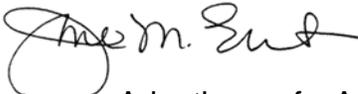




**TO:** P-12 Education Committee

**FROM:** Jhone M. Ebert 

**SUBJECT:** Proposed Emergency Adoption of Amendments to Sections 100.2(ff), 100.2(m), 100.18, 100.19, and Part 120 of the Commissioner's Regulations and the Addition of a New Section 100.21 of the Commissioner's Regulations Relating to the Implementation of the State's Approved Every Student Succeeds Act (ESSA) Plan

**DATE:** September 12, 2018 (**Revised September 16, 2018**)

**AUTHORIZATION(S):**



## SUMMARY

### Issue for Decision

Should the Board of Regents adopt, as a second emergency action, the proposed amendments to sections 100.2(ff), 100.2(m), 100.18, 100.19 and Part 120 of the Commissioner's Regulations and the new Section 100.21 of the Commissioner's Regulations to implement New York State's Every Student Succeeds Act (ESSA) plan that was approved by the United States Department of Education (USDE) in January 2018?

### Reason(s) for Consideration

Amendments and additions to Commissioner's Regulations are necessary to implement New York's USDE-approved ESSA plan and to comply with the provisions of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802).

## **Proposed Handling**

The proposed amendment is presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the September 2018 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency are included as Attachments B and C, respectively.

## **Procedural History**

At its April 2018 meeting, the Board of Regents was presented with a detailed summary of the proposed amendment and the Board of Regents voted to authorize Department staff to publish the proposed amendment in the State Register for the 60-day public comment period so that the Department had an opportunity to receive as much public comment as possible before adoption as an emergency rule for the 2018-2019 school year, as required under ESSA. A Notice of Proposed Rulemaking was published in the State Register on May 9, 2018.

At its June 2018 meeting, the Board of Regents was presented with the draft regulations and amendments, with proposed revisions based upon the public comment received from the date of publication of the regulation in the State Register (May 9) through June 4, 2018. The Department's responses to the public comment received from May 9 through June 4 was included in the June Board of Regents item, found at <http://www.regents.nysed.gov/common/regents/files/618p12a5.pdf>, and are included as Attachment D.

At the June meeting, the Board of Regents adopted the proposed amendment as an emergency measure, effective July 1, 2018. The Notice of Emergency Adoption and Revised Rulemaking was published in the State Register on July 18, 2018. Following the 30-day public comment period required under the State Administrative Procedure Act for revised rule makings, the Department received additional comments on the proposed amendment. A complete assessment of the public comment received from May 9 through August 17, 2018 can be found in Attachment E. Please note that some of the comments and responses presented to the Board of Regents at its June 2018 meeting have been modified in the full assessment of public comment to reflect subsequent comments received on the same issues and/or to reflect additional information gathered by the Department from stakeholders and/or Department staff on these issues over the past two months.

## **Background Information**

On December 10, 2015, ESSA was signed into law by President Obama. This bipartisan measure reauthorized the 50-year-old Elementary and Secondary Education Act (ESEA), which provides federal funds to improve elementary and secondary education in the nation's public schools and requires states and school districts, as a condition of funding, to take a variety of actions to ensure all children, regardless of race, income, background, or where they live, receive the education they need to prepare them

for success in postsecondary education, careers, and citizenship. New York State receives approximately \$1.6 billion annually in funding through ESSA.

After an extensive, 18-month long public engagement process, the Department, with Board approval, submitted New York State's ESSA plan to the USDE for review on September 17, 2018. Subsequently, the Department met regularly with the USDE to provide clarifications on the plan. On January 17, 2018, the USDE approved the State's plan. In January 2018, the Department provided the Board of Regents with an update on the approved plan and in March 2018, the Department provided an update regarding the financial transparency requirements related to ESSA. In April 2018, the Board of Regents was provided with a detailed summary of the proposed regulations and amendments and voted to post the draft regulations and amendments for public comment. After publication of the regulations in the State Register, at its June 2018 meeting, the Board of Regents adopted revised regulations as an emergency measure at its June 2018 meeting, effective July 1, 2018.

### **Overview of Proposed Regulations**

For a full description of the regulations previously adopted by the Board of Regents at its June 2018 Regents meeting, please refer to the June 2018 Regents item at the following link: <http://www.regents.nysed.gov/common/regents/files/618p12a5.pdf>.

### **Description of Comments Received and Proposed Revisions to the June 2018 Regulation**

From May 9, 2018 through August 17, 2018, the Department received approximately 1,900 comments on the regulations. More than 1,400 of the comments were submitted as part of four form letter campaigns, and the majority of the remaining comments were individualized to various degrees but made the same or very similar points. Two of the letter campaigns were based on form letters submitted primarily by parents who underscored their right to opt their children out of participation in state assessments and who urged that schools and districts not be subject to accountability consequences based upon student non-participation in state assessments. There were a number of individual school board members as well as a few local and state legislators who also submitted comments that echoed those in the form letters. A smaller third letter writing campaign was based on a form letter submitted primarily by teachers who made similar points as those expressed in the other form letters and also wrote in opposition to provisions of the regulations that the commenters believed impinged upon decisions that should be addressed in collective bargaining agreements. The fourth campaign was the result of several stakeholder groups collaborating on a set of common comments. The remainder of the comments came from individuals who and additional stakeholder groups that frequently commented on very specific aspects of the regulations.

A majority of the comments received were focused on the requirements in ESSA and in the proposed regulations related to student participation in state assessments. In a letter received by the Department on August 23, 2018, Mr. Patrick Rooney, Deputy Director of the USDE's Office of State Support, reiterated that each state and local

educational agency “must implement a set of high-quality, yearly, academic assessments that includes at a minimum, assessments in mathematics, reading/language arts, and science to all public elementary and secondary school students.... This requirement does not permit certain students or a specific percentage of students to be excluded from assessments. Rather it sets out the rule that all students in tested grades must be assessed.” The full text of Mr. Rooney’s letter is included in Attachment F.

In response to comments about participation rate requirements, the Department is proposing revisions to the regulations in five specific areas:

1. The criteria used to determine whether a school must develop and implement a participation rate improvement plan have been revised. Currently, a participation rate improvement plan is required when an accountability group for two consecutive years fails to meet the 95% participation requirement in either ELA or math and does not show improvement in participation rate between the current and prior school year. An additional criterion has been added that further limits the requirement for development of a participation rate improvement plan to those instances in which an accountability group has a Weighted Average Achievement Index that is below the state average (Level 1 or 2).
2. The provision that the Commissioner could require districts to set aside a portion of their Title I funds to implement the recommendations of a state participation rate audit in schools that have failed for five years to improve participation rates has been removed.
3. The regulations have been clarified and now specify that if a school is implementing a participation rate improvement plan and has made progress in regard to meeting the 95% participation rate requirement, the school need only update its participation rate plan and does not need to create a new plan each year.
4. The Department has revised the exit criteria for Comprehensive Support and Improvement Schools (CSI) and Targeted Support and Improvement Schools (TSI) as it relates to participation rate. As a result of this change, a school implementing a participation rate improvement plan will be eligible for removal from CSI or TSI status so long as the accountability group(s) for which a plan is required are not performing at Level 1 on the Weighted Average Achievement Index.
5. The Department has removed the provision allowing a school to be placed under preliminary registration review where excessive percentages of students fail to fully participate in the State assessment program.

A summary of the other major substantive changes can be found in Attachment A. The Department also made other non-substantive technical changes to the proposed amendment (to correct typographical errors, reconcile any inconsistent language, and/or to clarify the regulation in certain places). Further, as a result of the Department’s ongoing work with the New York State Office of Children and Family Services (“OCFS”) regarding transition liaisons serving youth released or conditionally released from residential facilities, the Department has also revised the regulations to include juvenile detention

facilities as authorized by Executive Law §503 to the list of residential facilities covered by §100.2(ff)(1)(i) of the regulations.

Among the stakeholder groups that submitted public comments were the following:

- Advocates for Children of New York
- Alliance for A Healthy Generation
- Bassett Research Institute for Rural Community Health
- Better Schools, Better Neighborhoods
- Buffalo Urban League
- Business Council of New York State
- Committee for Hispanic Children and Families
- Community Action Organization of Western NY
- Capital Region Chamber
- Democrats for Education Reform
- Educators 4 Excellence
- Good Shepherd Services
- Healthier School Campaign
- High Achievement New York
- Generation Citizen NYC
- Long Island President's Council
- New York Immigrant Coalition
- New York State School Boards Association
- New York State Allies for Public Education
- New York State Association of Career and Technical Educators
- New York State United Teachers
- NYC Save our Schools
- School Administrators Association of NYS (SAANYS)
- The Education Trust
- The Center for Educational Equity
- The Committee for Hispanic Children and Families
- The New York City Department of Education
- The New York Immigration Coalition
- The New York State Parent Teacher Association
- The Urban League of Rochester
- The United Way of NYC

Based on public comment received under the State Administrative Procedure Act, the Department recommends making changes to the proposed amendment, in addition to those described above regarding participation rate requirements. The changes are described in detail in the Summary of Changes chart in Attachment A.

A full assessment of the public comment received from May 9 through August 17, 2018 can be found in Attachment E.

As a result of these changes to the proposed amendment, a Notice of Emergency Adoption and Revised Rulemaking will be published in the State Register on October 3, 2018.

## **Related Regents Items:**

October 2016: Every Student Succeeds Act State Plan Development Activities

November 2016: Development of New York's Every Student Succeeds Act State Plan and ESSA State Plan High Concept Ideas

December 2016: Development of New York's Every Student Succeeds Act State Plan

January 2017: Development of the New York State Every Student Succeeds Act Plan and ESSA State Plan High Concept Ideas and Proposed "High Concept Idea" Summaries -- Supports and Improvements for Schools 12/1/2016 and Survey of School Quality and Student Success Indicators

March 2017: ESSA Public Retreat

April 2017: April 4 Board of Regents Meeting on ESSA

May 2017: Every Student Succeeds Act Draft State Plan for Public Comment

June 2017: Every Student Succeeds Act State Plan: Update on Public Hearings and Public Comment

July 2017: Board of Regents Public Retreat, with Proposed Changes to Final draft plan for submission; State Dashboards Presentation; Next Generation Assessments Presentation; Social, Emotional, Health and Mental Health, and Attendance Issues Presentation; Stakeholder Feedback Analysis Presentation

September 2017: Revised Draft Every Student Succeeds Act State Plan and Associated waivers

January 2018: USDE Review and Approval of New York's Every Student Succeeds Act State Plan

March 2018: Every Student Succeeds Act Financial Transparency

April 2018: Proposed Amendments to Sections 100.2(ff), 100.2(m), 100.18, 100.19, and Part 120 of the Commissioner's Regulations and the Addition of a new Section 100.21 of the Commissioner's Regulations Relating to the implementation of the State's Approved Every Student Succeeds Act (ESSA) Plan

June 2018: For Emergency Action: Proposed Draft Commissioner's Regulations Related to New York's Approved ESSA Plan

**Recommendation:**

Department staff recommends that the Board of Regents take the following actions:

VOTED: That sections 100.2(ff), 100.2(m), 100.18, 100.19 and Part 120 of the Commissioner's Regulations as amended and section 100.21 as added to the Commissioner's Regulations as an emergency measure at the June 2018 Board of Regents meeting be repealed, effective September 18, 2018; and further;

VOTED: That sections 100.2(ff), 100.2(m), 100.18, 100.19 and Part 120 of the Commissioner's Regulations be amended and that section 100.21 be added to the Commissioner's Regulations, as submitted, effective September 18, 2018, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of general welfare to ensure that the State's USDE approved ESSA plan can be implemented beginning with the 2018-2019 school year, consistent with the requirements set forth by the USDE and to ensure that the emergency rule adopted at the June Regents meeting, and subsequently revised, can remain continuously in effect until adopted as a permanent rule.

**Timetable for Implementation:**

If adopted at the September 2018 Regents meeting, the proposed amendment will become effective as an emergency measure on September 18, 2018. It is anticipated that the proposed amendment will be presented for permanent adoption at the December 2018 Board of Regents meeting after publication of a Notice of Emergency Adoption and Revised Rulemaking in the State Register on October 3, 2018 and expiration of the 30-day public comment period for revised rulemakings. If adopted at the December 2018 Regents meeting, the proposed amendment will be effective as a permanent rule on December 26, 2018.

**Attachment A**

| <b>Issue</b>  | <b>Emergency Regulation</b>  | <b>Section</b>         | <b>Proposed Revision</b>  | <b>Item page #</b> |
|---|--|------------------------|---|--------------------|
| <p>Enrollment of youth released or conditionally released from residential facilities</p> | <p>It shall be the duty of the board of education and the superintendent of schools of each school district to ensure:<br/>(i) that any youth presented for enrollment who is entitled to attend the schools of such district pursuant to Education Law, section 3202 and who is released or conditionally released from a residential facility operated by or under contract with the Office of Children and Family Services, the Department of Corrections and Community Supervision, the Office of Alcoholism and Substance Abuse Services, the Office of Mental Health, the Office for People with</p> | <p>100.2(ff)(1)(i)</p> | <p>As a result of the Department’s ongoing work with the New York State Office of Children and Family Services (“OCFS”) regarding transition liaisons serving youth released or conditionally released from residential facilities, the Department revised the regulations to include juvenile detention facilities as authorized by Executive Law §503 to the list of residential facilities covered by §100.2(ff)(1)(i) of the regulations.</p> | <p>24</p>          |

| Issue                        | Emergency Regulation  | Section            | Proposed Revision   | Item page # |
|------------------------------|---|--------------------|---|-------------|
|                              | <p>Developmental Disabilities, or a local department of social services, is promptly enrolled and admitted to attendance in such district, and that school district personnel cooperate with such facilities and agencies in facilitating such prompt enrollment.</p> |                    |   |             |
| <p>District Report Cards</p> | <p>A district or charter school may add any other appropriate information to its State Report Card. Districts are required to the extent practicable to translate report cards and other information into the languages that parents can understand.</p>              | <p>100.2(m)(4)</p> | <p>Revised to provide examples of other appropriate information that districts and charter schools may add to their report cards including, but not limited to: school climate and safety; access to specific learning opportunities, such as physical education; and teacher turnover and absences. Clarifies the expectation that reports cards and other information will, to the extent</p> | <p>26</p>   |

| Issue   | Emergency Regulation   | Section          | Proposed Revision   | Item page # |
|---|--|------------------|---|-------------|
|   |  |                  | practicable, be translated into the languages most frequently spoken in the district.   |             |
| Accountability for New York City High Schools | In the city school district of the city of New York, in any borough in which the aggregate performance of all of the high schools in such borough would cause a school to be identified as a CSI or a TSI high school pursuant to the provisions of this section, such district shall designate one or more high school superintendents in each such borough to carry out the requirements of this section applicable to a Target District within such borough; except that the Chancellor of the city school district of the city of New York may petition the Commissioner | 100.21(b)(1)(iv) | This provision has been removed so that, community school districts continue to be accountable for high schools that operate within their boundaries, as is currently the case. | 33          |

| Issue  | Emergency Regulation  | Section            | Proposed Revision   | Item page # |
|--|---|--------------------|---|-------------|
|  | to aggregate the performance of transfer high schools citywide and to designate one or more high school superintendents to carry out the requirements applicable to a Target District for such schools.                       |                    |   |             |
| N-Size for Core Subject Performance Index (i.e., the Index based on the performance in ELA, math, and science of continuously enrolled tested elementary and middle school students). In some schools, there are accountability groups that meet the n-size requirement for assignment of a Weighted Average Achievement Level to an accountability group but do not have sufficient | In order to be assigned a Core Subject Performance Index, an accountability subgroup must in the current school year and prior school year combined have a minimum of 30 students results for continuously enrolled students. | 100.21(b)(1)(xvii) | A Core Subject Performance Index will be computed if an accountability group has for the current year and prior year combined a minimum of 15 results for continuously enrolled students and these results equal at least 50% of the results for the subgroup on the Weighted Average Achievement Index (i.e., the Index that uses as the denominator the greater of the number of continuously enrolled students | 42          |

| Issue  | Emergency Regulation   | Section                   | Proposed Revision   | Item page # |
|--|--|---------------------------|---|-------------|
| <p>results to assign a Core Subject Performance Level. In some of these cases, assignment of a Core Subject Performance Level will increase the accountability group's Composite Performance Level, because the group's Core Subject Performance Level is higher than the school's Weighted Average Achievement Level.</p> |  |                           | <p>who participated in the state assessments or 95% of continuously enrolled students). For example, if there are 40 results for the Weighted Average Achievement Index, a Core Subject Performance Index would be assigned if there are at least 20 results for continuously enrolled tested students.</p> |             |
| <p>N-Size for Graduation Rate Indicator. In many schools, there are sufficient student results for an accountability group to be assigned a Composite Performance Level based on ELA, math, science, and social studies results but not</p>  | <p>To be assigned a Composite Performance Level, an accountability subgroup must in the current school year and prior school year combined have a minimum of 30 students results for continuously enrolled students.</p> | <p>100.21(b)(1)(xvii)</p> | <p>In an instance where the Composite Performance Index for a high school accountability group is equal to or greater than 30, a graduation rate level shall be computed for that accountability group so long as there are a minimum of 15 students in the</p>   | <p>42</p>   |

| Issue  | Emergency Regulation   | Section                 | Proposed Revision  | Item page # |
|--|--|-------------------------|--|-------------|
| <p>sufficient results to assign a Graduation Rate Level. This is because each student in the accountability cohort typically produces 4 student results for the Composite Performance Indicator but only one student result for each graduation rate cohort.</p> |  |                         | <p>graduation cohort.</p>  |             |
| <p>Out-of-School Suspensions</p>   | <p>The out-of-school suspension rate will be incorporated into the accountability system within a timeframe prescribed by the Commissioner</p> | <p>100.21(b)(2)(xi)</p> | <p>The timeframe incorporation is now explicit: The 2017-18 school year results will be used as a baseline for this indicator. Using 2018-19 school year results, the Commissioner shall report for each accountability group for which a school or district is accountable a Level from 1-4 based on the out-of-school suspension rate.</p> | <p>47</p>   |

| Issue   | Emergency Regulation  | Section                | Proposed Revision   | Item page # |
|---|---|------------------------|---|-------------|
|   |   |                        | <p>For the 2019-20 school year results, districts must implement the provisions of 100.21(i)(4) for any schools that have an accountability group that performs at Level 1 on the out-of-school suspension indicator. Beginning with 2020-21 school year results, the out-of-school suspension indicator shall be incorporated into the methodology used to determine the accountability status of schools and districts.</p> |             |
| <p>Definition of School-level evidence-based intervention</p> | <p>An evidence-based intervention could be a “promising practice” that is based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student</p> | <p>100.21(b)(4)(v)</p> | <p>To align with the definition in ESSA, this provision has been removed. An evidence-based intervention must be one that is an activity, strategy, or intervention that has met the criteria outlined in section 8101(21)(A) of ESSA by</p>  | <p>55</p>   |

| Issue  | Emergency Regulation  | Section                       | Proposed Revision  | Item page # |
|--|---|-------------------------------|--|-------------|
|  | outcomes or other relevant outcomes and includes ongoing efforts to examine the effects of such activity, strategy, or intervention   |                               | demonstrating a statistically significant effect on improving student outcomes or other relevant outcomes  |             |
| Required Parental and Student Involvement in School Improvement Plan | Schools identified as CSI will submit their plans to the Department for approval, which may reject any plan that does not adhere to the directions provided by the Department and/or provide sufficient evidence in such format as prescribed by the Commissioner that parents and pedagogical staff and in high schools, students, meaningfully participated in the development of the plan. | 100.21(b)(4)(viii)            | Revised to make clear that the Department shall reject CSI plans that do not demonstrate meaningful participation from parents and to include secondary students, not just high school students, in the process. | 57          |
| Principal Support Report and Principal Needs                         | The Principal Support report means a report to be completed by school   | 100.21 (b)(4)(xii) and (xiii) | Revised to make clear that the district will create a principal support report to  | 57          |

| Issue                      | Emergency Regulation  | Section | Proposed Revision   | Item page # |
|----------------------------|---|---------|---|-------------|
| Assessment for CSI Schools | <p>districts with at least one CSI school that did not meet its Annual Achievement Progression target.</p> <p>The Principal Needs Assessment means a comprehensive assessment of the capacity of the district to support its principals, that will be an additional required component of the District Needs Assessment in any Target District that has at least one CSI school that fails to meet its Annual Achievement Progression Target for two consecutive years, using such methodology and form as may be prescribed by the Commissioner.</p> |         | <p>identify the needs of the school leadership team, not just the principal. The principal needs assessment will be a comprehensive review of how the district will support its school leaders.</p> |             |

| <b>Issue</b>                             | <b>Emergency Regulation</b>  | <b>Section</b>     | <b>Proposed Revision</b>  | <b>Item page #</b> |
|--|--|--------------------|---|--------------------|
| Annual Achievement Progression           | The annual achievement progression is used to determine whether a Comprehensive Support and Improvement School is failing to make progress and may be subject to additional interventions. For elementary and middle schools, one way to make progress is to show an increase between the school's performance in the current school year compared to the prior school year on the Core Subject Performance Index. | 100.21(b)(4)(xiv)  | For elementary and middle schools, one way to make progress is to show improvement on both the Core Subject Performance Index and the Weighted Average Achievement Index. | 59                 |
| Requirements for Participatory Budgeting | Beginning with the 2019-2020 school year, CSI schools must annually set aside and spend a designated amount of allowable funds in such school year, in an  | 100.21(i)(1)(i)(d) | Districts now have the option to implement the Participatory Budgeting Process or select alternative forms of increasing parent and student engagement from               | 98                 |

| Issue  | Emergency Regulation  | Section                     | Proposed Revision  | Item page # |
|--|---|-----------------------------|--|-------------|
|  | <p>amount specified by the Commissioner and not to be less than \$2,000, for the purpose of funding projects that are proposed by and voted on by the students and families of the school through a process determined by the Commissioner.</p>   |                             | <p>a list determined by the Commissioner.</p>  |             |
| <p>Requirement for additional funding to be used for Participatory Budgeting in lieu of Public School Choice</p> | <p>In the event that a school must offer Public School Choice in a Comprehensive Support and Improvement School but cannot accommodate all transfer requests for lack of space, the district must double the amount the school spent in the prior year to implement Participatory Budgeting. If no transfer requests can be accommodated,</p> | <p>100.21(i)(1)(iii)(g)</p> | <p>The regulations have been clarified to specify that the additional amount to be spent on Participatory Budgeting is based on the school's first year allocation for Participatory Budgeting and does not continue to double or triple each year. (For example, if a school spent \$2,000 for Participatory Budgeting in Year 1, then a school that is unable to accommodate</p> | <p>102</p>  |

| Issue   | Emergency Regulation  | Section          | Proposed Revision   | Item page # |
|---|---|------------------|---|-------------|
|   | the district must triple the amount the school spent the prior year to implement Participatory Budgeting.   |                  | any transfer requests must spend \$6,000 in Year 2 and \$6,000 in Year 3 if the school remains identified for CSI and is unable to offer any transfers. The school does not have to spend \$18,000 in Year 3, triple the allocation in Year 2 on public school choice.) |             |
| Requirement for Development and Implementation of a Participation Rate Improvement Plan | Schools are required to implement a Participation Rate Improvement Plan if an accountability group for two consecutive years fails to meet the 95% participation rate requirement in either ELA or math and does not improve the participation rate between the current and prior school year for that group in that subject. | 100.21(i)(5)(ii) | A Participation Rate Improvement Plan would only be required for those accountability groups that perform at Level 1 or Level 2 (i.e., in the bottom half of schools in the State) on the Weighted Average Achievement Index.   | 108         |
| Authority of the Commissioner to direct that  | Beginning with 2020-2021 and 2021-2022  | 100.21(i)(5)(v)  | This provision regarding set aside of funds   | 111         |

| Issue  | Emergency Regulation   | Section                   | Proposed Revision  | Item page # |
|--|--|---------------------------|--|-------------|
| <p>districts set aside a portion of Title I funds when a school that is required to implement a participation rate improvement plan has failed three times to improve the participation rate for the accountability group for which a plan is required</p> | <p>school year results, for any school for which the Department shall conduct an audit of the participation rate because the schools have failed to improve the participation rate for at least five years for the accountability group(s) for which such plans were required, the Commissioner may require that the district set aside a portion of its Title I funds to use to increase student participation in state assessments in such school.</p> |                           | <p>has been removed and now indicates that schools that have failed to improve their participation rate for an accountability group in either ELA or in math for at least five years may be required to address recommendations contained in the participation rate audit.</p> |             |
| <p>Participation Plan Requirements for Schools that are improving but not yet at 95%</p>   | <p>Any school that is required to conduct a self-assessment and develop a participation rate improvement plan shall be required to update such plan annually until the school</p>  | <p>100.21(i)(5)(viii)</p> | <p>A school required to do a participation rate plan that is making annual improvements in increasing participation in state assessments will only have to update their participation rate</p>   | <p>112</p>  |

| Issue   | Emergency Regulation  | Section                                  | Proposed Revision   | Item page # |
|---|---|--|---|-------------|
|   | is no longer failing to meet the 95 percent participation rate for any subgroup(s) and subject(s) which caused it to be required to conduct such self-assessment and develop such plan. |  | plan, not create a new one.   |             |
| Removal of School from TSI and CSI status                       | Schools may not be removed from TSI or CSI status if the school is required to implement a School Improvement Participation Rate Plan.  | 100.21(j)(1)(ii)(d)<br>100.21(j)(1)(iii) | A school implementing a Participation Rate Improvement Plan would be eligible for removal from CSI or TSI status so long as the accountability group(s) for which a plan is required are not performing at Level 1 on the Weighted Average Achievement Index. | 113         |
| Identification of schools for public school registration review | The Commissioner may place under preliminary registration review any school in which excessive percentages of students fail to fully  | 100.21(k)(3)                             | This provision has been removed from the regulations.   | 118         |

| Issue  | Emergency Regulation  | Section  | Proposed Revision  | Item page # |
|--|---|--|--|-------------|
|  | participation the State assessment program.   |  |  |             |
| Translation of Parent Notifications  | Notification that a school has been identified as a Comprehensive Support and Improvement School or a Targeted Support and Improvement School or placed under registration review must be translated, when appropriate into the recipient's native language or mode of communication, to persons in parental relation of students attending the school. | 100.21(h)(1) and 100.2(l)(1)(i)                        | Clarifies that such translation must, to the extent practicable, be made into the languages most frequently spoken in the district.  | 95<br>118   |
| Required actions for schools placed under registration review that are also (1) designated as having poor learning environments, (2) in receivership, or (3) CSI schools | The Commissioner may direct that the district submit a plan to implement one of the following actions:<br>(a) convert the school to a charter school pursuant to Education Law section 2851(3);   | 100.21(l)(2)(ii)<br>100.21(l)(3)(i)<br>100.21(l)(4)(i) | The Department has revised the regulations to remove the provision that the Commissioner may direct the district to submit a plan to convert the school to a charter school pursuant to Education Law section 2851(3). | 120-<br>122 |

| Issue  | Emergency Regulation   | Section | Proposed Revision | Item page # |
|--|--|---------|-------------------|-------------|
| <p>that are not struggling or persistently struggling, and fail to take required actions or make required progress, or for receivership schools, to make demonstrable improvement, for two consecutive years</p> | <p>(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;<br/> (c) for the city school district of the City of New York, enter 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; or<br/> (d) close or phase out the school.</p> |         |                   |             |

## **Attachment B**

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

Pursuant to Education Law sections 101, 112, 207, 210, 215, 305, 309 and 3713 and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802).

1. Subdivision (ff) of section 100.2 of the Regulations of the Commissioner of Education is amended, as follows:

(ff) Enrollment of youth released or conditionally released from residential facilities.

(1) It shall be the duty of the board of education and the superintendent of schools of each school district to ensure:

(i) that any youth presented for enrollment who is entitled to attend the schools of such district pursuant to Education Law, section 3202 and who is released or conditionally released from a residential facility operated by or under contract with the Office of Children and Family Services, the Department of Corrections and Community Supervision, the Office of Alcoholism and Substance Abuse Services, the Office of Mental Health, the Office [of Mental Retardation and] for People with Developmental Disabilities, [or] a local department of social services, a local county correctional facility, or a juvenile detention facility as authorized by Executive Law section 503 is promptly enrolled and admitted to attendance in such district, and that school district personnel cooperate with such facilities and agencies in facilitating such prompt enrollment;

(ii) that the youth's educational records are requested from the school or educational program such student attended while in the residential facility; and

(iii) where applicable, that the educational plan for such student's release or conditional release, as submitted to the family court pursuant to Family Court Act section 353.3(7)(c), is implemented.

(2) Each school district shall designate one or more employees or representatives to [facilitate the prompt enrollment of students who are released or conditionally released and whose] serve as a transition liaison(s) with residential facility personnel as such facility is defined in subparagraph (i) of paragraph (1) of this subdivision, parents, students, and State and other local agencies for the purpose of facilitating a student's effective educational transition into, between, and out of such facilities to ensure that each student receives appropriate supports, services, and opportunities. The transition liaison's duties shall include, but are not limited to[, the receipt of student records and serving as a district contact person with residential facilities and State and local agencies.]:

(i) ensuring that the district has complied with the requirements of this subdivision, Parts 116 and 118 of the Commissioner's regulations and Education Law §112, as applicable;

(ii) coordinating the timely transmission, receipt, and review of a student's educational records (including but not limited to, report cards, transcripts, progress notes and Individualized Educational Plans) from the previous school and/or any educational program placements;

(iii) collaborating with staff in such facilities to ensure a student is appropriately enrolled in required educational and support services; and

(iv) ensuring that parents or guardians of students are informed of educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children.

2. Paragraph (m) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2018, as follows:

(1) The New York State report card for each public school, charter school, and school district, except the New York City school district, shall [consist of the following reports] be prepared by the Education Department[:

- (i) the New York State report card;
- (ii) the New York State accountability report; and
- (iii) for public school districts, the fiscal supplement].

The chancellor of the New York City School District shall produce a New York City report card, as approved by the [c]Commissioner.

(2) The superintendent of each public school district, except the New York City School District, shall present [all three parts of] the New York State report card to the board of education of such district at a public meeting within 30 calendar days of the commissioner's release of [each] the report. In New York City, the chancellor shall present, in this same time period, the New York City report card to the New York City Board of Education. In a charter school, the charter school leader shall present, in this same time period, the charter school report card to the charter school board of trustees.

(3) . . .

(4) To satisfy the local report card requirements under section 1111(h)(2) of the [No Child Left Behind Act] Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. section 6311(h)(2), each

report card for a local educational agency, as defined in 100.21(b)(1) shall be placed on the website of the local educational agency or, in any case in which a local educational agency does not operate a website, provided to the public in another manner determined by the local educational agency. Each public school principal and each [principal] school leader of a charter school receiving Federal funding under title 1 shall also distribute, within 30 calendar days of the commissioner's release of such reports, copies of the New York State report card [and the New York State accountability report] for the school and the district, or, in the New York City School District, the New York City report card to the parent of each student. A district or charter school may add any other appropriate information, including but not limited to measures of school climate and safety; access to specific learning opportunities, such as physical education; and teacher turnover and absences. Such additional information also must be distributed to the parent of each student and must be made widely available through public means, such as posting on the Internet, distribution through the media, and distribution through public agencies. To the extent practicable, the district or charter school shall provide the report and additional information in a language that the parents can understand (e.g. in the most frequently used languages in the district).

(5) The comprehensive [assessment] information report for each nonpublic school will include the following information, for each school building[,for the three school years immediately preceding the school year in which the report is issued]:

(i) student test data on the New York State elementary and middle-level ELA, [and] mathematics, and science assessments [in the New York State Testing Program, the Regents competency tests], all Regents examinations, New York State English as a

Second Language Achievement test [the second language proficiency examinations as defined in this Part];

(ii) student enrollment by grade, racial/ethnic group and English language learner status;

(iii) [number of students transferred into the alternative high school and high school equivalency preparation programs as set forth in section 100.7 of this Part];

[(iv)] data, as required by the commissioner, on diplomas and certificates awarded;

[(v)] (iv) any additional information prescribed by the commissioner on educational equity and other issues; and

[(vi)] (v) any additional information which the chief administrative officer of the nonpublic school believes will reflect the relative assessment of a school building or district. The chief administrative officer of each nonpublic school shall initiate measures designed to improve student results wherever it is warranted. The chief administrative officer of each nonpublic school shall be responsible for making the comprehensive [assessment] information report accessible to parents.

3. Subdivision (a) of section 100.18 of the Regulations of the Commissioner of Education is amended, as follows:

(a) Applicability. Notwithstanding the provisions of section 100.2(p)(1) through (11) and (14) through (16) of this Part, this section shall apply to school districts and charter schools in lieu of such provisions during the period of the Elementary and Secondary Education Act (ESEA) waiver, and any revisions and extensions thereof, except as otherwise provided in this section for all accountability designations made prior to July 1, 2018 and to the corresponding interventions for such schools and/or school districts for the 2018-2019 school year, except as otherwise provided in section 100.21 of this Part.

If a provision of section 100.2(p) of this Part conflicts with this section, the provisions of this section shall prevail and the provision of section 100.2(p) of this Part shall not apply.

4. Section 100.19 of the Regulations of the Commissioner of Education is amended as follows:

§100.19. Takeover and restructuring of failing and persistently failing schools.

(a) Definitions. As used in this section:

(1) . . .

(2) . . .

(3) Priority school shall mean a school identified as a priority school pursuant to section 100.18(g) of this Part prior to July 1, 2018. On or after July 1, 2018, a priority school shall mean a school identified as a comprehensive support and improvement school pursuant to section 100.21 of this Part.

(4) School district in good standing shall mean a school district that has not been identified pursuant to section 100.18(g) of this Part as a focus district prior to July 1, 2018. On or after July 1, 2018, a school district in good standing shall mean a school district that has not been identified pursuant to section 100.21 of this Part as a Target District.

(5) . . .

(6) . . .

(7) ...

(8) ...

(9) ...

(10) . . .

(11) ...

