

Attachment 1 – Notice to LEAs regarding public comment

Dear Stakeholder;

The New York State Department of Education has just posted for public comment the State's ESEA Flexibility Renewal Request for the 2015-16 through 2018-19 school years.

On November 13, 2014, the USDE issued new guidance for states with approved ESEA Flexibility Waivers describing how states could apply for a three or four year renewal of their approved Flexibility Waivers. States such as New York that were identified by the USDE as having fully implemented the USDE's Flexibility Waiver requirements regarding teacher and principal evaluations were notified that they had the option of applying for a four year renewal, covering the 2015-16, 2016-17, 2017-18, and 2018-19 school years. Under this process, states with approved waivers may submit amendments to the state's approved plan to take effect during the waiver period, as part of the renewal process.

The state must consult with stakeholders regarding its draft ESEA Renewal Request and any amendments before submitting its flexibility renewal request. The Notice Soliciting Public Comment, materials summarizing changes to the State's approved ESEA Waiver, and the State's complete ESEA Flexibility Renewal Request can be found on the New York State Education Department's Office of Accountability website at: <http://www.p12.nysed.gov/accountability/ESEAFlexibilityWaiver.html>.

Comments can be sent via email to ESEASUPPORT@nysed.gov, via mail to Dr. Lisa Long, Supervisor, Office of Accountability, Room 400, 55 Hanson Place, Brooklyn, NY 11217, or faxed to 718-722-2215. **Comments must be received no later February 26, 2015.**

Please identify in the subject line the topic(s) and/or the amendment(s) on which you wish to comment. For example, if you would like to comment on the revisions to the Priority School methodology for identification, please include "Priority School Identification" in the subject line of your email. If you wish to comment on the proposed amendment pertaining to testing of English language learners, then please include "Public Comment on Amendment 1" in the subject line of your email. Finally, if you wish to make multiple comments, then please include the topic(s) and/or amendments in the subject line of your email (ex: "Public Comments on Priority School Identification and Amendment 1").

Thank you in advance for your comments.

Sincerely,
The Office of Accountability

Attachment 2 -Comments on Request Received from LEAs

TBD

Attachment 3: Notice and information provided to the public regarding the request.

New York State ESEA Flexibility Waiver Renewal Request

For Public Comment: Proposed Amendments to New York State's Approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver for the 2015-16 through 2018-19 School Years

On November 13, 2014, the United States Department of Education (USDE) issued new guidance for states with approved ESEA Flexibility Waivers describing how states could apply for a three- or four-year renewal of their approved Flexibility Waivers. States such as New York that were identified by the USDE as having fully implemented the USDE's Flexibility Waiver requirements regarding teacher and principal evaluations were notified that they had the option of applying for a four-year renewal, covering the 2015-16, 2016-17, 2017-18, and 2018-19 school years. Under this process, states with approved waivers may submit amendments to the state's approved plan to take effect during the waiver period, as part of the renewal process. The state must consult with stakeholders regarding its draft ESEA Renewal Request and any amendments before submitting its flexibility renewal request. A copy of New York State's approved ESEA Flexibility Waiver can be found on the New York State Education Department's (NYSED or "the Department") website at: <http://www.p12.nysed.gov/accountability/documents/nyrequest2.pdf>.

At the February 2015 Board of Regents meeting, the Department presented for consideration proposed revisions and amendments to New York's approved ESEA Waiver. Members of the Board of Regents asked the Department to consider their questions along with any comments received from the public as the Department prepares a final ESEA Renewal Request for the United States Department of Education. The questions asked by the Board of Regents during the February 2015 meeting can be found here: <http://www.p12.nysed.gov/accountability/documents/BORQuestionsaboutESEARenewalWaiver-2-12-15-rev.pdf>

The Board of Regents also directed the Department to post the draft ESEA Renewal Request for public comment beginning on February 13 and ending on February 26, 2015. To view the PowerPoint presented to the Board of Regents at the February meeting, which summarizes the revisions made to the Renewal Request, please see: <http://www.p12.nysed.gov/accountability/documents/UpdateonESEAWaiverBORFebruary2015021315.pdf>

To read a nine page executive summary of the proposed revisions and amendments, please see: <http://www.p12.nysed.gov/accountability/documents/ExecutiveSummaryESEARenewalWaiver021315.pdf>

To review the complete 240 page redline version of the ESEA Renewal Waiver with attachments, please see: <http://www.p12.nysed.gov/accountability/documents/ESEAFlexibilityRenewal021315trackchange533pm.pdf>

To review the ESEA Renewal Waiver and attachments without redline edits, please see: <http://www.p12.nysed.gov/accountability/documents/ESEAFlexibilityRenewal021315clean533pm.pdf>

Following review of public comment, the Department will submit a final draft waiver renewal request with related amendments for action by the Regents in March 2015. If approved by the Board of Regents, the Department will submit New York's application for renewal of its ESEA Waiver for the 2015-16 through 2018-19 school years to the USDE no later than March 31, 2015.

