place any schools under independent receivership in the 2022-2023 school year or any subsequent school year. Beginning with the 2022–2023 school year results, the Commissioner may place any schools under independent receivership in the subsequent school year.

3. Paragraphs (4) and (5) of subdivision (a) of section 100.21 of the Regulations of the Commissioner of Education is amended 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 [2023–2024] 2025–2026 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] results, for the 2023–2024 school year based on 2022–2023 school year results, and for the 2024–2025 school year based on the 2023–2024 school year results using modified procedures as specified in subdivision (n) of this section.

4. 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, 2022–2023, and 2023–2024 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, 2022–2023, and 2023–2024 school year results.

(i)...

(ii)...

(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) ...



(b) For the 2023–2024 and 2024–2025 school years, the Commissioner shall not newly identify schools for CSI and will resume CSI identifications in the 2025–2026 school year based on 2024–2025 school year results.

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

(a)...

(b) For the 2023–2024 and 2024–2025 school years, the Commissioner shall not newly identify schools for CSI and will resume CSI identifications in the 2025–2026 school year based on 2024–2025 school year results.

(v) [A School Identified for Targets Support and Improvement] *Schools identified for targeted support and improvement (TSI) (elementary, middle, and high schools)* 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.

(a) For the 2023–2024 and 2024–2025 school years, the Commissioner shall not identify schools for ATSI and will resume ATSI identifications in the 2025–2026 school year based on 2024–2025 school year results.

(vi) *Target District* shall mean any school district with one or more schools identified for CSI, ATSI, or TSI. A Target District shall also mean any district whose district-wide performance levels would cause a subgroup to meet the scenario in the decision table to be identified for CSI, ATSI, or TSI pursuant to the provisions of this section.

(vii)...

(viii) Out-of-school suspension rate shall mean the number of students who were suspended from school (not including in-school suspensions) for one full day or longer anytime during the school year divided by the number of students enrolled on BEDS Day of that school year. Suspension data shall not be evaluated for accountability purposes for the 2023–2024 and 2024–2025 school years.

(ix) Performance levels shall mean for accountability determinations regarding comprehensive support and improvement schools, targeted support and improvement schools and target districts made commencing with the 2022–2023 school year assessment results at the secondary level, as follows:

(a) Level 1 - basic:

(1) a score of Accountability Level 1 on a Regents examination in ELA, Mathematics, Science, or Social Studies;

(2) a score of Level 1 on the New York State Alternate Assessment in ELA, Mathematics, or Science at the secondary level;

(3) a failing score on a Regents alternative examination in ELA, Mathematics, Science, or Social Studies; or

(4) a cohort member who has not been tested on any of the assessments in subclause (1) through (3) of this clause.

(b) Level 2 (basic proficient):

(1) a score of Accountability Level 2 on a Regents examination in ELA, Mathematics, Science, or Social Studies; or

(2) a score of Level 2 on the New York State Alternate Assessment in ELA, Mathematics, or Science at the secondary level.

(c) Level 3 (proficient):

(1) a score of Accountability Level 3 on a Regents examination in ELA, Mathematics, Science, or Social Studies;

(2) a score of Level 3 on the New York State Alternate Assessment in ELA, Mathematics, or Science at the secondary level;

(3) a passing score on a State-approved alternative examination to a Regents examination in ELA, Mathematics, Science, or Social Studies; or

(4) any alternative examination to a Regents examination in ELA, Mathematics, Science, or Social Studies accepted by the State for students covered under the interstate compact on educational opportunity for military children pursuant to subdivision (c) of section 100.20 of this Part.

(d) Level 4 (advanced):

(1) a score of Accountability Level 4 on a Regents examination in ELA, Mathematics, Science, or Social Studies;

(2) the highest score on a State-approved alternative examination to a Regents examination in ELA, Mathematics, Science, or Social Studies; or

(3) a score of Level 4 on the New York State Alternate Assessment in ELA, Mathematics, or Science at the secondary level.

(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**

Scenarios	Weighted	Core	ELP	Chronic Absenteeism
1	Both Level 1		Any Level (None*, 1-4)	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 **	

\*\*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:

(i) for the 2021–2022 school year results, 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.

(ii) for the 2022–2023 and 2023–2024 school year results, a Weighted Average Achievement Level using the results of ELA and mathematics assessments in grades 3–8 shall be computed by the Commissioner.

(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:

(i) for the 2021–2022 school year results, 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.

(ii) for the 2022–2023 and 2023–2024 school year results, a Core Subject Performance Level using the results of ELA and mathematics assessments in grades 3–8 shall be computed by the Commissioner.

(3)...

(4)...

(b)...

(c) in the 2023–2024 school year based on 2022–2023 school year results and in the 2024–2025 school year based on 2023–2024 school year results, a threshold on the decision table shall be determined by progressing through the scenarios until a minimum of five percent of the lowest performing elementary/middle schools meet the criteria for identification to determine the list of schools that meet exit criteria in accordance with the provisions of paragraph (5) of this subdivision. The Commissioner shall not identify schools for CSI at the elementary/middle level in the 2023–2024 school year based on 2022–2023 school year results or in the 2024–2025 school year based on 2023–2024 school year results.

(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] for two consecutive years between the 2021–2022 and 2023–2024 school years 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) For the identification of schools for TSI based on 2021–2022 school year results, the consecutive years will be based on 2018–2019 and 2021–2022 school year results.

(b) 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) ...

(b) ...

(c) The Commissioner shall not identify elementary/middle schools for ATSI in the 2023–2024 school year based on 2022–2023 school year results or in the 2024–2025 school year based on 2023–2024 school year results.