(12) Department-approved intervention model or comprehensive education plan

shall mean, for school years prior to the 2019-2020 school year, a comprehensive education plan pursuant to section 100.18(h)(2)(iii), a plan for a School Under Registration Review pursuant to section 100.18(l)(3) or a school phase out or closure plan pursuant to section 100.18(m)(5) of this Part. For school years commencing on or after July 1, 2019, Department-approved intervention model or comprehensive education plan shall mean a school comprehensive education plan as defined in section 100.21(b)(4)(viii) of this Part, a plan for a School Under Registration Review pursuant to section 100.21(l) of this Part, or a school phase out or closure plan pursuant to section 100.21(l) of this Part.

(13)...

(14) ...

(15) ...

(16) ...

(17) ...

(18) ...

(b) ...

(c) ...

(d) School District Receivership.

(1) ..

(2) ...

(3) ...

(4) ...

(5) ...

(6) With respect to a performance review conducted in accordance with paragraph

(5) of this subdivision:

(i) at the end of a school year in which a school has been removed from priority school status, pursuant to section 100.18(i)(1) of this Part for school years ending prior to July 1, 2018 and for a school that is removed from comprehensive support and improvement status, pursuant to subdivision (j) of section 100.21 of this Part for school years commencing on or after July 1, 2018, the [commissioner] Commissioner shall remove the school's designation as persistently struggling or struggling, except that, for a school that has been placed into independent receivership, the independent receiver shall continue to implement the school intervention plan consistent with subdivision (h) of this section; and

(ii) the [commissioner] Commissioner shall continue a school under district operation with the superintendent vested with the powers of a receiver consistent with this section if a school has made demonstrable improvement as determined by the commissioner in consultation and collaboration with the school district based on performance metrics and goals described in paragraph (2) of this subdivision and shall continue to be subject to annual review by the department as provided in paragraph (5) of this subdivision.

(7) . . .

(8) . .

(9) . . .

(e) . . .

(f) . . .

(g) . . .

(h) . . .

(i) . . .

(j) Phase [out] Out and Closure of Struggling and Persistently Struggling School. Nothing in this section shall prohibit the [commissioner] Commissioner from directing a school district to phase out or close a school pursuant to paragraph (f)(6) of this section, or section 100.18(l) of this Part prior to July 1, 2018, or subdivision (l) of section 100.21 of this Part on or after July 1, 2018, or prohibit the Board of Regents from revoking the registration of a school pursuant to such paragraph, or prohibit a school district from closing or phasing out a school with the approval of the commissioner.

(k) ...

(l) . . .

5. A new section 100.21 of the Regulations of the Commissioner of Education is added, effective July 1, 2018, as follows:

§100.21. ESSA Accountability System.

(a) Applicability. Notwithstanding the provisions of paragraphs (p)(1) through (11) and (14) through (16) of section 100.2 and section 100.18 of this Part, this section shall apply to school districts and charter schools in lieu of such provisions during the period the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, is effective, except as otherwise provided in this section. If a provision of paragraph (p) of section 100.2 or section 100.18 of this Part conflicts with this section, the provisions of this section shall prevail and the provisions of paragraph (p) of section 100.2 or section 100.18 of this Part shall not apply. Provided that for accountability designations made prior to July 1, 2018, the requirements of section 100.18 shall continue to apply to the extent that plans and interventions under that section are required to be implemented until the end of the 2018-2019 school year.

(b) Definitions. As used in this section:

(1) General Definitions

(i) ESSA means the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802).

(ii) Title I means Title I, part A of Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301-6327 (Public Law 114-95, 129 STAT. 1802).

(iii) Board of education shall mean the trustees or board of education of a school district; provided that in the case of the city school district of the City of New York, such term shall mean the chancellor of the city school district acting in lieu of the board of education of such city school district to the extent authorized by article 52-A of the Education Law and, with respect to community school districts and New York City superintendencies, such term shall mean the community superintendent or other superintendent of schools acting in lieu of the board of education to the extent authorized by article 52-A of the Education Law.

(iv) School district or district shall mean a common, union free, central, central high school or city school district, provided that, in the case of the city school district of the City of New York, such term shall mean a community school district or New York City superintendency to the extent that such entity is the local educational agency for purposes of Title I, and a special act school district as defined in subdivision 8 of section 4001 of the Education Law, except as otherwise provided in this section.

(v) Public school shall mean an elementary, middle, or high school operated by a school district or a charter school authorized pursuant to Article 56 of the Education Law, except as otherwise provided in this section.

(vi) Local educational agency (LEA) shall mean a local educational agency as defined in section 8101(30) of ESSA, including a school district, board of cooperative educational services, county vocational education and extension board, or charter school.

(vii) A transfer high school means a high school in which the majority of students upon their first enrollment in the high school had previously attended grade nine or higher in another high school or a high school in which the majority of students attained age 16 or higher in the year in which the students first entered grade 9, or a school in which more than 50 percent of currently enrolled students are English language learners as defined in Part 154 of this Title who have attended school in the 50 United States (excluding Puerto Rico) and the District of Columbia for less than three years.

(viii) Alternate assessment means a New York State Alternate Assessment approved by the Commissioner and recommended by the committee on special education for students with severe disabilities as defined in section 100.1(t)(2)(iv) of this Part, in lieu of a required State assessment.

(ix) Continuously enrolled means, for grades 3-8 and ungraded age equivalent students, students enrolled on BEDS day as defined in this subdivision and enrolled during the test administration period for the subject tested, and for high school, students in the accountability cohort, as defined in paragraph (b)(2) of this section, except that for the English language proficiency indicator continuously enrolled means, for grades 9-12 and ungraded age equivalent students, students enrolled on BEDS day and enrolled during the test administration period.

(x) Significant medical emergency means an excused absence from school during both the regular and makeup examination period for which a school district has documentation from a medical practitioner that a student is so incapacitated as to be unable to participate in the State assessment given during that examination period.

(xi) Accountability subgroups shall mean the following subgroups: all students; students from major racial and ethnic groups, as set forth in subparagraph (bb)(2)(v) of section 100.2 of this Part; students with disabilities, as defined in section 200.1 of this Title, including students no longer identified as students with disabilities but who had been so identified during the preceding one or two school years; English language learners, as defined in Part 154 of this Title, including students previously identified as an English language learner during the preceding one, two, three, or four school years; and economically disadvantaged students as defined in subparagraph (xii) of this paragraph; except that for the purposes of the accountability and high school graduation cohorts, students who were students with disabilities and students who were English language learners at any time while members of these cohorts shall be included in these subgroups. The school district accountability groups for each grade level shall include any student enrolled in a public school in the district or placed out of the district for educational services by the district committee on special education or a district official who meets the criteria for the accountability subgroup.

(xii) Economically disadvantaged students shall mean students who participate in, or whose family participates in, economic assistance programs, such as the Free or Reduced Price Lunch Programs; Social Security Insurance (SSI); Food Stamps; Foster Care; Refugee Assistance (cash or medical assistance); Earned Income Tax Credit (EITC); Home Energy Assistance Program (HEAP); Safety Net Assistance (SNA); Bureau

of Indian Affairs (BIA); or Family Assistance: Temporary Assistance for Needy Families (TANF). Provided that, if one student in a family is identified as economically disadvantaged, all students from that household may be identified as economically disadvantaged.

(xiii) For elementary and middle-level students, participation rate means the percentage of students enrolled during the test administration period who did not have a significant medical emergency and who received a valid score on the required State assessment in elementary- and middle-level grades. The State assessments that may be used in elementary- and middle-level grades to fulfill the testing requirement for participation in English Language Arts (ELA) and Mathematics are the New York State Testing Program (NYSTP) assessments in ELA and Mathematics in grades 3-8, Regents examinations in Mathematics taken in lieu of the NYSTP assessments for advanced grades 7 and 8 students, the Alternate Assessment for eligible students with disabilities in grades 3-8, and the New York State English as a Second Language Achievement Test (NYSESLAT) for English language learners enrolled in school in one of the 50 States in the United States (excluding Puerto Rico) or the District of Columbia for less than one year as of a date determined by the Commissioner and any examinations accepted to meet graduation and diploma requirements for students covered under the interstate compact on educational opportunity for military children pursuant to section 100.20 of this Title.

(xiv) For high school students, participation rate means the percentage of students in grade 12 during the reporting year who received a valid score on the required high school assessments. The State assessments that may be used at the secondary level to fulfill the testing requirement for participation in English Language Arts (ELA) and

Mathematics are New York State Regents examinations in English and Mathematics, approved alternatives to Regents exams in English and Mathematics, examinations accepted to meet graduation and diploma requirements for students covered under the interstate compact on educational opportunity for military children pursuant to section 100.20 of this Title and the New York State Alternate Assessment (NYSAA) for eligible students with disabilities at the secondary level.

(xv) Accountability level means a level from 1 to 4 derived when scores earned on Regents examinations and Regents alternative examinations as defined in this subdivision are converted to four accountability levels based on predetermined accountability cut scores established by the Commissioner. Accountability levels are used for calculating Performance Indices at the secondary level for ELA, Mathematics, Science, and Social Studies as described in paragraph (2) of subdivision (b) of this section.

(xvi) Performance levels shall mean for accountability determinations regarding comprehensive support and improvement schools, targeted support and improvement schools, and target districts made commencing with the 2017-2018 school year assessment results, as follows:

(a) for elementary and middle grades:

(1) Level 1 - basic:

(i) a score of Level 1 on State assessments in ELA, Mathematics, and Science;

(ii) a score of Level 1 on the New York State Alternate Assessment in ELA, Mathematics, and Science;

(iii) a score of Accountability Level 1 on a Regents Mathematics exam for advanced grade 7 or 8 students;

(iv) a score of Level 1 on a Regents Science exam for advanced grade 8 students;

(2) Level 2 - basic proficient:

(i) a score of Level 2 on State assessments in ELA, Mathematics, and Science;

(ii) a score of Level 2 on the New York State Alternate Assessment in ELA,

Mathematics, and Science;

(iii) a score of Accountability Level 2 on a Regents Mathematics exam for advanced grade 7 or 8 students;

(iv) a score of Level 2 on a Regents Science exam for advanced grade 8 students.

(3) Level 3 - proficient:

(i) a score of Level 3 on State assessments in ELA, Mathematics, and Science;

(ii) a score of Level 3 on the New York State Alternate Assessment in ELA,

Mathematics, and Science;

(iii) a score of Accountability Level 3 on a Regents Mathematics exam for advanced grade 7 or 8 students;

(iv) a score of Level 3 on a Regents Science exam for advanced grade 8 students.

(4) Level 4 - advanced:

(i) a score of Level 4 on State assessments in ELA, Mathematics, and Science;

(ii) a score of Level 4 on the New York State Alternate Assessment in ELA,

Mathematics, and Science;

(iii) a score of Accountability Level 4 on a Regents Mathematics examination for advanced grade 7 or 8 students;

(iv) a score of Level 4 on a Regents Science examination for advanced grade 8 students.

(b) for secondary-level grades:

(1) Level 1 - basic:

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

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

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

(iv) a cohort member who has not been tested on any of the assessments in (i) through (iii).

(2) Level 2 (basic proficient):

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

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

(3) Level 3 (proficient):

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

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

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

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

(4) Level 4 (advanced):

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

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

(c) Advanced middle school Mathematics students:

(1) For students enrolled in grade 7 or 8 and who take a Regents examination in Mathematics but do not take the grade 7 or 8 New York State Testing Program assessment in Mathematics, participation and accountability determinations for the school in which the student is enrolled in 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.

(2) For students enrolled in grade 7 or 8 who take both the grade 7 or 8 New York State Testing Program assessment in Mathematics and a Regents examination in Mathematics, participation and accountability determinations for the school in which the student is enrolled in grade 7 or 8 shall be based upon such student's performance on the New York State Testing Program assessment in Mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's highest performance level/score earned on the Regents examination taken in grade 7 or 8 or Regents examinations taken after the student first enters grade 9.

(d) Advanced middle school Science students:

(1) For students enrolled in grade 8 who take a Regents examination in science but do not take the Grade 8 Intermediate Science Test, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the Regents examination in Science. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on Science assessments after the student first enters grade 9.

(2) For students enrolled in grade 8 who take both the grade 8 Science Intermediate-Level Science Test and a Regents examination in Science, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the Grade 8 Intermediate-Level Science Test. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's highest performance level/score earned on the Regents examination taken in grade 7 or 8 or Regents examinations taken after the student first enters grade 9.

(3) For students who took the Grade 8 Intermediate-Level Science Test when they were enrolled in grade 7 and who take a Regents examination in Science when enrolled in grade 8, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the Regents examination in Science.

(4) For students who have taken the grade 8 Science intermediate assessment when enrolled in grade 7 and who do not take a Regents examination in Science when enrolled in grade 8, accountability determinations for the school in which the student is

enrolled in grade 8 shall be based upon the student's performance on the Grade 8 Intermediate-Level Test taken in grade 7.

(xvii) Minimum n size shall mean the minimum number of student results that are included within an accountability subgroup to make an accountability determination on a particular accountability measure. For purposes of this section, the minimum n size is 30 unless otherwise provided. For the Weighted Average Achievement Index and the Core Subject Performance Index the n size applies to the denominator used to calculate the indices. For English Language Proficiency; Chronic Absenteeism; Graduation Rate; and College, Career, and Civic Readiness, the n size applies to the denominator used to calculate the rates. For Growth, the n size applies to three years of results in ELA and Mathematics combined. For the Weighted Average Achievement Index, the Core Subject Performance Index; the Composite Performance; Academic Progress; Graduation Rate; and College, Career, and Civic Readiness indices, if there are fewer than 30 results in the current school year, then the results from the current and prior school year shall be combined and used if the results shall be equal to or greater than 30 to meet the minimum n size requirement. Provided, however, that where the Weighted Average Achievement Index for an accountability group is equal to or greater than 30, a Core Subject Performance Index shall be computed for that accountability group so long as there are a minimum of 15 student results for the Core Subject Performance Index and the number of student results for the Core Subject Performance Index equals at least 50 percent of the number of results for the Weighted Average Achievement Index. Provided further that, where the Composite Performance Index for a high school accountability group is equal to or greater than 30, a graduation rate shall be computed for that accountability group so long as there are a minimum of 15 students in the graduation cohort. If the

minimum n size is not sufficient to establish a baseline for a subgroup in order develop a school or district MIP as defined in paragraph (2) of this subdivision, the Commissioner shall not make an accountability determination for an accountability subgroup for the Academic Progress; Graduation Rate; Chronic Absenteeism; or College, Career, Career, and Civic Readiness measures.

(xviii) Self-Assessment Process. For each school year, public schools and school districts in which a self-assessment process is required pursuant to this section shall conduct a self-assessment of their academic program and the school learning environment, in such format and using such criteria as may be prescribed by the Commissioner. Such self-assessment shall not be required of those schools and school districts for which the Commissioner shall conduct a review of the performance of the school or school district in accordance with subdivision (g) of this section. The superintendent of the school district or principal of the charter school shall review the self-assessment(s) and make a recommendation to the Commissioner, in such format and according to such timeframe as the Commissioner may prescribe, as to whether the accountability group(s) for which the school is accountable within the school or school district shall be considered to have performed at Level 1, 2, 3, or 4 for each accountability measure for which the school is below the minimum n size. The Commissioner shall consider the self-assessment and any other relevant information in determining the levels to assign to the school's accountability group(s) for such measures.

(a) A registered school that has no continuously enrolled students because all students are students with disabilities who attend the school and who have been placed outside of their district of residence (in New York City, outside of their community school district of residence) for educational services by the district committee on special

education or a school district official shall participate in a self-assessment process based on the students who are enrolled in the school. Schools in which a majority of the students for which the school is accountable have not been enrolled in the school as the result of a school district placement shall participate in the self-assessment process as described in this subparagraph.

(xix) BEDS day shall mean the basic educational data system reporting deadline or such date as prescribed by the Commissioner.

(xx) Regents alternative examination shall mean a Department-approved alternative examination to a Regents examination pursuant to sections 100.2(f) and (mm) of this Title.

(2) Definitions related to measures of school and district accountability.

(i) An accountability measure shall mean a measure used for the purpose of implementing the system of accountability for schools and districts in accordance with the provisions of this section, and shall include the following measures for elementary/middle schools: (1) Composite Performance; (2) Student Growth; (3) Combined Composite Performance and Student Growth; (4) English Language Proficiency; (5) Academic Progress; and (6) Chronic Absenteeism as described in subdivision (f) of this section. High school accountability measures shall include: (1) Composite Performance; (2) Graduation Rate; (3) Combined Composite Performance and Graduation Rate; (4) English Language Proficiency; (5) Academic Progress; (6) Chronic Absenteeism; and (7) College, Career, and Civic Readiness as described in subdivision (f) of this section.

(ii) Graduates are students in the Graduation Rate Cohort as defined in subparagraph (xvi) of this paragraph who earned a Regents or local diploma by August 31<sup>st</sup> of the reporting year.

(iii) The State baseline means the statewide performance of an accountability subgroup on an accountability measure that is used to establish the State Long-term goals and annual Measures of Interim Progress for that measure. A state baseline shall be established for the following accountability measures: Academic Progress in ELA; Academic Progress in Mathematics; the Four-Year Graduation Rate; the Five-Year Graduation rate; the Six-Year Graduation Rate; chronic absenteeism; and college, career, and civic readiness.

(iv) School or district baseline mean the school or school district performance of an accountability subgroup on an accountability measure that is used to establish the school or school district's annual measures of interim progress for that subgroup on that measure. School and district baselines shall be established for the following accountability measures: Academic Progress in ELA; Academic Progress in Mathematics; the Four-Year Graduation Rate; the Five-Year Graduation Rate; the Six-Year Graduation Rate; Chronic Absenteeism; and College, Career, and Civic Readiness. Provided that for schools or districts with subgroups that fail to meet the minimum n size requirements, a school and/or district baseline will be established when such subgroup meets the minimum n size requirements, for the purpose of establishing Measures of Interim Progress.

(v) State Measures of Interim Progress (State MIPs). For each accountability measure that a State baseline has been established, the Commissioner shall establish for each accountability subgroup annual State MIPs. Prior to the start of the 2018-19 school year, the Commissioner shall establish State MIPs for the 2017-2018 through the 2021-2022 school years. The Commissioner shall annually establish new State MIPs for

the school year next succeeding the last school year for which State MIPs had been previously established.

(vi) School and District Measures of Interim Progress (school and district MIPs). For each accountability measure for which a school or district baseline has been established, the Commissioner shall establish for each accountability subgroup annual school and district MIPs. Prior to the start of the 2018-2019 school year, the Commissioner shall establish school and district MIPs for the 2017-2018 through the 2021-2022 school years. The Commissioner shall annually establish new school and district MIPs for the school year next succeeding the last school year for which school and district MIPs had been previously established. In the event that a school and/or district undergoes a significant change in student enrollment as determined by the Commissioner, including but not limited to a change in grade configuration or a significant increase or decrease in numbers of students who are members of an accountability subgroup, the district may petition the Commissioner to revise the school and/or district specific MIPs assigned to one or more accountability subgroups for one or more accountability measures in the school.

(vii) State Long-term goal shall mean the amount of progress the State expects each accountability subgroup to make, based on the State baseline, at the end of a five-year period towards achieving the State End-goal. Exceeding Long-term goal is determined by subtracting the Long-term goal from the State-End-goal, dividing by 2, and then adding the result to the Long-term goal. The outcome must be at or above that resulting number.

(viii) State End-goal shall mean the ultimate desired performance at an undetermined future point for an accountability subgroup on an accountability measure for which a State Long-term goal has been established.

(ix) Student growth means the change in student achievement for an individual student between two or more points in time.

(x) The Mean Student Growth Percentile means the result of a statistical model that calculates each student's change in achievement between two or more points in time on a State assessment and compares each student's performance to that of similarly achieving students.

(xi) The out-of-school suspension rate shall mean the number of students who were suspended from school (not including in-school suspensions) for one full day or longer anytime during the school year divided by the number of students enrolled on BEDS day of that school year commencing with data collected for the 2017-2018 school year. A student is counted only once, regardless of whether the student was suspended one or more times during the school year. For the 2018-2019 school year results, the Commissioner shall report for each accountability group for which a school or district is accountable a Level from 1-4 based on the out-of-school suspension rate. For the 2019-2020 school year results, districts must implement the provisions of 100.21(i)(4) for any schools that have an accountability group that performs at Level 1 on the out-of-school suspension indicator. Beginning with the 2020-2021 school year results, the out-of-school suspension indicator shall be incorporated into the methodology used to determine the accountability status of schools and districts under this section.

(xii) Accountability cohort.

(a) Except as provided in clauses (b) and (c) of this subparagraph, the accountability cohort for each public school for purposes of computing secondary-level composite performance and academic progress for any given school year shall consist of those students who first enrolled in ninth grade anywhere four years prior to the current reporting year and who were enrolled in the school on BEDS day of the reporting year. The district accountability cohort for purposes of computing secondary-level composite performance and academic progress for any given school year shall consist of those students who first enrolled in ninth grade anywhere four years prior to the current reporting year and who were as of BEDS day for the reporting year, enrolled in the school district or placed by the school district committee on special education or by school district officials in educational programs outside the school district on BEDS day of the reporting year. Students with disabilities in ungraded programs shall be included in the district and school accountability cohorts in the fourth school year following the one in which they attained the age of 17.

(b) The following students shall not be included in the school accountability cohort: students whose last regular enrollment record indicates that the student transferred to another high school or alternative high school equivalency preparation program approved pursuant to section 100.7 of this Part, or for which the public school or school district has provided evidence of enrollment in a high school equivalency preparation program on such form as the Commissioner may prescribe, or a prison or juvenile facility, or home schooling by a parent or guardian, or postsecondary school prior to earning a diploma, or who are a prior graduate from outside the United States and enrolled without documentation from their previous school, or who left the United States or its territories,

or who are deceased; except that, the following students will be included in the high school cohort of the school they attended before transferring:

(1) students whose last regular enrollment record indicates that the student transferred to an alternative high school equivalency preparation program approved pursuant to section 100.7 of this Part, or for which the public school or school district has provided evidence of enrollment in a high school equivalency preparation program on such form as the Commissioner may prescribe, but leave that program before the end of the third school year after the school year in which they first entered grade 9 without having earned a high school equivalency diploma or without entering a program leading to a high school diploma; and

(c) The following students shall not be included in the district accountability cohort: students whose last regular enrollment record as determined by the Commissioner indicates that he/she transferred to a high school that is not a component of the school district or to an alternative high school equivalency preparation program approved pursuant to section 100.7 of this Part, or for which the public school or school district has provided evidence of enrollment in a high school equivalency preparation program on such form as the Commissioner may prescribe, or criminal justice facility, or home schooling by a parent or guardian, or postsecondary school prior to earning a diploma, or who are a prior graduate from outside the United States and enrolled without documentation from their previous school, or who left the United States or its territories, or who are deceased; except that the following students will be included in the high school cohort of the school district they attended before transferring:

(1) students whose last enrollment record indicates the student transferred to an alternative high school equivalency preparation program approved pursuant to section

100.7 of this Part or for which the public school or school district has provided evidence of enrollment in a high school equivalency preparation program on such form as the Commissioner may prescribe, but leave that program before the end of the third school year after the school year in which they first entered grade 9 without having earned a high school equivalency diploma or without entering a program leading to a high school diploma.

(xiii) Graduation Rate Cohort.

(a) The Four-Year Graduation Rate Cohort for each public school and school district shall consist of those students (including an ungraded student with a disability in accordance with clause (e) of this subparagraph) whose first date of entry into grade nine (anywhere) was four years previously and whose last enrollment in the school or district (as applicable), did not end because of transfer to another school or district (as applicable), transfer to home schooling by a parent or guardian, transfer to a postsecondary school prior to earning a diploma, or being a prior graduate from outside the United States and enrolled without documentation from their previous school, or leaving the United States or its territories, or transferred to a prison or juvenile facility, or death. Data for this cohort are captured as of June 30 of the fourth school year after the school year in which the cohort first entered grade nine. Data for this cohort are lagged by a year.

(b) The Five-Year Graduation Rate Cohort for each public school, and school district shall consist of those students (including an ungraded student with a disability in accordance with clause (e) of this subparagraph) whose first date of entry into grade nine (anywhere) was five years previously and whose last enrollment in the school or district (as applicable), did not end because of transfer to another school or district (as

applicable), transfer to home schooling by a parent or guardian, transfer to a postsecondary school prior to earning a diploma, or being a prior graduate from outside the United States and enrolled without documentation from their previous school, or leaving the United States or its territories, or transferred to a prison or juvenile facility, or death. Data for this cohort are captured as of June 30 of the fifth school year after the school year in which the cohort first entered grade nine. Data for this cohort are lagged by a year.

(c) The Six-Year Graduation Rate Cohort for each public school and school district shall consist of those students (including an ungraded student with a disability in accordance with clause (e) of this subparagraph) whose first date of entry into grade nine (anywhere) was six years previously and whose last enrollment in the school or district (as applicable), did not end because of transfer to another school or district (as applicable), transfer to home schooling by a parent or guardian, transfer to a postsecondary school prior to earning a diploma, or being a prior graduate from outside the United States and enrolled without documentation from their previous school, or leaving the United States or its territories, or transferred to a prison or juvenile facility, or death. Data for this cohort are captured as of June 30 of the sixth school year after the school year in which the cohort first entered grade nine. Data for this cohort are lagged by a year.

(d) Graduates are students in the Four-Year, Five-Year, or Six-Year Graduation Rate Cohort who earned a local or Regents diploma by August 31 following the fourth, fifth or sixth school year after the school year in which the cohort first entered grade nine.

(e) Ungraded students with disabilities shall be included in the Accountability Cohort and the Four-Year, Five-Year, and Six-Year Graduation Rate Cohorts in the school year in which they attain the age of 17.

(3) Definitions related to school and district accountability designations.

(i) Comprehensive Support and Improvement (CSI) Schools (elementary and middle schools). The State shall designate elementary/middle schools as CSI schools using the following criteria:

(a) Beginning with the 2018-2019 school year, using 2017-2018 school year results, the State shall identify a minimum five percent of the lowest performing schools as CSI schools and shall identify CSI schools based upon the results from the all students group once every three years thereafter, based on the accountability measures described in subdivision (f) of this section. Provided that, if the accountability measures used to identify CSI schools in subdivision (f) of this section result in the identification of fewer than five percent of Title I public elementary/middle schools in the State, the Commissioner shall identify the lowest performing five percent of Title I public elementary/middle schools using the rank ordered list for the Combined Composite Performance and Growth Index; and

(b) Any Targeted Support and Improvement school that has been identified for additional targeted support based on the performance of one or more accountability subgroups and continues, following the designation for additional targeted support, to be identified as a targeted support and improvement school for three consecutive school years for the performance of the same accountability subgroup(s) shall be preliminarily identified as a CSI school.

(ii) CSI (high schools). The State shall designate high schools as CSI schools using the following criteria:

(a) Beginning with the 2018-2019 school year, using 2017-2018 school year results, the State will identify a minimum five percent of the lowest-performing schools as CSI schools based upon the results from the all students group once every three years based on the accountability measures described in subdivision (f) of this section. Provided that, if the methodology pursuant to (f)(1)(i) for elementary/middle schools and (f)(2)(i) for high schools of this section results in the identification of fewer than five percent of Title I public high schools in the State, the Commissioner shall identify the lowest performing five percent of Title I public high schools using the rank ordered list for the Combined Composite Performance and Graduation Rate Index; and

(b) Any targeted support and improvement school that has been identified for additional targeted support based on the performance of one or more accountability subgroups consistent with this section and continues, following the designation for additional targeted support, to be identified as a targeted support and improvement school for three consecutive school years for the performance of the same accountability subgroup(s) shall be preliminarily identified as a CSI school; and

(c) Any school with a Four-Year Graduation rate below 67 percent and a Five-Year or Six-Year Graduation Rate that is not at or above 67 percent in the years in which school are identified pursuant to clause (a) of this subparagraph shall be preliminarily identified as a CSI school.

(iii) A Targeted Support and Improvement (TSI) School shall mean a school with one or more consistently underperforming accountability subgroups based on the accountability measures described in subdivision (f) of this section. These schools will

be identified annually, beginning with the 2019-2020 school year, except that a school identified as a Priority or Focus School during the 2017-2018 school year may be identified, using 2017-2018 school year data only, if such school meets the criteria for identification as a TSI school beginning with the 2018-2019 school year. In addition, a TSI school with any accountability subgroup performing below the threshold for the all students subgroup for the lowest performing five percent of schools shall be identified for additional targeted support in accordance with subdivision (f) of this section. Beginning with the 2018-2019 school year, TSI schools shall be identified for additional targeted support in the same years in which CSI school designations are made based on the performance of the all students group.

(iv) Target District shall mean any school district with one or more CSI and/or TSI schools. A Target District shall also mean any district whose district-wide performance levels would cause a school to be identified as a CSI or a TSI school pursuant to the provisions of this section.

(v) A school in Good Standing means a school that is not identified as a CSI or TSI school pursuant to the provisions of this section.

(vi) Recognition schools shall mean schools in good standing that exhibit evidence of high performance and/or rapid improvement as determined by the Commissioner.

(vii) 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.

(4) Definitions related to interventions for designated schools and districts.

(i) Integrated intervention team means a school quality review team or joint intervention team appointed by the Commissioner, which may include a distinguished

educator appointed by the Commissioner, to conduct a diagnostic review of a CSI or TSI school or a Target District or a school under registration review.

(ii) A comprehensive needs assessment means a comprehensive assessment of the school or district that includes a review of school or district quality using such form(s) as may be prescribed by the Commissioner, which may include but is not limited to the diagnostic tool for school and district effectiveness as defined in paragraph (15) of subdivision (a) of section 100.19 of this Part; select state-reported and state-supported data indicators as prescribed by the Commissioner; and a resource audit as defined in this paragraph.

(iii) A progress needs assessment means an annual assessment of the school that includes a progress review of the implementation of the school comprehensive education plan; select State-reported and State-supported data in comparison to other schools and in comparison to prior year performance; a resource audit as defined in this paragraph; and a review of parent, staff, and teacher survey results; provided that a progress needs assessment shall not be conducted in a school year in which a comprehensive needs assessment is conducted.

(iv) Resource audit means an audit that examines the effectiveness of professional development and how schools and districts use their time (e.g., instructional time, length of school day and/or school year), space (facilities), staff, and funds in relation to best practices as determined by Commissioner.

(v) School-level evidence-based intervention means an activity, strategy, or intervention that has met the criteria outlined in section 8101(21)(A) of ESSA by demonstrating a statistically significant effect on improving student outcomes or other relevant outcomes: provided that such intervention must be implemented so as to affect

such percentage of a school's enrollment or such percentage of classrooms as may be prescribed by the Commissioner for the school.

(vi) School improvement grant means a grant awarded by the U.S. Department of Education to the New York State Education Department as a State Educational Agency (SEA), pursuant to section 1003 of ESSA and awarded by the New York State Education Department to a local educational agency (LEA), as defined in this section, as a subgrant.

(vii) Public school choice shall mean the option for students enrolled in a CSI school to transfer to a public school in good standing at the appropriate grade level within the district pursuant to subdivision (i) of this section; provided that if there are no schools in good standing within the district that serve the grade level of the students, parents of students in the identified schools shall be offered the ability to transfer their child to a TSI school.

(viii) School comprehensive education plan means a school improvement plan, using such form and format as the Commissioner may prescribe, that CSI and TSI schools shall develop in collaboration with stakeholders, in accordance with the district's plan for school-based management and shared decision making pursuant to the requirements of section 100.11 of this Part. The plan must include an analysis of the school's achievement of previous goals; be based upon data from the school, including but not limited to, the results of the comprehensive needs assessment or the progress needs assessment and any additional data collected by the school; specify the accountability measures for which the school has been identified; identify initiatives that will be implemented to positively affect student learning and to address the accountability measures for which the school has been identified; identify resource inequities, which may include a review of school and school district budgeting; explicitly delineate the plan

for annually increasing student performance through comprehensive instructional programs and services as well as enhancement of teacher and leader effectiveness, with a focus on the accountability subgroup(s) and measures for which the school was identified; include evidence-based interventions; and be first implemented no later than the beginning of the first day of regular student attendance in the school year following the school's identification. Schools identified as CSI will submit their plans to the Department for approval, which shall reject any plan that does not adhere to the directions provided by the Department and/or provide sufficient evidence in such format as prescribed by the Commissioner that parents and pedagogical staff and in secondary schools, students, meaningfully participated in the development of the plan.

(ix) Job-embedded professional development means professional development for teachers and leaders that is informed by the results of the comprehensive needs assessment or progress needs assessment of the school and by the teacher or leader evaluation system and any applicable supports, and addresses identified teacher and student needs.

(x) Participatory budgeting process shall mean a process by which CSI schools, beginning with the 2019-2020 school year, annually set aside and spend a designated amount of allowable funds in such school year, in an amount specified by the Commissioner and not to be less than \$2,000, for the purpose of funding projects that are proposed by and voted on by the students and families of the school through a process determined by the Commissioner. The project proposal period and subsequent final vote must occur annually within each CSI school and be organized in such manner as may be specified by the Commissioner, which shall include, at a minimum, guidance that the final

vote to determine the projects that are funded is open to all students and that the families of each student shall have a minimum of one vote per family.

(xi) Parent, staff, and student surveys means annual surveys of parents, staff, and students conducted by CSI and TSI schools, identified by the district and administered annually in a manner prescribed by the Commissioner that encourages stakeholder participation to provide schools with feedback on each of the following areas: Schoolwide Systems, Organization and Climate, School Leadership, Curriculum and Instruction, Social-Emotional Developmental Health, and Family Engagement for the purpose of providing data to support the development and amendments of the school comprehensive education plan.

(xii) Principal support report means a report to be completed by school districts with at least one CSI school that did not meet its Annual Achievement Progression target as defined in subparagraph (xiv) of this paragraph in which the school district identifies any areas in which the school district determines that it could more effectively support the leadership team(s) of its CSI school(s) based upon the specific needs of such school(s). The report is intended to provide summary information for the district and the State, and shall be consistent with Education Law sections 3012-c(10) and 3012-d(15) with respect to personally identifiable information.

(xiii) Principal needs assessment means a comprehensive assessment of the capacity of the district to support its school leadership team(s), that will be an additional required component of the District Needs Assessment in any Target District that has at least one CSI school that fails to meet its Annual Achievement Progression Target for two consecutive years, using such methodology and form as may be prescribed by the Commissioner. The results of such needs assessment shall be submitted to the

Department along with a plan to provide the necessary supports and resources identified by the assessment and the plan for support based upon the assessment.

