






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

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

**FROM:** Angelica Infante-Green 

**SUBJECT:** Amendment of section 100.18 of the Regulations of the Commissioner, relating to School and District Accountability and New York State's approved ESEA Flexibility Renewal Waiver

**DATE:** October 19, 2015

**AUTHORIZATION(S):**  

## SUMMARY

### Issue for Decision (Consent Agenda)

Should the Board of Regents adopt as a permanent rule the proposed revisions to section 100.18 of the Regulations of the Commissioner pertaining to school and district accountability in order to conform the regulations with the State's approved Elementary and Secondary Education Act (ESEA) Renewal Waiver and align the regulations with Commissioner's Regulation section 100.19 related to receivership?

### Reason(s) for Consideration

Required in order to implement New York State's approved ESEA Renewal Waiver.

### Proposed Handling

The proposed amendment is being presented to the Full Board for action at the October 2015 Regents meeting.

### Procedural History

The proposed amendment was adopted as an emergency rule at the July 2015

Regents meeting, effective July 21, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on August 5, 2015. The proposed amendment was readopted by emergency action at the September 2015 Regents meeting to ensure the rule remains continuously in effect until it can be adopted and take effect as a permanent rule. The Department has received no public comments on the proposed amendment.

A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **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 United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year. At its February 2014 meeting, the Board of Regents directed the Department to submit its ESEA Renewal Application. On July 31, 2014, USDE approved New York State's ESEA Waiver Renewal Request for the 2014-15 school year. On November 13, 2014, the USDE issued new guidance for states with approved ESEA Flexibility Waivers describing how states could apply for a three- or four-year renewal of their approved Flexibility Waivers. At its March 2015 meeting, the Board of Regents directed the Department to submit its ESEA Renewal application for the 2015-16, 2016-17, 2017-18, and 2018-19 school years. On June 15, the Board of Regents added section 100.19 to the Regulations of the Commissioner, in order to implement Education Law 211-f related to school receivership. On June 23, 2015, the USDE approved New York's 2015-19 ESEA Renewal Request.

The approved request grants New York flexibility, among other things, to:

- Establish alternative Annual Measurable Objectives (AMOs) that do not require that all students by no later than the 2013-14 school year be proficient in language/arts and mathematics.
- Replace the identification of schools and districts for improvement, corrective action, and restructuring based on failure to make Annual Yearly Progress (AYP) with the identification of Priority Schools and Focus Schools and Districts.
- Revise the consequences for identified schools and districts, providing districts with greater flexibility to implement their plans for improvement without having to set aside significant percentages of funding to support activities such as supplementary educational services.
- Waive the requirement that a school have a poverty percentage of 40 percent or more to become a school wide program.
- Allow the use of 1003(a) school improvement funds to provide grants to Title I Reward Schools and Local Assistance Plan Schools.

- Allow districts to forego testing students who take Regents math examinations in grade 7 or 8 on the mathematics assessments for those grade levels.
- Allow 21st Century Community Learning Center funds to support expanded learning time both during the school day and when school is not in session.
- Waive the requirement that districts develop improvement plans regarding highly qualified teachers; and
- Allow districts to transfer up to 100 percent of funds from certain programs into Title I.

### **Summary of Revisions to Commissioner's Regulation 100.18**

Staff recommends that the Board of Regents approve the following revisions to Commissioner's Regulation 100.18 in order to align the regulations with the State's approved ESEA Renewal Request and Commissioner's Regulation 100.19 dealing with receivership:

- Revise the Grades 3-8 Performance Index so that it no longer includes a "growth to proficiency" component, but continue to use Student Growth Percentiles as part of the process of making accountability determinations for elementary and middle schools. This will accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations.
- Allow districts to use one of the three new 1003(g) School Improvement Grant (SIG) intervention models to meet the requirements to implement a whole school reform model in a Priority School. As part of New York's approved SIG application, New York has added the following models to the programs that may be funded through the SIG grant: the early learning model, the evidence-based model, and the innovative framework model. These new models are in addition to the transformation, turnaround, restart, and closure models funded under the grant.
- Make modest revisions to the methodologies used to identify and remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data. The major changes in the identification and removal methodologies are:
  - Priority Schools
    - Identify all schools that are among the lowest performing and not making progress as Priority Schools, irrespective of their prior accountability status. When the original list of Priority Schools was established only schools in improvement could be identified for English language arts and mathematics performance.

- Make more consistent the progress filters to be used to remove schools from identification and to make annual progress determinations.
- Focus District
  - Allow a district to be identified as Focus, even if no schools in the district are identified as Priority or Focus. This most typically happens when a district performs poorly with a group for which it is held accountable, but none of the schools in the district individually have enough students in that group to be held accountable for the performance of that group.
  - Use more consistent progress filters to remove the district and schools from identification and to make annual progress determinations.
- Focus Schools
  - Use a more straight forward method to identify Focus Schools. Once a district has been identified as a Focus District, all schools in the district that perform below the Focus District cut points, have not made progress as determined by the Commissioner, and do not successfully appeal their designation will be identified as Focus Schools. Previously a complicated formula was used to apportion Focus Schools to Focus Districts.
  - Add a new provision that commencing with 2015-16 school year results, a school that has been identified as a LAP for three consecutive years will be preliminarily identified as a new Focus School. If the school is identified as Focus and the District is currently in Good Standing, the District will become a Focus District as well.
  - Eliminate the requirement that districts in some instances identify a new school to become Focus in order to remove a school from Focus status that has met the criteria for removal. This will ensure the removal from accountability status of all schools that have met the criteria for removal. Currently some districts are reluctant to remove a school from Focus designation when such removal requires the district to replace the removed school on the Focus School list.
  - Use more consistent progress filters to remove a school from identification and to make annual progress determinations.
- Local Assistance Plan Schools
  - Increase to two consecutive years the period that a school must have either low performance or failure to close a large gap on an accountability

measure in order for the school to be identified as a LAP School. Also increase to two years the period that a school must make acceptable progress in order to be removed from LAP status.

- Extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics.
- Add a provision that if an accountability group has fewer than 30 valid test scores in the current school year and has failed to meet the 95% participation rate requirement, the Department will combine current year and prior year assessment results for accountability determinations.
- Require more rigorous interventions and supports for Re-identified Focus Schools. Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.
- Revise the Schools under Registration Review (SURRE) process to align to the receivership requirements pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURRE that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership. If the school fails to make demonstrable improvement for two consecutive years, the Commissioner can direct that the school receivership be terminated and require that the district take one of the following actions: convert the school to a charter school or enter into a contract with the State University of New York (SUNY) or City University of New York (in New York City) to provide for the education of the students in the identified school. In the event that the school district does not submit an acceptable plan to implement one of these options, the Commissioner can direct that the school district close or phase out the school. For schools that are identified as SURRE that are not

subject to school receivership, the regulations specify the required elements of an acceptable new or revised improvement plan.

- Require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.
- Revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner. A school may now be identified as a poor learning environment if there is evidence that the school does not maintain required programs and services or evidence of failure to appropriately refer for identification and/or provide required programs and services to students with disabilities pursuant to Part 200 of this Title or evidence of failure to appropriately identify and/or provide required programs and services to English language learners pursuant to Part 154.

### **Recommendation**

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

VOTED: That paragraphs (14), (15) and (22) of subdivision (b) and subdivisions (f), (g), (h), (i), (j), (k) and (l) of section 100.18 of the Regulations of the Commissioner of Education be amended, and that paragraphs (24), (25), (26), (27), (28) and (29) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education be added, as submitted, effective November 11, 2015.

### **Timetable for Implementation**

The proposed amendment was adopted as an emergency rule at the July 2015 Regents meeting, effective July 21, 2015 and readopted by emergency action at the September 2015 Regents meeting to ensure the rule remains continuously in effect until it can be adopted and take effect as a permanent rule. If adopted at the October meeting, the proposed amendment will take effect as a permanent rule on November 11, 2015.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 210, 211-e, 211-f, 215, 305, 309 and 3713

1. Paragraphs (14), (15) and (22) of subdivision (b) of the Regulations of the Commissioner of Education are amended, effective November 11, 2015, as follows:

(14) Performance levels shall mean:

(i) for elementary and middle grades for accountability determinations regarding Priority Schools, Focus Schools, Focus Districts and Local Assistance Plans made up to and including 2013-2014 school year assessment results:

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(ii) for elementary and middle grades commencing with the 2014-2015 school year assessment results.

(a) level 1 - well below proficient:

(1) a score of level 1 on State assessments in English language arts, mathematics and science or a score of level 1 on a State alternate assessment;

(b) level 2 - below proficient:

(1) a score of level 2 on State assessments in English language arts, mathematics and science or a score of level 2 on a State alternate assessment;

(c) level 3 - proficient:

(1) a score of level 3 on State assessments in English language arts, mathematics and science or a score of level 3 on a State alternate assessment;

(2) a score of 65 or higher, or a comparable score as approved by the Board of Regents, on a Regents examination in science or mathematics for students in grade 7 or 8 pursuant to section 100.4(d) of this Part;

(d) level 4 - excels in standards:

(1) a score of level 4 on State assessments in English language arts, mathematics and science or a score of level 4 on a State alternate assessment.

[(ii)] (iii) for high school using Regents examinations based on 2005 learning standards or using a State alternate assessment:

(a) . . .

(b) . . .

(c) . . .

(d) . . .

[(iii)] (iv) for high school using Regents examinations measuring the Common Core Learning Standards:



(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

[(iv)] (v) Notwithstanding the provisions of this section:

(a) For students who attend grade 7 or 8 and take a Regents examination in mathematics in the 2013-2014 [and 2014-2015 school years] through the 2018-2019 school years, but do not take the grade 7 or 8 mathematics assessment, participation and accountability determinations for the school in which the student attends grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on mathematics assessments taken after the student first enters grade 9. For such students, a score of 65 or above, or a comparable score as approved by the Board of Regents, on a Regents examination in mathematics taken in grade 9 or thereafter will be credited as level 3 for purposes of calculating the high school performance index.

(b) For students who attend grade 7 or 8 and who take both the grade 7 or 8 mathematics assessment and a Regents examination in mathematics during the 2013-2014 [and 2014-2015] through 2018-2019 school years, participation and accountability

determinations for the school such students attend in grade 7 or 8 shall be based upon the student's performance on the grade 7 or 8 mathematics assessment.

(c) . . .

(15) Performance index shall be calculated based on the student performance levels as follows:

(i) For elementary and middle grades for accountability determinations regarding Priority Schools, Focus Schools, Focus Districts and Local Assistance Plan Schools made up to and including 2013-2014 school year results, each student scoring at level 1 who is not on track to be proficient will be credited with 0 points, each student scoring at level 2 who is not on track to be proficient with 100 points, and each student scoring at level 1 or 2 who is on track to be proficient or at level 3 or 4 with 200 points. The performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.

