TO: EMSC Committee

FROM: John B. King, Jr.

SUBJECT: Proposed Amendment of section 100.2(p)(9), (10) and (11) of the Regulations of the Commissioner of Education, Relating to the Merger of the Schools Under Registration Review and Persistently Lowest-Achieving Schools Processes

DATE: April 1, 2010

STRATEGIC GOAL: Goals 1 and 2

AUTHORIZATION(S):

SUMMARY

Issue for Discussion

Should the Board of Regents amend paragraphs (9), (10) and (11) of section 100.2(p) of the Commissioner's Regulations to merge the process for determining Persistently Lowest-Achieving (PLA) schools with the process for placing Schools Under Registration Review (SURR)?

Reason(s) for Consideration

To consolidate the process of identifying schools for registration review (SURR) under Commissioner's regulations with the United States Department of Education's (USED) framework for identifying schools as Persistently Lowest-Achieving in order for states to access State Fiscal Stabilization Funds (Phase II), School Improvement Grants and other federal funding opportunities and to require all newly identified SURRs to implement intervention strategies based upon School Improvement Grant guidelines issued by USED in January 2010.

Proposed Handling

The proposed amendment is being presented to the EMSC Committee for discussion at the April 2010 Regents meeting.

Procedural History

In December 2009, the Board of Regents approved the methodology by which the Commissioner identifies schools as Persistently Lowest-Achieving (PLA). On January 21, 2010, Commissioner Steiner announced that 57 schools had been identified as PLA and therefore eligible for funding to implement an intervention to turn them around, as part of New York's Race to the Top school reform agenda. On February 16, 2010, Commissioner Steiner announced that four schools had been identified as Schools Under Registration Review. These schools also met the definition for PLA and are therefore eligible for federal funding to implement a PLA intervention. On January 28, 2010, USED released its Final Requirements for School Improvement Grants (SIG). Approved states are granted funds to improve student achievement in Title I schools identified for improvement, corrective action, or restructuring so as to enable those schools to make adequate yearly progress (AYP) and exit improvement status. In accordance with SIG guidelines, on March 23, 2010, New York submitted its application to USED for SIG funds. In accordance with USED guidelines, the application included the State's definition for PLA schools and identified the interventions strategies that PLA schools must implement to receive funds.

Background Information

The purpose of the proposed amendment is to strengthen the SURR process by merging it with the process to identify Persistently Lowest-Achieving (PLA) schools in order to increase the percentage of schools that successfully implement an intervention strategy that results in the school being removed from PLA status or that results in the school being replaced by a new school in Good Standing. The proposed amendment will:

- Integrate support for SURR schools with support provided to schools that are PLA and eliminate any duplication in planning requirements and technical assistance and monitoring.
- Modify the definition of a SURR school so that potential SURR schools will be those that are PLA rather than those that are farthest from State standards
- Conform the SURR definition of PLA to the federal definition of the term.
- Identify the academic indicators used to identify a school as PLA.
- Provide new schools that are created as a result of the phasing-out of an old school and phasing-in of a new school or the restart model an accountability status of Good Standing and not identify these as SURR at the time of registration.
- Ensure that existing schools that implement a turnaround or transformation model remain SURR until academic performance improves or the schools are closed and restarted or replaced.
- Provide the Commissioner with flexibility to identify PLA alternative high schools, special act schools, schools in Community School District 75, non-Title I elementary schools or non Title-I eligible secondary schools for registration

- Require districts to implement an intervention subject to the approval of the Commissioner, including the following: turnaround model, restart model, school closure model, transformation model; and to develop a new restructuring plan or update an existing restructuring plan to describe the implementation of the intervention, in accordance with a timeline prescribed by the Commissioner.
- Replace the requirement for a resource, planning and program audit of the district and the school with a joint intervention team assisting a district in the selection of an intervention.
- Provide a SURR with three rather than two academic years to show progress prior to the Commissioner recommending that its registration be revoked.
- Base removal decisions on the academic indicators used to identify a school as PLA.
- Permit current SURR schools that do not meet the PLA definition to continue implementation of its existing restructuring plan; and, to require current SURR schools that meet the PLA definition to implement intervention requirements pursuant to revised regulations.

A Notice of Proposed Rule Making will be published in the State Register on April 14, 2010. Supporting materials are available upon request from the Secretary to the Board of Regents.