(xiv) Annual Achievement Progression Target means:

(a) For elementary and middle schools, an increase between the school's performance in the current school year compared to the prior school year based on either the accountability measures described in subclause (1) or (2) of this clause for the all students group:

(1) both the Core Subject Performance Index and the Weighted Average Achievement Index as defined in subdivision (f) of this section; or

(2) the Mean Student Growth Percentile as defined in subparagraph (x) of paragraph (2) of this subdivision, using only the most current school year results compared only to the prior school year results; except that if a school receives a Mean Student Growth Percentile score of 50 or higher, the Annual Achievement Progression for such school shall be deemed an increase.

(b) For high schools, an increase between the school's performance in the current school year compared to the prior school year on one of the accountability measures described in either subclause (1), (2) or (3) of this clause for the all students group:

(1) Composite Performance Index computed pursuant to (f)(i)(a)(9) of this section;  
or

(2) the unweighted average of the Four-Year, Five-Year, and Six-Year Graduation Rates computed pursuant to clause (b) of subparagraph (i) of paragraph (2) of subdivision (f) of this section; or

(3) Notwithstanding the provisions of this clause, a school identified as a CSI school solely because of a Graduation Rate below 67 percent must show an increase on

the Average of the Four-Year, Five-Year, and Six-Year Graduation Rates computed pursuant to subclause (2) of this clause.

(xv) District comprehensive improvement plan means a district improvement plan, in such form and format as the Commissioner may prescribe, that Target Districts shall develop, in collaboration with stakeholders in accordance with the district's plan for shared decision making pursuant to the requirements of section 100.11 of this Part. The plan must include an analysis of the district's achievement of previous goals; be based upon data from the district, including but not limited to, the results of the district-level comprehensive needs assessment or school-level comprehensive needs assessments or progress needs assessments, and any additional data collected by the district; specify the accountability measures for which the district has been identified; identify initiatives that will be implemented to positively affect student learning and to address the accountability measures for which the district has been identified; identify resource inequities, which may include a review of school and school district budgeting; explicitly delineate the plan for annually increasing student performance through comprehensive instructional programs and services as well as enhancement of teacher and leader effectiveness, with a focus on the accountability subgroup(s) and measures for which the district and its schools have been identified; and be first implemented no later than the beginning of the first day of regular student attendance in the school year following the district's identification.

(c) Procedure for registration of public schools.

(1) A school district that seeks to register a public elementary, intermediate, middle, junior high school, or high school shall submit a petition for registration to the Board of Regents, in a form prescribed by the Commissioner and containing such

information as the Commissioner may require, no later than March 1 for schools opening in September of the next successive school year or, for those schools opening during a current school year, at least 90 days prior to the opening of such school, except that the Commissioner may waive this timeline for good cause.

(2) The Commissioner shall review the petition and shall recommend its approval to the Board of Regents if it is satisfactorily demonstrated that the school district has provided an assurance that the school will be operated in an educationally sound manner; is in compliance with applicable statutes, rules, and regulations relating to public schools; and will operate in accordance with applicable building codes and pursuant to a certificate of occupancy. No new public school will be recommended for registration by the Commissioner if, in the Commissioner's judgment, the establishment of such school would conflict with an approved plan for school district reorganization, except where it can be established to the satisfaction of the Commissioner that such school is essential to the educational welfare of the students.

(3) Where a school registered pursuant to this paragraph is in a Target District, the Commissioner shall determine the accountability status of the newly registered school based upon his or her review of the proposed educational program, including but not limited to such factors as: school mission, school administration and staff, grade configurations and groupings of students, zoning patterns, curricula and instruction, and facilities.

(4) In the event that a school district merges two or more schools or transfers organizational responsibility for one or more grades from one school to another, the school district shall inform the Commissioner, in a form prescribed by the Commissioner and containing such information as the Commissioner may require, no later than March

1 for schools opening in September of the next successive school year or, for those schools opening during a current school year, at least 90 days prior to the opening of such school, except that the Commissioner may waive this timeline for good cause. As a result of such changes, the Commissioner may adjust the accountability status of the affected schools to reflect such organizational changes.

(d) All registrations approved by the Board of Regents pursuant to this subdivision shall continue in effect unless revoked by the Board of Regents upon recommendation of the Commissioner after review of the registration, or the school district closes the school. In the event that a school district closes a registered school, the school district shall inform the Commissioner, in a form prescribed by the Commissioner and containing such information as the Commissioner may require, no later than March 1 for schools that it will not enroll students in September of the next successive school year, except that the Commissioner may waive this timeline for good cause.

(e) System of accountability for student success. Each school year, commencing with the 2017-2018 school year results, the Commissioner shall review the performance of all public schools and school districts in the State. The Commissioner shall determine whether such public schools shall be identified as a CSI or TSI school and/or whether each school district shall be identified as a Target District in accordance with the accountability criteria set forth in subdivision (f) of this section.

(f) Accountability system for schools and districts.

(1) Accountability system for elementary and middle schools.

(i) CSI school. An elementary/middle school shall be preliminarily identified as a CSI school using the following decision table, which combines the following measures of student performance for all students in the school: (1) Composite Performance; (2)

Student Growth; (3) Combined Composite Performance and Student Growth; (4) English Language Proficiency; (5) Academic Progress; and (6) Chronic Absenteeism. A school shall be preliminarily identified as a CSI school if one or more of the rows in the decision table are applicable to the school; provided that in order to be preliminarily identified using the decision table below, a performance level must be assigned at a minimum to the Combined Composite Performance and Student Growth measure and one or more of the following measures: English Language Proficiency, Academic Progress, and/or Chronic Absenteeism.

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

| <b><u>Composite Performance Level</u></b> | <b><u>Student Growth Level</u></b> | <b><u>Combined Composite Performance &amp; Growth Level</u></b> | <b><u>English Language Proficiency Level</u></b> | <b><u>Academic Progress Level</u></b> | <b><u>Chronic Absenteeism Level</u></b> |
|---|------------------------------------|---|--|---------------------------------------|---|
| Both Level 1                              |                                    | Level 1   | Any Level  | Any Level                             |   |
| Either Level 1                            |                                    | Level 1   | None*  | Any One of the Two is Level 1         |   |
| Either Level 1                            |                                    | Level 1   | Level 1  | Any Level                             |   |
| Either Level 1                            |                                    | Level 1   | Level 2  | Any Level 1                           |   |
| Either Level 1                            |                                    | Level 1   | Level 3 or 4                                     | Both Level 1                          |   |

\*\*None\*\* means there were not enough English language learners to meet the minimum n-size requirement.

(a) Composite Performance Level. For each public elementary/middle school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of subdivision (b) of this section, a Composite Performance Level using the results of ELA and Mathematics assessments in grades 3-8 and Science assessments for grades 4 and 8 shall be computed by the Commissioner in accordance with the following steps:

(1) The Commissioner shall first determine an ELA and a Mathematics Achievement Index for each public school in the State. The ELA and the Math Achievement Index is a number between 0-250 that is computed separately for ELA and math for a subgroup by summing the number of continuously enrolled students who scored at Level 2, plus the number of continuously enrolled students who scored at Level 3 multiplied by 2, plus the number of continuously enrolled students who scored at Level 4 multiplied by 2.5 (numerator) and dividing this result by the greater of the number of continuously enrolled students in the subgroup with valid test scores or 95% of continuously enrolled students (denominator). The result of this division is then multiplied by 100.

(2) The Commissioner shall then determine a Science Achievement Index for each public school in the State. The Science Achievement Index is a number between 0-250 that is computed for Science for a subgroup by summing the number of continuously enrolled students who scored at Level 2, plus the number of continuously enrolled students who scored at Level 3 multiplied by 2, plus the number of continuously enrolled students who scored at Level 4 multiplied by 2.5 (numerator), and dividing this result by the greater of the number of continuously enrolled students in the subgroup with valid test scores or 95% of continuously enrolled students (denominator). The result of this division is then multiplied by 100.

(3) The Commissioner shall then compute the Weighted Average Achievement Index, which is a number between 0-250 that is computed as the weighted average of the ELA, Mathematics, and Science achievement indices.

(4) The Commissioner shall then rank order schools based on their performance on the Weighted Average Achievement Index.

(5) Each elementary/middle school will then be assigned a Weighted Average Achievement Level from 1-4 based on such rank ordering using the table below:

| <b><u>Weighted Average Achievement Rank</u></b> | <b><u>Weighted Average Achievement Level</u></b> |
|---|--|
| 10% or Less                                     | 1  |
| 10.1 to 50%                                     | 2  |
| 50.1 to 75%                                     | 3  |
| Greater than 75%                                | 4  |

(6) The Commissioner shall then compute the Core Subject Performance Index, which is a number from 0-250 that is computed by summing for elementary/middle-level ELA, Mathematics, and Science, the number of continuously enrolled students who scored at Level 2, plus the number of continuously enrolled students who scored at Level 3 multiplied by 2, plus the number of continuously enrolled students who scored at Level 4 multiplied by 2.5 (numerator), and dividing this result by the number of valid test results for continuously enrolled students in ELA, Mathematics, and Science (denominator). The result of this division is then multiplied by 100 to determine the Index.

(7) The Commissioner shall then rank order schools by the Core Subject Performance Index.

(8) Each elementary/middle school will then be assigned a Core Subject Performance Level 1-4 based on such rank ordering using the table below:

| <b><u>Core Subject Performance Index Rank</u></b> | <b><u>Core Subject Performance Level</u></b> |
|---|--|
| 10% or Less                                       | 1  |
| 10.1 to 50%                                       | 2  |
| 50.1 to 75%                                       | 3  |
| Greater than 75%                                  | 4  |

(9) The Commissioner shall combine the results of the Weighted Average Achievement Level as calculated in subclause (5) with the Core Subject Performance Index Level as calculated in subclause (8) to create a Composite Performance Index.

The Composite Performance Index for elementary/middle schools is a calculation by which the results of the Weighted Average Achievement Level and the Core Subject Performance Index Level are combined to be used as a measure of academic achievement pursuant to subdivision (f) of this section. Provided that, for elementary/middle schools in the State with the same Composite Performance Index, the Commissioner shall rank order schools using the higher of the Weighted Average Achievement rank order as calculated in subclause (4) or the Core Subject Performance Index rank order as calculated in subclause (7) of this clause.

(10) The Commissioner shall then assign a Composite Performance Achievement Level from 1-4 for all schools based on the Composite Performance Index rank ordering described in subclause (9) of this clause using the table below:

| <u>Composite Performance Index Rank</u> | <u>Composite Performance Level</u> |
|---|------------------------------------|
| 10% or Less                             | 1                                  |
| 10.1 to 50%                             | 2                                  |
| 50.1 to 75%                             | 3                                  |
| Greater than 75%                        | 4                                  |

The resulting Composite Performance Level is then used in the table described in subparagraph (i) of paragraph (1) of subdivision (f) of this section as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(11) If the all students subgroup does not meet the minimum n size, as defined in paragraph (1) of subdivision (b) of this section, then the school shall be identified using the established process for small schools (self-assessment process), as described in paragraph (1) of subdivision (b) of this section.

(b) Student Growth Level. For each public elementary/middle school whose all students subgroup meets the minimum n-size requirements as defined in paragraph (1) of subdivision (b) of this section, a Student Growth Level will be determined in accordance with the following steps:

(1) A Mean Growth Percentile for the all students subgroup in each school shall be calculated by adding the student growth percentile scores for continuously enrolled students in grades 4-8 ELA to the student growth percentile scores for continuously enrolled students in grades 4-8 math for the current and the previous two school years, and dividing the result by the total number of student growth percentile scores in those grades/subjects and years.

(2) The Commissioner shall then create a rank ordered list of school performance based on the school's Mean Growth Percentile score.

(3) A Student Growth Level from 1-4 shall then be assigned to each school using the table below:

| <u>Mean Growth Percentile</u> | <u>Student Growth Level</u> |
|-------------------------------|-----------------------------|
| 45 or less                    | 1                           |
| 45.1 to 50                    | 2                           |
| 50.1 to 54                    | 3                           |
| Greater than 54               | 4                           |

(4) The resulting Student Growth Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of student performance to determine whether the school is preliminarily identified as a CSI school.

(c) Combined Composite Performance and Growth Level. For each public elementary/middle school meeting the minimum n-size requirement as defined in

paragraph (1) of subdivision (b) of this section, a Combined Composite Performance and Student Growth Level shall be computed by the Commissioner in accordance with the following steps:

(1) The Commissioner shall generate a combined Composite Performance and Student Growth rank ordered list by summing a school's Composite Performance Index final rank order as described in subclause (9) of clause (a) of this subparagraph and the school's Student Growth rank order as described in clause (b) of this subparagraph.

(2) If there is no Student Growth Level for the school because the all students subgroup did not meet the minimum n size for the Student Growth measure, then the Combined Composite Performance and Student Growth Level shall be determined using the Composite Performance Level only.

(3) A Combined Composite Performance and Student Growth Level from 1-4 shall then be assigned to each school based on the school's placement on a rank ordered list in comparison with other schools in accordance with the following table:

| <b><u>Rank Based on Combined Composite Performance and Student Growth</u></b> | <b><u>Level</u></b> |
|---|---------------------|
| In the lowest 10%   | 1                   |
| Between 10.1% and 50%   | 2                   |
| Between 50.1 and 75%  | 3                   |
| In the highest 75%  | 4                   |

(4) The resulting Combined Composite Performance and Student Growth Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(d) English Language Proficiency Level. For each public elementary/middle school meeting the minimum n-size requirements as defined in paragraph (1) of

subdivision (b) of this section, the Commissioner shall compute an English Language Proficiency Level in accordance with the following steps:

(1) The Commissioner shall first determine an initial level of proficiency and the corresponding years that the student was identified as an English Language Learner based upon the student's performance on the NYSESLAT in the initial year of identification as an English Language Learner pursuant to Part 154 of this Title.

(2) The Commissioner shall then determine progress rates for each student based on the years that the student has been identified as an English language learner and the level achieved on the NYSESLAT in the first year in which the student was identified as an English Language Learner pursuant to Part 154 of this Title.

(3) The Commissioner shall then calculate each school's success ratio based on all continuously enrolled students' results compared to continuously enrolled students' progress rates, as determined by the Commissioner. Utilizing this information, each school shall then be assigned an English Language Proficiency Level from 1-4 in accordance with the following table:

| <b><u>Success Ratio</u></b> | <b><u>English Language Proficiency Level</u></b> |
|-----------------------------|--|
| 0 - 0.49                    | 1  |
| 0.50 - 0.99                 | 2  |
| 1.0 - 1.24                  | 3  |
| 1.25+                       | 4  |

(5) The resulting English Language Proficiency Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school shall be preliminarily identified as a CSI School.

(e) Academic Progress Level. For each public elementary/middle school meeting the minimum n-size requirement as defined in paragraph (1) of subdivision (b) of this section, the Commissioner shall compute an Academic Progress Level in accordance with the following steps:

(1) The Commissioner shall calculate separate ELA and Mathematics Academic Achievement Indices from 0-250 for the all students subgroup in the school.

(2) The Commissioner shall then determine a separate State MIP and Long-term goal for ELA and Mathematics.

(3) The Commissioner shall determine a separate school MIP in ELA and in Mathematics.

(4) The Commissioner shall then assign an Academic Progress Level in ELA from 1-4 using the table below based on each of the following: whether or not the school's ELA Academic Achievement Index met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school's MIP.

(5) The Commissioner shall then assign an Academic Progress Level in Mathematics from 1 to 4 using the table below based on each of the following: whether or not the school's Mathematics Academic Achievement Index met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP and/or, (3) the school's MIP.

|                                   | <u>Did Not Meet Long-Term Goal</u> | <u>Met Long-Term Goal</u> | <u>Exceeded Long-Term Goal</u> |
|-----------------------------------|------------------------------------|---------------------------|--------------------------------|
| Did not meet either MIP           | Level 1                            | N/A                       | N/A                            |
| Met lower of State or School MIP  | Level 2                            | Level 3                   | Level 4                        |
| Met higher of State or School MIP | Level 3                            | Level 4                   | Level 4                        |

(6) The Commissioner shall then average the ELA Academic Progress Level assigned in subclause (4) of this clause and the Mathematics Academic Progress Level assigned in subclause (5) of this clause. The resulting average Academic Progress Level will be rounded down to the nearest whole number that represents the level that will be used and an Academic Progress Level from 1-4 will be assigned. The resulting Academic Progress Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI School.

(7) Notwithstanding the Academic Progress Level resulting from the table above, using the all students subgroup's baseline performance as measured by the previous school year test results, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but increases the Achievement Index by an amount at least equal to the difference between the higher of the school's current year MIP and prior year MIP or the current year State MIP and prior year State MIP, the all students subgroup will be assigned an Academic Progress Level 2. Provided further that, if the all students subgroup meets either but not both of the school and State MIP for that subgroup and makes progress that is equivalent to at least three times the difference between the lower of the school specific current and prior year MIPs and the State current and prior year MIPs for that subgroup, but if such progress is insufficient for the subgroup to meet the higher of the State or school MIP or the Long-term goal, the all students subgroup will be assigned an Academic Progress Level 3.

(f) Chronic Absenteeism Level. For each public elementary/middle school meeting the minimum n-size requirement pursuant to subparagraph (xvii) of paragraph (1) of

subdivision (b) of this section, the Commissioner shall compute a Chronic Absenteeism Level in accordance with the following steps:

(1) The Commissioner shall first compute the school’s Chronic Absenteeism Rate, which means the number of students enrolled during the school year in a school for a minimum of ten instructional days and in attendance at least one of those days who were absent (excused or unexcused) for at least 10 percent of enrolled instructional days divided by the total number of students enrolled during the school year, expressed as a percentage. Suspensions are not counted as excused or unexcused absences, as suspended students are required to be provided with instruction while they are suspended. At the elementary/middle level, Chronic Absenteeism is calculated for grades 1-8 and ungraded age equivalent students.

(2) The Commissioner shall then determine a State MIP and Long-term goal for Chronic Absenteeism.

(3) The Commissioner shall also determine a school MIP for Chronic Absenteeism.

(4) The Commissioner shall then assign a Chronic Absenteeism Level from 1-4 based on whether the school’s Chronic Absenteeism Rate, as defined in this clause met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP. Utilizing this information, each school shall then be assigned a Chronic Absenteeism Level from 1-4 in accordance with the following table:

|                         | <b><u>Did Not Meet Long-Term Goal</u></b> | <b><u>Met Long-Term Goal</u></b> | <b><u>Exceeded Long-Term Goal</u></b> |
|-------------------------|---|----------------------------------|---------------------------------------|
| Did not meet either MIP | Level 1                                   | N/A                              | N/A                                   |
| Met lower MIP           | Level 2                                   | Level 3                          | Level 4                               |
| Met higher MIP          | Level 3                                   | Level 4                          | Level 4                               |

(5) The resulting Chronic Absenteeism Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(6) Notwithstanding the Chronic Absenteeism Level generated by the table above, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but decreases the Chronic Absenteeism Rate by an amount equal to the difference between the lower of the school's current year MIP and prior year MIP or the current year State MIP and prior year MIP for the all students subgroup, the all students subgroup will be assigned a Chronic Absenteeism Level 2. Provided further that, if the all students subgroup meets either but not both the school and State MIP for that subgroup and makes progress in decreasing the Chronic Absenteeism Rate that is equivalent to three times the difference between the lower of the school specific current and prior year MIP and the State current and prior year MIP for the all students subgroup, but if such progress is insufficient for the all students subgroup to meet the more rigorous of the State or school MIP or the State Long-term goal, the all students subgroup will be assigned a Chronic Absenteeism Level 3.

(7) Provided further that, notwithstanding the Chronic Absenteeism Level determined pursuant to paragraphs (4), (5) and (6), the Commissioner may assign a Chronic Absenteeism Level 1 to an all students subgroup whose chronic absenteeism rate is below a percent established by the Commissioner and the Commissioner may assign a Chronic Absenteeism Level 2 to an all students subgroup whose chronic absenteeism rate is at or above a percent established by the Commissioner.

(g) For feeder schools: The Weighted Average Achievement Index and Level, the Core Subject Performance Index and Level, the Composite Performance Index and Level,

and the Academic Progress Level of public schools, school districts, and charter schools serving grades 1 and/or 2, but not grade 3 or higher (hereafter referred to as "feeder schools") will be determined using backmapping. In school districts with such feeder schools and in school districts that accept grade 3 students from feeder schools in other school districts by contract, the grade 3 State assessment results for each feeder school student will be attributed to the feeder school as well as to the school in which the student took the assessment. The student's results will be attributed to a feeder school only if the student was continuously enrolled in the feeder school from BEDS day until the end of the school year in the highest grade served by the feeder school. For feeder schools, the Combined Composite Performance and Growth Level will be determined using the Elementary/Middle-Level ELA and Math Composite Performance Level only.

(ii) Targeted Support and Improvement (TSI) Elementary/Middle Schools. An elementary/middle school shall be preliminarily identified as a TSI school if the school meets the criteria for identification outlined in the table below for two consecutive school years for the same accountability subgroup, except that a school identified as a Priority or Focus School during the 2017-2018 school year may be identified, using 2017-2018 school year data only, if such school meets the criteria for identification as a TSI school beginning with the 2018-2019 school year.

(a) The decision table below combines multiple measures of performance for accountability subgroups in the school using the same methodology used to designate CSI schools pursuant to subparagraph (i) of this paragraph and using the following accountability measures: (1) Composite Performance; (2) Student Growth; (3) Combined Composite Performance and Student Growth; (4) English Language Proficiency; (5) Academic Progress; and (6) Chronic Absenteeism.

(b) The designations for TSI schools shall be based on the performance of accountability subgroups, as defined in paragraph (1) of subdivision (b) of this section and shall not include the performance of the all students accountability subgroup; provided that, in order to be preliminarily identified using the decision table below, a performance level must be assigned to, at a minimum, the Combined Composite Performance and Student Growth measure and one or more of the following measures: English Language Proficiency, Academic Progress, and/or Chronic Absenteeism.

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

| <b><u>Composite Performance Level</u></b> | <b><u>Student Growth Level</u></b> | <b><u>Combined Composite Performance &amp; Growth Level</u></b> | <b><u>English Language Proficiency Level</u></b> | <b><u>Academic Progress Level</u></b> | <b><u>Chronic Absenteeism Level</u></b> |
|---|------------------------------------|---|--|---------------------------------------|---|
| Both Level 1                              |                                    | Level 1   | Any Level  | Any Level                             |   |
| Either Level 1                            |                                    | Level 1   | None*  | Any One of the Two is Level 1         |   |
| Either Level 1                            |                                    | Level 1   | Level 1  | Any Level                             |   |
| Either Level 1                            |                                    | Level 1   | Level 2  | Any Level 1                           |   |
| Either Level 1                            |                                    | Level 1   | Level 3 or 4                                     | Both Level 1                          |   |

\*"None" means there were not enough English Language learners to meet the minimum n size requirement.

(c) If a school meets the identification criteria for both a CSI and TSI school, the school shall be designated as a CSI school; provided however that if in the year in which a CSI school is removed from CSI identification and such school meets the criteria for a TSI school, the school shall be designated as a TSI school.

(d) When the Commissioner creates a rank ordered list for the racial/ethnic subgroup for purposes of identification of TSI schools, one rank ordered list will be generated for all racial/ethnic groups combined.

(iii) TSI schools identified for additional support.

(a) Beginning with the 2018-2019 school year, for each year in which the Commissioner identifies CSI schools based on the performance of the all students subgroup in accordance with subparagraph (i) of paragraph (1) of subdivision (f) of this section, the Commissioner shall identify for additional targeted support any TSI school with a subgroup whose performance would have caused the school to be identified as a CSI school using the methods for identification specified in subdivision (f) of this section.

(b) Such school shall be identified for additional targeted support only if the school had been identified as a TSI school in the prior school year and remains so identified in the current school year.

(c) Notwithstanding the provisions of clause (a) of this subparagraph, in assigning Performance Levels for the purpose of determining whether the performance of a subgroup in a TSI school would have caused the school to be identified as a CSI school, the Commissioner shall:

(1) Assign to the subgroup the Weighted Average Achievement Level that would have been assigned to the all students subgroup with the same Weighted Average Achievement Index for purposes of identifying CSI schools.

(2) Assign to the subgroup the Core Subject Performance Index Level that would have been assigned to the all students subgroup with the same Core Subject Performance Index for purposes of identifying CSI schools.

(3) Assign to the subgroup the Composite Performance Achievement Level that would have been assigned to the all students subgroup with the same Weighted Average Achievement Level, Weighted Average Achievement Index ranking, Core Subject

Performance Index Level and Core Subject Performance Index ranking for purposes of identifying CSI schools.

(4) Assign to the subgroup the Student Growth Level that would have been assigned to the all students subgroup with the same Mean Student Growth Percentile for purposes of identifying CSI schools.

(5) Assign to the subgroup the Combined Composite Performance and Student Growth Level that would have been assigned to the all students subgroup with the same Combined Composite Performance and Growth rank for purposes of identifying CSI schools.

(6) For measures of English Language Proficiency; Academic Progress; and Chronic Absenteeism as defined in subdivision (b) of this section, the Commissioner shall use the State MIP and State Long-term goal applicable to the all students subgroup to determine the subgroup's performance level on these measures.

(2) Accountability system for high schools.

(i) CSI schools. A high school shall be preliminarily identified as a CSI school using the following decision table, which combines multiple measures of performance for all students in the school, as defined in paragraph (1) of subdivision (b) of this section, using the following accountability measures: (1) Composite Performance; (2) Graduation Rate; (3) Combined Composite Performance and Graduation Rate; (4) English Language Proficiency; (5) Academic Progress; (6) Chronic Absenteeism; and (7) College, Career, and Civic Readiness; provided that in order to be preliminarily identified using the decision table below a performance level must be assigned to, at a minimum, the Combined Composite Performance and Graduation Rate measure and one or more of the following measures: English Language Proficiency; Academic Progress; Chronic Absenteeism;

and/or College, Career, and Civic Readiness (“CCCR”). A school shall be preliminarily identified as a CSI school if it meets any of the conditions in the rows of the decision table below. Provided, however, that notwithstanding the table below, beginning with 2017-2018 school year graduation results, any public high school with a Four-Year Graduation Rate below 67 percent and a Five-Year or Six-Year Graduation Rate that is not at or above 67 percent will be preliminarily identified as a CSI school.

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

| <u>Composite Performance Level</u> | <u>Grad Rate Level</u> | <u>Combined Composite Performance &amp; Grad Rate Level</u> | <u>ELP Level</u> | <u>Progress Level</u>           | <u>Chronic Absenteeism Level</u> | <u>CCCR Level</u> |
|------------------------------------|------------------------|---|------------------|---------------------------------|----------------------------------|-------------------|
| Both Level 1                       |                        | Level 1   | Any Level        | Any Level                       |                                  |                   |
| Either Level 1                     |                        | Level 1   | None*            | Any One of the Three is Level 1 |                                  |                   |
| Either Level 1                     |                        | Level 1   | Level 1          | Any Level                       |                                  |                   |
| Either Level 1                     |                        | Level 1   | Level 2          | Any Level 1                     |                                  |                   |
| Either Level 1                     |                        | Level 1   | Level 3 or 4     | Any Two Level 1                 |                                  |                   |

\*“None” means there were not enough English Language Learners to meet the minimum n-size requirement.

(a) Composite Performance Level. For each public high school whose all students group, as an accountability subgroup defined in subparagraph (x) of paragraph (1) of subdivision (b) of this section, meets the minimum n-size requirements pursuant to paragraph (1) of subdivision (b) of this section, a Composite Performance Level using the results of the ELA, Mathematics, Science, and Social Studies assessments for the Accountability Cohort shall be computed by the Commissioner in accordance with the following steps:

(1) The Commissioner shall first calculate a Performance Index separately for ELA, Mathematics, Science, and Social Studies at the secondary level using the following formula for each subject:

(i) The sum of the number of students in the Accountability Cohort who scored at Level 2, plus the number who scored at Level 3 multiplied by 2, plus the number who scored at Level 4 multiplied by 2.5 (numerator), divided by the number of students in the Accountability Cohort as defined in paragraph (2) of subdivision (b) of this section (denominator). The result of this division is then multiplied by 100 to establish the Performance Index for each subject area.

(2) The Commissioner shall then combine the Performance Indices for ELA, Mathematics, Science, and Social Studies to calculate a Composite Performance Index in accordance with the following formula:

(i) The sum of the ELA Performance Index multiplied by three, plus the result of the Mathematics Performance Index multiplied by three, plus the result of the Science Performance Index multiplied by two, plus the result of the Social Studies Performance Index multiplied by one, divided by the sum of the multipliers used to make this calculation.

(3) The Commissioner shall then rank order schools based on their Composite Performance Index in accordance with subclause (2) of this clause, except that upon a finding of extenuating or extraordinary circumstances, the Commissioner may in creating the rank ordered list exclude from the rankings those schools that meet the criteria established in subparagraphs (vii) and (xviii) of paragraph (b) of this section as well as schools that are implementing a plan for school closure or phase out that has been approved by the Commissioner.

(4) The Commissioner shall then assign a Composite Performance Achievement Level for all schools based on the rank ordering described in subclause (3) of this clause using the table below:

| <u>Composite Performance Index Rank</u> | <u>Composite Performance Achievement Level</u> |
|---|--|
| 10% or Less                             | 1  |
| 10.1 to 50%                             | 2  |
| 50.1 to 75%                             | 3  |
| Greater than 75%                        | 4  |

\*The Commissioner may exclude from the rank ordered list schools defined in subparagraph (vii) of paragraph (1) of subdivision (b) of this section or schools defined in subdivision 8 of section 4001 of the Education Law.

The resulting Composite Performance Achievement Level is then used in the table described in subparagraph (i) of paragraph (2) of this subdivision as one of multiple measures of performance to determine whether the school shall be preliminarily identified as a CSI school.

(5) If the all students subgroup does not meet the minimum n size for the Composite Performance Achievement Level, as defined in paragraph (1) of subdivision (b) of this section, then the school shall be identified using the established self-assessment process, as described in paragraph (1) of subdivision (b) of this section.

(b) Graduation Rate Level. For each public high school meeting the minimum n-size requirement pursuant to paragraph (1) of subdivision (b) of this section, the Commissioner shall compute a Graduation Rate Level for the Four-Year, Five-Year, and Six-Year Graduation Rate, as applicable in accordance with the following steps:

(1) The Commissioner shall first determine a State MIP and Long-term goal based on the State Four-Year, Five-Year, and Six-Year Graduation Rate.

(2) The Commissioner shall also determine a school MIP based on the school's Four-Year, Five-Year, and Six-Year Graduation Rate.

(3) The Commissioner shall then assign a Graduation Rate Level from 1 to 4 based on the average of the school's Four-Year, Five-Year and Six-Year Graduation Rates, as available, based on whether or not the school met, exceeded, or failed to meet each of the following: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP for the Four-Year, Five-Year, and Six-Year Graduation Rate in accordance with the following table:

|                         | <u>Did Not Meet Long-Term Goal</u> | <u>Met Long-Term Goal</u> | <u>Exceeded Long-Term Goal</u> |
|-------------------------|------------------------------------|---------------------------|--------------------------------|
| Did not meet either MIP | Level 1                            | N/A                       | N/A                            |
| Met lower MIP           | Level 2                            | Level 3                   | Level 4                        |
| Met higher MIP          | Level 3                            | Level 4                   | Level 4                        |

(4) The Commissioner shall then average the Four-Year, Five-Year, and Six-Year Graduation Rate Level, as applicable to the school. The resulting average Graduation Rate Level will be rounded to the nearest level for a Graduation Rate Level from 1-4.

(5) The resulting Graduation Rate Level is then used in the table described in subparagraph (i) of paragraph (2) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(6) After the Graduation Rate Level has been assigned to the school, the Commissioner shall create a Graduation Rate rank order list by first rank ordering schools by Graduation Rate Level and then rank ordering schools by their average Graduation Rate within each level.

(7) Provided, however, that notwithstanding the table above, any public high

school with a graduation rate of 67 percent or below on the Four-Year Graduation Rate cohort that does not have a Five-Year or Six-Year Graduation Rate Cohort at or above 67 percent shall be preliminarily identified as a CSI school.

(8) Provided further that, notwithstanding the Graduation Rate Level generated by the table above, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but increases the graduation rate by an amount at least equal to the difference between the lower of the school's current year MIP and prior year MIP or the State's current year MIP and prior year MIP for the all students subgroup, the all students subgroup will be assigned a Graduation Rate Level 2. Provided further that, if the all students subgroup meets either but not both of the school and State MIP for the all students subgroup and makes progress that is at least equal to three times the difference between the lower of the school-specific current and prior year MIPs and the State's current and prior year MIPs for the all students subgroup, but if such progress is insufficient for the all students subgroup to meet the higher of the State or school MIP or the Long-term goal, the all students subgroup will be assigned a Graduation Rate Level 3.

(9) Provided further that, notwithstanding the Graduation Rate Level determined pursuant to paragraphs (7) and (8), the Commissioner may assign a Graduation Level 1 to an all students subgroup whose unweighted average Four-Year, Five-Year, and Six-Year graduation rates are below a percent established by the Commissioner and the Commissioner may assign a Graduation Level 2 to an all students subgroup whose unweighted average Four-Year, Five-Year, and Six-Year graduation rates is at or above a percent established by the Commissioner.

(c) Combined Composite Performance and Graduation Rate Level. For each public high school meeting the minimum n-size requirement as defined in paragraph (1) of subdivision (b) of this section, a Combined Composite Performance and Graduation Rate Level shall be computed by the Commissioner in accordance with the following steps:

(1) The Commissioner shall generate a combined Composite Performance and Graduation Rate rank ordered list by summing a school's Composite Performance Index rank order, as described in clause (a) of this subparagraph, and the school's Graduation Rate rank order as described in clause (b) of this subparagraph.