(ii) Commencing with the 2014-2015 school year assessments, for elementary and middle grades, each student scoring at level 1 will be credited with 0 points, each student scoring at level 2 with 100 points, and each student scoring at level 3 or 4 with 200 points. The performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.

[(ii)] (iii) . . .

[(iii)] (iv) . . .

(22) A whole school reform model means the turnaround model, restart model, transformation model or closure model as set forth in section 100.2(p)(10)(iv) of this Part; an innovation framework model as set forth in paragraph (26) of this subdivision; an evidence based model as set forth in paragraph (27) of this subdivision or an early learning intervention model as set forth in paragraph (28) of this subdivision or a [three year] plan that provides for the redesign of a school by implementation of all of the following turnaround elements:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) . . .

2. Paragraphs (24), (25), (26), (27), (28) and (29) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education are added, effective November 11, 2015, as follows:

(24) Re-identified Focus School shall mean a school that had been identified as a Focus School or a Priority School for the 2012-2013, 2013-2014, 2014-2015 school

years and was identified as a Focus School on the list of such schools promulgated by the Commissioner during the 2015-2016 school year.

(25) Re-identified Priority School shall mean a school that had been identified as a Priority School for the 2012-2013 and 2014-2015 school years and was identified as a Priority School on the list of such schools promulgated by the Commissioner during the 2015-2016 school year.

(26) An innovation framework model shall mean a model in which the district replaces the principal at the identified school and selects one of three New York State Education Department design frameworks - College Pathways School Design, Community-Oriented School Design, or Career and Technical Education School Design - and partners specifically with an Educational Partnership Organization (EPO), in accordance with Education Law section 211-e, to jointly launch a whole-school redesign.

(27) An evidence-based model shall mean a model in which the district replaces the principal at the identified school and implements an evidence-based whole-school reform strategy selected from a United States Department of Education (USDE) list of approved strategies.

(28) An Early Learning Intervention Model shall mean a model in which the district replaces the principal at the identified school and offers full-day kindergarten, establishes or expands a high-quality preschool program, and implements an approved Annual Professional Performance Review plan that serves as a rigorous evaluation and support system.

(29) Struggling school, persistently struggling school, school district receiver, school intervention plan, school receiver, and consultation and collaboration shall be as defined in section 100.19(a) of this Part.

3. Paragraphs (2) and (9) of subdivision (f) of section 100.18 of the Regulations of the Commissioner of Education are amended, effective November 11, 2015, as follows:

(2) For an accountability group within public schools, charter schools or school districts with fewer than 30 students subject to a performance criterion set forth in subdivision (j) of this section, the commissioner shall use the weighted average of the current and prior school year's performance data for that criterion in order to make a determination of adequate yearly progress. [No accountability group within a public school, charter school or school district will be held accountable if it consists of fewer than 30 students as long as the "all students" accountability group includes at least 30 students for that school year.] Commencing with 2014-15 school year results, notwithstanding the provision of this paragraph, a public school, charter school or school district will not be held accountable for an accountability group that consists of fewer than 30 students on performance criterion set forth in subdivision (j) of this section if the "all students" accountability group for that performance criterion includes at least 30 students for that school year and the accountability group with fewer than 30 students did not fail to meet participation rate requirements pursuant to subparagraph (4)(ii) of this subdivision.

(9) Effective with [2013-14] 2013-2014 school year results and continuing with the results for each school year thereafter, the “all students” accountability group for a public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance criterion specified in paragraphs (j)(1) and (2) of this section if all the accountability groups, except the “all students” group, for which a public school, charter school or school district is accountable on that performance criterion made adequate yearly progress. Effective with 2014-2015 school year results and continuing with the results for each school year thereafter, the “all students” accountability group for a public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance criterion specified in paragraph (j)(3) of this section if all the accountability groups, except the “all students” group, for which a public school, charter school or school district is accountable on that performance criterion made adequate yearly progress.

4. Subdivision (g) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective November 11, 2015, as follows:

(g) Differentiated accountability for schools and districts. Prior to the commencement of the 2012-2013 school year, the commissioner, based on the 2010-2011 school year results, shall designate focus districts, priority schools and focus charter schools. Prior to the commencement of the 2013-2014 school year, based on the 2011-2012 school year results, and each year thereafter based on the subsequent school year results, the commissioner shall designate public schools requiring a local assistance plan.

(1) Preliminary identification of priority schools prior to the commencement of the 2015-2016 school year.

(i) . . .

(ii) The commissioner shall not preliminarily identify a school in a special act school district as a priority school unless the school meets the conditions specified in this subdivision and also has been identified by the commissioner as a school under registration review because of a poor learning environment, pursuant to paragraph [(k)(3)] (k)(2) of this section.