Recommendation

It is recommended that the Regents EMSC Committee reach consensus on the intent of the proposed amendment prior to taking action at the June Regents meeting.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented for adoption at the June Regents meeting, with a July 14, 2010 effective date.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Paragraph (9) of subdivision (p) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 14, 2010, as follows:

(9) Identification of schools for public school registration review.

(i) Up through and including the 2009-2010 school year, [The] the commissioner shall place under registration review those schools that are determined to be farthest from meeting the benchmarks established by the commissioner pursuant to subparagraph (14)(ix) of this subdivision and most in need of improvement.

(ii) Beginning with the 2010-2011 school year and thereafter, the commissioner shall place under preliminary registration review a school that is identified as persistently lowest-achieving in such school year. A school identified as persistently lowest-achieving in the 2009-2010 school year, that was not a school under registration review during the 2009-2010 school year, shall not be placed under registration review but shall follow the intervention and other applicable requirements in subparagraphs (10)(ii) and (iv) of this subdivision.

(a) A school shall be identified as persistently lowest-achieving if, based upon the academic indicators set forth in clause (b) of this subparagraph, it is:

(1) A Title I school in improvement, corrective action, or restructuring that:

(i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action or restructuring, or the lowest achieving five Title I schools in improvement, corrective action or restructuring, whichever number of schools is greater; or

(ii) is a high school that has a graduation rate, as defined in section 100.2(p)(15)(iv) of this subdivision, that is less than 60 percent over the three consecutive year period for which accountability determinations have been made pursuant to this subdivision; or

(2) A secondary school that is eligible for, but does not receive, Title I funds that:

(i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) is a high school that has a graduation rate, as defined in section 100.2(p)(15)(iv) of this subdivision, that is less than 60 percent over the three consecutive year period for which accountability determinations have been made.

(b) A school shall be identified as persistently lowest-achieving based on the following academic indicators:

(1) the performance of the school's "all students" group on the State assessments in English language arts and mathematics combined, which shall be determined by dividing the sum of the "all students" performance index for each English language arts and mathematics measure for which the school is accountable by the number of measures for which the school is accountable; and

(2) the school's lack of progress on the State assessments in English language arts and mathematics over three years. A school shall be deemed to have demonstrated lack of progress if:

(i) the school is designated as a school in restructuring; and

(ii) the school has failed to demonstrate, over the three consecutive year period for which accountability determinations have been made pursuant to this subdivision, at least a twenty-five point gain in its performance index for the "all students" group in each English language arts and mathematics measure for which the school is held accountable; and/or

(3) the school has a graduation rate, as defined in section 100.2(p)(15)(iv) of this subdivision, that is less than 60 percent over the three consecutive year period for which accountability determinations have been made pursuant to this subdivision.

(iii) The commissioner shall also place under preliminary registration review a school that is not otherwise eligible to be identified as persistently lowest-achieving that meets the academic indicators in clause (ii)(b) of this paragraph to be identified as a persistently lowest-achieving school; and

(a) is a school in which more than fifty percent of the total student enrollment consists of students with disabilities; or

(b) is a non-Title I elementary school or a non-Title I eligible secondary school.

[In determining the number of schools to identify as farthest from meeting the benchmarks, the commissioner shall give primary consideration to the percentages of students meeting performance benchmarks. The commissioner may also consider the sufficiency of State and local resources to effectively implement and monitor school improvement efforts in schools under registration review.]

(iv) [In addition,] The commissioner may also place under preliminary registration review any school that [does not meet or exceed each of the benchmarks and] has conditions that threaten the health, safety and/or educational welfare of

students or has been the subject of persistent complaints to the department by parents or persons in parental relation to the student [may be] , and has been identified by the commissioner as a poor learning environment based upon a combination of factors affecting student learning, including but not limited to: high rates of student absenteeism, high levels of school violence, excessive rates of student suspensions, violation of applicable building health and safety standards, high rates of teacher and administrator turnover, excessive rates of referral of students to or participation in special education or excessive rates of participation of students with disabilities in the alternate assessment, excessive transfers of students to alternative high school and high school equivalency programs and excessive use of uncertified teachers or teachers in subject areas other than those for which they possess certification.

(v) The commissioner may also place under registration review any school for which a district fails to provide in a timely manner the student performance data required by the commissioner to conduct the annual assessment of the school's performance or any school in which excessive percentages of students fail to fully participate in the State assessment program.