(2) A Combined Composite Performance and Graduation Rate Level from 1-4 shall then be assigned to each school based on the school's Combined Composite Performance and Graduation Rate ranking in accordance with the following table.

| <b><u>Rank Based on Combined Composite Performance and Graduation Rate Rankings</u></b> | <b><u>Combined Composite Performance &amp; Graduation Rate Level</u></b> |
|---|--|
| In the lowest 10%   | 1  |
| Between 10.1% and 50%   | 2  |
| Between 50.1 and 75%  | 3  |
| In the highest 75%  | 4  |

\*The Commissioner may exclude from the rank ordered list schools defined in subparagraph (vii) of paragraph (1) of subdivision (b) of this section or schools defined in subdivision 8 of section 4001 of the Education Law.

(3) The resulting Combined Composite Performance and Graduation Rate Level shall then be used in the table described in subparagraph (i) of paragraph (2) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school; provided that if the all students subgroup does not meet the minimum n size for the Graduation Rate measure, as defined in paragraph (1) of subdivision (b) of this section, then the Combined

Composite Performance and Graduate Rate Level will be determined using the Composite Performance Level only.

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

(1) The Commissioner shall first determine an initial level of proficiency and the corresponding years that the student was identified as an English Language Learner based upon the student's performance on the NYSESLAT in the initial year of identification as an English Language Learner pursuant to Part 154 of this Title.

(2) The Commissioner shall then determine progress rates for each student based on the years identified as an English language learner and the level achieved on the NYSESLAT in the first year in which the student was identified as an English Language Learner pursuant to Part 154 of this Title.

(3) The Commissioner shall then calculate each school's success ratio based on all continuously enrolled students' results compared to the continuously enrolled students' progress rates, as determined by the Commissioner. Utilizing this information, each school shall then be assigned an English Language Proficiency Level from 1-4 in accordance with the following table:

| <u>Success Ratio</u> | <u>English Language Proficiency Level</u> |
|----------------------|---|
| 0 - 0.49             | 1   |
| 0.50 - 0.99          | 2   |
| 1.0 - 1.24           | 3   |
| 1.25+                | 4   |

(4) The resulting English Language Proficiency Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school shall be preliminarily identified as a CSI school.

(e) Academic Progress Level. For each public high school meeting the minimum n-size requirement as defined in paragraph (1) of subdivision (b) of this section, the Commissioner shall compute an Academic Progress Level in accordance with the following steps:

(1) The Commissioner shall calculate separate ELA and Mathematics Academic Achievement Indices from 0-250 for the all students subgroup in the school.

(2) The Commissioner shall then determine a separate State MIP and Long-term goal for ELA and Mathematics.

(3) The Commissioner shall determine a separate school MIP in ELA and Mathematics.

(4) The Commissioner shall then assign an Academic Progress Level in ELA from 1-4 using the table below based on each of the following: whether or not the school's ELA Academic Achievement Index met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school's MIP.

(5) The Commissioner shall then assign an Academic Progress Level in Mathematics from 1-4 using the table below based on whether the school's Mathematics Academic Achievement Index met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP.

|  |   |                                  |                                       |
|--|---|----------------------------------|---------------------------------------|
|  | <b><u>Did Not Meet Long-Term Goal</u></b> | <b><u>Met Long-Term Goal</u></b> | <b><u>Exceeded Long-Term Goal</u></b> |
|--|---|----------------------------------|---------------------------------------|

|                                   |         |         |         |
|-----------------------------------|---------|---------|---------|
| Did not meet either MIP           | Level 1 | N/A     | N/A     |
| Met lower of State or School MIP  | Level 2 | Level 3 | Level 4 |
| Met higher of State or School MIP | Level 3 | Level 4 | Level 4 |

(6) The Commissioner shall then average the ELA Academic Progress Level assigned in subclause (4) of this clause and the Mathematics Academic Progress Level assigned in subclause (5) of this clause. The resulting average Academic Progress Level will be rounded down to the nearest whole number that represents the level that will be used and an Academic Progress Level from 1-4 will be assigned. The resulting Academic Progress Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(7) Notwithstanding the Academic Progress Level resulting from the table above, using the all students subgroup's baseline performance as measured by the previous school year test results, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but increases the Achievement Index by an amount at least equal to the difference between the higher of the school's current year MIP and prior year MIP or the current year State MIP and prior year State MIP, the all students subgroup will be assigned an Academic Progress Level 2. Provided further that, if the all students subgroup meets either but not both of the school and State MIPs for that subgroup and makes progress that is equivalent to at least three times the difference between the lower of the school-specific current and prior year MIPs and the State current and prior year MIPs for that subgroup, but if such progress is

insufficient for the subgroup to meet the higher of the State or school MIP or the Long-term goal, the all students subgroup will be assigned an Academic Progress Level 3.

(f) Chronic Absenteeism Level. For each public high school meeting the minimum n-size requirement pursuant to paragraph (1) of subdivision (b) of this section, the Commissioner shall compute a Chronic Absenteeism Level in accordance with the following steps:

(1) The Commissioner shall first compute the school's Chronic Absenteeism Rate, which means the number of students enrolled during the school year in a school for a minimum of ten instructional days and in attendance at least one of those days who were absent (excused or unexcused) for at least 10 percent of enrolled instructional days divided by the total number of students enrolled during the school year, expressed as a percentage. Suspensions are not counted as excused or unexcused absences, as suspended students are required to be provided with instruction while they are suspended. At the high school level, chronic absenteeism is calculated for grades nine-12 and ungraded age equivalent students.

(2) The Commissioner shall then determine a State MIP and Long-term goal for Chronic Absenteeism.

(3) The Commissioner shall also determine a school MIP for Chronic Absenteeism.

(4) The Commissioner shall then assign a Chronic Absenteeism Level from 1-4 based on whether the school's Chronic Absenteeism Rate, as defined in this clause met, exceeded, or failed to meet: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP. Each school shall then be assigned a Chronic Absenteeism Level from 1-4 in accordance with the following table:

|                         | <u>Did Not Meet Long-Term Goal</u> | <u>Met Long-Term Goal</u> | <u>Exceeded Long-Term Goal</u> |
|-------------------------|------------------------------------|---------------------------|--------------------------------|
| Did not meet either MIP | Level 1                            | N/A                       | N/A                            |
| Met lower MIP           | Level 2                            | Level 3                   | Level 4                        |
| Met higher MIP          | Level 3                            | Level 4                   | Level 4                        |

(5) The resulting Chronic Absenteeism Level is then used in the table described in subparagraph (i) of paragraph (1) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(6) Notwithstanding the Chronic Absenteeism Level generated by the table above, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but decreases the Chronic Absenteeism Rate by an amount equal to the difference between the lower of the school's current year MIP and prior year MIP or the current year State MIP and prior year MIP for the all students subgroup, the all students subgroup will be assigned a Chronic Absenteeism Level 2. Provided further that, if the all students subgroup meets either but not both the school and State MIP for that subgroup and makes progress toward decreasing the Chronic Absenteeism Rate that is equivalent to three times the difference between the lower of the school specific current and prior year MIP and the State current and prior year MIP for the all students subgroup, but if such progress is insufficient for the all students subgroup to meet the higher of the State or school MIP or the State Long-term goal, the all students subgroup will be assigned a Chronic Absenteeism Level 3.

(7) Provided further that, notwithstanding the Chronic Absenteeism Level determined pursuant to paragraphs (4), (5) and (6), the Commissioner may assign a Chronic Absenteeism Level 1 to an all students subgroup whose chronic absenteeism rate is below a percent established by the Commissioner and the Commissioner may

assign a Chronic Absenteeism Level 2 to an all students subgroup whose chronic absenteeism rate is at or above a percent established by the Commissioner.

(g) College, Career, and Civic Readiness Level. For each public high school meeting the minimum n-size requirement pursuant to paragraph (1) of subdivision (b) of this section, the Commissioner shall compute a College, Career, and Civic Readiness Index.

(1) The Index is calculated using the number of students in the 4-Year Graduation Rate Cohort as of June 30 of the reporting year plus any members of the English language learner subgroup who earn a Regents Diploma with a Seal of Biliteracy who are not members of the 4-Year Graduation Rate Cohort as the denominator.

(2) The numerator is the number of these students demonstrating success on specific college, career, and civic readiness using specific measures multiplied by the weighting (0.5 to 2.0) assigned to each of these measures in accordance with table below plus the number of students who earned a High School Equivalency diploma in the current reporting year and students who were members of the English language learner subgroup at the time of graduation who earned a Regents Diploma with a Seal of Biliteracy in the reporting year, regardless of whether or not they were in the 4-year Graduation Rate Cohort.

|  |            |
|--|------------|
| <p>In accordance with the provisions of Section 100.5 of this Part:<br/>           Regents Diploma with Advanced Designation<br/>           Regents or Local Diploma with CTE Technical Endorsement<br/>           Regents Diploma with Seal of Biliteracy<br/>           Regents Diploma and score of 3 or higher on an Advanced Placement exam<br/>           Regents Diploma and score of 4 or higher on an International Baccalaureate exam<br/>           Regents or Local Diploma and the passage of nationally certified Career and Technical Education (CTE) examination<br/>           Regents Diploma and high school credit earned through participation in dual enrollment (in high school and accredited college) course<br/>           Skills and achievement commencement credential as provided in section 100.6(a) of this Part and a Level 4 on the New York State Alternate Assessment for students with disabilities as defined in section 100.1(t)(2)(iv) of this Part.</p> | <p>2.0</p> |
|--|------------|

|   |     |
|---|-----|
| Annual ELL and earned Regents with Seal of Biliiteracy in current reporting year and not in 4-year graduation-rate cohort   |     |
| In accordance with the provisions of Section 100.5 of this Part:<br>Regents Diploma and high school credit earned through participation in an Advanced Placement course<br>Regents Diploma and high school credit earned through participation in an International Baccalaureate course<br>Regents Diploma with Career Development and Occupational Studies (CDOS) endorsement<br>Skills and achievement commencement credential as provided in section 100.6(a) of this Part and Level 3 on the New York State Alternate Assessment for students with disabilities as defined in section 100.1(t)(2)(iv) of this Part. | 1.5 |
| Regents or Local Diploma only in accordance with provisions of section 100.5 of this Part<br>Skills and achievement commencement credential as provided in section 100.6(a) of this Part and an achievement Level 2 on the NYSAA  | 1.0 |
| Annual high school equivalency diploma recipients<br>(included in numerator but not denominator)<br>New York State career development and occupational studies commencement credential as provided in section 100.6(b) of this Part.  | 0.5 |
| No high school diploma or high school equivalency diploma.  | 0   |

To determine the College, Career, and Civic Readiness Index, the numerator is divided by the denominator, and the result is multiplied by 100.

(3) The Commissioner shall then assign a College, Career, and Civic Readiness Level from 1 to 4 based on the table below and whether or not the College, Career, and Civic Readiness Index met, exceeded, or failed to meet each of the following: (1) the State Long-term goal, (2) the State MIP, and/or (3) the school MIP.

|                         | <u>Did Not Meet Long-Term Goal</u> | <u>Met Long-Term Goal</u> | <u>Exceeded Long-Term Goal</u> |
|-------------------------|------------------------------------|---------------------------|--------------------------------|
| Did not meet either MIP | Level 1                            | N/A                       | N/A                            |
| Met lower MIP           | Level 2                            | Level 3                   | Level 4                        |
| Met higher MIP          | Level 3                            | Level 4                   | Level 4                        |

(4) The resulting College, Career, and Civic Readiness Level is then used in the table described in subparagraph (i) of paragraph (2) of this subdivision as one of multiple measures of performance to determine whether the school is preliminarily identified as a CSI school.

(5) Notwithstanding the College, Career, and Civic Readiness Level generated by the table above, using the all students subgroup's baseline performance as measured by the previous school year test results, for purposes of the accountability designation, if the all students subgroup does not meet the lower of the State or school MIP but increases the College, Career, and Civil Readiness Index by an amount at least equal to the difference between the higher of the school's current year MIP and prior year MIP or the State current year MIP and prior year MIP, the all students subgroup will be assigned a College, Career, and Civic Readiness Level 2. Provided further that, if the all students subgroup meets either but not both of the school and State MIP for that subgroup and makes progress that is equivalent to at least three times the difference between the lower of the school-specific current and prior year MIPs and the State current and prior year MIPs for that subgroup, but if such progress is insufficient for the subgroup to meet the higher of the State or School MIP or the Long-Term Goal, the all students subgroup will be assigned a College, Career, and Civic Readiness Level 3.

(6) Provided further that, notwithstanding the College, Career, and Civic Readiness Level determined pursuant to paragraph (3), (4), and (5), the Commissioner may assign a College, Career, and Civic Readiness Level 1 to an all students subgroup whose College, Career, and Civic Readiness Index is below a benchmark established by the Commissioner and the Commissioner may assign a College, Career, and Civic

Readiness Level 2 to an all students subgroup whose College, Career, and Civic Readiness Index is at or above a benchmark established by the Commissioner.

(ii) Targeted Support and Improvement High Schools. A high school shall be preliminarily identified as a TSI school if the school meets the criteria for identification outlined in the table below for two consecutive school years for the same accountability subgroup, except that a school identified as a Priority or Focus School during the 2017-2018 school year may be identified, using 2017-2018 school year data only, if such school meets the criteria for identification as a TSI school beginning with the 2018-2019 school year.

(a) The decision table below combines multiple measures for accountability subgroups in the school using the same methodology used to designate CSI schools pursuant to subparagraph (i) of this paragraph and using the following accountability measures: (1) Composite Performance; (2) Graduation Rate; (3) Combined Composite Performance and Graduation Rate; (4) English Language Proficiency; (5) Academic Progress; (6) Chronic Absenteeism; and (7) College, Career, and Civic Readiness.

(b) The designations for TSI schools shall be based on the performance of accountability subgroups, as defined in paragraph (1) of subdivision (b) of this section and shall not include the performance of the all students accountability subgroup; provided that in order to be preliminarily identified using the decision table below a performance level must be assigned to, at a minimum, the Combined Composite Performance and Graduation Rate measure and one or more of the following measures: English Language Proficiency; Academic Progress; Chronic Absenteeism; and/or College, Career, and Civic Readiness.

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

| <b>Composite Performance Level</b> | <b>Graduation Rate Level</b> | <b>Combined Composite Performance &amp; Graduation Rate Level</b> | <b>English Language Proficiency Level</b> | <b>Progress Level</b>           | <b>Chronic Absenteeism Level</b> | <b>CCCR Level</b> |
|------------------------------------|------------------------------|---|---|---------------------------------|----------------------------------|-------------------|
| Both Level 1                       |                              | Level 1   | Any Level                                 | Any Level                       |                                  |                   |
| Either Level 1                     |                              | Level 1   | None*                                     | Any One of the Three is Level 1 |                                  |                   |
| Either Level 1                     |                              | Level 1   | Level 1                                   | Any Level                       |                                  |                   |
| Either Level 1                     |                              | Level 1   | Level 2                                   | Any Level 1                     |                                  |                   |
| Either Level 1                     |                              | Level 1   | Level 3 or 4                              | Any Two Level 1                 |                                  |                   |

\*"None" means that there are not a sufficient number of English Language Learners to meet the minimum n-size requirement.

(c) If a high school meets the identification criteria for both a CSI and TSI school, the high school shall be designated as a CSI school; provided however that if in the year in which a CSI school is removed from CSI identification and such school meets the criteria for a TSI school, the school shall be designated as a TSI school.

(d) When the Commissioner creates a rank ordered list for the racial/ethnic subgroup for purposes of identification of a TSI school, one rank ordered list will be generated for all racial/ethnic groups combined.

(iii) TSI High Schools identified for additional support.

(a) Beginning with the 2018-2019 school year, for each year in which the Commissioner identifies CSI schools based on the performance of the all students subgroup in accordance with subparagraph (i) of paragraph (1) of subdivision (f) of this section, the Commissioner shall identify for additional targeted support any TSI high school with a subgroup whose performance would have caused the school to be identified as a CSI school using the methods for identification specified in subdivision (f) of this section.

(b) Such high school shall be identified for additional targeted support only if the school had been identified as a TSI school in the prior school year and remains so identified in the current school year.

(c) Notwithstanding the provisions of clause (a) of this subparagraph, in assigning Performance Levels for the purpose of determining whether the performance of a subgroup in a TSI school would have caused the school to be identified as a CSI school, the Commissioner shall:

(1) Assign to the subgroup the Composite Performance Level that would have been assigned to the all students subgroup with the same Composite Performance Index for purposes of identifying CSI schools.

(2) Assign to the subgroup the Combined Composite Performance and Graduation Rate Level that would have been assigned to the all students subgroup with the same Combined Composite Performance and Graduation Rate ranking for purposes of identifying CSI schools.

(3) For the Graduation Rate, Academic Progress, Chronic Absenteeism, and the College, Career, and Civil Readiness measures, the Commissioner shall use the State MIPs and Long-term goals applicable to the all students subgroup to determine the subgroup's levels on these indicators.

(3) Target Districts.

(i) Any school district with one or more CSI or TSI schools identified pursuant to the provisions of this section shall be identified as a Target District.

(ii) Notwithstanding any other provision of this section to the contrary, the Commissioner shall apply the accountability measures for identification as a CSI or TSI

school to the school district as a whole, and if such district meets the criteria for identification as a CSI or TSI school, the district shall be identified as a Target District in accordance with the timelines and procedures prescribed in this section for identification of CSI schools and TSI schools.

(g) For each school preliminarily identified as a TSI school or CSI school, and for each school district preliminarily identified as a Target District pursuant to subdivision (f) of this section, the school district or charter school shall be given the opportunity to present to the Commissioner additional data and/or any relevant information concerning extenuating or extraordinary circumstances faced by the school or district that should be cause for the Commissioner not to identify the school as a CSI or TSI school or the district as a Target District.

(h) Public notification of identification as a CSI or TSI school or a Target District.

(1) Upon receipt of a designation as a CSI or TSI school or Target District, the board of education (in New York City, the chancellor or the chancellor's designee) or charter school board of trustees shall take appropriate action to notify the general public of the issuance of such designation. Such action shall include, but not be limited to, direct notification, within 30 days of receipt of the Commissioner's designation, in English and translated, when appropriate and to the extent practicable for the most frequently used languages in the district, into the recipient's native language or mode of communication, to persons in parental relation of children attending the school that it has been designated as a CSI or TSI school, or Target District and disclosure of such designation by the school district at the next public meeting of the local board of education or by the charter school board of trustees at the next public meeting.

(2) Each school year during which a school remains identified as a CSI or TSI school or Target District, 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 or charter school board of trustees shall provide direct notification to parents or other persons in parental relation to children attending the school or district, as applicable, that the school or district remains a CSI or TSI school or Target District, as applicable. 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 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.

(3) Notwithstanding the provisions of paragraphs (1) or (2) of this subdivision, in the event that a CSI 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 this section, the district may use a single notification to fulfill the annual public notification requirements of this section and section 100.19(c)(1)(ii) of this Part.

(i) Interventions. Beginning with accountability designations made on or after July 1, 2018, all CSI and TSI schools and Target Districts shall implement all interventions applicable to such designations under this subdivision. Provided, however, that a charter school identified as a CSI or TSI school shall not be required to implement the interventions applicable to the school accountability designation pursuant to this subdivision and, in lieu of such interventions, such identified charter school shall take such actions as are required by its charter authorizer pursuant to Article 56 of the Education Law consistent with the charter agreement that each charter school has with

its charter authorizer. Provided further, however, that any school identified as of June 30, 2018 as a priority or focus school pursuant to section 100.18 of this Part shall implement a school comprehensive education plan in the 2018-2019 school year that meets the requirements for such plan as specified in section 100.18 of this Part. Provided further that any school required to offer public school choice prior to July 1, 2018 pursuant to section 100.18 of this Part shall continue to permit any students to remain in the school to which they have transferred and provide transportation until such students have completed the highest grade level in the school to which such students have transferred, in the manner required by the provisions of section 120.3 of this Part.

(1) Interventions for CSI Schools.

(i) In the first school year in which the school is identified as a CSI school, the school must:

(a) participate in a comprehensive needs assessment conducted in accordance with subparagraph (ii) of paragraph (4) of subdivision (b) of this section;

(b) develop, in consultation with parents, school staff, and other stakeholders pursuant to section 100.11 of this Part, a school comprehensive education plan as defined in subparagraph (viii) of paragraph (4) of subdivision (b) of this section. Such plan shall:

(1) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee) and submitted for approval to the Commissioner by July 1 of the school year in which the plan is required to be implemented;

(2) be implemented no later than the first day of regular student attendance of the next school year after the school year in which the school was identified;

(3) be updated annually and incorporate the findings of the comprehensive needs assessment or progress needs assessment as applicable, and be implemented no later

than the first day of regular student attendance of each year that the school remains a CSI school;

(4) be made widely available through public means by either posting on the district's or school's website, if one exists, or displayed conspicuously within the school, according to such timeline as may be prescribed by the Commissioner;

(5) be developed in consultation with parents, school staff, and others pursuant to section 100.11 of this Part; and

(6) include a description of the goals, targets, and activities, and include timelines for the implementation of school-level evidence-based interventions and job-embedded professional development as defined in subparagraphs (v) and (ix) and of paragraph (4) of subdivision (b) of this section.

(c) limit incoming teachers transfers to teachers rated effective or highly effective pursuant to Education Law §3012-d by a school district in the previous school year, subject to collective bargaining as required under article 14 of the Civil Service Law, and require that any successor collective bargaining agreement authorize such transfers unless otherwise prohibited by law;

(d) establish a participatory budgeting process as defined in subparagraph (x) subparagraph (4) of subdivision (b) of this section or provide opportunities for parent and student engagement in a manner prescribed by the Commissioner;

(e) conduct parent, staff, and student surveys as defined in subparagraph (xi) of paragraph (4) of subdivision (b) of this section; and

(f) notify parents and the public of the school's designation as a CSI school in accordance with subdivision (i) of this section.

(ii) In the second school year of identification as a CSI school:

(a) except as otherwise provided in this subparagraph, the school shall continue to implement the requirements established by subparagraph (i) of this subdivision, including the school comprehensive education plan;

(b) obtain prior approval of the Commissioner for any significant modification to the school's approved comprehensive education plan;

(c) the principal must submit to the district on a quarterly basis a report of the leading indicators identified in the comprehensive education plan detailing the progress made toward meeting the goals set forth in the school's comprehensive education plan;

(d) any CSI school that has met or exceeded its Annual Achievement Progression targets, as defined in paragraph (4) of subdivision (a) of this section, in the first set of available annual assessment data following the school's identification will receive a progress needs assessment, which will inform the development of and/or any amendments or modifications to the school comprehensive education plan to be implemented in the following school year;

(e) Any CSI school that has not met or exceeded its Annual Achievement Progression targets, as defined in paragraph (4) of subdivision (a) of this section, in the first set of available annual assessment data following the school's identification, will receive either a progress needs assessment or a comprehensive needs assessment, as determined by the Commissioner and based on the needs of the school as exhibited by the most recent performance on the accountability measures. In addition to the needs assessment, as determined by the Commissioner, the district shall also submit a principal support report, as defined in subparagraph (xii) of paragraph (4) of subdivision (b) of this section;

(iii) In the third school year of identification as a CSI school:

(a) except as otherwise provided in this subparagraph, the school must continue to implement the requirements established by subparagraph (ii) of this paragraph, including the school comprehensive education plan;

(b) the principal must continue to submit to the district on a quarterly basis a report of the leading indicators identified in the comprehensive needs assessment detailing the progress made toward meeting the goals set forth in the school comprehensive education plan;

(c) Any CSI school that has met or exceeded its Annual Achievement Progression targets, as defined in paragraph (4) of subdivision (b) of this section, in both the first set of available annual assessment data following the school's identification and the second set of available data following identification, will receive a progress needs assessment, which will inform the development of and/or any modifications to the school comprehensive education plan to be implemented in the following school year. Provided that, if such school makes sufficient progress to be removed from the accountability designation as set forth in subdivision (j) of this section, such school shall be removed from the designation as a CSI school;

(d) Any CSI school that did not meet or exceed its Annual Achievement Progression targets as defined in paragraph (4) of subdivision (b) of this section, based on the first set of available annual assessment data following the school's identification, but did meet, or exceeded, its Annual Achievement Progression targets based on the second set of available annual assessment data, will receive either a progress needs assessment, which will inform the development of the comprehensive education plan to be implemented in the following school year.

(e) Any CSI that did not meet or exceed its Annual Achievement Progression target in the first and second set of available assessment data following the release of accountability determinations will receive a progress needs assessment or comprehensive needs assessment, as determined by the Commissioner and based on the needs of the school as exhibited by the most recent performance on the accountability measures. Provided that, if a progress needs assessment was conducted in previous year of identification, a comprehensive needs assessment must be completed. Any CSI school that did not meet its Annual Achievement Progression target in the first and second set of available assessment data following the release of accountability determinations will also be required to amend the current year's comprehensive education plan, and submit such amendment for the Commissioner's approval, within 60 days of the release of the school's Annual Achievement Progression results to identify how the school will partner with a BOCES, Regional Bilingual Educational Resource Network, Teacher Center, or other Regional Technical Assistance Center, or other technical assistance provider as determined by the Commissioner to support the implementation of its comprehensive education plan. Additionally, a Principal Needs Assessment, as defined in subparagraph (xiii) of paragraph (4) of subdivision (a) of this section, will be added to the District Needs Assessment process for any district with a CSI school that does not reach its Annual Achievement Progression targets for two consecutive years; and

(f) Any CSI school that met, or exceeded, its Annual Achievement Progression target as defined in paragraph (4) of subdivision (a) of this section, based on the first set of available annual assessment data following the school's identification, but did not meet its Annual Achievement Progression target based on the second set of available annual

assessment data, will receive either a progress needs assessment or a comprehensive needs assessment, as determined by the Commissioner and based on the needs of the school as exhibited by the most recent performance on the accountability measures. In addition to the needs assessment, as determined by the Commissioner, the district shall also submit a principal support report, as defined in paragraph (4) of subdivision (a) of this section.

(g) In any CSI school that has a decline in its Core Subject Performance Index for elementary/middle schools or its Composite Performance Index for high schools for the all students subgroup, as determined by the Commissioner, for two consecutive years, the school district must provide all students enrolled in the school with public school choice in accordance with section 120.1 and paragraph (4) of subdivision (b) of this section. Provided further that, in instances when there are no schools in Good Standing or TSI schools serving the grade levels served by the CSI school that is required to provide public school choice, the district shall ensure that the CSI school expends for Participatory Budgeting an amount equal to or greater than three times the amount expended by such school during the first year in which such school implemented Participatory Budgeting. The tripling of the amount to expend is considered to be a one-time action, and the school will be required to expend the resulting amount each year until it is no longer a CSI school (e.g., if district spent \$2,000 in Year 1, such amount is tripled to \$6,000 in Year 2, and the district must spend \$6,000 in Year 3 and each year thereafter until it is no longer a CSI school). In instances when there are schools within the school district that are in Good Standing or TSI but the district is unable to fulfill all of the public school choice transfer requests submitted on behalf of students from the CSI school because there are not enough available seats to accommodate all transfer requests

received, then the district must ensure that the CSI school expends for Participatory Budgeting an amount equal to or greater than at least two times the amount set aside at such school during the first year in which such school implemented participatory budgeting. The doubling of the amount to expend is considered to be a one time action, and the school will be required to expend the resulting amount each year until it is no longer a CSI school. Schools that are required to offer Public School Choice but were unable to do so and that instead fulfilled the annual participatory budgeting requirement identified in this subdivision through increasing opportunities for parent and student engagement as prescribed by the Commissioner will be required to provide additional opportunities for increased parent and student engagement in a manner prescribed by the Commissioner.

(iv) For any CSI school that is required to offer public school choice or increase the amount expended for Participatory Budgeting as outlined in clause (g) of subparagraph (iii), that school shall continue to provide all students enrolled in the school with public school choice during the period the school is identified as a CSI school. For schools that were unable to offer to public school choice as outlined in clause (g) of subparagraph (iii), and have fulfilled the annual participatory budgeting requirement described in this subdivision through an alternate means of increasing opportunities for parent and student engagement prescribed by the Commissioner will be required to continue to provide additional opportunities for increased parent and student engagement as outlined in clause (g) of subparagraph (iii) for each year the school is identified as a CSI school.

If a school's designation as a CSI school is removed, the school shall no longer be required to provide all students in the school with public school choice in the following

school year; provided further that any student receiving public school choice at the time the CSI designation is removed, shall continue to be provided the opportunity to remain in the school to which they have transferred and be provided with transportation until the student has completed the highest grade level in the school to which such students have transferred, in the manner required by the provisions of section 120.3 of this Part.

(v) Notwithstanding the provisions of this paragraph, a school district, on behalf of a transfer high school that has been identified as a CSI school, may petition the Commissioner to differentiate the required interventions for such transfer high school. Such petition may include, but need not be limited to, a request for one or more of the following:

(a) the school comprehensive education plan shall be subject to approval only by the district;

(b) a transfer high school shall not be required to offer public school choice;

(c) a transfer high school shall not be required to amend its school comprehensive education plan to partner with a BOCES, Regional Bilingual Educational Resource Network, Teacher Center, or other Regional Technical Assistance Center or other technical assistance provider as determined by the Commissioner to support the implementation of its school comprehensive education plan.

(vi) CSI Schools Identified as Persistently Struggling Schools, Struggling Schools and/or Schools Under Registration Review.

(a) Notwithstanding the provisions of subdivision (i) of this section, in the event that a CSI 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 this section, the district may use a single notification to fulfill the annual public notification requirements of this subdivision and section 100.19(c)(1)(ii) of this Part.

(b) For schools designated as struggling or persistently struggling pursuant to section 100.19 of this Part, in creating the school comprehensive education plan or in revising the department-approved 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.

(c) For schools that are identified as persistently struggling or struggling pursuant to section 100.19 of this Part, the requirements for the school 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.

(2) Interventions for TSI Schools.

(i) In the first school year of identification as a TSI school, and for every school year thereafter during which the school remains so identified, the school must:

(a) participate in a comprehensive needs assessment in the first year of identification and a comprehensive needs assessment or a progress needs assessment in subsequent years in which the school is identified;

(b) develop a school comprehensive education plan. Such plan shall:

(1) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee;

(2) be implemented no later than the first day of regular student attendance of the next school year after the school year in which the school was identified;

(3) be updated annually and incorporate the findings of the comprehensive needs assessment or progress needs assessment as applicable, and be implemented no later than the first day of regular student attendance of each school year that the school remains a TSI school;

(4) be made widely available through public means by either posting on the district's or school's website, if one exists, or displayed conspicuously within the school, according to such timeline as may be prescribed by the Commissioner;

(5) be developed in consultation with parents, school staff, and others pursuant to section 100.11 of this Part; and

(6) include a description of the goals, targets, and activities, and include timelines for the implementation of school-level evidence-based interventions and job-embedded professional development.

(3) Interventions for Target Districts.

(i) In the first year of identification as a Target District, and for every school year thereafter during which the district remains so identified, the district must:

(a) participate in a comprehensive needs assessment;

(b) develop a district comprehensive improvement plan. Such plan shall:

(1) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee);

(2) be implemented no later than the first day of regular student attendance of the next school year after the school year in which the district was identified;

(3) be updated annually and incorporate the findings of the comprehensive needs assessment;

(4) be made widely available through public means by either posting on the district's website, if one exists, or displayed conspicuously within the district, according to such timeline as may be prescribed by the Commissioner;

(5) be developed in consultation with parents, school staff, and others, consistent with the district plan pursuant to section 100.11 of this Part; and

(6) include a description of the goals, targets, and activities, and include timelines for the implementation of interventions and professional development that address the needs identified by the district and school needs assessments.

(c) for the second year of identification and each subsequent school year thereafter that the school district is identified as a Target District, obtain prior approval of the Commissioner for any significant modification of the district's comprehensive improvement plan;

(4) Interventions for schools with subgroups performing at Level 1 on an accountability measure.

(i) Any school with any accountability measure of Level 1 for any subgroup, as calculated pursuant to subdivision (f) of this section, that is not a CSI or TSI school shall:

(a) participate in a needs assessment, in a format as may be prescribed by the Commissioner, to determine the additional support that the school needs to improve performance. Such needs assessment must identify the academic achievement gaps between accountability subgroups within the school, the root causes for the gaps, and delineate the resources and strategies that the district will use to support the school to address such gaps.

(b) based on the needs assessment, in a format as may be prescribed by the Commissioner, the district, in consultation with parents, school staff, and other

stakeholders at the school, consistent with the district plan pursuant to section 100.11 of this Part, shall identify additional resources that the district will provide to the school to assist it to increase performance on the accountability measure for the identified group(s). Provided that in its consolidated application submitted to the Department, the district must identify the additional resources and professional development that the district will provide the school to improve performance.

(ii) Any TSI school that is identified for additional targeted support may be required to implement additional actions, as determined by the Commissioner, including submission of their annual school comprehensive education plan to the Commissioner for approval; partnering with a BOCES, Regional Bilingual Educational Resource Network, Teacher Center, or other Regional Technical Assistance Center, or other technical assistance provider; and/or implementing a participatory budgeting process. Districts with TSI schools identified for additional targeted support may be required to implement additional actions, as determined by the Commissioner, including submitting a principal support report.

(5) Interventions for schools that fail to demonstrate an assessment participation rate of 95 percent.

(i) Pursuant to paragraph (1) of subdivision (b) of this section, the Commissioner shall annually determine the participation rate for each accountability subgroup in each public school in which the subgroup has 40 or more students. The Commissioner shall determine that the subgroup has met the participation rate requirement if:

(a) the participation rate for the current year equals or exceeds 95 percent; or

(b) the weighted average of the current year and prior year participation rates equals or exceeds 95 percent;

(ii) Beginning with 2017-2018 and 2018-2019 school year results, any public elementary/middle or high school that has a Weighted Average Achievement Level of 1 or 2 and that fails to meet the required 95 percent participation rate for the same subgroup(s), in the same subject (i.e., ELA or math) for two consecutive years, and that fails to improve participation rate as compared to the previous year for the same subgroup(s) and subject(s), as determined by the Commissioner, must conduct a participation rate self-assessment and develop a participation rate improvement plan, in such form and according to such timeline as determined by the Commissioner. Such school participation rate self-assessment and improvement plan shall be developed in collaboration with a committee composed of the school principal or his/her designee(s); school staff, including teachers and student support staff selected by the representative collective bargaining organization(s), and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by school-related parent organizations; except that a school district may designate that a school-based management team established pursuant to section 100.11 of this Part or a community engagement team established pursuant to 100.19 of this Part may serve as the committee required by this paragraph. Such school plan must address participation of students from all subgroups for which the school has failed to meet the required 95 percent participation rate and failed to improve the participation rate as compared to the previous year. Such school plan must be adopted by the district Board of Education (in New York City, the chancellor or chancellor's designee), after consultation with the committee, no later than 60 days following notification to the district that such a plan is required. The Board of Education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public upon

adoption of the school plan; such action shall include, but not be limited to, publishing on the district website, if one exists, or direct notification, within 30 days of adoption, in English and translated, when appropriate, into the recipient's native language or mode of communication.