(2) Preliminary identification of priority schools based upon 2014-2015 school year results:

(i) The commissioner shall preliminarily designate a school as priority if:

(a) the school is a high school that has a four year cohort graduation rate for the “all students” group that is less than 60 percent for the 2008, 2009 and 2010 four year high school graduation cohorts; or

(b) the school is an elementary or middle school that:

(1) had a 2014-2015 combined English language arts and mathematics performance index at or below the cut point established by the commissioner for the “all students” group; and

(2) did not make the required progress as established by the commissioner in its 2014-2015 combined English language arts and mathematics performance index for the “all students” group compared to its 2013-2014 combined performance index; and

(3) had a combined mean student growth percentile in English language arts and mathematics for the 2013-2014 and 2014-2015 school years combined for the “all students” group of 50 percent or below; and

(4) had 50 percent or less of the accountability groups in the school for which the school is accountable have a 2014-2015 mean student growth percentiles that exceeded the statewide median student growth percentile for that accountability group;  
or

(c) the school is a high school that:

(1) had a combined English language arts and mathematics performance index at or below the cut point established by the commissioner for the “all students” group;  
and

(2) did not make the required progress as established by the commissioner in its 2014-2015 combined English language arts and mathematics performance index for the “all students” group compared to its 2013-2014 combined performance index.

(ii) the commissioner shall not preliminarily identify a school if the 2011 four year or 2009 five year graduation rate for the “all students” group is 70 percent or more.

(iii) At the commissioner’s discretion, a school will not be identified as a priority school for Performance Index for a grade level if the “all students” group meets one or more of the following progress filters:

(a) made adequate yearly progress for English language arts and mathematics for 2013-2014 and 2014-2015.



(b) made a 10 point gain in performance index from 2013-2014 to 2014-2015.

(c) made a 10 percent point gap reduction in performance index from 2013-2014 to 2014-2015.

(iv) At the commissioner's discretion, a school may be considered to have made progress and will not be identified as a priority school for graduation rate if the "all students" group meets one or more of the following progress filters:

(a) the 2009 five year cohort graduation rate is at or above 60 percent;

(b) the 2011 four year or the 2010 five year cohort graduation rate is at or above 60 percent;

(c) the increase in four year graduation rate is 10 points or more from 2008 to 2010 cohort;

(d) the increase in four year or five year graduation rate is 10 points or more from 2009 to 2010 cohort;

(e) there is a 10 percent gap reduction for the four year graduation rate from the prior cohort;

(v) The commissioner shall not preliminarily identify a school in a special act school district as a priority school unless the school meets the conditions specified in this subdivision and also has been identified by the commissioner as a school under registration review because of a poor learning environment, pursuant to paragraph (k)(2) of this section.

[(2)] (3) Preliminary identification of focus districts and schools prior to the commencement of the 2015-2016 school year.

(i) The commissioner will preliminarily designate a district or a charter school as focus using the following methodology:

(a) . . .

(b) . . .

(ii) . . .

(iii) . . .

(4) Preliminary identification of focus districts and schools, based upon 2014-2015 school year results:

(i) The commissioner will preliminarily designate a district as focus using the following methodology:

(a) Preliminary identification as focus district based on combined English language arts and mathematics performance index:

(1) For each district, for the elementary-middle or the secondary level the combined 2014-2015 performance index of English language arts and mathematics for each accountability group, except the “all students” group, is determined.

(2) If a district’s combined 2013-2014 and 2014-2015 mean student growth percentile is above the state average for an accountability group, then the elementary-

middle level performance index of the accountability group is removed from those for which the school district can be identified as a focus district.

(3) If a district's 2010 four year or 2009 five year graduation rate is above the state average for an accountability group, then the elementary-middle or secondary level performance index of the accountability group is removed from those for which the school district can be identified as a focus district.

(4) If a district makes a 10 point gain or 10 percent gap reduction from the 2013-2014 performance index for an accountability group, then the grade level performance index of the accountability group is removed from those for which the school district can be identified as a focus district.

(5) If a district makes adequate yearly progress for the 2013-2014 and 2014-2015 for an accountability group, then the accountability group is removed from those for which the school district can be identified as a focus district.

(6) If a remaining accountability group is among the lowest percentile in the State for the combined performance index of English language arts and mathematics for the 2014-2015 school year, as determined by the commissioner, the district will be preliminarily identified as a focus district, except that in determining which racial-ethnic groups will be considered among the lowest percentile in the state, the commissioner shall create a single rank ordered list to which a uniform standard shall be applied such that any racial-ethnic group performing below the single cut point shall be preliminarily identified.

(b) Preliminary identification of focus district based on graduation rate.

(1) For each school district, the 2010 four year graduation cohort rate for each accountability group, except the “all students” group, is determined.

(2) If a district’s 2010 four year or 2009 five year graduation rate is above the state average for the accountability group(s), then the accountability group is removed from those for which the school district can be identified as a focus district.

(3) If a district makes a 10 point gain from the 2009 four year graduation rate or the 2008 five year graduation rate in the accountability group(s), then the accountability group is removed from those for which the school district can be identified as a focus district .

(4) If a district makes a 10 percent gap reduction from the 2009 four year graduation rate in the accountability group(s), then the accountability group is removed from those for which the school district can be identified as a focus district.

(5) If a district makes a 10 point gain from the 2008 four year graduation rate in the accountability group(s), then the accountability group is removed from those for which the school district can be identified as a focus district.

(6) If a district makes adequate yearly progress for the 2013-2014 and 2014-2015 in the accountability group(s), then the accountability group is removed from those for which the school district can be identified as a focus district.

(7) If any of the remaining accountability groups are among the lowest percentile in the State for graduation rate, as determined by the commissioner, the school district will be preliminarily identified as a focus district ,except that in determining which racial-

ethnic groups will be considered among the lowest percentile in the state, the commissioner shall create a single rank ordered list to which a uniform standard shall be applied such that any racial-ethnic group performing below the single cut point shall be preliminarily identified.