[(i) For] (vi) Beginning in the 2010-2011 school year, for each school identified [as farthest from meeting the benchmarks,] for preliminary registration review pursuant to subparagraphs (ii) and (iii) of this paragraph, the local school district shall be given the opportunity to present to the commissioner additional assessment data, which may include, but need not be limited to, valid and reliable measures of: the performance of students in grades other than those in which the State tests are administered; the performance of limited English proficient students and/or other students with special

needs; and the progress that specific grades have made or that cohorts of students in the school have made towards [meeting minimum and/or] demonstrating higher student performance [standards]. For each school identified as a poor learning environment and placed under preliminary registration review pursuant to subparagraph (iv) of this paragraph, the district shall be given the opportunity to present evidence to the commissioner that the conditions in the school do not threaten the health or safety or educational welfare of students and do not adversely affect student performance. The district may also provide relevant information concerning extraordinary, temporary circumstances faced by the school that may have affected the performance of students in the school on the State tests.

[(ii)] (vii) The commissioner shall review the additional information provided by the district and determine which of the schools identified [as farthest from meeting the benchmarks specified in subparagraph (14)(ix) of this subdivision] for preliminary registration review pursuant to subparagraphs (ii) and (iii) of this paragraph, or identified as poor learning environments pursuant to subparagraph (iv) of this paragraph, [are most in need of improvement and] shall be placed under registration review.

(viii) In determining the number of schools to place under registration review, other than persistently lowest-achieving schools identified pursuant to subparagraph (ii) of this paragraph, the commissioner may consider the sufficiency of State and local resources to effectively implement and monitor school improvement efforts in schools under registration review.

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

assessment may make a determination that the school [is most in need of improvement and place such school] shall be placed under registration review.

2. Paragraph (10) of subdivision (p) of section 100.2 of the Regulations of the Commissioner is amended, effective July 14, 2010, as follows:

(10) Public school registration review.

(i) Upon placing the registration of a school under review, the commissioner shall warn the board of education (in New York City, the chancellor) that the school has been placed under registration review, and that the school is at risk of having its registration revoked. The commissioner shall include in any warning issued pursuant to this subparagraph an explicit delineation of the progress that must be demonstrated in order for a school to be removed from consideration for revocation of registration [, except that, if a school has also been designated as restructuring (advanced) pursuant to item (6)(i)(a)(3)(iii) of this subdivision, the commissioner shall include in such warning that the school will be considered for revocation of registration unless an acceptable plan for closure or phase out of the school is submitted by the board of education to the commissioner]. Upon receipt of such warning, the board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public of the issuance of such warning. Such action shall include, but need not be limited to, direct notification, within 30 days of receipt of the commissioner's warning, in English and translated, when appropriate, into the recipient's native language or mode of communication, to persons in parental relation of children attending the school that it has been placed under registration review and is at risk of having its registration revoked, and disclosure by the district at the next public meeting of the local board of

education of such warning. Each school year during which a school remains under registration review, by June 30th or at the time of a student's initial application or admission to the school, whichever is earliest, the board of education shall provide direct notification to parents or other persons in parental relation to children attending the school that the school remains under registration review and is at risk of having its registration revoked. Such notification shall include a summary of the actions that the district and school are taking to improve student results and an explanation of any district programs of choice, magnet programs, transfer policies, or other options that a parent or a person in parental relation may have to place the child in a different public school within the district. Such notification shall include the timelines and process for parents exercising their rights to school choice.

(ii) Following the [identification] placement of a school under registration review, or following the identification of a school as persistently lowest-achieving in the 2009-2010 school year, [the commissioner shall appoint a team to undertake a resource, planning, and program audit of the district and the school. The commissioner shall provide to the school district a copy of the audit, which shall include, as appropriate, recommendations for improving instruction; curriculum; assessment; school management and leadership; qualifications and professional development of school staff; parent and community involvement; school discipline, safety, and security; instructional supplies and materials; physical facilities; and district support for the school improvement efforts. For schools also designated in improvement (year 1) or corrective action (year 1) such audit shall be in lieu of the on-site review or curriculum audit required under subparagraph (6)(iv) of this subdivision. Based upon the results of the

audit, the commissioner shall require that the school modify the school's improvement plan or corrective action plan to meet the requirements of a restructuring plan pursuant to subclause (6)(iv)(c)(2) of this subdivision and] a joint intervention team, as appointed by the commissioner, shall assist the school district in which such school is located in selecting an intervention pursuant to subparagraph (iv) of this paragraph. The district shall develop a new restructuring plan, or update an existing restructuring plan, that shall, in addition to the requirements pursuant to subclause (6)(iv)(c)(2), describe the implementation of the intervention. Such plan shall be in a format as prescribed by the commissioner. The district shall update the plan annually for implementation no later than the first day of the regular student attendance of each school year that the designation continues. The school shall implement the [plan] intervention in accordance with a timeline prescribed by the commissioner, and no later than the beginning of the next school year following the school's identification for registration review, provided that the commissioner may upon a finding of good cause extend the timeline for implementing elements of such plan beyond the date prescribed therein.