(iii) Beginning with 2018-2019 and 2019-2020 school year results, for any school that completed a school participation rate self-assessment and improvement plan in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s), as determined by the Commissioner, for which the plan was required, the district shall conduct a participation rate audit and develop an updated participation rate improvement plan. Such district participation improvement plan shall be developed in collaboration with a committee composed of the superintendent or his/her designee(s); the school principal or his/her designee(s); school staff, including teachers and student support staff selected by the representative collective bargaining organization(s); and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by district-related and/or school-related parent organizations. Such district plan must be adopted by the district board of education, no later than 60 days following notification to the district that such a plan is required. The board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public upon adoption of the school plan; such action shall include, but not be limited to, publishing on the district website, if one exists, or direct notification to the parents, within 30 days of adoption, in English and translated, when appropriate, into the recipient's native language or mode of communication.

(iv) Beginning with 2019-2020 and 2020-2021 school year results, for any school for which a district audit and district participation rate improvement plan was completed in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s), as determined by the Commissioner, for which the plan was required, the district must partner with a Board of Cooperative Educational Services (BOCES) or other technical assistance center to conduct a participation rate audit and develop an updated participation rate plan. Such participation rate improvement plan shall be developed in collaboration with a committee composed of BOCES staff, the superintendent or his/her designee(s); the school principal or his/her designee(s); school staff, including teachers and student support staff, no more than fifty percent of whom shall be selected by the representative collective bargaining organization(s); and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by district-related and/or school-related parent organizations. Such plan must be adopted by the district board of education no later than 60 days following notification to the district that such a plan is required. The board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public upon adoption of the school plan; such action shall include, but not be limited to, publishing on the district website, if one exists, or direct notification to the parents, within 30 days of adoption, in English and translated, when appropriate, into the recipient's native language or mode of communication.

(v) Beginning with 2020-2021 and 2021-2022 school year results, for any school for which an audit and participation rate improvement plan was completed pursuant to subparagraph (iv) of this paragraph in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s), as determined by the

Commissioner, for which the plan was required, the Department shall conduct an audit of the participation rate and the school may be required by the Commissioner to address recommendations contained in the participation rate audit.

(vi) Beginning with 2017-2018 and 2018-2019 school year results, for any public elementary/middle or high school that is required to develop a participation rate improvement plan and is among the lowest 10 percent of schools within the State for participation rate as determined by the Commissioner, the district must submit such plan for approval by the Commissioner no later than 60 days following notification to the district that such plan is required.

(vii) Notwithstanding the requirements of this subdivision, the Commissioner may make a determination that a school may be excused from development of a self-assessment and participation rate improvement plan if the school demonstrates extenuating or extraordinary circumstances that should cause the school to be so excused as determined by the Commissioner.

(viii) Any school that is required to conduct a self-assessment and develop a participation rate improvement plan shall be required to update such plan annually until the school is no longer failing to meet the 95 percent participation rate for any subgroup(s) and subject(s) which caused it to be required to conduct such self-assessment and develop such plan. For schools that have demonstrated improvement towards meeting the 95 percent participation rate requirement for the accountability group(s) for which such plan is required, the school shall not be required to conduct a new self-assessment or develop a new plan but instead shall be required to update its plan and/or provide the Department with an assurance that participation improvement strategies shall continue.

(j) Removal from accountability designation.

(1) For elementary/middle schools:

(i) To exit CSI status, a CSI elementary/middle school must, for two consecutive years, exceed the levels that would cause it to be identified for CSI status in each such school year.

(ii) Elementary/middle schools may exit CSI status if, for two consecutive years:

(a) The elementary/middle school's Composite Performance Level and Student Growth Level are both Level 2 or higher; or

(b) Both the Composite Performance Index and Mean Growth Percentile are higher than at the time of identification; and the Combined Composite Performance and Student Growth Level is a Level 2 or higher; and none of the following is Level 1: Academic Progress, English Language Proficiency, and Chronic Absenteeism.

(c) Notwithstanding any provision of this subdivision to the contrary, an elementary/middle school may also exit CSI status if such elementary/middle school is not on the new list of identified CSI schools that is created every third year, as a consequence of the school having improved performance on the measures used to identify such schools.

(d) Notwithstanding any provision of this subdivision to the contrary including clause (c) of this subparagraph, an elementary/middle school may not exit CSI status if the school is required to implement a participation rate plan improvement pursuant to paragraph (5) of subdivision (i) of this section and the school has performed at Level 1 on the Weighted Average Achievement Index for the all students group.

(iii) To exit TSI status, the performance of a TSI elementary/middle school must, for two consecutive years, be such that it would no longer be identified as a TSI School under the criteria listed in subdivision (f) of this section. For an elementary/middle school

to be removed from TSI status, all identified subgroups must meet the specified exit criteria. Provided that to be removed from designation as a TSI elementary/middle school, a school must not be identified for any accountability subgroup and the school may not be among those required to implement a participation rate improvement plan for the accountability subgroup(s) for which the school has been identified, except that this provision shall not apply to any accountability subgroup that performs at or above Level 2 on the Weighted Average Achievement Index.

(2) For high schools:

(i) High schools may exit CSI status if, for two consecutive years:

(a) The high school's Composite Performance Level and Graduation Rate Level are both Level 2 or higher; or

(b) Both the Composite Performance Index and average of the Four-Year, Five-Year, and Six-Year Graduation Rates are higher than at the time of identification; and the Combined Composite Performance and Graduation Rate Level is a Level 2 or higher; and none of the following are Level 1: English Language Proficiency; Academic Progress; Chronic Absenteeism; and College, Career, and Civic Readiness.

(c) Notwithstanding any provision of this subdivision to the contrary, a high school may also exit CSI status if such school is not on the new list of identified CSI schools that is created every third year as a consequence of the school having improved performance on the measures used to identify high schools.

(d) Notwithstanding any provision of this subdivision to the contrary, a high school may not exit CSI status if the school is required to implement a participation rate improvement plan.

(ii) To exit TSI status, the performance of a TSI high school must, for two consecutive years, be such that it would no longer be identified as a TSI school under subdivision (f) of this section. For a high school to be removed from TSI status, all identified subgroups must meet the specified exit criteria and the school shall not be among those required to implement a participation rate plan pursuant to this section. Provided that to be removed from the designation as a TSI school, a high school shall not be identified as a TSI school for any accountability subgroup.

(3) Provided that, any CSI school or TSI school which is identified for both the elementary and middle school, or the middle and high school, each identified grade span level must meet the exit criteria described in this subdivision.

(4) Provided further that, any elementary, middle, or high school that has been identified as a CSI school for three consecutive school years shall be preliminarily identified as a struggling school and subject to the provisions of section 100.19 of this Part.

(5) Provided further that any TSI elementary, middle or high school that continues to be identified for three consecutive school years after designation for additional targeted support for the performance of the same accountability subgroup(s) for which the school was identified for additional targeted support shall be preliminarily identified as a CSI school.

(6) Removal of designation as a Target District. A district may be removed from Target District status if:

(i) all of the schools in the district are in Good Standing; and

(ii) if the district has been identified as a Target District because of district-wide performance, the district's performance must, for two consecutive years, be such that it would no longer be identified as a Target District under subdivision (f) of this section.

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

(1) The Commissioner shall place under preliminary registration review those schools identified for receivership in accordance with section 100.19 of this Title; provided, however, that the Commissioner may also place under preliminary registration review any school identified as a CSI school in accordance with this section for at least three consecutive years.

(2) 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 a CSI school and shall be subject to all of the requirements of this section.

(3) The Commissioner may also place under preliminary registration review any school for which a school 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.

(4) For each school identified for preliminary registration review pursuant to paragraph (1) 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.

(5) For each school identified as a poor learning environment and placed under preliminary registration review pursuant to paragraph (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.

(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) of this subdivision, or identified as poor learning

environments pursuant to paragraph (2) of this subdivision, shall be placed under registration review.

(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 or chancellor's designee) 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, except that for a school identified as a poor learning environment pursuant to this paragraph the Commissioner need not inform the board of education of the actions that must be taken and/or the progress that must be demonstrated in order for the school to be removed from consideration for revocation of registration until the Commissioner has completed the review of the recommendations of the integrated intervention team.

(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 not be limited to, direct notification, within 30 days of receipt of the Commissioner's warning, in English and translated, when appropriate and to the extent practicable for the most frequently used languages in the district, into the recipient's native language or mode of communication, to persons in parental relation of students 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 30 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 students 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 student 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 or 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 this section and section 100.19(c)(1)(ii) of this Part.

(2) Schools with poor learning environments identified for registration review.

(i) Following the placement of a school under registration review pursuant to paragraph (2) of subdivision (k) of this section, 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 for his or her approval interventions based upon the reason for which the school was identified for registration review, which may include but need not be limited to whether the school should:

(a) continue to implement its current improvement plan or any interventions required under subdivision (h) of this section, as modified by recommendations of the integrated intervention team;

(b) implement a new intervention plan that addresses the recommendations of the integrated intervention team; or

(c) be phased out or closed.

(ii) 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 or intervention plan, a new intervention 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) of this subdivision. If the school fails for two consecutive years to take the actions or make the progress required by the Commissioner, the Commissioner may direct that the district submit a plan to implement one of the following actions:

(a) 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;

(b) for the city school district of the City of New York, enter 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; or

(c) close or phase out the 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.

(3) Receivership schools.

(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 the district submit a plan to take one of the following actions:

(a) 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;

(b) 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 or

(c) close or phase out the 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) CSI schools identified for registration review that are not struggling or persistently struggling schools.

(i) A school that is identified for registration review that has been identified as a CSI school that is not a struggling or persistently school pursuant to section 100.19 of this Part shall continue to implement its current improvement plan and/or any interventions required under this section. If the school fails for two consecutive years to take the actions or make the progress required by the Commissioner, the Commissioner may direct the district to submit a plan to take one of the following actions:

(a) 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;

(b) 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; or

(c) close or phase out the 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.

(5) In the event that a school district seeks to register a new school to replace a school under registration review that is being closed or phased out pursuant to paragraphs (2), (3), or (4) of this subdivision or to close and replace a struggling or

persistently struggling school pursuant to section 100.19 of this Part, the Commissioner may direct the school district to provide information in such format and according to such timeline as prescribed by the Commissioner that includes, but is not limited to, the following:

(i) an overview of the instructional design, programs, partnerships, and curriculum for the school that shall be opened and the timeline by which each of these elements shall be put in place, as well as the professional development that shall be provided to the staff members of the school;

(ii) the additional resources that will be provided to any schools to which students from the closing or phasing out school may be reassigned, as well as additional resources to ensure implementation of plans for any new school to be opened;

(iii) evidence that key stakeholder groups were involved in the decisions regarding the plan for the closure and opening of schools;

(iv) the process for identifying and appointing the leadership and staff of the new school, which must result in the selection of school leaders with a track record of success as school leaders and a staff that consists primarily of experienced teachers (i.e., at least three years of teaching experience) who are certified in the subject area(s) they will teach, have been rated Effective or Highly Effective pursuant to Education Law §3012-d in each of the past three years, and are not currently assigned to the school to be closed or phased out, unless approval has been granted by the Commissioner to waive any of these requirements, subject to collective bargaining as required under article 14 of the Civil Service Law, and require that any successor collective bargaining agreement authorize such appointments unless otherwise prohibited by law;

(v) evidence that the school's enrollment will not increase socio-economic and/or racial/ethnic isolation of students in the new school and the staff of the new school has been trained in culturally responsive-sustaining practices and can meet the needs of all students, including students with disabilities and English language learners/multilingual learners; and

(vi) the Commissioner may further direct that a district that seeks to register a new school to replace a school under registration review or a struggling or persistently struggling school that is being closed or phased out contract with an independent monitor to oversee the closure or phase process and the opening of the new school. The independent monitor shall be appointed by the Commissioner, in consultation with the superintendent of the school district, and shall report to the Commissioner according to such timeframe and in such manner as the Commissioner shall direct. The independent monitor shall be:

(a) a consultant to the school district, which shall pay for such services, but shall report to the Commissioner or her designee.

(b) serve on any committee(s) that are part of the process of hiring school leaders and staff for any school that shall be opened.

(c) shall neither have been an employee of the school district in the past two years, nor be engaged in any other work with the school district while serving as an independent monitor.

(vii) The Commissioner shall forward to the Board of Regents a petition to register a new school to replace a school under registration review or a persistently struggling or struggling school only upon a finding by the Commissioner that the school district has

submitted a plan to create a new and satisfactory educational environment for students and has the capacity to implement successfully such plan.

(6) 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, school 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.

(7) If the school has not taken the required actions to close or phase out a school as delineated by the Commissioner pursuant to paragraphs (2), (3), (4), or (5) 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 or chancellor's designee) shall be afforded notice of such recommendation and an opportunity to be heard in accordance with paragraph (9) of this subdivision.

(8) 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 students of the school is protected. Such plan shall specify the instructional program into which students 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 students. The Commissioner shall require the board of education to implement such plan.

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

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

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

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

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

(ii) Within 15 days of receiving notice of the recommendation to revoke registration, the board of education (in New York City, both the chancellor or chancellor's designee and any community school board having jurisdiction over the school) 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.

(iii) 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 the oral argument.

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

(1) 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.

(2) 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 (2) of subdivision (k) of this section, remain present in the school.

(3) In the event that a school placed under registration review prior to the 2018-2019 school year demonstrates that it has met its previously established progress targets pursuant to paragraph (p) of section 100.2 or section 100.18 of this Part, but is identified in the 2018-2019 school year as a CSI school pursuant to this section, the school shall remain under registration review and shall follow the intervention requirements pursuant to subdivision (i) of this section and meet the targets for removal from designation as a CSI school pursuant to subdivision (j) of this section, pursuant to a timeline prescribed by the Commissioner.

(4) In the event that a school placed under registration review prior to the 2018-2019 school year demonstrates that it has met its previously established progress targets pursuant to paragraph (p) of section 100.2 or section 100.19 of this Part, and is not

identified in the 2018-2019 school year as a CSI school pursuant to subdivision (g) of this section, the school shall be removed from registration review.

(5) In the event that a board of education either seeks to phase out or close a school under registration review or is required to close or phase out a school pursuant to paragraph (l)(3) of this section, the board of education (in New York City, the chancellor or chancellor's designee) shall submit for Commissioner's approval, a plan identifying the intervention that will be implemented and will result in phase out or closure, in the form and containing such content as prescribed by the Commissioner. The Commissioner will consider the academic impact of such phase out or closure on other schools within the school district and may grant approval of such plan provided that:

(i) 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);

(ii) a formal phase out or closure plan has been developed and approved in accordance with the requirements of the intervention prescribed by the Commissioner pursuant to subdivision (i) of this section; and

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

(m) Severability. If any provision of this section or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this section or the application thereof to other persons and circumstances.

7. Part 120 of the Regulations of the Commissioner of Education is amended, effective July 1, 2018, as follows:

Part 120. [No Child Left Behind Act of 2001] School Choice and Supplemental Educational Service Providers.

§ 120.1. [Purpose. The purpose of this Part is to implement key provisions of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, Public Law, section 107-110 (NCLB). The provisions of this Part shall be construed in a manner consistent with Federal law, and shall not be construed to create greater rights than are conferred under Federal law, except as specifically authorized by State statute.

§120.2. General definitions...

§120.3]. Title I public school choice.

(a) For school years prior to the 2018-2019 school year, [Each] each Title I LEA that has a Title I school in a Priority or Focus designation shall provide all students enrolled in the school the option to transfer to another public school served by the Title I LEA at the same grade level that is not a school identified as a persistently dangerous school pursuant to section 120.5 of this Part, or that is not a Priority or Focus School pursuant to section 100.18 of this Title, regardless of whether or not such school is receiving title I funds, to the extent required by section 1116(b)(1)(E) of the NCLB, 20 U.S.C. section 6316(b)(1)(E) (Public Law, section 107-110, section 1116(b)(1)(E), 115 STAT. 1479; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234); provided, however, that students enrolled in a school pursuant to public school choice under this section prior to the 2018-2019 school

year shall continue to be given the choice to enroll in such school until such student completes the highest grade level of the school to which the student transferred. For school years commencing with the 2018-2019 school year, schools required to provide students enrolled in the school with the option to transfer to another public school served by the Title I LEA at the same grade level pursuant to section 100.21(i) of this Title shall be required to comply with this section. Nothing in this section shall be construed to confer a right to transfer to a magnet school or special focus school having entrance requirements based on academic or other skills without meeting such requirements, or to transfer to a school where such transfer would violate health and safety code requirements or would otherwise be in violation of law. If more than one school served by the Title I LEA meets the requirements of this subdivision, the Title I LEA shall provide the parents or other persons in parental relationship to such students with a choice of more than one such school, and shall take into account the preferences of the parents or other persons in parental relationship among the choices offered by the Title I LEA.

(b) ...

(c) ...

(d) Transportation shall be provided to the school the student attends to the extent required by sections 100.18 100.21 of this Title and the provisions of section 1116(b)(9) and (13), 20 U.S.C. section 6316(b)(9) and (13) or the applicable provisions of the Education Law (Public Law, section 107-110, section 1116(b)(9) and (13), 115 STAT. 1486 and 115 STAT. 1487; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234).

(e) ...

(f) ...

(g) ...

[§120.4]. §120.2. Supplemental educational services...

[§120.5.] §120.3. Unsafe school choice. Each local educational agency shall ensure that any student who attends a persistently dangerous public elementary or secondary school, as determined by the [commissioner] Commissioner pursuant to subdivision (a) of this section, or who is a victim of a violent criminal offense, as defined pursuant to subdivision (b) of this section, that occurred on the grounds of a public elementary or secondary school that the student attends, shall be allowed to attend a safe public school at the same grade level within the local educational agency. For purposes of this section, a safe public school shall mean a public school that has not been designated by the [commissioner] Commissioner as a persistently dangerous public elementary or secondary school.

(a) Persistently dangerous schools. Pursuant to guidelines to be developed by the [commissioner] Commissioner in consultation with a representative sample of local educational agencies, the [commissioner] Commissioner shall determine which public elementary and secondary schools are persistently dangerous. A determination that a school is persistently dangerous shall be based upon objective information including, at a minimum, data submitted through the uniform violent incident reporting system, established pursuant to section 2802 of the Education Law, over a period of two years.

(1) On or before July 1st of each year commencing in 2003, the [commissioner] Commissioner shall annually notify the local educational agencies of those schools which the information described in this subdivision indicate may be persistently dangerous public elementary and secondary schools.

(2) Upon notification that a school has been identified for potential designation as a persistently dangerous public elementary or secondary school, the local educational agency shall be given the opportunity to present evidence to the [commissioner] Commissioner that conditions in the school do not unreasonably threaten the safety of students, that it has taken appropriate action or actions to improve safety at the school, and any other such evidence in support of its position that the school should not be designated as persistently dangerous. The [commissioner] Commissioner shall request local educational agencies to submit, by a date prescribed by the [commissioner] Commissioner, data for the current school year that is reportable under the uniform violent incident reporting system and is deemed necessary to make a final determination that a school should be designated as persistently dangerous. If a local educational agency fails to submit such data by such date, such final determination shall be based on data on file with the [commissioner] Commissioner.

(3) The [commissioner] Commissioner shall consider any evidence presented to him pursuant to paragraph (2) of this subdivision and shall notify the local educational agency no later than August 1st immediately following his initial notification of the final determination on whether the school has been designated as a persistently dangerous public elementary or secondary school.

(b) ...

(c) ...

(d) ....

(1) Where the [commissioner] Commissioner has determined that a school is a persistently dangerous public elementary or secondary school, the local educational agency shall notify the parents of, or persons in parental relation to, all students attending

such school of their right to transfer to a safe public school within the local educational agency and the procedures for such transfer. The local educational agency shall so notify the parents of, or persons in parental relation to, all such students no later than 10 days after such local educational agency has been advised that the [commissioner] Commissioner has determined that a school is a persistently dangerous public elementary or secondary school.

(2) ....

(e) Duration of unsafe school choice.

(1) The transfer of a student to a safe public school from a school that has been designated by the [commissioner] Commissioner as a persistently dangerous public elementary or secondary school pursuant to the provisions of this section may be either temporary or permanent, as determined by the local educational agency, provided, however, that a temporary transfer shall remain in effect at least as long as such student's transferring school continues to be identified as persistently dangerous, unless the parent or other person in parental relationship to the student requests that the student transfer back to the transferring school pursuant to paragraph (3) of this subdivision. In determining whether a transfer will be temporary or permanent, a local educational agency shall evaluate the educational needs of the student and any other relevant factors affecting such student's ability to succeed if returned to the transferring school, and shall make the transfer permanent if such evaluation indicates that a permanent transfer would be in the best educational interests of the student. For purposes of this subdivision, permanent transfer shall mean a transfer that ends when the student has completed the highest grade level in the school such student has transferred to, or when the parent or

other person in parental relationship to the student has requested that the student transfer back to the transferring school pursuant to paragraph (3) of this subdivision.

(2) ...

(3) ...

(f) When the [commissioner] Commissioner has designated a school of a local educational agency as a persistently dangerous public elementary or secondary school, or when a student has been the victim of a violent criminal offense that occurred on the grounds of a public elementary or secondary school that the student attends, it shall be the responsibility of such local educational agency, based on objective criteria, to designate a safe public school or schools within the local educational agency to which students may transfer. Nothing in this subdivision shall be construed to require a local educational agency to designate a safe public school where there are no other public schools within the local educational agency at the same grade level or such transfer to a safe public school within the local educational agency is otherwise impossible or to require a local educational agency that has only one public school within the local educational agency or only one public school at each grade level to make such a designation.

(g) ...

(h) In the event that a local educational agency fails to comply with the school choice provisions of this section or section 2802 of the Education Law, the parent or person in parental relation to a student attending a school that has been designated as persistently dangerous and the parent, or persons in parental relation to a student who is the victim of a violent criminal offense, may commence an appeal to the [commissioner] Commissioner pursuant to section 310 of the Education Law.

(i) Removal of persistently dangerous public elementary or secondary school designation. In the event that a local educational agency believes that a school has demonstrated the progress necessary to have its designation as a persistently dangerous public elementary or secondary school removed for the next school year, such local educational agency may petition the [commissioner] Commissioner to remove such designation by the date prescribed by the [commissioner] Commissioner. A school's designation as persistently dangerous shall not be removed if, in the [commissioner's] Commissioner's judgment, conditions that may contribute to a dangerous environment remain present at the school.

[§ 120.6. Qualifications of teachers and paraprofessionals.

(a) For the purpose of compliance with the NCLB, a local educational agency shall ensure that its teachers of core academic subjects are highly qualified in accordance with the requirements and definitions prescribed in 34 CFR 200.55, 200.56 (Code of Federal Regulations, revised as of July 1, 2003, title 34, volume 1, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001, 2003; available at the NYS Education Department, Office of Higher Education, 2M West Wing, Education Building, 89 Washington Avenue, Albany, NY 12234.) For the purpose of compliance with the Individuals with Disabilities Education Act (IDEA) and the NCLB, a local educational agency shall ensure that special education teachers who teach core academic subjects are highly qualified in accordance with 34 CFR 300.18 (Code of Federal Regulations, 2006 edition, title 34, section 300.18, Federal Register / Vol. 71, No. 156 / August 14, 2006 / pp. 46758-46759—Office of the Federal Register, National Archives and Records Administration, 800 North Capital Street, NW, Suite 700, Washington, DC 20001; available at the Office of Vocational and Educational Services for Individuals with

Disabilities, Room 1624, One Commerce Plaza, Albany, NY 12234). A local educational agency shall provide a teacher of core academic subjects who is not new to the profession the opportunity to meet the NCLB and IDEA requirements to be highly qualified, in part, through passing the high objective uniform State standard of evaluation (HOUSSE). The HOUSSE shall be an evaluation, prescribed by the department and conducted locally either during a pre-employment review or at the time of an annual professional performance review prescribed in section 100.2(o) of this Title, that enables a teacher who is beyond the first year of the effective date of the teacher's first teaching certificate, or in accordance with the provisions of 34 CFR 300.18, to demonstrate subject matter competency in all core academic

subjects that the teacher teaches. The evaluation shall be based upon objective, coherent information as prescribed by the department, and shall include, but not be limited to, information on the teacher's education, credentials, professional experience, and professional development.

(b) For the purpose of compliance with the NCLB, a local educational agency shall ensure that a paraprofessional who is hired by the LEA and works in a program supported with funds under Title I meets qualifications in accordance with the requirements of 34 CFR 200.58 (*Code of Federal Regulations*, revised as of July 1, 2003, title 34, volume 1, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001, 2003; available at the New York State Education Department, Office of Higher Education, 2M West Wing, Education Building, 89 Washington Avenue, Albany, NY 12234.)]

## **Attachment C**

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

On December 10, 2015, the Every Student Succeeds Act (ESSA) was signed into law by President Obama. This bipartisan measure reauthorized the 50-year-old Elementary and Secondary Education Act, which provides federal funds to improve elementary and secondary education in the nation's public schools and requires states and school districts, as a condition of funding, to take a variety of actions to ensure all children, regardless of race, income, background, or where they live, receive the education they need to prepare them for success in postsecondary education, careers, and citizenship. New York State receives approximately \$1.6 billion annually in funding through ESSA.

After an extensive, 18-month long public engagement process, the Department, with Board approval, submitted New York State's ESSA plan to the USDE for review on September 17, 2018. Subsequently, the Department met regularly with the USDE to provide clarifications on the plan. On January 17, 2018, the USDE approved the State's plan. In January 2018, the Department provided the Board of Regents with an update on the approved plan and in March 2018, the Department provided an update regarding the financial transparency requirements related to ESSA. In April 2018, the Department provided Board of Regents with a detailed summary of the proposed amendment and the Board of Regents voted to authorize Department staff to publish the proposed amendment in the State Register for the 60-day public comment period so that the Department had an opportunity to receive as much public comment as possible before adoption as an emergency rule for the 2018-2019 school year, as required under ESSA.

In order to implement the State's USDE approved ESSA Plan and to prepare for implementation of the plan beginning with the 2018-19 school year, a new section 100.21 and amendments to Commissioner's Regulations sections 100.2(ff), 100.2(m), 100.18, 100.19 and Part 120 were made to align the Commissioner's Regulations with the approved ESSA plan, relating to New York State's updated accountability system.

A Notice of Proposed Rulemaking was published in the State Register on May 9, 2018 and based on comments from the field, revisions were made to the proposed amendment. As a result, a Notice of Emergency Adoption and Revised Rule Making was published in the State Register on July 18, 2018. Based on comments received during the public comment period on the revised rule making, the Department recommends making further revisions to the regulation. Because the Board of Regents meets at scheduled intervals, the December 2018 Regents meeting is the earliest the proposed rule could be presented for adoption, after expiration of the 30-day public comment period required under the State Administrative Procedure Act for a revised rulemaking. However, since the 2018-2019 school year began on July 1, 2018 emergency adoption is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the June 2018 Regents and the revisions adopted at the September 2018 Regents meeting remain continuously in effect until the rule can be adopted as a permanent rule in order to timely implement New York State's approved ESSA plan, so that school districts may timely meet school/school district accountability requirements for the 2018-2019 school year and beyond, consistent with the approved ESSA plan and pursuant to statutory requirements. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its December 2018 meeting.

**ASSESSMENT OF PUBLIC COMMENT**

**Previously Published as Part of the June 2018 Board of Regents Item**

(COMMENT RECEIVED AS OF June 4, 2018)

Following publication of the Notice of Proposed Rule Making in the State Register on May 9, 2018 through June 4, 2018, the Department received the following comments on the proposed amendment:

1. COMMENT: A student should be credited as achieving Level 2 on the high school Composite Performance Level based on whether the student has met the graduation assessment in the subject as opposed to scoring at least 65 on the examination. This would ensure equal weighting for students with disabilities who are eligible for the safety net provision.

DEPARTMENT RESPONSE: No change necessary. ESSA requires that a uniform standard be applied to all students in computing Academic Achievement. It would be inconsistent with ESSA to define achievement levels differently for different groups of students.

2. COMMENT: The levels assigned to the ELP success ratio should be revised. The threshold would be a more reliable measure if the Success Ratio for Level 2 were 0.50 to 0.85 (or 0.90) and Level 3 were 0.86 to 1.24.

DEPARTMENT RESPONSE: No change necessary. The ELP success ratio has been designed so that schools that have below average performance receive Level 2.

3. COMMENT: The commenter indicates that the proposed regulation allows a single student to be counted multiple times to determine if there are 30 or more students.

The commenter recommends that there be a minimum of 80% of the students being counted only once for each of the 3 subject areas. This will prevent the situation where the results from a very small number of students over two years could result in a school meeting the minimum n-size of 30 for an accountability group.

DEPARTMENT RESPONSE: The computation of minimum n-size in the draft regulations is consistent with the requirements of ESSA and New York's approved ESSA plan. While it is true that a student may be calculated twice over a two-year period, the calculation used for minimum n-size was developed to strike a balance between ensuring reliability of the measure and maximizing the number of students for whom a school is held accountable. The Department does not believe a change is necessary.

4. COMMENT: Those who are at the 40th or 45th percentile should be assigned a Level 3 in the conversion chart so that 55 to 60% of the schools will be at Level 3 or 4 on measures such as Composite Performance or student growth.

DEPARTMENT RESPONSE: These measures have been designed so that schools that have below average performance receive Level 2. The Department does not believe that a school that performing at the 40<sup>th</sup> or 45<sup>th</sup> percentile should be assigned Level 3 because these percentiles mean that on average students in the accountability group have shown less growth than their peers. Therefore, no change is necessary.

5. COMMENT: It seems unfair to expect a newly arrived ELL to graduate within a four-year window. Perhaps there could be some leeway to examine the graduation of newly arrived ELLs within a different cohort for graduation and accountability purposes.

DEPARTMENT RESPONSE: Schools have flexibility to determine the appropriate grade to which to assign a newly arrived ELL. Once a student has been assigned to a high school cohort, ESSA does not allow for different rules to be applied to how the

graduation rate is computed for English language learners. However, New York uses a four-, five-, and six-year graduation rate for accountability purposes in recognition of the fact that some students will need more than four years to graduate from high school. The Department does not believe any change is warranted.

6. COMMENT: The College Career and Civic Readiness Index is based on the four-year graduation rate cohort. Although Skills and Achievement Commencement Credentials are included in the 2.0 weighting and 1.5 weightings, these students typically do not graduate in 4 years. They are most likely to attend school until they are 21. The commenter recommends that students with disabilities on track for a Skills and Achievement Credential should not be held to the four-year graduation criteria.

DEPARTMENT RESPONSE: Ungraded students with disabilities are included in the Accountability Cohort and the Four-Year, Five-Year, and Six-Year Graduation Rate Cohorts in the school year in which they attain the age of 17. The Department does not believe a change is warranted.

7. COMMENT: Several commenters expressed concern with the process by which the draft regulations were presented to the Board of Regents and believes that the Board should have seen and had the opportunity to review and discuss the full text of the proposed regulations prior to their publication as a proposed rulemaking in the State Register.

DEPARTMENT RESPONSE: At its April 2018 meeting, the Board of Regents was presented with a detailed summary of the proposed amendment and the Board of Regents voted to authorize Department staff to publish the proposed amendment in the State Register for the 60-day public comment period so that the Department had an opportunity to receive as much public comment as possible before adoption as an

emergency rule for the 2018-2019 school year, as required under ESSA. On April 24, the Board of Regents was provided with the materials filed with the Department of State for publication in the State Register, and as soon as the full text was finalized and posted on the Department's website on May 9, the text was made available to the Board of Regents. The Board of Regents will be presented with the full text for emergency adoption at the June 2018 meeting.

8. COMMENT: Several commenters expressed the position that the proposed ESSA regulations make a direct frontal assault on the rights of parents to opt-out their children from the state testing system. This is contrary to the intent of ESSA and good public policy. Further, a number of these provisions were never discussed in public and were not detailed in the summary provided to the Board of Regents at the April Regents meeting.

DEPARTMENT RESPONSE: ESSA requires that LEAs provide parents upon their request with information on any state or local policy or procedures and parental rights regarding student participation in mandated assessments, where applicable. ESSA also makes clear that it does not preempt any state or local law with regard to a parental decision regarding participation in State assessments. The proposed regulations, therefore, contain no provisions relating to the right of parents to opt their children out of the State assessment system.

ESSA requires that State assessments annually measure the achievement of not less than 95% of all students, and 95% of all students in each subgroup of students. Therefore, the proposed regulations, consistent with the requirements of ESSA and New York's approved plan, specify how academic achievement is computed and what the consequences are for schools when, for at least two consecutive years, fewer than 95%

of students in an accountability subgroup do not participate in the grades 3-8 English language arts or mathematics assessment.

9. COMMENT: In the plan that New York submitted to the United States Department of Education, Academic Achievement in elementary/middle ELA and math was to be computed using the higher of two ways of ranking performance: one using as the denominator the greater of the number of continuously enrolled students tested or 95% of the number of continuously enrolled students and the other using as the denominator the number of continuously enrolled students tested. However, in the proposed regulations, these two performance scores are added together to calculate the “Composite Performance Index.” This has the effect of lowering the “score” in schools with higher opt-out rates for the Composite Performance Index that is then used to identify schools for CSI and TSI status. The higher score will only be used as a “tiebreaker” when two schools have the identical Composite Performance Index score.

DEPARTMENT RESPONSE: This revision (to add the two performance scores together) was made to the State’s ESSA plan based on discussions with the United States Department of Education that ultimately led to approval of New York’s plan in January 2018. The proposed regulatory provisions conform to the State’s approved ESSA plan.