(i) The commissioner shall not preliminarily identify a special act school district as a focus district unless at least one school in the school district has been preliminarily identified as a priority school.

(ii) A school district in which a school has been preliminarily identified as a priority school shall be preliminarily identified as a focus district.

~~[(3)]~~ (5) Notification of preliminary identification of a priority school, focus district or focus charter school.

(i) If a charter school whose elementary-middle or secondary grade level English language arts and mathematics combined performance index for the 2014-2015 school year or whose four year graduation rate for the 2010 graduation rate cohort for an accountability group is at or below the cut points established by the commissioner and which are not making progress for that accountability group as determined by the commissioner, will be identified a charter focus school.

(ii) At the commissioner's discretion, a charter school may be designated as making progress if it achieves one or more of the progress filters pursuant to subparagraph (ii) of paragraph (8) of this subdivision.

[(i)] (iii) For each preliminarily identified priority school, focus district or focus charter school, the school district or charter school shall be given the opportunity to present to the commissioner additional data and relevant information concerning extenuating or extraordinary circumstances faced by the school district or school that should be cause for the commissioner to not identify a district as a focus district, a public school as a priority school, or a charter school as a priority or focus school. The commissioner shall remove from preliminary priority school identification any school identified pursuant to clause (1)(i)(b) of this subdivision where the school district or charter school provides evidence that the school's 2007 four year graduation cohort rate for the "all students" group equals or exceeds 60 percent.

[(ii)] (iv) . . .

[(iii)] (v) . . .

[(4)] (6) . . .

[(5)] (7) Identification of focus schools prior to the commencement of the 2015-2016 school year.

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) . . .

(viii) . . .

(ix) . . .

(x) . . .

(8) Identification of Focus Schools with the 2014-2015 school year results:

(i) If the school district has been identified as a focus district, then the commissioner will provide the school district with the list of schools that are preliminarily identified as focus schools, which shall consist of those schools whose elementary-middle or secondary grade level English language arts and math combined performance index for the 2014-2015 school year or whose four year graduation rate for the 2010 graduation rate cohort for an accountability group is at or below the cut points established by the commissioner and which are not making progress for that accountability group as determined by the commissioner. The district may petition the commissioner, using such format as the commissioner may prescribe, to substitute for good cause one or more schools on the list with school(s) selected by the district. If there are no schools in a district that meets the criteria to be a focus school, then the commissioner will not identify a focus school in that district.

(ii) At the commissioner's discretion, a school may be designated as making progress if it achieves one or more of the following progress filters:

(a) If a school's combined 2013-2014 and 2014-2015 mean student growth percentile is above the state average in the accountability group(s) for which it could be potentially identified, then the school need not be identified for those accountability group(s) at the elementary-middle level.

(b) If a school's 2010 four year or 2009 five year graduation rate is above the state average for the accountability group(s) for which it could be potentially identified, then the school need not be identified for those accountability group(s) at the elementary-middle or secondary level.

(c) If a school makes a 10 point gain or 10 percent gap reduction from the 2013-2014 performance index in the accountability group(s) for which it could be potentially identified, then the school need not be identified for those accountability group(s) at that grade level.

(d) If a school makes a 10 point gain from the 2009 four year graduation rate or the 2008 five year graduation rate in the accountability group(s) for which it could be potentially identified, then the school need not be identified for those accountability group(s).

(e) If a school makes a 10 percent gap reduction from the 2009 four year graduation rate in the accountability group(s) for which it could be potentially identified, then the school need not be identified for those accountability group(s).

(f) If a school makes a 10 point gain from the 2008 four year graduation rate in the accountability group(s) for which it could be potentially identified, then the school need not be identified for those accountability group(s).



(g) If a school makes adequate yearly progress for the 2013-2014 and 2014-2015 in the accountability group(s) for which it could be potentially identified, then the school need not be identified for those accountability group(s).

(iii) A priority school shall not be identified as a focus school.

(iv) The focus district may petition the commissioner, using such format as the commissioner may prescribe, to substitute for good cause one or more schools not identified as focus for a school that has been identified as focus or to self-identify a school as focus. In the case of the city school district of the City of New York, if the chancellor identifies more than the minimum number of schools in a community school district, the chancellor may request that such additional schools be credited towards meeting the minimum number of school requirement in other community school districts within the same county.

(v) A focus district shall provide the commissioner with its proposed list of focus schools according to such timeline as prescribed by the commissioner. The commissioner shall review and approve the proposed list and provide notification to the school district of which schools have been designated as focus schools.

(vi) Prior to the start of each school year, the commissioner shall provide each focus district with the opportunity to revise its approved list of focus schools.

(vii) Before placing a transfer high school on the list of potential focus schools, the commissioner shall review the performance of the school on a case-by-case basis, giving careful consideration to the mission of a particular school, student performance, and the school's ability to effectively serve its students in a turnaround environment. The

commissioner will take into account the graduation cohort data, the age and number of credits that members of the cohort have upon admission to the school; and the success of the school in graduating students up to the age of 21.

(9) Identification of Local Assistance Plan Schools as Focus Schools.

(i) Commencing with 2015-2016 school year results, a school that has been identified as a Local Assistance Plan School based on 2013-2014, 2014-2015 and 2015-2016 school year results and based on each three consecutive school years of results thereafter will be preliminary identified as a Focus School.