(iii) Schools placed under registration review pursuant to subparagraph (9)(i) of this subdivision, but not identified pursuant to subparagraph (9)(ii) of this subdivision as persistently lowest-achieving prior to the 2010-2011 school year, shall continue implementation of the existing restructuring plan.

(iv) Interventions.

(1) A school that is identified pursuant to subparagraph (9)(ii) of this subdivision as persistently lowest-achieving in the 2010-2011 school year or thereafter and placed under registration review, and a school that is identified pursuant to subparagraph (9)(ii)

the following interventions, in a format and timeline as approved by the commissioner:

(i) Turnaround model. Implementation of the turnaround model may include, but not be limited to, the following actions as approved by the commissioner:

(a) Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;

(b) Using locally adopted competencies to measure the effectiveness of staff that shall work within the turnaround environment to meet the needs of students:

(1) screen all existing staff and rehire no more than fifty percent; and

(2) select new staff;

(c) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that shall be designed to recruit, place, and retain staff with the skills necessary to meet the needs of students in the turnaround school;

(d) Provide staff ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(e) Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new "turnaround office" in the LEA or SEA, hire a "turnaround leader" who reports directly to the Superintendent or Chief Academic

in exchange for greater accountability;

(f) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with State academic standards;

(g) Promote the continuous use of student data (such as from formative, interim, and summative assessments) that shall inform and differentiate instruction in order to meet the academic needs of individual students;

(h) Establish schedules and implement strategies that shall provide increased learning time, as defined by the commissioner; and

(i) Provide appropriate social-emotional and community-oriented services and supports for students.

(ii) Restart model. Implementation of the restart model may include, but is not limited to, converting a school or closing and reopening a school under a charter school operator, a charter management organization, or an education management organization that has been selected pursuant to a format approved by the commissioner.

(iii) School closure model. Implementation of the school closure model may include, but is not limited to, closing a school and enrolling its students in other schools within the district that are in good standing.

(iv) Transformation model. Implementation of the transformation model may include, but is not limited to, the following actions as approved by the commissioner; in

"lead partner" that may assist the school with planning and implementation:

(a) develop and increase teacher and school leader effectiveness;

(b) replace the principal who led the school prior to commencement of the transformation model;

(c) use rigorous, transparent, and equitable evaluation systems for teachers and principals that:

(1) take into account data on student growth as a significant factor as well as other factors, such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduation rates; and

(2) are designed and developed with teacher and principal involvement;

(d) identify and reward school leaders, teachers, and other staff who, through implementation of the transformation model, have increased student achievement and high school graduation rates, per rates defined by the commissioner; and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(e) provide staff ongoing, high-quality job-embedded professional development (e.g. regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(f) implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that shall be designed to recruit, place and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(g) use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with State academic standards; and

(h) promote the continuous use of student data (such as from formative, interim and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students

(i) establish schedules and strategies that provide increased learning time;

(j) provide ongoing mechanisms for family and community engagement;

(k) give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

(l) ensure that the school receives ongoing, intensive technical assistance and related support for the LEA, the SEA or a designated external lead partner organization.

(2) A school as described in subparagraph (9)(iii) of this subdivision that is placed under registration review in the 2010-2011 school year or thereafter, shall implement a plan, in a format and timeline as approved by the commissioner, that shall, at a minimum, meet the requirements of a restructuring plan pursuant to subclause

or turnaround model.

[(ii)] (iv) The department shall periodically monitor the implementation of the restructuring plan. The commissioner may require a school district to submit such reports and data as the commissioner deems necessary to monitor the implementation of the restructuring plan and to determine the degree to which the school has achieved the progress required by the commissioner. Such reports shall be in a format and in accordance with such timeframe as are prescribed by the commissioner. The commissioner may upon a finding of good cause extend the deadline for submission of a restructuring plan.