10. COMMENT: The proposed regulations establish an Academic Progress Index for each school. This Index is based on performance levels on the ELA and Math assessments using continuously enrolled students as the student count. This is a measure used to identify CSI and TSI schools. Several commenters expressed that this measure penalizes schools with opt-outs since it assumes all students are taking the state assessments.

DEPARTMENT RESPONSE: As indicated in the April summary of the proposed regulations, the Academic Progress Index is computed based upon the State long-term goals and Measures of Interim Progress (MIPs) in the schools. ESSA requires that goals and MIPs be computed using as the denominator for the computations the greater of the number of continuously enrolled students tested or 95% of the number of continuously enrolled students. These long-term goals and MIPs are computed using the above denominator as the baseline, thus taking into account that not all students participate in State assessments.

11. COMMENT: The proposed regulations provide that a school cannot exit CSI or TSI status if the school has a participation rate below 95 percent, regardless of all other indicators. This will block schools from exiting CSI or TSI status which otherwise have met performance targets set by SED.

DEPARTMENT RESPONSE: The proposed regulations provide that a school that is required to implement a participation rate improvement plan may not exit CSI or and may not exit TSI status if it is required to implement a participation rate improvement plan for an accountability group for which it has been identified as CSI. This provision is a modification of the existing more rigorous provisions pertaining to Priority and Focus Schools, which require that, in order to exit Priority or Focus status, the school must meet the 95% participation rate requirement for all groups for which the school is accountable for two consecutive years.

12. COMMENT: Several commenters expressed concern with the provision that permits the Commissioner to place under preliminary registration review (SURR) any school with “excessive percentages of students that fail to fully participate in the state assessment program.” This authority does not exist in the current SURR regs. If these

regulations are enacted the Commissioner would have the unilateral authority to close schools that have high opt-out rates but are otherwise high performing.

DEPARTMENT RESPONSE: These are not new requirements. Section 100.18(k)(3) of the Commissioner's regulations currently authorizes the Commissioner to place under registration review any school in "which excessive percentages of students fail to fully participate in the State assessment program," and a similar provision has existed in §100.2(p) for over a decade.

13. COMMENT: Several commenters expresses concerns with the provisions that permit the Commissioner to impose a financial penalty by requiring districts to set aside Title I funds if the participation rate on state tests do not improve by the third year. This provision was not included in the summary provided to the Regents at the April Regents meeting.

DEPARTMENT RESPONSE: This provision, which permits but does not mandate that the Commissioner require a set aside to increase student participation, is consistent with New York's approved ESSA plan and was referenced in the April Regents summary as follows:

"In the third year of identification, for any school for which a district audit and district participation improvement plan was completed in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s) for which the plan was required, the district must work with a Board of Cooperative Educational Services (BOCES) to conduct a participation rate audit and develop an updated participation rate plan."

"In the fourth year of identification, for any school for which a BOCES audit and BOCES participation improvement plan was completed in the previous school year

and that fails to improve its participation rates for the subgroup(s) and subject(s) for which the plan was required, the Department will conduct an audit of the participation rate and the school may be required by the Commissioner to undertake additional activities to raise student participation in State assessments.”

14. COMMENT: The proposed regulations require any new collective bargaining agreement to limit teachers transferring into a CSI school to those rated effective/highly effective. Many collective bargaining agreements contain provisions that govern the transfer of teachers. Several commenters expressed concern and believe that this provision of the draft regulations would impair these existing and long standing collective bargaining agreements by requiring that any future agreement preclude certain teacher transfers.

DEPARTMENT RESPONSE: The proposed regulation provides that any such requirement would not affect current CBAs and would only be applicable to the extent permitted by law. Therefore, this provision would not impair existing collective bargaining agreements. No change is warranted.

15. COMMENT: Districts that create a new school to replace a closed and restructured SURR/CSI school must select staff that consists “primarily” of experienced teachers (at least three years) who have been rated Effective/Highly Effective in each of the past three years and are not currently assigned to the school. Several commenters expressed concern and believe that this is an inappropriate intrusion into collective bargaining.

DEPARTMENT RESPONSE: This provision is consistent with current requirements in Commissioner’s regulations §100.18 for implementation of a whole school reform model, which currently requires that districts review “the quality of all staff

and retain only those who have the ability to be successful in the turnaround effort.” Nevertheless, in an effort to address the commenter’s concerns, the Department recommends revising the proposed amendment to make it clear that this provision shall not abrogate any existing collective bargaining agreement and that any new successor agreement shall authorize such appointments.

16. COMMENT: The committee that is established to develop the corrective action plan in schools with high opt-out rates must include teaching and support staff. However, beginning with the third year of a corrective action plan, only half the staff members can be selected by the bargaining unit. All staff should be selected by the respective bargaining units. Several commenters expressed concern and believe that it is inappropriate for the administration to select employees to serve on such committees.

DEPARTMENT RESPONSE: This provision is applicable only after a school has failed to improve its participation rate following two years of implementing a participation rate improvement plan. The intent is to allow districts to select teachers to participate in development of the next plan who may have new ideas for increasing participation rates. Therefore, the Department does not believe any change is warranted.

**ASSESSMENT OF PUBLIC COMMENT**

(COMMENT RECEIVED AS OF AUGUST 17, 2018)

Following publication of the Notice of Proposed Rule Making in the State Register on May 9, 2018 through August 17, 2018, the Department received the following comments on the proposed amendment. These comments include those listed in Attachment D that had been received between May 9 and June 4, but the Department's response has been updated in some instances:

1. COMMENT: A student should be credited as achieving Level 2 on the high school Composite Performance Level based on whether the student has met the graduation assessment in the subject as opposed to scoring at least 65 on the examination. This would ensure equal weighting for students with disabilities who are eligible for the safety net provision.

DEPARTMENT RESPONSE: No change necessary. ESSA requires that a uniform standard be applied to all students in computing Academic Achievement. It would be inconsistent with ESSA to define achievement levels differently for different groups of students.

2. COMMENT: The levels assigned to the ELP success ratio should be revised. The threshold would be a more reliable measure if the Success Ratio for Level 2 were 0.50 to 0.85 (or 0.90) and Level 3 were 0.86 to 1.24.

DEPARTMENT RESPONSE: No change necessary. The ELP success ratio has been designed so that schools that have below average performance receive Level 2.

3. COMMENT: The commenter indicates that the proposed regulation allows a single student to be counted multiple times to determine if there are 30 or more students. The commenter recommends that there be a minimum of 80% of the students being counted only once for each of the 3 subject areas. This will prevent the situation where the results from a very small number of students over two years could result in a school meeting the minimum n-size of 30 for an accountability group.

DEPARTMENT RESPONSE: The computation of minimum n-size in the draft regulations is consistent with the requirements of ESSA and New York's approved ESSA plan. While it is true that a student may be calculated twice over a two-year period, the calculation used for minimum n-size was developed to strike a balance between ensuring reliability of the measure and maximizing the number of students for whom a school is held accountable. However, the Department has made changes to the regulations to make it less likely that an elementary or middle school that has been assigned a Weighted Average Achievement Level will not be assigned a Core Subject Performance Level or a high school that is assigned a Composite Performance Level is not assigned a Graduation Rate Level. This has been accomplished by lowering the n-size to 15 for assignment of a Level in certain instances for the Core Subject Performance measure and the 4-, 5-, and 6-year Graduation Rate measures.

4. COMMENT: Those who are at the 40th or 45th percentile should be assigned a Level 3 in the conversion chart so that 55 to 60% of the schools will be at Level 3 or 4 on measures such as Composite Performance or student growth.

DEPARTMENT RESPONSE: These measures have been designed so that schools that have below average performance receive Level 2. The Department does not believe that a school performing at the 40th or 45th percentile should be assigned

Level 3 because these percentiles mean that on average students in the accountability group have shown less growth than their peers. Therefore, no change is necessary.

5. COMMENT: It seems unfair to expect a newly arrived ELL to graduate within a four-year window. Perhaps there could be some leeway to examine the graduation of newly arrived ELLs within a different cohort for graduation and accountability purposes.

DEPARTMENT RESPONSE: Schools have flexibility to determine the appropriate grade to which to assign a newly arrived ELL. Once a student has been assigned to a high school cohort, ESSA does not allow for different rules to be applied to how the graduation rate is computed for English language learners. However, New York uses a four-, five-, and six-year graduation rate for accountability purposes in recognition of the fact that some students will need more than four years to graduate from high school. The Department does not believe any change is warranted.

6. COMMENT: The College Career and Civic Readiness Index is based on the four-year graduation rate cohort. Although Skills and Achievement Commencement Credentials are included in the 2.0 weighting and 1.5 weightings, these students typically do not graduate in 4 years. They are most likely to attend school until they are 21. The commenter recommends that students with disabilities on track for a Skills and Achievement Credential should not be held to the four-year graduation criteria.

DEPARTMENT RESPONSE: Ungraded students with disabilities are included in the Accountability Cohort and the Four-Year, Five-Year, and Six-Year Graduation Rate Cohorts in the school year in which they attain the age of 17. The Department does not believe a change is warranted.

7. COMMENT: Several commenters expressed concern with the process by which the draft regulations were presented to the Board of Regents and believes that the Board should have seen and had the opportunity to review and discuss the full text of the proposed regulations prior to their publication as a proposed rulemaking in the State Register.

DEPARTMENT RESPONSE: At its April 2018 meeting, the Board of Regents was presented with a detailed summary of the proposed amendment and the Board of Regents voted to authorize Department staff to publish the proposed amendment in the State Register for the 60-day public comment period so that the Department had an opportunity to receive as much public comment as possible before adoption as an emergency rule for the 2018-2019 school year, as required under ESSA. On April 24, the Board of Regents was provided with the materials filed with the Department of State for publication in the State Register, and as soon as the full text was finalized and posted on the Department's website on May 9, the text was made available to the Board of Regents. The Board of Regents was presented with the full text for emergency adoption at the June 2018 meeting.

8. COMMENT: Several commenters expressed the position that the proposed ESSA regulations make a direct frontal assault on the rights of parents to opt-out their children from the state testing system. Commenters expressed the position that the Department should not seek to punish schools where parents and student exercise their right to opt out, and they strongly encouraged the Department to remove this provision in the draft regulations and respect parents' and students' rights to opt out. According to the commenters, creating new high stakes consequences for schools with high opt out rates is a significant step in the wrong direction. Several commenters stated

that all educational factors in a school should be used when assessing its effectiveness rather than primarily focusing on one assessment. This is contrary to the intent of ESSA and good public policy. Further, a number of these provisions were never discussed in public and were not detailed in the summary provided to the Board of Regents at the April Regents meeting.

DEPARTMENT RESPONSE: ESSA requires that LEAs provide parents upon their request with information on any state or local policy or procedures and parental rights regarding student participation in mandated assessments, where applicable. ESSA also makes clear that it does not preempt any state or local law with regard to a parental decision regarding participation in State assessments. The proposed regulations, therefore, contain no provisions relating to the right of parents to opt their children out of the State assessment system.

In a letter received by the Department on August 23, 2018, Mr. Patrick Rooney, Deputy Director of the USDE's Office of State Support, reiterated that each state and local educational agency "must implement a set of high-quality, yearly, academic assessments that includes at a minimum, assessments in mathematics, reading/language arts, and science to all public elementary and secondary school students....This requirement does not permit certain students or a specific percentage of students to be excluded from assessments. Rather it sets out the rule that all students in tested grades must be assessed." ESSA requires that State assessments annually measure the achievement of not less than 95% of all students, and 95% of all students in each subgroup of students. Therefore, the proposed regulations, consistent with the requirements of ESSA and New York's approved plan, specify how academic

achievement is computed and what the consequences are for schools when, for at least two consecutive years, fewer than 95% of students in an accountability subgroup do not participate in the grades 3-8 English language arts or mathematics assessment.

9. COMMENT: In the plan that New York submitted to the United States Department of Education, Academic Achievement in elementary/middle ELA and math was to be computed using the higher of two ways of ranking performance: one using as the denominator the greater of the number of continuously enrolled students tested or 95% of the number of continuously enrolled students and the other using as the denominator the number of continuously enrolled students tested. However, in the proposed regulations, these two performance scores are added together to calculate the “Composite Performance Index.” This has the effect of lowering the “score” in schools with higher opt-out rates for the Composite Performance Index that is then used to identify schools for CSI and TSI status. The higher score will only be used as a “tiebreaker” when two schools have the identical Composite Performance Index score.

DEPARTMENT RESPONSE: This revision (to add the two performance scores together) was made to the State’s ESSA plan based on discussions with the United States Department of Education that ultimately led to approval of New York’s plan in January 2018. The proposed regulatory provisions conform to the State’s approved ESSA plan.

10. COMMENT: The proposed regulations establish an Academic Progress Index for each school. This Index is based on performance levels on the ELA and Math assessments using continuously enrolled students as the student count. This is a measure used to identify CSI and TSI schools. Several commenters expressed that this

measure penalizes schools with opt-outs since it assumes all students are taking the state assessments.

DEPARTMENT RESPONSE: As indicated in the April summary of the proposed regulations, the Academic Progress Index is computed based upon the State long-term goals and Measures of Interim Progress (MIPs) in the schools. ESSA requires that goals and MIPs be computed using as the denominator for the computations the greater of the number of continuously enrolled students tested or 95% of the number of continuously enrolled students. These long-term goals and MIPs are computed using the above denominator as the baseline, thus taking into account that not all students participate in State assessments.

11. COMMENT: The proposed regulations provide that a school cannot exit CSI or TSI status if the school has a participation rate below 95 percent, regardless of all other indicators. This will block schools from exiting CSI or TSI status which otherwise have met performance targets set by SED.

DEPARTMENT RESPONSE. The regulations have been revised so that schools can be removed from TSI and CSI status so long as the accountability group(s) for which the school is required to do a participation rate improvement plan are not performing at Level 1 on the Weighted Average Achievement measure.

12. COMMENT: Several commenters expressed concern over the provision that permits the Commissioner to place under preliminary registration review (SURRE) any school with “excessive percentages of students that fail to fully participate in the state assessment program.” This authority does not exist in the current SURRE regs. If these regulations are enacted the Commissioner would have the unilateral authority to close schools that have high opt-out rates but are otherwise high performing.

DEPARTMENT RESPONSE: In response to public comment received, the regulations have been revised to remove this provision. However, to be clear, the comment is inaccurate in its characterization of this provision of the regulations. These are not new requirements. Section 100.18(k)(3) of the Commissioner's regulations currently authorizes the Commissioner to place under registration review any school in "which excessive percentages of students fail to fully participate in the State assessment program," and a similar provision has existed in §100.2(p) for over a decade.

13. COMMENT: Several commenters expressed concerns with the provisions that permit the Commissioner to impose a financial penalty by requiring districts to set aside Title I funds if the participation rate on state tests do not improve by the third year. This provision was not included in the summary provided to the Regents at the April Regents meeting.

DEPARTMENT RESPONSE: In response to public comment received, the regulations have been revised to remove this provision. However, to be clear, the comment is inaccurate in its characterization of this provision of the regulations. This provision permitted, but did not mandate, that the Commissioner require a set aside to be used to increase student participation, and the set aside was not a financial penalty, but rather represented the possibility of the school district redirecting funds for this purpose.

However, in response to public comment received, this provision has been removed and a new provision has been substituted, which provides that for any school for which the Department conducts an audit based on a minimum of five years of low

participation rates, the school may be required to undertake additional activities to raise student participation rates on State assessments.

14. COMMENT: The proposed regulations require any new collective bargaining agreement to limit teachers transferring into a CSI school to those rated effective/highly effective. Many collective bargaining agreements contain provisions that govern the transfer of teachers. This provision of the draft regulations would impair these existing and long-standing collective bargaining agreements by requiring that any future agreement preclude certain teacher transfers.

DEPARTMENT RESPONSE: The proposed regulation provides that any such requirement would not affect current collective bargaining agreements (CBAs) and would only be applicable to the extent permitted by law. Therefore, this provision would not impair existing CBAs. No change is warranted.

15. COMMENT: Districts that create a new school to replace a closed and restructured SURR/CSI school must select staff that consists “primarily” of experienced teachers (at least three years) who have been rated Effective/Highly Effective in each of the past three years and are not currently assigned to the school. Several commenters expressed concern and believe that this is an inappropriate intrusion into collective bargaining.

DEPARTMENT RESPONSE: This provision is consistent with current requirements in Commissioner’s regulations §100.18 for implementation of a whole school reform model, which currently requires that districts review “the quality of all staff and retain only those who have the ability to be successful in the turnaround effort.” The emergency regulations adopted in June make it clear that this provision shall not

abrogate any existing collective bargaining agreement and that any new successor agreement shall authorize such appointments.

16. COMMENT: The committee that is established to develop the corrective action plan in schools with high opt-out rates must include teaching and support staff. However, beginning with the third year of a corrective action plan, only half the staff members can be selected by the bargaining unit. All staff should be selected by the respective bargaining units. Several commenters expressed concern and believe that it is inappropriate for the administration to select employees to serve on such committees.

DEPARTMENT RESPONSE: This provision is applicable only after a school has failed to improve its participation rate following two years of implementing a participation rate improvement plan. The intent is to allow districts to select teachers to participate in development of the next plan who may have new ideas for increasing participation rates. Therefore, the Department does not believe any change is warranted.

17. COMMENT: Several commenters expressed concern surrounding the content and administration of the 3-8 assessments. Although required by ESSA, many commenters expressed dismay over the impact the act of taking the assessments has on children, and the rigidity of a statewide assessment system which does not allow for local control of student assessments.

DEPARTMENT RESPONSE: This comment is outside the scope of the regulations. Therefore, no response is necessary.

Nevertheless, the Department responds that the assessments within the New York State Testing Program are rigorously developed to measure the extent to which students achieve the New York State Learning Standards. New York State teachers certified in teaching the specific content area participate in all important steps in the

process of developing the tests including, but not limited to, writing test questions, selecting test questions for each administration of the examinations, rating student responses, and establishing standards for passing and achieving mastery. The final decisions regarding which questions to include on each test are made by teachers of that grade level. This helps to ensure that the tests are developmentally appropriate and reflect what is happening in classrooms across the state. No revisions are necessary.

18. COMMENT: A commenter asked the Department to consider eliminating the requirement that the school comprehensive education plan (SCEP) developed by TSI schools and the district comprehensive improvement plan (DCIP) developed by Target districts be formally approved by the board of education. For TSI schools, under ESSA, the requirement that the SCEP be submitted to NYSED for review and approval has been eliminated. The SCEP will instead be reviewed by the district. Likewise, the proposed regulations do not require that the DCIP be submitted to NYSED for review and approval. Therefore, the need for the SCEP and DCIP to be formally approved by the board of education is unnecessary and an unduly regulatory burden. The benefit derived by NYSED by requiring formal approval of the SCEP and DCIP by the board of education is not apparent and this approval should be eliminated or, at the very least, made optional. The SCEP and DCIP will be developed, reviewed, approved, and monitored locally and, as such, the decision as to whether these plans require board of education approval should similarly be locally made.

DEPARTMENT RESPONSE: Because implementation of DCIPs and SCEPs are best accomplished through the collective effort of all stakeholders and may require a reallocation of resources, the Department believes that it is important that Boards of

Education, as the chief policymakers for school districts, review and approve these plans, regardless of whether they must be submitted to the Department.

19. COMMENT: A commenter expressed the position that the regulations give money to private industries in the form of charter schools, which unfairly punishes districts with high percentages of students from low-income families.

DEPARTMENT RESPONSE: The regulations relate to the implementation of New York's approved ESSA plan, and as such the comment is outside the scope and no response is necessary.

20. COMMENT: Commenter expressed concern related to the exit criteria for schools designated as CSI or TSI. Specifically, commenter opposes conditioning such removal for schools on the absence of a participation rate improvement plan. Commenter expressed concern related to the operational implications of retaining schools in accountability status because of conditions beyond their control and unrelated to student nonperformance. Must such schools continue to implement improvement strategies that are no longer relevant or appropriate? Will school districts be precluded from redistributing resources previously allocated for such schools to others still in need of improvement?

DEPARTMENT RESPONSE: In response to public comment received, the regulations have been revised so that a school implementing a Participation Rate Improvement Plan would be eligible for removal from CSI or TSI status so long as the accountability group(s) for which a plan is required is/are not performing at Level 1 on the Weighted Average Achievement Index.

21. COMMENT: Commenter expressed the opinion that the design of the participatory budgeting process is more prescriptive and usurps the statutory authority

of school boards to make decisions regarding the allocation and distribution of local resources for school purposes. Decisions related to the expenditure of revenues that are raised locally for school purposes rest exclusively within the authority of school boards. These issues can and should be resolved through use of the Plan's collaborative process.

DEPARTMENT RESPONSE: The Department routinely requires that funds be set aside to implement provisions of school improvement plans. However, the regulations have been amended to allow schools to select alternate forms of promoting parent and student engagement from a list determined by the Commissioner in lieu of setting aside funds to support participatory budgeting.

22. COMMENT: Commenter expressed concern over the provisions that require CSI schools that are required to provide public school choice but are unable to do so to expend additional funds for participatory budgeting. Such process contravenes the statutory authority of school boards over the allocation and distribution of local resources for school purposes. Additionally, without limitations on the expenditure of such additional moneys, implementation of this requirement could result in the diversion of funds away from educational services and supports necessary to improve student achievement outcomes and the school's underperformance.

DEPARTMENT RESPONSE: The Department routinely requires that funds be set aside to implement provisions of school improvement plans. Participatory Budgeting is intended to be a vehicle to increase communication and understanding about the needs that exist between the school and stakeholders. However, the regulations have been amended to allow schools to select alternate forms of promoting parent and

student engagement from a list determined by the Commissioner in lieu of setting aside funds to support participatory budgeting.

23. COMMENT: Commenter expressed concern that the calculation of the amount of funds required for participatory budgeting could rise exponentially. Additionally, there is a lack of limitations on the scope and duration of the financial obligations imposed by this requirement, and that the potential fiscal liability of school districts under such circumstances would certainly have a direct impact on the education of all students in any given school.

DEPARTMENT RESPONSE: The regulations have been clarified to specify that the additional amount to be spent on participatory budgeting is based on the school's first year allocation for participatory budgeting and does not continue to double or triple each year (for example, if a school spent \$2,000 for participatory budgeting in Year 1, then a school that is unable to accommodate any transfer requests must spend \$6,000 in Year 2 and \$6,000 in Year 3 if the school remains identified for CSI and is unable to offer any transfers).

24. COMMENT: Commenter opposed the provision that requires CSI schools to provide public school choice if they experience a decline in their Core Subject Performance Index if an elementary or middle school, or their Composite Performance Index for two consecutive years (elementary or middle) or a decline in the Composite Performance Index for two consecutive years (high school). Commenter opposes this provision indicating that ESSA no longer requires public school choice, but instead makes school choice an option at the discretion of a local educational agency (school district) at 20 USC 6311(d)(1)(D)).

DEPARTMENT RESPONSE: The amendments to ESSA continue to permit public school choice as an intervention for identified schools, provided that there is no state law prohibiting such intervention. Therefore, no change is necessary.

25. COMMENT: Commenter opposes the use of public school choice as an intervention, indicating that such intervention does not always support school improvement or better opportunities for students. Additionally, the commenter expressed concern that those shortcomings can be made worse by the automatic increase of participatory budgeting funds which can be spent in ways not necessarily connected to a school district's efforts to mitigate the conditions that prevent it from being able to offer public school choice.

DEPARTMENT RESPONSE: The Department routinely requires that funds be set aside to implement provisions of school improvement plans. The New York State ESSA plan has been developed to allow flexibility to identified districts and schools that make progress, while providing additional support and oversight to the districts and schools that do not make gains. However, the Department recognizes that all students deserve access to a quality education, and if a school that had been identified continues to decline for two consecutive years after identification as a CSI school, the Department would be concerned about the LEA's ability to improve outcomes at the school and would want to provide additional options to the students attending this school. The increase to participatory budgeting expenditures would only occur in schools that do not make gains for two consecutive years AND are unable to provide public school choice. Schools that are able to offer public school choice would not be required to offer an additional amount toward participatory budgeting. In addition, the regulations have

been amended to give schools alternate opportunities to promote parent and student engagement in lieu of setting aside of local funds to support participatory budgeting.

26. COMMENT: Commenter expressed concern surrounding the impact of the n-size on schools housing grades K-3, indicating that it seems somewhat unreasonable for smaller K-3 elementary schools to be evaluated within a system that would base student performance outcomes solely on achievement at one grade level (third), with subgroups that might barely reach the minimum “n.” At the very least, these schools are susceptible to significantly fluctuating performance/achievement indices from one year to the next. Further, as there would be no growth index available for these schools nor science assessments administered (in addition to ELA and math), an accountability determination would be made based on particularly limited criteria.

DEPARTMENT RESPONSE: Schools with a grade K-3 configuration will be able to be evaluated based upon the Composite Performance Level indicator, the Academic Progress Indicator, the Chronic Absenteeism Indicator, and the English language proficiency indicator. The only indicator to which these schools would not be subject is student growth. Should a school believe its preliminary designation is incorrect, consistent with the regulation, the district may appeal that designation and provide evidence to support the school receiving a different designation.

27. COMMENT: For students taking Algebra I in Grade 8: The regulations indicate that when a student passes the Algebra I Regents examination in grade 8, this result counts toward middle school accountability only (assuming the grade 8 assessment is not administered to the student as well). As such, should the student elect to improve upon a score at the high school level, a higher score earned on the Algebra I Regents would not contribute to high school accountability – even in a case

where a student's score might increase from 65 to 90, for example. That seems counterintuitive, as it would seem that high school instruction would have made a considerable difference in the student's performance on the re-take in such a situation.

DEPARTMENT RESPONSE: Consistent with the requirements of ESSA, a student who passes a Regents exam in middle school in lieu of taking the grade level assessment must take a more rigorous exam in high school for the high school to receive accountability credit. Results on the same Regents exam may not be used to give credit to both a middle school and a high school.

28. COMMENT: Multiple commenters expressed concern that the performance index computation awards a Level 2 performance in Algebra the same credit as a Level 2 performance in higher level math courses such as Geometry and Algebra 2. Commenters suggested adjusting/lowering the Level 3 score for Algebra 2 and Geometry to reward students who have met success in those courses.

DEPARTMENT RESPONSE: High schools receive credit for the best performance of a student on a Regents examination in a subject using the performance levels associated with the examination. Therefore, no change is necessary.

29. COMMENT: Commenter advocates for the discontinuance of statewide assessments for 3rd through 5th graders to allow teachers/administration to assess whether a child should be able to go to the next grade. The commenter argued that teachers know how a child learns or approaches solving problems, and statewide tests may not allow for that.

DEPARTMENT RESPONSE: ESSA requires that all students in grades 3-8 be assessed annually in English language arts and mathematics using a common valid and reliable assessment. However, both the Education Law and Commissioner's

regulations prohibit the use of the assessments as the primary basis by which decisions are made to promote or retain students.

30. COMMENT: A commenter expressed concern about graduation rate targets being set at 95%, 96% and 97%, and the impact of those on small schools. When graduating a class of 17 students, just one failure causes the school to miss this target. Schools with such a small graduating class are most likely rural and poor, thus increasing the odds of a student who may not graduate. The commenter suggested that there should be rigor but not when it places more stress on small, rural, poor districts with high percentages of students with learning disabilities.

DEPARTMENT RESPONSE: The commenter is referring to the state’s “end goal.” Schools can achieve the highest performance level (4) for graduation rate by either exceeding the state long-term goal or meeting the state long-term goal and the school’s Measure of Interim Progress, if it is higher than the state long-term goal. Schools do not have to meet the end goal to receive a Level 4 on this indicator. It should also be noted that schools are only accountable for graduation rate cohorts in which there are at least 30 student results or, as a result of a proposed change to the regulations, 15 student results in those situations where a Composite Performance Level has been assigned to a group.

31. COMMENT: A few commenters expressed concern that requiring English Language Learners to sit for the state assessments one-year into their arrival is untenable. Students should sit for the exam when their classroom teacher and ELL teacher determine that they are ready.

DEPARTMENT RESPONSE: The State Education Department sought a waiver from the United States Department of Education to extend the exemption for newly

arrived ELLs from participation in the ELA exam. Since this waiver is not approved, the Department must adhere to the requirements of ESSA that these students participate in the ELA examination after they have received one year of instruction.

32. COMMENT: Commenter expressed that ESSA provisions 1111(c)(4)(E)(iii) and 1111 (e)(1)(B)(iii)(XI) make it clear that individual states, not USDOE, determine how opt-outs will factor into the accountability system. Commenter questioned the inclusion of the participation rate plan into the regulation, and suggests that if USDOE conditioned its approval of New York's ESSA plan on such requirement, then USDOE has exceeded its statutory authority in opposition to Congressional intent.

DEPARTMENT RESPONSE: In a letter received by the Department on August 23, 2018, Mr. Patrick Rooney, Deputy Director of the USDE's Office of State Support, wrote that with respect to a State's accountability system the ESEA requires an SEA to calculate the Academic Achievement indicator to account for assessment participation rates. According to Mr. Rooney, "ESEA section 1111 (c)(4)(E)(ii) specifically requires that an SEA include in the denominator of this indicator the greater of (1) 95 percent of all students (or 95 percent of students in each subgroup, as the case may be) or (2) the number of students participating in the assessments. Thus, the statute allows for up to five percent of students to not participate in annual reading/language arts and mathematics assessment without it factoring into the calculation of the Academic Achievement indicator." Mr. Rooney further wrote that: "In addition, each State is required to implement with fidelity the consolidated State plan it submitted and Secretary DeVos approved, including the requirement in section A.4.vii to describe the State's annual measurement of achievement to factor in the requirement for 95 percent student participation in the statewide reading/language arts and mathematics

assessments. The New York State Education Department (NYSED) indicated in its consolidated State plan a series of actions it would take if any LEA or school exhibited a consistent pattern of testing fewer than 95 percent of all students and/or fewer than 95 percent of students in a particular subgroup, including that it would require schools that fail to meet the 95 percent participation requirement to submit a self-assessment and participation rate improvement plan to NYSED for the Commissioner's approval no less than three months prior to the next test administration period.” Finally, Mr. Rooney noted that should a state not meet the 95% participation requirement, the Secretary of Education could take actions that include “sending a written request to the SEA that it come into compliance, increasing monitoring, placing a condition on the SEA's Title I, Part A grant award, placing the SEA on high-risk status (2 C.F.R. §§200.207 and 3474.10), issuing a cease and desist order (GEPA section 456 (20 U.S.C. §1234e)), entering into a compliance agreement with the SEA to secure compliance (GEPA 457 (20 U.S.C. §1234f)), withholding all or a portion of the SEA's Title I, Part A administrative funds (ESEA section 1111(a)(7) (20 U.S.C. §6311 (a)(7))), and suspending, and then withholding, all or a portion of the State's Title I, Part A programmatic funds (GEPA section 455 (20 U.S.C. §1234d)).”

Nevertheless, in response to feedback from stakeholders, the Department proposed a number of revisions to the regulations, including eliminating the requirement for a participation rate plan if a school has a Weighted Average Achievement Level of 3 or above; revising the requirement that a school otherwise eligible for removal from TSI or CSI status remain identified if the school is implementing a participation rate improvement plan by limiting this provision to subgroups that perform at Level 1 on the Weighted Average Achievement Indicator; and eliminating the requirement that the

Commissioner may require schools that have received a State participation rate audit set aside a portion of the district's Title I funds to support implementation of the audit's recommendations.

33. COMMENT: A commenter applauded the inclusion of Chronic Absenteeism as one of the metrics in the current regulations. The commenter suggested several different ways to measure the average number of instructional hours per student per year achieved by the district. This should be computed by adding the number of minutes per day of instruction with a qualified educator, subtracting days for absence or suspension; also subtracting days or half days for superintendents conferences or school cancellations; also subtracting days for state-mandated assessments or practice assessments. Use of this metric could encourage productive policies like better block scheduling and limiting non-educational superintendent conference days, as well as programs to decrease absenteeism and minimize suspensions. A variation would be to weight educational hours by the number of educators in the room (with qualified teachers counting higher than aides) and also inversely by the number of students in the room. This may be a particularly informative measure for the Students with Disabilities subgroup, where levels of support for students in integrated classrooms can vary significantly across programs.

DEPARTMENT RESPONSE: No change necessary as the comment is supportive, but the Department notes that it has adopted the United States Department of Education's definition for measuring Chronic Absenteeism.

34. COMMENT: A commenter praised the inclusion of Career and Technical Education in components of the Plan.

DEPARTMENT RESPONSE: No change necessary as the comment is supportive of the regulations.

35. COMMENT: A commenter praised the balance given to participation rates in the regulations. The commenter also praised the inclusion of credit for 4-6 year graduates as well as GED completers.

DEPARTMENT RESPONSE: No change necessary as the comment is supportive of the regulations.

36. COMMENT: A commenter suggested that the testing window is too long and the test format should be shorter to allow schools to more readily use the data.

DEPARTMENT RESPONSE: The comment is outside of the scope of the regulations. Therefore, no response is necessary. However, in 2017, the Board of Regents decided to reduce the number of test sessions on the Grades 3–8 English Language Arts and Mathematics Tests from three sessions to two, effective with the 2018 administration. The length of the testing window is designed to allow sufficient time to administer the tests and provide make-ups for those students who are absent during the designated administration date(s). In addition, the window is necessary to provide flexibility for schools that are closed due to unexpected events, such as power outages, and to provide the multiple-day testing accommodation to students pursuant to an Individualized Education Program (IEP) or 504 plan.

37. COMMENT: A commenter noted several semantic suggestions and/or inconsistencies throughout the plan (e.g., “Composite Performance Achievement Level” versus “Composite Performance Level”).

DEPARTMENT RESPONSE: Technical, non-substantive revisions have been made to the regulations as appropriate to address any inconsistencies in the terms of the regulations .

38. COMMENT: A commenter expressed concern that the instrument used to measure academic progress is biased, and that authentic local tests and portfolio assessments more accurately show student progress.

DEPARTMENT RESPONSE: No change necessary. Hundreds of New York State educators are involved in creating and reviewing questions for the Grades 3-8 ELA and Math Tests, including selecting the questions for the test forms. The assessments feature test questions written by New York State teachers specifically for the annual New York State tests. Teachers from across the State serve on committees to write, evaluate and select questions for the tests to help ensure fairness and freedom from bias.