(ii) School districts and charter schools will be informed of the preliminary status of the school district and schools, and will be provided the opportunity to appeal such preliminarily identification, in a format and according to such timeline as prescribed by the commissioner. If the commissioner identifies a Local Assistance Plan school as a focus school in a district in which in the prior school year there were no schools identified as focus or priority, the district shall also be identified as a focus district.

(iii) If a school district or charter school appeals the designation of a transfer high school as a focus school, the commissioner shall give careful consideration to the mission of the school, student performance, and the school's ability to effectively serve its students in a turnaround environment. The commissioner will take into account student performance factors including the age and number of credits that members of the cohort have upon admission to the school and the success of the school in graduating students up to the age of 21.

[(6)] (10) School requiring a local assistance plan.

(i) Beginning with the 2013-2014 school year results and annually thereafter, a school that has not been designated as a priority or focus school shall be designated as a local assistance plan school if the school:

(a) failed to make adequate yearly progress (AYP) for an accountability group for three consecutive years on the same performance criterion in subdivision (j) of this section; provided that such school shall not be designated as a local assistance plan school if the school has met other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph; or

(b) has gaps in achievement on a performance criterion in subdivision (j) of this section and the school has not shown sufficient progress toward reducing or closing those gaps, or meeting other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph, between students who are members and students who are not members of that accountability group; or

(c) For determinations based on 2013-2014 school year results, the school is located in a district that is not designated as Focus and the school meets the criteria for identification as a focus school pursuant to subparagraph [(5)(ii)] (7)(ii) of this subdivision, and such other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph, and for determinations based on 2014-2015 school year results and each school year's results thereafter the school meets the criteria for identification pursuant to paragraph (8) of this subdivision.

(ii) . . .

(iii) . . .

(iv) Notwithstanding subparagraphs (i), (ii) and (iii) of this paragraph, commencing with the 2014-2015 school year results a school shall not be identified as a Local Assistance Plan School until the school meets any of the criteria specified in clauses (b) and (c) of subparagraph (i) of this paragraph for two consecutive years.

~~[(iv)]~~ (v) Districts will be informed of the preliminary status of its schools and will be provided the opportunity to appeal the identification of any preliminarily identified school.

(vi) The commissioner shall remove from Local Assistance Plan status a school that for two consecutive school years does not meet the criteria for identification in clauses (a), (b) and (c) of subparagraph (i) of this paragraph.

~~[(7)]~~ (11) Public notification of identification as a priority or focus school.

(i) ...

(ii) ...

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii) of this paragraph, in the event that a priority school has been identified as a struggling school or a persistently struggling school pursuant to section 100.19 of this Part and/or a School Under Registration Review pursuant to section 100.18 of this Part, the district may use a single notification to fulfill the annual public notification requirements of subdivisions (g)(7)(ii) and (l)(1)(ii) of this section and section 100.19(c)(1)(ii) of this Part.

5. Subdivision (h) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective November 11, 2015, as follows:

(h) Interventions.

(1) . . .

(2) School and district diagnostic review.

(i) Commencing in the 2013-2014 school year, the school district will annually use the results of a diagnostic tool of quality indicators, in the form and content prescribed by the commissioner, which may include a visit by an integrated intervention team as appointed by the commissioner, to inform the creation of a district comprehensive improvement plan. For the 2012-2013 school year, school districts shall use school quality reviews, external school curriculum audits, and joint intervention team reviews to develop district-wide strategic plans, as well as school-based plans for intervention.

(a) . . .

(b) . . .

(c) . . .

(d) Any school designated as a school requiring a local assistance plan but located within a focus district [shall] may upon the approval of the commissioner be included in the submission of the district comprehensive improvement plan, which will replace the requirements of the local assistance plan.

(ii) District comprehensive improvement plan.

(a) Commencing with the plan for the [2012-2013] 2015-2016 school year, each focus district shall develop a district comprehensive improvement plan, in such format as may be prescribed by the commissioner, to identify the actions that will be taken to improve student performance levels of the accountability group(s) for each accountability performance criterion for which the school district has been identified as a focus district or one or more schools within the school district have been identified as priority schools. The plan shall

(1) . . .

(2) . . .

(3) be implemented no later than the beginning of the [2012-2013] 2016-2017 school year or immediately upon approval of the board of education, if such approval occurs after the first day of regular school attendance.

(4) . . .

(5) . . .

(6) . . .

(7) . . .

(8) . . .

(b) . . .

(c) . . .

(iii) Comprehensive education plan.

(a) Commencing with the plan for the [2012-13] 2012-2013 school year, each priority and focus school located in a focus district shall develop and implement a comprehensive education plan.

(b) The plan shall:

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

(7) . . .

(8) For schools designated as struggling or persistently struggling, in creating the school intervention plan or in revising the Department-approved school comprehensive education plan or intervention model, the school receiver shall ensure that the plan addresses the tenets of the Diagnostic Tool For School and District Effectiveness and include student outcome data pursuant to section 100.19(f)(4) of this Part.

(9) Commencing with the 2015-2016 school year, re-identified focus schools must revise their school comprehensive education plan to focus on the needs identified through their most recent Integrated Intervention Team, district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews. The plan must also include:

(i) a review of the re-identified focus school leader, if the principal has been the leader of the school for more than two full academic years, in order to determine whether the school leader should be provided additional professional development and/or mentoring or replaced. The review shall be in a form and format as may be prescribed by the commissioner, and must be submitted as an addendum to the comprehensive education plan.

(ii) a description of how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-2017 school year.