(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 applies 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**

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	Level 1	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**	

\*"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:

(i) For the 2021–2022 school year results, a Weighted Average Achievement Level shall be computed 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.

(ii) For the 2022–2023 and 2023–2024 school year results, a Weighted Average Achievement Index using only the results of ELA, mathematics, and science assessments shall be computed by the Commissioner. The State assessments that may be used at the high school level are New York State Regents examinations in ELA, mathematics, and science, approved alternatives to Regents examinations in ELA, mathematics, and science, and the New York State Alternate Assessment (NYSAA) for eligible students with disabilities at the secondary level.

(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:

(i) for the 2021–2022 school year results, 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.

(ii) for the 2022–2023 and 2023–2024 school year results, a Core Subject Performance Level using only the results of ELA, mathematics, and science assessments shall be computed by the Commissioner. The State assessments that may be used at the high school level are New York State Regents examinations in ELA, mathematics, and science, approved alternatives to Regents examinations in ELA,

mathematics, and science, and the New York State Alternate Assessment (NYSAA) for eligible students with disabilities at the secondary level.

(3)...

(4)...

(5)...

(b)...

(c) In the 2023–2024 school year based on 2022–2023 school year results and in the 2024–2025 school year based on 2023–2024 school year results, a threshold on the scenario tables shall be determined by progressing through the scenarios until a minimum of five percent of the lowest performing high schools meet the criteria for identification to determine the list of schools that meet exit criteria in accordance with the provisions of paragraph (5) of this subdivision. The Commissioner shall not identify schools for CSI in the 2023–2024 and the 2024–2025 school years.

(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 for [based on 2018–2019 school year results] two consecutive years between the 2021–2022 and 2023–2024 school years 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) For the identification of schools for TSI based on 2021–2022 school year results, the consecutive years will be 2018–2019 and 2021–2022 school year results.

(c) 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. The Commissioner shall not identify schools for ATSI at the high school level in the 2023–2024 school year based on 2022–2023 school year results and the 2024–2025 school year based on 2023–2024 school year results.

(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, 2022–2023, or 2023–2024 school year results.

(ii) Annual Achievement Progression target shall not be determined using [data] results from 2021–2022, 2022–2023, or 2023–2024 school years 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, 2022–2023, or 2023–2024 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, 2022–2023, or 2023–2024 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, or the 2022–2023 year compared to the 2021–2022 school year, based on either the Core Subject Performance Index or the Weighted Average Achievement Index 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]results or meets the CSI identification criteria in the 2023–2024 school year based on 2022-2023 school year results.

(b) Beginning with the 2023–2024 school year results, a school identified for CSI and ATSI may exit status if there is an increase in performance for two consecutive years on either the Core Subject Performance Index or the Weighted Average Achievement Index. Provided, however, that an elementary/middle school may not exit CSI or ATSI status if the school meets the criteria for identification as CSI or ATSI.

(c) For schools identified for TSI, the school is not identified for TSI using the 2021–2022 or 2022–2023 school year [data] results.

(d) Beginning with the 2023–2024 school year results, a school identified for TSI may exit status if the school does not meet the TSI criteria for two consecutive years.

(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, or the 2023–2024 year compared to the 2021–2022 school year, based on the Weighted Average Achievement Index 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] results or meets the CSI or ATSI identification criteria in the 2023–2024 school year based on 2022–2023 school year results.

(b) Beginning with the 2023–2024 school year results, a school identified for CSI and ATSI may exit status if there is an increase in performance for two consecutive years on either the Weighted Average Achievement Index or the Core Subject Performance Index, or if the unweighted average of the Four-Year, Five-Year, and Six-Year Graduation Rates is higher than the Graduation Rate at the time of identification

for two consecutive years. For schools identified for CSI for having Graduation Rate less than 67%, the school must have a Graduation Rate at or above 67% for two consecutive years to exit CSI status. Provided, however, that a high school may not exit CSI or ATSI status if the school meets the criteria for identification as CSI or ATSI.

(c) For schools identified for TSI, the school is not identified for TSI using the 2021–2022 or 2022–2023 school year [data] results.

(d) Beginning with the 2023–2024 school year results, a school identified for TSI may exit status if the school does not meet the TSI criteria for two consecutive years.

(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. The Commissioner shall not identify any schools as struggling schools until the 2024–2025 school year results.

(iv)...

(v)...

(6)...

STATEMENT OF FACTS AND CIRCUMSTANCE WHICH NECESSITATE  
EMERGENCY ACTION

In June 2023, the Department submitted an amendment request to the United States Department of Education (USDE) on behalf of all Local Education Agencies (LEAs) to New York State's Consolidated State Plan under the Every Student Succeeds Act (ESSA) in the 2023–2024 school year based on 2022–2023 school year results and the 2024–2025 school year based on 2023–2024 school year results. USDE granted the Department amendments to New York State's Consolidated State Plan that would continue New York State's transition towards a more stable and normalized accountability system.

As a result, it is necessary for the Department to adopt emergency regulations to be consistent with the amendments granted by USDE. The approved amendments provide a two-year rebuild model that would maintain school and district accountability determinations using results from the 2022–2023 and 2023–2024 school years.

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 January 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the January meeting, would be January 27, 2023, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary for the preservation of the general welfare to immediately align the Regulations of the Commissioner of Education with New York's ESSA Accountability State Plan.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the January 2024 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rulemaking. However, since the emergency action will expire before the January 2024 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2023 Regents meeting.