39. COMMENT: A commenter suggested NYSED revamp the state exams and the way in which they are scored, as well as the Common Core standards on which they are based, to improve their fairness, reliability, validity, and diagnostic utility, and ensure that they are less onerous and stressful for children.

DEPARTMENT RESPONSE: No change necessary. In 2015, New York State (NYS) began a process of review and revision of its current English Language Arts (ELA) and Mathematics Learning Standards. The New York State Next Generation English Language Arts and Mathematics Learning Standards (Revised 2017) were developed through numerous phases of public comment as well as virtual and face-to-face meetings with committees consisting of NYS educators, teachers of English Language Learners/Multilingual Learners and differently abled students, parents,

curriculum specialists, school administrators, college professors, and experts in cognitive research. These revised standards reflect the collaborative efforts and expertise among all constituents involved.

The State Education Department is working with District Superintendents, superintendents, the Staff and Curriculum Development Network, and teacher centers to provide guidance on professional development for teachers to implement the new standards. The projected timeline for new grade 3-8 tests measuring the Next Generation Learning Standards is Spring 2021.

Based on extensive feedback, NYSED removed time limits from the tests in 2016. In general, this means that as long as students are working productively, they will have as much time as they need to complete each test session, within the confines of the regular school day.

In 2017, the Board of Regents decided to reduce the number of test sessions on the Grades 3–8 English Language Arts and Mathematics Tests from three sessions to two, effective with the 2018 administration. Fewer test sessions lessen test fatigue for students and better enable them to demonstrate what they know and are able to do.

40. COMMENT: The plan states that “a district or charter school may add any other appropriate information” to the New York State report card. We request that this item be amended to provide examples of the types of information that districts may add to their State Report Card. Within the state ESSA plan (page 44), the NY Board of Regents has committed to incorporating additional measures of school quality and student success into the state’s accountability system over time, and to regularly publishing a set of indicators (not part of the accountability system) that highlight school

conditions and student opportunities to learn. These indicators will provide parents and others with information that creates a more comprehensive picture of a school's efforts for continual improvement around attendance and supporting the whole child. We particularly support the indicators focused on school climate and safety, access to specific learning opportunities including physical education, and teacher turnover, absence, and working conditions, and recommend that these items be highlighted within the regulations.

DEPARTMENT RESPONSE: The regulation has been revised to make clear that districts may include additional information on the report card. The revised regulation includes examples that districts may include on the report card, including indicators of school climate and safety; access to specific learning opportunities including physical education; and teacher turnover, absence, and working conditions.

41. COMMENT: We commend NYSED's use of the diagnostic tool for school and district effectiveness (DTSDE) as the primary tool for comprehensive needs assessments. The DTSDE includes data collection on Student Social and Emotional Developmental Health and Family and Consumer Engagement, but lacks data collection around indicators of physical health and the health and wellness environment within the school. We therefore request that this item be amended to include the following types of data in addition to the DTSDE: Data from the New York State Physical Education Profile; information about the health status of students such as the number of students attending school with asthma, diabetes, or other chronic health conditions (this data is available in student health information cards and from local public health agencies); school climate and safety, such as through the U.S. Department of Education's School Climate Survey; school discipline policies; school health policies and practices using the

Healthier Generation’s Healthy Schools Program assessment; staffing patterns, such as the ratio of qualified health professionals to students, including but not limited to school nurses, social workers, and school counselors, using district human resources data; and free-and reduced-priced percentages, participation in community eligibility provision, and participation in school lunch and breakfast programs (as compared to eligibility).

**DEPARTMENT RESPONSE:**

The Department recognizes the importance of social-emotional learning, school climate, and student physical health and wellness, and anticipates that each of these will be reviewed and analyzed as part of the multifaceted Needs Assessment process. This process will include a review of specific data related to many of the indicators suggested in the commenter’s letter, including school climate data, school safety and discipline data, and the ratio of qualified health professionals to students. The Department will also consider the U.S. Department of Education’s School Climate Survey to fulfil the survey requirement for students, parents, and teachers when LEAs supplement the School Climate Survey with additional questions on instruction and leadership identified by the Department. In addition to incorporating these various indicators into the Needs Assessment process, the on-site Needs Assessment will include a component that reviews how the school has analyzed and addressed these data and how the school has developed systems and structures to support student’s health and well-being.

42. COMMENT: Commenter recommends that the annual surveys of parents, staff, and students conducted by CSI and TSI schools, include parent (and those in parental relations to the student), staff, and student perceptions of the “Physical Health and Wellness Environment” within the school. A positive health and wellness

environment contributes to school climate, social emotional health, and family engagement, as well as to student attendance and academic outcomes.

DEPARTMENT RESPONSE: The Department agrees that parent, staff, and student perceptions of the physical health and wellness environment are important indicators for schools to consider when identifying a school's needs. The Department organized its definition of surveys around the tenets of the Diagnostic Tool for School and District Effectiveness to be consistent with other components of the school improvement process, including the needs assessment and the School Comprehensive Educational Plan. The Department will provide guidance to ensure that schools and Districts consider health and wellness as essential components within these Tenets.

43. COMMENT: Definition of Chronic Absenteeism—Elementary/Middle Level (pages 41) (1) states that, “The Commissioner shall first compute the school’s Chronic Absenteeism Rate, which means the number of students enrolled during the school year in a school for a minimum of ten instructional days, and in attendance at least one of those days who were absent (excused or unexcused) for at least 10 percent of enrolled instructional days divided by the total number of students enrolled during the school year, expressed as a percentage. Suspensions are not counted as excused or unexcused absences, as suspended students are required to be provided with instruction while they are suspended...” A couple of commenters requested that this item be amended such that absences due to suspensions be included in the computation of the Chronic Absenteeism Rate.

DEPARTMENT RESPONSE: The Department has adopted the United States Department of Education’s definition for measuring Chronic Absenteeism, which states that a student absence is defined as “not participating in instruction or instruction-related

activities at an approved off-grounds location.” In New York State, because suspended students must be provided with instruction, they are not absent pursuant to the United States Department of Education definition.

44. COMMENT: Several commenters requested that the participation of parents (or those in parental relation to the student) and teachers be required for the needs assessments and plan development process for schools that are in their third year of CSI identification.

DEPARTMENT RESPONSE: Parents and students will be included in the Needs Assessment process each year a school is identified. In addition, as outlined in the regulations, parents and secondary students will be involved in the development of the school improvement plan each year. The proposed regulations have been revised to clarify that the Department will reject CSI school comprehensive education plans that do not demonstrate meaningful participation from parents and secondary students.

45. COMMENT: A commenter applauded the inclusion of schools with conditions that threaten the health or safety of students in the preliminary registration review.

DEPARTMENT RESPONSE: No change necessary as the comment is supportive of the regulations.

46. COMMENT: Several commenters expressed that districts should decide the process for increasing test participation rates.

DEPARTMENT RESPONSE: The regulations provide broad flexibility to schools and districts to develop strategies for improving participation rates.

47. COMMENT: Commenter supports the proposed regulation and suggests that for accountability purposes schools with high opt-out rates should either be treated

the same as underperforming schools or just get rid of testing altogether. The latter is not a realistic option. If opting-out is considered a valid pathway, then underperforming students will be pressured to opt-out and no accurate snapshot of a school can be had. Commenter further encouraged the improvement of the assessment content and administration.

DEPARTMENT RESPONSE: The interaction among the Weighted Average Achievement measure, Core Subject Performance measure and Academic Progress Indicator are designed to meet the participation rate requirements of ESSA, ensure that schools are identified that have academic issues rather than just participation rate issues, and incentivize increased participation in state assessments. While “curation” of test takers could, in theory, increase a subgroup’s Core Subject Performance Index, such action would also decrease a school’s Weighted Average Achievement Index, with potential negative implications for a subgroup’s Composite Performance Level and Academic Progress Level.

48. COMMENT: Commenter supports appropriate assessments and suggests that tests should be part of a school’s final exam week and that schools should be allowed to safely grade their own tests and have them count as a student’s score for part of the year.

DEPARTMENT RESPONSE: The comment is outside the scope of the regulation; therefore, no response is necessary. Nevertheless, the New York State Grades 3-8 English Language Arts and Mathematics tests were not designed to be “final exams” that measure what a student has been taught by their teacher from September to June of a given academic year. The tests are designed to measure how well students are mastering the learning standards that guide classroom instruction and

help to ensure that students are on track to graduate from high school with the critical thinking, problem solving, and reasoning skills needed for success in college and the workplace. The tests also show how schools and districts are progressing with the learning standards.

Arranging for the scoring of the English Language Arts and Mathematics Tests is the responsibility of each school or school district. Schools have several scoring model options to choose from, including but not limited to, regional scoring, three or more schools within a district, one school if doing paper-based testing, and private contractor. Regardless of the scoring model being used, a minimum of three scorers is necessary to score each student's test. However, to comply with a State requirement, none of the scorers assigned to score a student's test responses may be that of the student's teacher.

49. COMMENT: The commenter applauds the inclusion of a College, Career, and Civic Readiness Index which recognizes civics education as a critical component of ensuring students receive a well-rounded education. While the CCCRI establishes a baseline for holding schools accountable for ensuring students' civic readiness, the proposed regulations do not establish a civic readiness standard. Commenter recommends that the State Education Department adopt regulations to define civic readiness.

DEPARTMENT RESPONSE: Civic Readiness is embedded within the Social Studies Frameworks. The Department at the direction of the Board of Regents will be convening stakeholders to develop resources and tools to assist schools in improving instruction related to civics and civic engagement. This group of stakeholders will be asked to make a recommendation to the Board of Regents regarding whether

Commissioner's regulations should be amended to include a specific definition of civic readiness.

50. COMMENT: Commenter was excited to learn recently of the Board's plan to create a "civics seal." Many states, including New York, already have a seal of biliteracy; however, students in advanced courses are better prepared to attain this seal based on the current point system. Commenter urges the Board to establish equitable standards when deciding the prerequisites to earn a civics seal in order to incentivize more students rather than widen the civic engagement gap. Commenter believes that the civics seal prerequisites should, at minimum, include two capstone projects to be sequenced in eighth grade social studies and the existing Participation in Government course, which includes these Action Civics elements: community examination, issue identification, research, strategizing, taking action, and reflection.

DEPARTMENT RESPONSE: The Department at the direction of the Board of Regents will be convening stakeholders to develop resources and tools to assist schools in improving instruction related to civics and civic engagement as well as examine policies related to social studies education. One specific charge to this group of stakeholders will be to make recommends regarding creation of a seal of Civic Readiness and potential requirements for a student earning such a seal. Materials related to this initiative will be posted for public comment and feedback. The recommendation of the commenter will be shared with the group.

51. COMMENT: In tandem with the civics seal, the state must allocate funding to districts to provide teachers with the necessary professional development that aligns to implementing these changes. Commenter recommends that the majority of those funds be allocated towards Title I schools.

DEPARTMENT RESPONSE: The Department will provide appropriate professional development in regard to any changes in civics standards or requirements. Districts will have flexibility to decide what funds to use to support any necessary professional development in this area.

52. COMMENT: A commenter applauded NYSED for developing an ESSA plan that recognizes the effect of school environment on student academic performance and supports efforts to improve the climate of all schools.

DEPARTMENT RESPONSE: No change necessary as the comment is supportive of the regulations.

53. COMMENT: Several commenters appreciated the inclusive and transparent process that the Board of Regents and NYSED have worked to maintain while creating the ESSA state plan. In particular, commenters point to the importance of preserving the provisions regarding test participation, which are an essential equity protection for historically under-served groups of students whose needs are too often ignored in our education system. Throughout the ESSA process, NYSED and the Board of Regents worked to find common ground among opposing views on this issue. For some stakeholders, even these reasonable compromises will never be enough. There are those who have asked the Department to violate federal law and ignore test participation altogether. Others have called for provisions that would effectively enable schools to systemically exclude certain groups of students from state assessments. These commenters state that they stand with civil rights, education, parent, and business community partners in urging the Department to maintain the current provisions.

DEPARTMENT RESPONSE: No change necessary as the comment is supportive of the regulations.

54. COMMENT: Several commenters requested that §100.2(m)(4) be amended to specify that NYSED will produce, and school districts shall make available, the report card in at least the 10 most frequently used languages statewide. In the case of any school districts where local laws, regulations, and policies mandate translation into more than 10 languages, the regulation should specify that districts must follow local policies and/or regulations to make the report card available in additional languages.

DEPARTMENT RESPONSE: The draft regulations have been revised to require that to the extent practicable, the district or charter school shall provide the reports and additional information in a language that parents can understand for the most frequently used languages in the district. The Department anticipates issuing guidance regarding how districts can meet these provisions and will work toward obtaining additional resources to support them in doing so.

55. COMMENT: Several commenters requested that §100.21(h) be amended such that notification of CSI or TSI designation be made in the 10 most frequently used languages statewide. In addition to making this requirement clear (including, but not limited to, by removing “when appropriate” from paragraph (1)), the commenters request that the requirement for notification in the 10 most frequently used languages statewide be added to paragraph (2).

DEPARTMENT RESPONSE: The draft regulations have been revised to require that to the extent practicable, the district or charter school shall provide the reports and additional information in a language that parents can understand for the most frequently

used languages in the district. The Department anticipates issuing guidance regarding how districts can implement these provisions and will work toward obtaining additional resources to support them in doing so.

56. COMMENT: Several commenters noted that as allowed by ESSA, the proposed regulation at §100.21(b)(1)(xi) includes former students with disabilities in the students with disabilities subgroup and former English language learners (ELLs) in the ELL subgroup for the purpose of accountability determinations. While they do not seek to change the provision, they have requested that the regulation be amended to provide for disaggregated reporting of accountability data for current versus former members of these subgroups.

DEPARTMENT RESPONSE: No change necessary. The numbers of ELLs, former ELLs, students with disabilities, and former students with disabilities separately are small in many schools and districts. As such, in order to protect the privacy of students, the Department would have to suppress outcomes for these subgroups, limiting the amount of data the Department could make available. These suppression rules can have the unintended consequence of suppressing information for other groups of students as well. However, the Department agrees that it would be helpful to have this disaggregated reporting in the future and the Department will work with stakeholders to determine how this might be accomplished in future years.

57. COMMENT: Several commenters expressed that §100.21(b)(1)(xi) should ensure that schools develop an action plan to address the academic needs of current

members of these subgroups if their achievement, without factoring in former subgroup members, would have resulted in the school receiving a “1” for such subgroup.

DEPARTMENT RESPONSE: NYSED understands why current members of a subgroup might benefit from an action plan to address their specific academic needs when their scores, without factoring in former members of the subgroup, would have resulted in a school receiving a “1” for that subgroup. However, for students with disabilities, there are existing regulations that require the individual identification, servicing, and progress monitoring of a student’s academic achievement and functional performance needs. Any additional plans to address the achievement of this subgroup would be more appropriately addressed via guidance and technical assistance.

58. COMMENT: Several commenters stated that New York’s approved ESSA plan provides that out-of-school suspensions will become an accountability indicator “beginning with the 2018-19 school year results,” which the commenters strongly support. Commenters request that this language be incorporated in the regulations, as well, including by adding it to the definition of “accountability measure” (and noting the school year for which the addition goes into effect) and by replacing “within a timeframe prescribed by the Commissioner” in the “out-of-school suspension rate” definition with a date certain that is consistent with the state’s ESSA plan. Conforming changes should be made throughout the regulation where accountability indicators are listed.

DEPARTMENT RESPONSE: The regulations have been revised to clarify that the out-of-school suspension levels in 2017-18 will be used as the baseline and using the 2018-19 school year results, the Commissioner shall report for each accountability group for which a school or district is accountable a Level from 1-4. For 2019-20 school year results, districts will be required to address in their consolidated

applications any subgroup in a school or in the district that performs at Level 1 on the out-of-school suspension indicator. Beginning with 2020-21 school year results, this indicator will be incorporated into the methodology for determining the accountability status of schools and districts.

59. COMMENT: Several commenters noted that TSI schools could be under-performing for one or more subgroups of students. New York’s ESSA plan already constrains the definition of “additional targeted support” schools to a narrow set of extremely low-performing schools. At §100.21(b)(3)(i)(b), the phrase “for the performance of the same accountability subgroup(s)” should be removed so that any school that has been designated for additional targeted support and has been in TSI for three consecutive school years is subsequently identified for CSI in order to provide escalated support and intervention. This change would ensure that schools that are seriously under-performing for historically under-served groups of students will receive the urgent attention and support that they need.

DEPARTMENT RESPONSE: The Department believes there is a significant difference between a school in which the same group meets the criteria for identification year after year and a school in which different subgroups of students might cause a school over time to be identified as TSI. While the Department believes it is appropriate for the Department to provide additional support to the former group of schools, the Department will monitor the performance of TSI schools to determine if more robust intervention in schools that are identified for different groups of students over time is warranted.

60. COMMENT: Several commenters commended NYSED for identifying Target Districts as part of the state’s ESSA plan and regulations. This approach will help

ensure that school districts receive the support that they need to help under-performing school and can help identify district-level capacity challenges that would impede the school improvement process. Focusing on district-level as well as school-level improvement is an important hallmark of an effective strategy to support increased student achievement.

DEPARTMENT RESPONSE: No change necessary as the comment is supportive of the regulations.

61. COMMENT: Several commenters requested that NYSED provide additional opportunities for public input on the definition of “Recognition schools,” either by specifying the criteria in the regulation or by committing to seeking public input in the future.

DEPARTMENT RESPONSE: The Department plans to seek stakeholder feedback on the proposed methodology for identification of recognition schools.

62. COMMENT: Several commenters applauded New York’s approved ESSA plan for the appropriately strong language about the importance of parent involvement in the school improvement process, specifying that “the State will reject plans from CSI schools that do not provide adequate evidence of involvement from parents and families.” They requested that the regulation conform to the state plan in this regard. Two specific changes to the proposed regulation were asked for: 1) Schools identified as CSI will submit their plans to the Department for approval, which shall [may] reject any plan that does not adhere to the directions provided by the Department and [and/or] provide sufficient evidence in such format as prescribed by the Commissioner that parents and pedagogical staff and in high schools, students, meaningfully participated in the development of the plan;” and 2) requested strong and specific provisions to ensure

that parents' voices are heard throughout the improvement process. This should include, but not be limited to, a provision consistent with the ESEA Title I requirement that "if the LEA's plan is not satisfactory to the parents of participating children, the LEA must submit any parent comments, along with the LEA's plan, to the SEA."

DEPARTMENT RESPONSE: The regulations have been modified to indicate that the Department shall reject any plan that does not adhere to the directions provided by the Department and does not contain sufficient evidence of parent, staff, and in secondary schools, student participation.

Parents will be able to submit comments regarding any concerns they have with the plan submitted. This provision will be handled through guidance to LEAs and to modifications to the SCEP and DCIP template, rather than through regulation.

63. COMMENT: Several commenters commended NYSED for including student input in the creation of high school improvement plans and encourage NYSED to maintain this provision.

DEPARTMENT RESPONSE: No change necessary as the comments are supportive of the regulations.

64. COMMENT: Several commenters requested §100.21(i)(2)(i)(b)(5) (development of comprehensive education plans for TSI schools) be amended to specify that the parents be parents of students in the subgroup(s) for which the school was identified for TSI.

DEPARTMENT RESPONSE: The Department is supportive of the suggestion that the parents involved in the development of the SCEP at a TSI school include representatives from the subgroup(s) for which the school has been identified. The Department is also sensitive to the privacy rights of individuals, and as a result, the

Department would prefer to issue guidance to LEAs identifying the importance of including parent representatives of identified subgroups in the development of TSI SCEPs rather than mandating their inclusion through regulation.

65. COMMENT: Several commenters requested that the regulation specify that the notification to parents of a school's identification for TSI, CSI, and relevant school improvement status changes must also include information (in multiple languages) about how parents can participate in the school improvement process.

DEPARTMENT RESPONSE: See responses to Comments #54 and #55. NYSED agrees that information about school improvement status, school report cards and a school's TSI or CSI categorization must, to the extent practicable, be made available in the home/native languages spoken most frequently by a district's ELL students. The draft regulations have been revised to require that to the extent practicable, such information be provided in a language that parents can understand for the most frequently used languages in the district. The Department anticipates issuing guidance regarding how districts can implement these provisions and will work toward obtaining additional resources to support them in doing so. In addition, the Department will be working towards developing additional resources to districts to support them in communicating to parents about school improvement status, school report cards, and the school's CSI or TSI status.

66. COMMENT: Several commenters expressed concern that the proposed criteria for demonstrating progress are far too weak to signify meaningful school improvement. Under the definition at §100.21(b)(4)(xiv), any increase in the school's performance index – no matter how small – would result in the school making sufficient progress. Likewise, demonstrating growth at the state average would result in the

school making sufficient progress, no matter how far behind its students already are. Commenters requested more ambitious targets tied to demonstrating that the school is on track to meet its accountability measures.

DEPARTMENT RESPONSE: The Annual Achievement Progression Target is not intended to be used as a means of determining whether or not the school is making sufficient progress toward being removed from accountability status. Instead, the purpose of the Annual Achievement Progression Target is to identify the CSI schools that have not made gains from the previous year and, therefore, should receive additional support and oversight from the Department. The Annual Achievement Progression Target will enable the Department to determine the schools that require additional support.

67. COMMENT: Several commenters expressed concern about the use of the Core Subject Performance Index at §100.21(b)(4)(xiv) to determine the progress of an identified school. Based on the definition, it appears that a school could meet its target simply by encouraging low-performing students to opt-out of the state assessment. Commenters requested that the factors used to calculate the Weighted Average Achievement Index be used instead to make this determination.

DEPARTMENT RESPONSE: The purpose of the Annual Achievement Progression Target is to identify the CSI schools that have not made gains from the previous year and, therefore, should receive additional support and oversight from the Department. The Department originally selected the Core Subject Performance Index as its preferred measure of determining if the school has made gains rather than the Weighted Average Achievement Index, since the Core Subject Performance Index is computed using solely the results of the students who took the exam. Based on the

commenters' concern that this could work at cross purposes with initiatives to increase participation rates, the regulations have been modified to require that a school increase both its Core Subject Performance Index and its Weighted Average Achievement Index in order to demonstrate progress through this means.

68. COMMENT: Commenter supports the methodology used to calculate the Core Subject Performance Index, as defined in the regulation and further explained by NYSED at the June meeting of the Board of Regents, which means that schools that have low test participation (high opt-out) cannot be identified for improvement unless they also have very low achievement for the students who do take the assessments. This methodology appears consistent with federal law and, in the short-term, appears to strike a reasonable balance between the interests described above.

DEPARTMENT RESPONSE: No change necessary as the comments are supportive of the regulations.

69. COMMENT: Several commenters requested clarification on the impact of provision §100.21(f)(1)(iii)(b), which requires that in order to be identified for additional targeted support and improvement (ATSI) a school must have been identified as a TSI school in the current and prior school years and why this provision is necessary. The commenters are interested in the specific circumstances for which the provision seeks to avoid identifying schools for ATSI. If the language would prevent extremely low-achieving schools for a particular subgroup from receiving additional attention via identification for ATSI, commenters recommend this provision be removed.

DEPARTMENT RESPONSE: This provision ensures that a school would not be identified for additional targeted support and improvement until it has been a Targeted Support and Improvement School for at least one year.

70. COMMENT: Several commenters requested that treatment of dual enrollment courses align with the language of the state’s approved ESSA plan, which states that: “New York State’s College, Career, and Civic Readiness Index will give credit to schools for students who pass high school courses and additional credit for students who achieve specified scores on nationally recognized exams associated with these courses or who earn college credit for participation in dual enrollment courses.” To effectuate this change, dual enrollment courses should be treated more consistently with AP and IB courses in the calculation of the College, Career & Civic Readiness accountability indicator. To that end, the regulation should specify that as soon as data collection permits, student participation in the course should be included at the 1.5 level and success in the course should be included at the 2.0 level, e.g.: Regents Diploma and high school credit earned through participation in dual enrollment (in high school and accredited college) course – 1.5; and Regents Diploma and college credit earned through participation in dual enrollment (in high school and accredited college) course – 2.0.

DEPARTMENT RESPONSE: Once such data is available, the Department will consider whether the weighting for the College, Career, and Civic Readiness indicator should be adjusted.

71. COMMENT: Several commenters commended NYSED for including §100.21(i)(1)(i)(c) in the ESSA plan and regulations, which states that, “In the first school year in which the school is identified as a CSI school, the school must... limit incoming teachers transfers to teachers rated effective or highly effective pursuant to Education Law §3012-d by a school district in the previous school year, subject to collective bargaining as required under article 14 of the Civil Service Law, and require

that any successor collective bargaining agreement authorize such transfers unless otherwise prohibited by law...”

DEPARTMENT RESPONSE: No change necessary as the comment is supportive of the regulations.

72. COMMENT: Several commenters requested several specific changes to §100.21(i)(1)(iii)(g), the provisions for public school choice: Rather than being available only for students in CSI schools with declining achievement on the performance index, public school choice should be available for students in all CSI schools. The commenters note that CSI schools are already the bottom-performing schools in the state.

DEPARTMENT RESPONSE: Rather than mandate Public School Choice upon identification, as had been required under No Child Left Behind, the proposed regulations give schools the opportunity to improve first, and if improvements are not realized for two consecutive years, then require schools to offer Public School Choice. The proposed regulations make Public School Choice an option, but not a requirement, for any district with a CSI school that believes that Public School Choice will support stronger outcomes for students and for CSI schools.

73. COMMENT: Several commenters requested several specific changes to §100.21(i)(1)(iii)(g), the provisions for public school choice. If there are no schools in good standing or TSI schools serving the grade levels served by the CSI school that is required to provide public school choice, the school district should be required to create additional seats in schools in good standing or open additional schools in good standing.

DEPARTMENT RESPONSE: The Commissioner can intervene with schools struggling to make gains, regardless of their ability to offer Public School Choice, to ensure that the students have access to a quality education, by designating the school as a School Under Registration Review (SURR), or if the school is in the Receivership program, appointing an Independent Receiver to manage and operate the school. If a school fails to make demonstrable improvement while subject to Independent Receivership, then the Commissioner may direct that the school receivership be terminated and the district submit a plan to take one of the following actions: place the school under management of the State University of New York or the City University of New York, or phase out and close the school. While converting the school to a charter school was previously included in this list of actions, the Department has revised the regulations to remove this action.

74. COMMENT: Several commenters requested several specific changes to §100.21(i)(1)(iii)(g), the provisions for public school choice. The commenters do not believe that Participatory Budgeting is, or should be described as, an alternative to public school choice. Both concepts are valuable and should be advanced independently.

DEPARTMENT RESPONSE: The Department is interested in promoting multiple ways to promote students and parent voice. Based on comments received on the proposed regulations, the Department has revised the proposed regulations to provide greater flexibility to districts in how they promote greater parental and student involvement in engagement. Districts may now choose to take other actions to promote parent and student engagement in lieu of implementing participatory budgeting.

75. COMMENT: Several commenters noted that if schools are systemically excluding certain groups of students from state assessments, there must be urgency and action to protect the ability of all students to participate in state assessments and have the students' used to make accountability determinations. The draft regulation provides extensive opportunities for schools to improve their test participation rates. This includes – over multiple years – a self-assessment, help from the school district, and help from a BOCES. Commenters commend the Department for this reasonable and balanced approach to supporting schools in improving their participation rates. Commenters suggested that If anything is to improve, they believe the process may be too elongated, and would benefit from combining the district and BOCES steps.

DEPARTMENT RESPONSE: No change necessary as the comment is supportive of the regulations.

76. COMMENT: Several commenters commended NYSED for including provision §100.21(i)(5)(vi), which requires that for the lowest 10 percent of schools within the State for participation rate as determined by the Commissioner, the district must submit a participation rate plan for approval by the Commissioner no later than 60 days following notification to the district that such plan is required. This will ensure that schools with the lowest participation rates in the state take immediate steps to improve test participation in partnership with parents and will enable NYSED to support these schools in their efforts.

DEPARTMENT RESPONSE: No change necessary as the comment is supportive of the regulations.

77. COMMENT: Several commenters expressed concern with another commenter's public letter regarding the draft regulations.

DEPARTMENT RESPONSE: No response is necessary to these comments because they are responses to other comments the Department received on the regulation and not comments on the regulations themselves. Moreover, these comments are generally supportive of the regulation.

78. COMMENT: A commenter requested a new subdivision (n) of section 100.18 of the Regulations of the Commissioner of Education be added for the purpose of expanding the data included in the annual report by the Board of Regents to the Governor and the Legislature in accordance with Education Law §215-a providing easy public access to such report. Commenter suggested the following language: (n) All of the items required to be included in an annual report by the regents to the governor and the legislature pursuant to section 215-a of the Education Law shall be set forth in a single, easily accessible portal the department's website, and in an easy to comprehend format, all of the information required by section 215-a, and, in addition, class sizes, indicators of student achievement in social studies; college, career and civic readiness rates; expenditures per pupil for services for English language learners; and numbers of students eligible for, but not receiving, specific courses and services mandated by federal or state statutes and regulations, including, but not limited to, academic intervention services, response to intervention services, special education and related services, bilingual or English as a second language instruction, guidance services, mandated courses or sequences of courses, pathways to graduation, physical education, health services, adequate science laboratories, and reasonable access to up-to-date textbooks, computers, software and other instructional materials. To the extent practicable, all such information shall be displayed on a statewide, individual-

school-district and individual-school basis, and by racial/ethnic group, gender, economic status, English-language-learner status, and migrant status.

DEPARTMENT RESPONSE: Information necessary to meet the requirements of Education Law section 215-a can be accessed through the Department's "Chapter 655" Webpage. New York State Report Cards will include data required by ESSA at the statewide level; by individual public and charter school; by district; and by racial/ethnic groups, gender, economic status, ELL status, and migrant status. College, career, and civic readiness rates as well as student achievement in social studies (as part of the Composite Performance Measure) will be included in the accountability section of the report cards. Class size will be included in a Student and Educator Report on [data.nysed.gov](http://data.nysed.gov). Expenditures per pupil per ESSA will be included in report cards beginning in 2018-19; however, ESSA does not require that SEAs report expenditures per pupil for English language learners. The small number of ELLs in many schools would result in significant data suppressions. ESSA also does not require SEAs to report numbers of students eligible for, but not receiving, specific courses and services mandated by federal or state statutes and regulations, including, but not limited to, academic intervention services, response to intervention services, special education and related services, bilingual or English as a second language instruction, guidance services, mandated courses or sequences of courses, pathways to graduation, physical education, health services, adequate science laboratories, and reasonable access to up-to-date textbooks, computers, software and other instructional materials. The Department will consider whether any of this information should be collected and reported publicly, bearing in mind the potential benefit of reporting such data balanced

by the additional resources that districts would need to allocate to reliably collect such information.

79. COMMENT: A commenter expressed concern that the provision of a needs assessment and support report, focused on one particular administrative title, is too narrowly focused, duplicative with other improvement planning processes, and susceptible to creating unintended consequences. The commenter recommended the principal needs assessment and support report be deleted and any needed support for the entire administrative team should be included in the Comprehensive Improvement Plan.

**DEPARTMENT RESPONSE:**

The purpose of the Principal Support Report and Principal Needs Assessment has evolved so that both documents no longer involve an evaluation of the school leader and now focus on ensuring that the district is providing sufficient supports to principals and a school's leadership team. Based on comments received, the Department has modified the regulations so that this report addresses supports provided to the entire school leadership team. For the Principal Support Report, districts will identify the supports they are providing to the school leadership team of a school that does not make gains after one year. If the school does not make gains for two consecutive years, then as part of the District Needs Assessment, the district will need to reflect as to why the supports listed in the Principal Support Report were not enough to result in improved outcomes. The intent of these provisions is to ensure that school leaders receive the supports they need from their district to succeed. There is no component of either of these reports that involves an evaluation of the principal or any other title.

80. COMMENT: The regulations indicate that a continuously enrolled student is a “student enrolled on BEDS day and enrolled during the test administration period for the subject tested...” (8 NYCRR§100.21(b)(IXix)). As written, a student could be enrolled on BEDS day, leave the school, and re-enroll during the testing period and be counted as continuously enrolled. A commenter suggested the definition of a continuously enrolled student should be clarified to indicate that continuous enrollment is based on students enrolled on BEDS day and each day through the test administration period.

DEPARTMENT RESPONSE: No change required. The language included in the proposed regulations accurately reflects how the Department has for many years defined and collected information regarding continuously enrolled students. Revising this definition would require significant preparation and revision to data collection procedures. The Department will consult with key stakeholders regarding the advisability of making such a revision in the future to the definition of continuous enrollment.

81. COMMENT: A commenter expressed concern that measurements, such as the calculation for chronic absenteeism, can lead to unintended consequences. A small school would have a higher probability of being classified as low-performing, as even a few chronically absent students would impact results (e.g., one student in a building of 200 students equals .5%. If one student is absent one day, that student's absence could mean the difference between Level 3 or Levels 1 or 2). Commenter recommends that chronic absenteeism be calculated through a tiered approach based on school building size so as to accommodate small districts and schools.

DEPARTMENT RESPONSE: There is no measurement error associated with the chronic absenteeism indicator. (That is, in a particular year it is known exactly what

percent of students in an accountability group in a school have been reported as meeting the definition of having been chronically absent.) However, in those instances where the attendance pattern of a small group of students within an accountability group produces anomalous results, the school may appeal the group's accountability designation.

82. COMMENT: According to 8 NYCRR§100.21(b)(4)(xi), parent, staff, and student surveys must be conducted in schools identified as Comprehensive Support and Improvement and Targeted Support and Improvement schools. Student surveys in grades K-3 will be very challenging. Student surveys should be required for students beginning in grade 4.

DEPARTMENT RESPONSE: The regulations do not stipulate which grade levels must be included as part of the student survey requirement. The Department will issue guidance to clarify that the survey selected by a district is to be administered to students in the grade levels for which the survey has been designed.

83. COMMENT: A provision of the regulations currently reads: "(xv) Accountability level means a level from 1 to 4 derived when scores earned on Regents examinations and Regents alternative examinations as defined in this subdivision are converted to four accountability levels based on predetermined accountability cut scores established by the Commissioner." There are now five (5) scoring levels for Regents Exams. Are these references to 1-4 levels a typo?