(10) For schools that are identified as Persistently Struggling or Struggling pursuant to section 100.19 of this Part, the requirements for the comprehensive education plan include, in addition to those required in this section, the requirements specified in section 100.19(d)(1) of this Part, related to development of a community engagement plan and inclusion of rigorous performance metrics and goals.



(c) No later than September 30, 2012 for schools identified during the 2011-2012 school year, and no later than July 31, 2016 for schools identified during the 2016-2017 school year, except that the commissioner may waive this timeline for good cause, each focus district with one or more priority schools shall submit in such format as prescribed by the commissioner the schedule by which each of the school district's priority schools shall implement, as part of the school's comprehensive improvement plan, a whole school reform model. A school implementing a transformation, turnaround, innovative framework model, early learning intervention model or evidence based model, or restart model pursuant to a school improvement grant or a school innovation fund grant, shall be deemed to be implementing a whole school reform model. Upon approval of the schedule by the commissioner, each priority school shall implement the whole school reform model according to the timeline specified in the schedule, which shall require that implementation begin no later than the 2014-2015 school year for schools identified during the 2012-2013 school year, and no later than the 2018-2019 school year for schools identified during the 2015-2016 school year. The schedule for implementation of the whole school reform model may not be modified without prior approval of the commissioner.

(d) Once a priority school has begun to implement a whole school reform model, the school will be required to complete the [three year] whole school reform plan even if the school is removed from priority status subsequent to the school beginning implementation of the plan.

(e) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) . . .

6. Subdivision (i) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective November 11, 2015, as follows:

(i) Removal from accountability designation.

(1) . . .

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

(i) Commencing with 2011-2012 and 2012-2013 school year results, and each consecutive two year period thereafter, a school district may petition to have its focus designation revised if the school district meets the participation requirement in ELA and [math] mathematics for all accountability groups and the performance targets established by the commissioner, and the school district has a combined performance index in ELA and mathematics for each group for which the school district is accountable that exceeds the thresholds for identification in the second year of the two year period. For all groups for which the school district is accountable for graduation rate, the district must also exceed the graduation rate threshold for identification [in both years] with the four year or five year graduation rate in the first year and with the four year graduation rate in the second year of the two year period. The school district may petition for the removal of focus designation for any focus school in the school district

that meets these same performance targets and participation rate requirements for ELA and mathematics, except that for a focus school that is identified pursuant to paragraph (8) of subdivision (g) of this section, a district may petition for removal if the school meets the criteria specified in subparagraph (vi) of paragraph (10) this section.

(ii) Upon receipt of a petition for revision of status by a focus district, the commissioner will review the status of the school district and each priority and focus school in the school district. If the school district and each priority school and focus school within the school district meet the criteria for removal, the commissioner shall remove the focus designation from the school district and the focus and priority designation from all schools within the school district. Commencing with 2015-2016 school year results, if the school district does not meet the criteria for removal but each priority and focus school within the school district meets the criteria for removal, the district will remain a focus district but each school within the district shall be removed from priority or focus school designation.

(iii) . . .

(iv) [If] For accountability determinations made prior to the 2015-2016 school year, 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 [(g)(5)] (g)(7) of this section; or

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

(v) [Notwithstanding] For accountability determinations made prior to the 2015-2016 school year, notwithstanding the provisions of this subparagraph, 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.

(vi) . . .

7. Subdivision (j) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective November 11, 2015, 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) . . .

(2) . . .

(3) . . .

(4) . . .

8. Subdivision (k) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective November 11, 2015, as follows:

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

(1) Beginning with 2014-2015 school year results and thereafter, the commissioner shall place under preliminary registration review those schools identified as [focus or] priority for at least three consecutive years that are determined to have made insufficient progress towards the implementation of their comprehensive improvement plan or have failed to demonstrate progress since identification as a [focus or] priority School in improving student results on the performance criteria specified in paragraphs (j)(1) and (4) of this section, except that the commissioner may upon a finding of extenuating circumstances extend the period during which the school must demonstrate progress.

[(2) Beginning with the 2013-14 school year results, the commissioner shall place under preliminary registration review a local assistance plan school, that was not otherwise eligible to be identified as a priority school that meets the performance criteria in subdivision (j) of this section to be identified as a priority school:]

[(3)] (2) Beginning with 2012-13 school year, the commissioner may also place under preliminary registration review any school that 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, 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, evidence that the school does not maintain required programs and services; evidence of failure to appropriately refer for identification and/or provide required programs and services to students with disabilities pursuant to Part 200 of this Title; evidence of failure to appropriately identify and/or provide required programs and services to English language learners pursuant to Part 154 of this Title, 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. Notwithstanding the provisions of subdivision (g) of this section, any school that is identified as a School Under Registration Review pursuant to this paragraph shall also be identified as priority school and shall be subject to all of the requirements of this section.

[(4)] (3) . . .

[(5)] (4) For each school identified for preliminary registration review pursuant to paragraph (1) [or (2)] of this subdivision, the school district shall be given the opportunity to present to the commissioner additional data and relevant information concerning extenuating or extraordinary circumstances faced by the school that should be cause for the commissioner to not identify the school for registration review.

[(6)] (5) For each school identified as a poor learning environment and placed under preliminary registration review pursuant to paragraph [(3)] (2) of this subdivision, the school 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.

[(7)] (6) The commissioner shall review the additional information provided by the school district and determine which of the schools identified for preliminary registration review pursuant to paragraph (1) [or (2)] of this subdivision, or identified as poor learning environments pursuant to paragraph [(3)] (2) of this subdivision, shall be placed under registration review.