[(iii)] (v) Unless it is determined by the commissioner that a school identified for registration review should be phased out or closed, or that a shorter period of time shall be granted, a school placed under registration review shall be given [two] three full academic years to show progress. If, after [two] three full academic years of implementing a restructuring plan, the school has not demonstrated progress as delineated by the commissioner in the warning pursuant to subparagraph (i) of this paragraph, the commissioner shall recommend to the Board of Regents that the registration be revoked and the school be declared an unsound educational environment, except that the commissioner may upon a finding of extenuating circumstances extend the period during which the school must demonstrate progress. The board of education of the school district which operates the school (in New York City, the chancellor) shall be afforded notice of such recommendation and an opportunity to be heard in accordance with subparagraph (iv) of this paragraph. Upon

approval of revocation of registration by the Board of Regents, the commissioner will develop a plan to ensure that the educational welfare of the pupils of the school is protected. Such plan shall specify the instructional program into which pupils who had attended the school will be placed, how their participation in the specified programs will be funded, and the measures that will be taken to ensure that the selected placements appropriately meet the educational needs of the pupils. The commissioner shall require the board of education to implement such plan.

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

(a) The commissioner shall provide written notice of his recommendation and the reasons therefore to the board of education, which operates the school (in New York City, both the New York City Board of Education and any community school board having jurisdiction over the school). Such notice shall also set forth:

(1) the board of education's right to submit a response to the recommendation and request oral argument pursuant to clause (b) of this subparagraph;

(2) the place, date and time the matter will be reviewed and if requested, argument heard by a three-member panel of the Board of Regents for recommendation to the full Board of Regents; and

(3) notification that failure to submit a response will result in the commissioner's recommendation being submitted to the Board of Regents for determination.

(b) Within 15 days of receiving notice of the recommendation to revoke registration, the board of education may submit a written response to the commissioner's recommendation. The response shall be in the form of a written

statement which presents the board of education's position, all evidence and information which the board of education believes is pertinent to the case, and legal argument. If the board of education desires, it may include in its response a request for oral argument. Such response must be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.

(c) Within 30 days of the date of notice of the commissioner's recommendation, a panel comprised of three members of the Board of Regents, appointed by the chancellor, shall convene to consider the commissioner's recommendation, review any written response submitted by the board of education and, if timely requested by the board of education, hear oral argument.

3. Paragraph (11) of subdivision (p) of section 100.2 of the Regulations of the Commissioner is amended, effective July 14, 2010, as follows:

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

(i) In the event that a school has demonstrated the progress necessary to be removed from registration review, the superintendent may petition the commissioner to remove the school from registration review. If such petition is based upon results [on student assessments,] <u>of the "all student" group on the English language arts and mathematics assessments or graduation rate,</u> such petition shall be submitted [to] <u>pursuant to a date prescribed by</u> the commissioner <u>but</u> no later than December 31st of the calendar year in which such assessments were administered, except that the commissioner may for good cause accept a petition submitted after such date. A school shall not be removed from registration review if, in the commissioner's judgment,

conditions that may contribute to a poor learning environment, as identified in paragraph (9) of this subdivision, remain present in the school.

(ii) In the event that a school placed under registration review prior to the 2010-2011 school year demonstrates previously established progress to be removed from registration review, but is identified in the 2010-2011 school year as persistently lowest-achieving pursuant to subparagraph (9)(ii) of this subdivision, the school shall remain under registration review and shall follow intervention requirements pursuant to subparagraph (10)(iv) of this subdivision.

(iii) In the event that a school placed under registration review prior to the 2010-2011 school year demonstrates previously established progress to be removed from registration review and is not identified in the 2010-2011 school year as persistently lowest-achieving pursuant to subparagraph (9)(ii) of this subdivision, the school shall be removed from registration review.

[(ii)] (iv) In the event that a board of education seeks to phase out or close a school under registration review, the board of education (in New York City, the chancellor or chancellor's designee) shall submit [a petition to the commissioner requesting that the] for commissioner's approval, a plan identifying the intervention that will be implemented and will result in phase out or closure [plan be approved]. The commissioner may grant [such petition] approval of such plan provided that:

(a) official resolutions or other approvals to phase out or close the existing school have been adopted by the local board of education (in New York City, the chancellor or chancellor's designee);

(b) a formal phase out or closure plan has been developed and approved in accordance with the requirements of [clause (6)(iv)(c) of this subdivision] the intervention prescribed by the commissioner pursuant to subparagraph (10)(iv) of this subdivision; and

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