DEPARTMENT RESPONSE: This is not a typo. Although English language arts and mathematics Regents exam results are reported to individual students using five levels, these are converted to four "accountability levels" by combining Regents exam Levels 1 and 2 into a single level for institutional accountability purposes.

84. COMMENT: A commenter recommends modifying the definition of suspension rate to measure the total number of instructional days lost due to suspensions that exclude students from their regular program and classroom regardless of whether the student remains in the same school or is sent to another one. “Instructional Days Lost” should include any time a student is suspended from school and does not receive regularly programmed instruction in their regular classroom. The commenter also recommends counting any suspension that causes a student to miss more than 50 percent of their regularly programmed instruction in their regular classroom in a day as a full-day suspension for purposes of calculating Lost Instruction Time to reflect the significant amount of classroom instruction missed that day. To account for schools of different sizes, the measure should be expressed as a “per 100 students” metric, using BEDS Day Enrollment numbers. Such an indicator would be responsive to the various suspension scenarios at different schools. It would also be linked to a metric - instructional time - closely related to student outcomes. Furthermore, the measure would better capture longer and more frequent suspensions (which Black students and students with disabilities receive disproportionately), neither of which is captured sufficiently by the current definition. This measure would more accurately capture high rates of student suspensions in schools across the State.

DEPARTMENT RESPONSE: The Department engaged in extensive outreach to solicit input from educators, policymakers, stakeholders and the public regarding the indicators to be included in the ESSA accountability system. Based on this feedback, the Department determined that the most important metric in terms of student suspension is the percentage of students in an accountability group who are suspended out-of-school one or more times during the school year. The Department believes that,

for example, the suspension of one student for 50 days of instruction is very different than the suspension of 10 students from five days of instruction.

85. COMMENT: A commenter expressed concern that the proposed calculation of chronic absenteeism for elementary schools does not include the attendance of kindergarten students. The commenter recommends that the Regents amend §100.21(f)(1) to state that, at the elementary/middle school level, chronic absenteeism is calculated for grades Kindergarten-8 and ungraded age-equivalent students.

DEPARTMENT RESPONSE: Because attendance in kindergarten is not compulsory, the Department believes it is inappropriate to include kindergarteners in the computation of chronic absenteeism.

86. COMMENT: A commenter expressed concern that the State is proposing to calculate chronic absenteeism only at the school level. Such calculations may mask the chronic absenteeism of highly mobile students, such as students in temporary housing, who may transfer schools multiple times over the course of a school year. The commenter recommends that the Regents amend §100.21(f) to add a district-level calculation of chronic absenteeism and ensure that the district measure of interim progress accounts for the district-level calculation of chronic absenteeism.

DEPARTMENT RESPONSE: Chronic Absenteeism will also be calculated at the District Level and be used to make Target District determinations. Therefore, no change is necessary.

87. COMMENT: In order to ensure that families understand critical information about how their children's school is performing, a commenter requests that the Department amend regulatory language pertaining to report cards and required notices

to specify that the Department will produce and school districts will make available the school report card and CSI or TSI designation notices in at least the 10 most frequently used language statewide. However, if the top 10 statewide languages do not include the top 5 local languages of the district, the commenter recommends that report cards and notices be translated into those top 5 languages, as well.

DEPARTMENT RESPONSE: The draft regulations have been revised to require that to the extent practicable, the district or charter school shall provide the reports and additional information in a language that parents can understand in the most frequently used languages in the district. The Department will be issuing guidance regarding how districts can implement these provisions and will work toward obtaining additional resources to support them in doing so. The proposed regulations allow districts and charter schools the flexibility to focus on the languages of the parents/guardians of the students they serve.

88. COMMENT: A commenter expressed concern that the draft regulations move away from previous agreements with respect to performance calculations. It was the commenter's understanding the higher performance calculation (i.e., the higher of a school's Weighted Average Achievement Level or Core Subject Performance Level) would be used to make accountability determinations. The current regulations reflect that an averaging of the two Levels will be used. This change would allow refusal rates to impact school accountability determinations.

DEPARTMENT RESPONSE: The current regulations reflect changes that were made in the plan submitted to the United States Department of Education to secure plan approval. The "higher performance calculation" is still used to rank schools that have the

same Composite Performance Index in order to determine a subgroup's Composite Performance Level.

89. COMMENT: A commenter expresses appreciation for NYSED's process that provided multiple opportunities for school districts and other stakeholders to participate in its ESSA plan development and now implementation. This commenter describes other aspects of the new ESSA accountability system that they view favorably, including the addition of chronic absenteeism and college readiness indicators at the state level; the continued emphasis on student growth in elementary and middle school accountability -- the Department's approach to place it in equal standing with student achievement as a key driver of school improvement; and the inclusion of five- and six-year rates in the graduation rate indicator, so that more students, schools, and communities can see their success reflected in this metric.

DEPARTMENT RESPONSE: No response necessary as the comment is supportive of the regulations.

90. COMMENT: Provide Grades 3-8 test exam results quicker, so that schools and districts can plan appropriately for the next school year. The commenter strongly encourages NYSED to minimize the lag between testing and reporting test results on the Grades 3-8 exam, as it does not allow schools and districts to plan appropriately for the start of the next school year.

DEPARTMENT RESPONSE: The comment is outside the scope of the regulation. Therefore, no response is necessary. Moreover, in June of each year, the Department authorized the release of instructional reports for the Grades 3-8 ELA and Mathematics Tests. The reports allow authorized school personnel to view, for each question that contributed to a student's score, whether the student answered the

question correctly and the NYS Learning Standard measured by the question. The reports allow for raw score performance comparisons at the student, classroom, school, district, and regional levels.

Also, the Department released 75 percent of the Grades 3-8 ELA and Mathematics Test questions that count toward student scores in early June. This includes 100 percent of the constructed-response (open-ended) questions, as well as the scoring materials used by educators to score student responses to these questions. Each released multiple-choice question includes the question itself and an item map that provides the answer key and the standard measured by the question. Each released constructed-response question includes the question itself and an item map that provides the standard measured by the question.

91. COMMENT: A commenter strongly encourages NYSED to dis-incentivize double-testing by changing reporting files and growth percentiles. Currently, NYSED releases reporting files that omit students who only take the Regents exam and not the 8th grade Mathematics exam. These students are omitted in the percent proficient and growth percentiles for a school, which puts the school at a disadvantage. The Regents-only students are rightfully not taking the 8th grade exam and thereby avoiding double-testing; however, their schools suffer the consequences by seemingly low ranks and analysis that would mis-categorize or mischaracterize the learning occurring at the school. This commenter urges NYSED to use a conversion table that takes into account the student's Regents score and imputes what they would have likely scored if the student had taken the regular 8th grade exam.

DEPARTMENT RESPONSE: Middle school students who take a Regents exam math or science in grades 7 or 8 in lieu of the grade level exam have their results

included in the computation of the Weighted Average Achievement Index, the Core Subject Performance Index and the Academic Progress measure. During the 2014-15 school year, the Department and its student growth vendor developed an expansion of the student growth model to calculate SGPs for eighth grade students who take the Algebra I Regents Examination. However, consistent with the Department's intent to maintain stability in the State-provided growth model during the transition period (2015-16 through 2018-19 school years) as the Department considers a revised State-provided growth model, the Department decided not to adopt this expansion of the growth model for use in institutional accountability. Once the transition period concludes, the Department will consider expanding the model to allow students who take the Algebra I Regents Exam in place of grade level math assessments to contribute to their schools' growth measures. Growth for these students would be calculated by comparing them to their peers who also took the Algebra I Regents Exam. While including these students will increase the total number of student growth results included in school growth measures, the growth measures are as likely to increase or decrease a school's Student Growth level depending on how students perform on the Regents Exam relative to their peers.

92. COMMENT: Revisit regulations on participation rate as a criterion for exiting CSI or TSI status, especially for schools with small participation rate deficiencies. The commenter strongly encourages NYSED to avoid harsh punishment for schools with small deficiencies in exam participation. The commenter believes that the policy as proposed in the regulations would mean that a CSI school that has shown consistent academic progress each year and has technically qualified to exit the CSI designation

as per the criteria, but still, for example, has a 94% participation rate for Students With Disabilities (SWD) will not exit CSI status.

DEPARTMENT RESPONSE: The Regulations have been revised so that schools can be removed from TSI and CSI status so long as the accountability group(s) for which the school is required to do a participation rate improvement plan are not performing at Level 1 on the Weighted Average Achievement measure.

93. COMMENT: Reconsider and provide additional details about testing participation rate consequences. The commenter believes that participation rate requirements substantially differed in the amount of discretion offered to the Commissioner to remove schools from potential consequences. The commenter expressed that the flexibility described in the regulations does not mirror the approach that NYSED put forward in the approved State Plan, and they feel that insufficient detail is provided about some of the consequences that are listed. For example, “improvement plan,” “self-assessment,” and “participation rate audit” are not defined in the definitions section of the regulations; and “appropriate action” to take to notify “the general public” is left fairly loose. Additionally, they comment that all interventions seem to be predicated on 2 years of results for the same subgroup in the same subject starting in SY17-18, since all regulatory language refers to the initial SY17-18 infraction. The commenter states that the regulations seem to suggest that if a school is above 95% in this one year (SY17-18) it is no longer essentially at risk of being designated for participation rate in future years. The commenter points out that there seem to be various off-ramps and flexibility built in for participation rate accountability when consequences seem a lot more stringent for CSI schools. The commenter believes that this is an inconsistent approach, because even in the most extreme participation rate

interventions, the regulations still only say “schools may be required to undertake additional actions” and “extenuating circumstances” can get a school out of consequences.

DEPARTMENT RESPONSE: The Department has revised the proposed regulations and eliminated the reference to “additional activities.” The proposed revised regulations would require schools that undergo a participation rate audit because they have failed for five years to improve the performance of an accountability group in ELA or in math to address recommendations contained in the participation rate audit completed by the Department. With respect to the participation rate audit, the Department will be issuing guidance in the future to schools on how to implement this provision. The Department does not believe that any additional regulatory changes are needed.

94. COMMENT: NYSED should provide more clarity on the State’s involvement and requirement for Commissioner’s approval in participation rate improvement plans for both schools and districts. It is not clear what it means (for schools and districts) to be required by NYSED to implement certain activities and how a district will be required to monitor the implementation of such activities at each school required to implement a plan. There are also references to an audit in the regulations for schools and districts that do not improve their participation rates, but there is insufficient clarity on what kind of an audit and performed by whom.

DEPARTMENT RESPONSE: See response to comment #93.

95. COMMENT: The commenter strongly encourages NYSED to identify transfer schools as CSI in the same proportion as other school types are identified as

Comprehensive Support & Improvement (CSI) so that transfer schools are not over-designated based on the need of their students.

DEPARTMENT RESPONSE: The Department disagrees that the number of transfer high schools identified should be proportionate to the number of non-transfer high schools identified. The Department has worked with stakeholders to develop an accountability mechanism that recognizes the unique circumstances of transfer high schools. This mechanism could result in a higher or lower percentage of transfer high schools identified compared to non-transfer high schools, depending on how well transfer high schools perform in relation to the established accountability metrics.

96. COMMENT: The commenter strongly encourages NYSED to revisit the accuracy of its College, Career and Civic Readiness Index data and consider other alternatives for early implementation in SY17-18. The commenter commends NYSED on the decision to include a measure of college- and career- readiness to the statewide accountability system. However, in order to ensure this metric is an accurate and fair representation of their schools' readiness, they believe that Advanced Placement and Dual Enrollment coursework done by students prior to 2017-18 must be collected and used. Without this data, the metric will be inaccurate and not a true representation of school performance. The commenter urges NYSED to allow districts to submit prior course data through SIRS or by a separate spreadsheet collection. If this data cannot be gathered, then the commenter suggests NYSED delay implementation of this metric until the next round of CSI determinations are made in 2020-21 when multiple years' of data will have been collected from schools across the entire state.

DEPARTMENT RESPONSE: The Department has researched the impact of including Advanced Placement and Dual Enrollment course and exam results that were

taken by students prior to 2017-18 but not reported to the Department and found that inclusion of these data for the vast majority of schools would have little impact on the College, Career, and Civic Readiness Indices and Levels assigned to schools and no impact on the overall accountability status of a school. The Department will note this issue on school report cards. Further, the Department will accept appeals of accountability designations when the inclusion of these results would change the level that would be assigned a subgroup's CCCR indicator and consequently change the subgroup's accountability designation. Given this information, the Department does not believe a delay in the use of the CCCR measure or a recalculation of Indices or Levels is warranted.

97. COMMENT: The commenter strongly encourages NYSED to revisit state accountability measures that are based on the school's own baseline and instead encourages the state to consider using the student population as the basis for growth. In the cases where a school is below the state average, the only way for a school to avoid a Level 1 rating in graduation rate, CCCRI, and chronic absenteeism is to improve on the school's own result from the prior year. We encourage NYSED to set realistic targets based on incoming student need or prior student performance (e.g. growth).

DEPARTMENT RESPONSE: Several indicators in the ESSA accountability system, such as graduation rate, CCCRI, and chronic absenteeism, give schools credit for making progress compared to the subgroup's baseline performance. The Department will continue to explore alternative ways of holding schools accountable for results, which could include measures that are based upon the incoming performance of students.

98. COMMENT: A commenter urged NYSED to include at the high school level a metric based on growth percentiles or a student's starting point in terms of ELA and Math achievement.

DEPARTMENT RESPONSE: The Board of Regents have expressed their commitment over time to adding additional indicators to the ESSA accountability system. Resources permitting, the Department will explore the feasibility of including a metric of student growth in high school based on student performance on Regents examinations. The current grades 9-12 growth model used for to inform principal Annual Professional Performance Reviews includes a measure of student growth on ELA and Algebra I Regents examinations that measures student growth in relation to a student's performance on the 7 and 8 ELA and math assessments. However, because not all students take the ELA or Algebra Regents exams in the same year, high school growth measures tend to not be as robust as models that measure student growth for elementary/middle school students.

99. COMMENT: The commenter strongly encourages NYSED to revisit the suspension rate metric to avoid suspension quotas or other unintended consequences. The commenter would like for the suspension rate metric to be removed from the ESSA plan because they believe it could incentivize underreporting of serious incidents in schools.

DEPARTMENT RESPONSE: Suspension data is an important indicator of school climate that has been collected and reported for decades in New York. The three-year roll-out timeline for the use of this indicator for accountability purposes is intended to provide districts and schools with ample opportunity to implement alternatives to suspensions. This should result in both a reduction in serious incidents

and a reduction in suspensions. In addition, as the use of school climate surveys is expanded, the Department should be better able to determine any instances where there is dissonance between the number of incidents reported and the viewpoints of stakeholders regarding school safety and climate. Therefore, there is little reason to think that there will be a substantial increase in underreporting of serious incidents based on the use of suspension as an accountability measure.

100. COMMENT: A commenter strongly encourages NYSED to create an “ELL graduation rate” that includes all English Language Learner students. The current ELL graduation rates issued by the state do not give a full picture of student progress as the measure only documents students who have not passed the NYSESLAT. The commenter urges NYSED to report an “ELL graduation rate” to show the success of ELL student, by including all students who were English Language Learners at the time they entered high school.

DEPARTMENT RESPONSE: No change necessary. Graduation rates for English Language Learners already include students who are ELLs in the current reporting year as well as those who are not ELLs in the current reporting year but were ELL at any time during the cohort period.

101. COMMENT: A commenter strongly encourages NYSED to explain instances in the chronic absenteeism, graduation rate, and CCCRI regulations when the Commissioner has discretion to assign schools based on other non-defined criteria, as opposed to the use of the decision tables. For these three metrics, NYSED has created opportunities in the regulations for the Commissioner to assign a school to a Level 1 (graduation rate) or Level 2 (chronic absenteeism and CCCRI) outside of the regular decision table. With an eye towards a transparent system that allows districts and

schools to understand the system they are held accountable to, the commenter urges NYSED to name the criteria the Commissioner would use in these circumstances or remove these mentions of discretion.

DEPARTMENT RESPONSE: The regulation is intended to give the Commissioner flexibility to establish “floors” and “ceilings” in the assignment of Levels. For example, the Commissioner could decide as the system matures that all schools must achieve a certain minimum performance on an indicator to achieve Level 2 even if the school has met its lower Measure of Interim Progress. Conversely, the Commissioner may decide that over time a school may warrant receiving a Level 2 even if the school does not meet the lower of the two Measures of Interim Progress.

102. COMMENT: Better align Annual Achievement Progress Targets with CSI and TSI exit criteria. The commenter has questions regarding the process used for setting Annual Achievement Progress Targets (AAPT's). In particular, while AAPT's appear to overlap with exit criteria from CSI and TSI schools, the criteria do not appear to precisely align. The commenter finds it unclear, as the regulations are written, how AAPT's may or may not get a school out of its status, and what role the exit criteria would then play. The commenter suggests aligning these two sets of metrics for identified schools to ensure affected schools are clear in what performance targets they are required to reach.

DEPARTMENT RESPONSE: The purpose of the Annual Achievement Progression Target is to identify the CSI schools that have not made gains from the previous year and, therefore, should receive additional support and oversight from the Department. This measure will allow the Department to best determine how to direct its resources so that the schools that are struggling to make gains receive additional

attention. It is expected that some schools will meet their Progression Target but will not be eligible to be removed from CSI status. The Annual Achievement Progression Target was designed as a means of determining if a school had improved its performance from the previous year, not as the basis for making exit determinations.

103. COMMENT: Provide additional detail around designation and interventions for Schools Performing at Level 1. The commenter feels that the regulations do not make clear whether schools receiving the Schools Performing at Level 1 designation receive this for the all students subgroup or for any particular subgroup. While references to Schools Performing at Level 1 are made in the section of regulations related to Target Districts, the commenter is not clear who will hold Schools Performing at Level 1 accountable for their performance and improvement, nor who will provide resources and support for any related interventions.

DEPARTMENT RESPONSE: Any group that receives a Level 1 designation for any group is required to have that group's performance addressed in the district's consolidated application. The Department will issue further guidance on how districts are expected to work with schools to address this requirement.

104. COMMENT: Provide additional detail around designation and interventions for schools identified for Additional Targeted Support. Whereas CSI and TSI designations are defined and elaborated upon in the regulations, the definitions section of the regulation omits a definition for Additional Targeted Support (ATS). Additionally, there are no clear interventions described in the regulatory text: while it states that ATS schools "may be required" to implement additional actions "as determined by the Commissioner," the commenter is seeking greater clarity around the

formal parameters of this designation and how it would be meaningfully differentiated from the TSI status.

DEPARTMENT RESPONSE: The definition for Additional Targeted Support schools can be found in Section 3 (iii) within the definition for Targeted Support and Improvement schools. A TSI school with any accountability subgroup performing below the threshold for the all students subgroup for the lowest performing five percent of schools shall be identified for additional targeted support. Beginning with the 2018-19 school year, TSI schools shall be identified for additional targeted support in the same years in which CSI school designations are made based on the performance of the all students group. Examples of the actions required of schools identified for Additional Targeted Support can be found in Section (i). These include submitting the annual school comprehensive education plan to the Commissioner for approval; partnering with a BOCES, Regional Bilingual Educational Resource Network, Teacher Center, or other Regional Technical Assistance Center, or other technical assistance provider; and/or implementing a participatory budgeting process. Districts with TSI schools identified for additional targeted support may be required to implement additional actions, as determined by the Commissioner, including submitting a principal support report.

105. COMMENT: Preserve local autonomy around school closure decisions. The commenter believes that the regulatory language does not clearly reflect that the school district reserves the right to decide to close a school. Rather, the text suggests that the Commissioner decides. Under the Receivership Law, the district decides whether to close a school and then seeks approval from the Commissioner. This is, in effect, putting the new school into Receivership status, as it will be assigned an independent monitor who reports to the Commissioner from its inception. It does not

appear to us that this provision was included in the State's original plan, and we seek to maintain our own discretion in closing schools.

DEPARTMENT RESPONSE: The Commissioner's Regulations related to receivership outlined in Section 100.19(j) explicitly state that nothing prohibits a school district from closing or phasing out a school with the approval of the commissioner. The purpose of an independent monitor is to ensure that an acceptable plan for the closing of a school and opening of a new school, as appropriate, is submitted and then successfully implemented. The independent monitor is not an independent receiver and does not serve as the superintendent for the school. Any school that opens as a result of successful implementation of the school opening plan remains under the jurisdiction of the district and is not placed in receivership.

106. COMMENT: Clarify applicability of CSI/TSI designations and interventions to charter schools. The commenter states that it is not sufficiently clear in the regulatory text how ESSA designations and interventions would be applied across all school types. The regulatory language suggests that charters can still receive the CSI and TSI designation, but that interventions can be differentiated depending on their authorizer and charter. It is not clear how interventions would be consistently or uniformly applied, though, across traditional public and charter public schools receiving the CSI or TSI designations. The commenter asks that the state clarify this point.

DEPARTMENT RESPONSE: Charter schools are identified as CSI and TSI in the same manner as other public schools. However, interventions for charter schools designed as a CSI or TSI school, pursuant to federal and state law, is differentiated based on the school's charter and the authorizer's policies and procedures, which are typically included as part of the school's charter. The major authorizers in New York

have indicated that a school's designation as a CSI or TSI school will result in a school being required to take corrective actions and will be factored into renewal decisions.

107. COMMENT: The regulations state that schools must administer a survey to four groups annually: students, teachers, school leaders, and principals. The regulations do not specify whether this survey must be the same instrument in all schools across the state, or whether districts have autonomy to make decisions about the survey. A commenter strongly encourages NYSED to reconsider the need for a mandated survey as an intervention strategy for schools. The commenter urges NYSED to give districts flexibility to determine the survey instrument that is most meaningful for their context. The commenter also urges NYSED to keep surveys out of the state accountability system. If the state explores this option, the commenter would implore NYSED to allow districts to submit their local surveys for approval in lieu of a statewide survey. For scoring purposes, the local and state survey could be equated to a shared set of questions with similar wording to ensure that schools could all contribute scores to a statewide metric.

DEPARTMENT RESPONSE: The requirement that identified schools survey staff, parents, and students is intended to ensure that schools can gather feedback from multiple stakeholders to identify needs to be addressed in the School Comprehensive Education Plan. The Department will issue guidance to LEAs on ways to fulfill this requirement and how LEAs may be permitted to identify survey instruments that best meet their needs. The Department hopes that schools and districts look for various ways to gather ongoing feedback from stakeholders and, therefore, the Department would not restrict schools and district from using additional surveys beyond the survey that the LEA uses to fulfill the annual survey requirement. There is no plan at this time

to include surveys as part of process for differentiating school accountability designations.

108. COMMENT: Explain how evidenced-based interventions (EBIs) will be evaluated and monitored. The regulations lack clarity about how NYSED will monitor the selection, use, implementation, and effectiveness of EBIs at CSI and TSI schools. For instance, it would be helpful to know and plan for expectations that NYSED will have about what counts as “evidence based” for interventions, what counts as “job embedded” professional development aligned to EBIs, and how much autonomy schools and districts will have in choosing EBIs to deploy at schools. Additionally, some of the definition language suggests that in order for such evidence-based interventions to be acceptable, they must help increase the enrollment of the school – which seems outside of the scope of what the intervention is designed to do (i.e., to improve student outcomes). The commenter asks for these points to be clarified, and strongly recommends that NYSED allows local school districts to set their own direction in selecting, implementing, and monitoring the implementation of interventions at low performing schools (with guidance on how to stay in alignment with federal statutory requirements for evidence base of interventions).

DEPARTMENT RESPONSE: The Department will monitor the identification of evidence-based interventions through the School Comprehensive Education Plan (SCEP) approval process in CSI schools. In addition, the Department may consider the implementation and effectiveness of the intervention through the on-site Needs Assessment process. LEAs must identify in their annual SCEP one evidence-based intervention that meets the definition of either “Strong,” “Moderate,” or “Promising” evidence as defined in Section 8101(21)(A) of ESSA. The Department will review the

evidence-based intervention identified when approving CSI school SCEPs. Districts will be responsible for reviewing the evidence-based intervention identified in TSI school SCEPs.

As stated in the ESSA plan, “CSI and TSI schools will have the flexibility to identify an evidence-based intervention to address the root causes identified during the needs assessment process.” The Department does not intend to mandate specific interventions.

The regulations do not indicate that evidence-based interventions must increase the enrollment of the school. The Department will use the definitions found in Section 8101(21)(A) of ESSA to determine if an intervention meets the criteria for evidence-based. However, there is language in the regulation that identifies the expectation that an intervention “must be implemented so as to affect such percentage of a school’s enrollment or such percentage of classrooms as may be prescribed by the Commissioner for the school.” This language has been included to ensure that CSI schools identify an intervention that is intended to impact sufficient numbers of students at the school.

Finally, in addition to the definition of job-embedded professional development identified in the Regulations, the Department will follow the definition of Professional Development found in Section 8101(42) of ESSA when reviewing SCEPs to ensure that professional development aligns to the law’s provision that PD does not heavily really on “stand-alone, 1-day, or short-term workshops,” and instead allows for individual practice of skills in authentic contexts and provides opportunities for feedback.

109. COMMENT: Detail where money for the participatory budgeting process will come from and how participatory budgeting processes will be administered. While

some aspects of participatory budgeting (PB) process are detailed in the regulations, and while NYSED is administering a pilot program to better understand how PB can work, we suggest incorporating clearer guardrails on PB programming at CSI schools in the final regulations. Specifically, the commenter requests greater clarity about where funds should come from to be used in PB, and - while the floor has been set at \$2,000 per school – understanding the expectation of how much the state expects schools to contribute to PB processes. It would also be helpful to know more about specific programmatic components for how PB should work (e.g., voting and parent and teacher participation).

DEPARTMENT RESPONSE: To ensure that implementation of participatory budgeting is successful, the Department believes it would be better to conduct a pilot process that informs the guidance given to districts and schools rather than define specific parameters within regulations at this time. Similarly, while the proposed regulations specify the minimum amount required to be used for participatory budgeting, at this stage the Department would not want to restrain schools and districts that have fully embraced participatory budgeting by putting limits on the amount that schools can dedicate toward this endeavor.

110. COMMENT: Revisit district- versus borough-level accountability. The commenter strongly suggests that NYSED maintain the current structure for district-level accountability for New York City high schools. The commenter believes that NYSED's proposed designation of borough-level high school accountability does not comport with the New York City Department of Education's (NYCDOE) structure for high school supervision, support, and accountability. The proposed change could also

potentially have a negative impact on the NYCDOE's ongoing efforts to create vertical alignment and a more seamless P-12 continuum.

DEPARTMENT RESPONSE: The regulations have been revised so that the present accountability system in which community school districts are held accountable for high school performance will be maintained.

111. COMMENT: Provide additional guidance on performing Resource Allocation Reviews/Audits. The commenter is seeking greater clarity on how NYSED will examine (or require districts to examine) the effectiveness of professional development and other provisions of the Resource Allocation Reviews/Audits. Additionally, the regulations reference use of "best practices as determined by Commissioner," without specifying the guidelines in place for what practices these will be, or how CSI/TSI schools will need to account for them in these Audits. The commenter would like to continue to be able to determine the effectiveness of their own professional learning, and they suggest the Commissioner engage with districts to understand and determine an ongoing list of best practices in school improvement and transformation work.

DEPARTMENT RESPONSE: The Department appreciates the feedback that more guidance is needed concerning the Resource Audit process. The Department anticipates providing this information as part of the guidance and training that LEAs will receive on the Needs Assessment process.

112. COMMENT: Make Measures of Interim Progress an authentic, meaningful lever for school improvement. Based on current schedule for release of school performance data, there is little time left (at least for SY18-19) to use Measures of Interim Progress as meaningful, authentic goals against which schools can hold themselves accountable for performance improvement. The commenter urges NYSED

to make MIPs a greater focus of the new ESSA accountability system, with a goal of moving beyond considering the system one of just accountability metrics and instead as a means drive meaningful and continuous improvement at all schools.

DEPARTMENT RESPONSE: The Department is required to identify CSI and TSI schools in 2018-19 using 2017-18 school year data. Since the 2018-19 school year will be a planning year, there should be ample time for identified schools to develop their plans for implementation in the 2019-20 school year. In addition, any current Priority or Focus school will continue to implement their current plans in the 2018-19 school year.

113. COMMENT: Several commenters shared views and concerns that did not pertain to the regulations, but raised points regarding issues such as redistricting, school segregation, school lotteries, NYS state standards, school curricula, testing in general, assessment procedures, enrollment in college, and the value of hard work.

DEPARTMENT RESPONSE: These comments were outside the scope of the regulations. Therefore, no response is necessary.

114. COMMENT: The commenter expressed concern that transfer schools will be disproportionately identified as failing because of their mission to serve over-age, under-credited students. The commenter requests that NYSED research alternative metrics for transfer schools and weigh the success of students by means such as completion of the HSE, attainment of workforce credentials and graduation after a sixth year.

DEPARTMENT RESPONSE: The ESSA accountability system already takes into account graduation after a sixth year. The earning of high school equivalency diplomas is also part of the College, Career, and Civic Readiness Index and will be

incorporated into the accountability mechanism that recognizes the unique circumstances of high schools. The Department intends to review regularly with stakeholders the way in which it holds transfer high schools accountable, with the possibility over time of revising current accountability metrics or adding new ones that address the unique circumstances of these schools.

## Attachment F

### Letter from Mr. Patrick Rooney, Deputy Director, United States Department of Education regarding ESSA Participation Rate Requirements



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

AUG 23 2018

Ms. Jhone Ebert  
Senior Deputy Commissioner for Education Policy  
New York State Education Department  
89 Washington Avenue  
Albany, NY 12234

Dear Deputy Commissioner Ebert:

I am writing in response to your email on August 15, 2018, regarding the assessment requirements under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). Specifically, you requested information regarding the assessment participation rate requirements, including the potential consequences when a State is unable to meet the 95 percent participation rate requirement.

Section I I I I of the ESEA (20 U.S.C. 6311(b)(2)) requires a State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality, yearly academic assessments that includes, at a minimum, assessments in mathematics, reading/language arts, and science to all public elementary and secondary school students. With respect to reading/language arts and mathematics, the assessments must be administered in each of grades 3 through 8 and not less than once in grades 9 through 12. With respect to science, the assessments must be administered not less than once during grades 3 through 5, grades 6 through 9, and grades 10 through 12.

An SEA and LEA must provide for the participation of all students on the assessments (see ESEA section I I I I (b)(2)(B)(vii)(I)) so that they can identify the learning progress of all students against the same high expectations, regardless of a student's race, ethnicity, socioeconomic status, or neighborhood. This requirement does not permit certain students or a specific percentage of students to be excluded from assessments. Rather, it sets out the rule that all students in the tested grades must be assessed.

With respect to a State's accountability system, the ESEA requires that each State include a measure of academic achievement, for all public schools in the State, as measured by proficiency on the annual reading/language arts and mathematics assessments (see ESEA section 1111(c)(4)(B)(i)). ESEA section 1111(c)(4)(E) further requires that an SEA calculate the Academic Achievement indicator to account for assessment participation rates. ESEA section 1111(c)(4)(E)(ii) specifically requires that an SEA include in the denominator of this indicator the greater of (1) 95 percent of all students (or 95 percent of students in each subgroup, as the case may be) or (2) the number of students participating in the assessments. Thus, the statute allows for up to five percent of students to not participate in annual reading/language arts and mathematics assessment without it factoring into the calculation of the Academic Achievement indicator.

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In applying for funds under Title I, Part A of the ESEA, each SEA assures that it will administer the Title I, Part A program in accordance with all applicable statutes and regulations (see ESEA section 8304(a)). Similarly, each LEA that receives Title I, Part A funds assures that it will administer its Title I, Part A program in accordance with all applicable statutes and regulations (see ESEA section 8306(a)(1)).

In addition, each State is required to implement with fidelity the consolidated State plan it submitted and Secretary DeVos approved, including the requirement in section A.4.vii to describe the State's annual measurement of achievement to factor in the requirement for 95 percent student participation in the statewide reading/language arts and mathematics assessments. The New York State Education Department (NYSED) indicated in its consolidated State plan a series of actions it would take if any LEA or school exhibited a consistent pattern of testing fewer than 95 percent of all students and/or fewer than 95 percent of students in a particular subgroup, including that it would require schools that fail to meet the 95 percent participation requirement to submit a self-assessment and participation rate improvement plan to NYSED for the Commissioner's approval no less than three months prior to the next test administration period.

To your question of what consequences could accrue if the SEA is out of compliance with the ESEA, there are a range of enforcement actions available. These include sending a written request to the SEA that it come into compliance, increasing monitoring, placing a condition on the SEA's Title I, Part A grant award, placing the SEA on high-risk status (2 C.F.R. 200.207 and 3474.10), issuing a cease and desist order (GEPA section 456 (20 U.S.C. 1234e)), entering into a compliance agreement with the SEA to secure compliance (GEPA 457 (20 U.S.C. 1234f)), withholding all or a portion of the SEA's Title I, Part A administrative funds (ESEA section 1111(a)(7) (20 U.S.C. 6311(a)(7))), and suspending, and then withholding, all or a portion of the State's Title I, Part A programmatic funds (GEPA section 455 (20 U.S.C. 1234d)). An SEA has similar enforcement actions available to it with respect to noncompliance by an LEA, including withholding an LEA's Title I, Part A funds. see, e.g., GEPA section 440 (20 U.S.C. 1232c(b)).

Please note that an LEA may not avoid administering the State assessments required under ESEA section 1111(b)(2) by declining to accept Title I, Part A funds. As noted above, the assessment requirements are State-level requirements that apply to any SEA that accepts Title I, Part A funds. That SEA must then administer its assessments statewide — including to students in LEAs that do not participate in Title I, Part

I look forward to working with you to ensure that all students participate in statewide assessments during 2018-2019 school year and each year thereafter. If you need additional information or clarification, please do not hesitate to contact Denise M. Joseph of my staff at: [OSS.NewYork@ed.gov](mailto:OSS.NewYork@ed.gov). Thank you for your continued commitment to enhancing education for all of New York's students.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Rooney', with a long horizontal flourish extending to the right.

Patrick Rooney  
Deputy Director  
Office of State Support

cc: Ira Schwartz, Assistant Commissioner, Office of Accountability