9. Subdivision (l) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective November 11, 2015, as follows:

(l) Public school registration review.

(1) 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 paragraph the actions that must be taken and/or the progress that must be demonstrated in order for a school to be removed from consideration for revocation of registration.

(i) 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 school district at the next public meeting of the local board of education of such warning.

(ii) 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 school district and school are taking to improve student results and an explanation of any school 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 school district. Such notification shall include the timelines and process for parents exercising their rights to school choice. Notwithstanding the provisions of this subparagraph, in the event that the commissioner places a struggling school or a persistently struggling school pursuant to section 100.19 of this Part under registration review, the district may use a single notification to fulfill the annual public notification requirements of subdivision subdivisions (g)(7)(ii) and (l)(1)(ii) of this section and section 100.19(c)(1)(ii) of this Part.



(2) Following the placement of a school under registration review that has not been identified as a struggling school or persistently struggling school pursuant to section 100.19 of this Part, an integrated intervention team, which may include a distinguished educator, as appointed by the commissioner, pursuant to section 100.17(c)(3)(i) of this Part, shall conduct a diagnostic review of the school and recommend to the commissioner whether the school should:

(i) continue to implement its current improvement plan, as modified by recommendations of the integrated intervention team;

(ii) implement a new comprehensive improvement plan, which may contain a new whole school reform model; or

(iii) be phased out or closed.

(iv) A school district may fulfill the requirements for implementation of a revised or new improvement plan pursuant to subparagraphs (i) and (ii) by:

(a) entering into a contract with an Educational Partnership Organization pursuant to Education Law section 211-e;

(b) converting a school to a charter school pursuant to Education Law section 2851(3);

(c) entering into a contract with the state university trustees, subject to the approval of the commissioner of education, pursuant to Education Law section 355(n) for the education of the children of the school.

(d) for the city school district of the City of New York, entering into a contract with the city university of New York pursuant to Education Law section 2590(k) to administer a New York City public high school.

(e) implementing a plan to provide enhanced support and oversight of the school through an alternative governance structure that shall, at a minimum, include:

(1) a separate and distinct management structure within the district for identified schools;

(2) a mechanism to ensure that the schools operating under an alternate governance structure receive enhanced district resources;

(3) dedicated resources for professional development, coaching, and mentoring;

(4) additional flexibility in recruiting, hiring, retaining, and removing staff, including use of incentives to recruit teachers and administrators;

(5) evidence of collective bargaining unit agreements that include provisions for:

(i) the screening of administrators and staff at participating schools, and expedited replacement of ineffective administrators and staff, prior to the August before plan implementation;

(ii) changes to the school day length or schedule that support implementation of an expanded learning time program;

(iii) full staff and administrator participation in additional professional development in the summer proceeding plan implementation;

(iv) an extended learning time component focused on supporting student achievement and improvement of teacher practices; and

(v) implementation of a department approved intervention model based upon a School Improvement Grant or School Innovation Fund Grant.

(3) The commissioner shall review the recommendations of the integrated intervention team and may approve, or modify and approve as so modified, such recommendations. Upon such approval, the commissioner shall direct that the school district submit in a format and according to a timeline prescribed by the commissioner a revised improvement plan, a new comprehensive improvement plan, or a plan for phase out or closure that implements the recommendations of the integrated intervention team. Upon approval of the plan by the commissioner, the school shall be required to implement such plan. If the school district fails to submit an approvable plan, the commissioner may recommend to the Board of Regents that the registration be revoked and the school be declared an unsound educational environment pursuant to paragraph [(7)] (6) of this subdivision.

(4) Struggling and Persistently Struggling Schools Identified for Registration Review

(i) A school that is identified for registration review that has also been identified as a struggling school or persistently struggling school pursuant to section 100.19 of this Part shall implement the school receivership provisions of that section, except that if the school fails to make demonstrable improvement pursuant to section 100.19 of this Part

for two consecutive years, the Commissioner may direct that the school receivership be terminated and provide the district the opportunity to take one of the following actions:

(a) convert the school to a charter school pursuant to Education Law section 2851(3);

(b) enter into a contract with the state university trustees, subject to the approval of the commissioner of education, pursuant to Education Law section 355(n) for the education of the children of the school; or

(c) for the city school district of the City of New York, entering into a contract with the city board and the city university of New York pursuant to Education Law section 2590(k) to administer a New York City public high school. (ii) In the event that the school district does not submit an acceptable plan in such format and in such timeline as the commissioner may establish, the commissioner may direct that the school district close or phase out the school pursuant to a plan approved by the commissioner.

[(4)] (5) The commissioner may require a school district to submit such reports and data as the commissioner deems necessary to monitor the implementation of the improvement plan, comprehensive education plan, or closure or phase out 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 required plan.

[(5)](6) [Unless it is determined by the commissioner that a school identified for registration review should be phased out or closed, or that a shorter period of time shall

be granted, a school placed under registration review shall be given three full academic years to show implement its plan and/or show required progress. The commissioner may establish interim required benchmarks for plan implementation and/or demonstration of required progress.] If the school has not taken the required actions and/or demonstrated progress as delineated by the commissioner pursuant to paragraph (3) or paragraph (4) of this subdivision, 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 paragraph [(7)] (8) of this subdivision.

[(6)](7) . . .

[(7)](8) . . .