If you would like to submit comments regarding the draft renewal application or the amendments, please submit your comments by email to eseasupport@nysed.gov. Please identify in the subject line the topic(s) and/or the amendment(s) on which you wish to comment. For example, if you would like to comment on the

revisions to the Priority School methodology for identification, please include "Public Comment on Priority School Identification" in the subject line of your e-mail. If you wish to comment on the proposed amendment pertaining to testing of English language learners, then please include "Public Comment on Amendment 1" in the subject line of your e-mail. Finally, if you wish to make multiple comments, then please include the topic(s) and/or amendments in the subject line of your e-mail (ex: "Public Comments on Priority School Identification and Amendment 1").

Comments may also be submitted to Dr. Lisa Long, Supervisor, Office of Accountability, 55 Hanson Place, Room 445, Brooklyn, NY 11217. Please indicate "ESEA Waiver Public Comment" on the outside of the envelope. Comments must be received by Thursday, February 26, 2015..

TBD

Attachment 4(a): Average statewide proficiency based on 2013-14 assessments – reading/language arts and mathematics

Grades 3 -8 ELA									
Accountability Group	Enrollment	Level 1 Off Track	Level 1 On Track	Level 2 Off Track	Level 2 On Track	Level 3	Level 4	Performance Index	%Level 1 On Track + %Level 2 On Track + %Level 3 + %Level 4
All Students	1123106	353043	1	391226	25376	255331	98129	102	33.7
Students With Disabilities	206638	133019	0	51084	824	19000	2711	47	10.9
American Indian/Alaskan	6514	2497	0	2386	99	1196	336	87	25
Asian or Pacific Islander	101044	17305	0	29826	2413	32281	19219	136	53.4
Black (not Hispanic)	204537	89970	0	73695	2923	30763	7186	76	20
Hispanic	274836	114223	0	103176	4041	43390	10006	79	20.9
White	521808	124549	1	177662	15614	144228	59754	118	42.1
Limited English Proficient	111206	66179	0	33311	421	9859	1436	51	10.5
Economically Disadvantaged	601842	254303	0	217491	8954	95959	25135	79	21.6
Multi-racial	14367	4499	0	4481	286	3473	1628	106	37.5

Grades 3 -8 Math									
Accountability Group	Enrollment	Level 1 Off Track	Level 1 On Track	Level 2 Off Track	Level 2 On Track	Level 3	Level 4	Performance Index	%Level 1 On Track + %Level 2 On Track + %Level 3 + %Level 4
All Students	1109462	314871	0	353111	2713	289636	149131	111	39.8
Students With Disabilities	201947	118295	0	52723	168	24481	6280	57	15.3
American Indian/Alaskan Native	6349	2203	0	2184	13	1349	600	96	30.9
Asian or Pacific Islander	102049	10930	0	21796	241	34889	34193	157	67.9
Black (not Hispanic)	202562	90995	0	66297	356	33318	11596	77	22.3
Hispanic	274800	107379	0	96084	517	52650	18170	87	26
White	509681	99461	0	162543	1541	163824	82312	129	48.6
Limited English Proficient	116044	57751	0	34785	98	16644	6766	70	20.3
Economically Disadvantaged	596431	233158	0	199457	1113	114796	47907	88	27.5
Multi-racial	14021	3903	0	4207	45	3606	2260	114	42.2

Attachment 4(b): 2013-14 Percent Proficient on High School English Language Arts (ELA) and Mathematics Exams by Subgroup

High School ELA							
Accountability Group	Enrollment	Level 1	Level 2	Level 3	Level 4	Performance Index	% Level 3 + % Level 4
All Students	192531	21781	45903	93786	31061	154	64.8
Students With Disabilities	27845	11071	9196	6014	1564	87	27.2
American Indian/Alaskan Native	892	163	269	374	86	133	51.6
Asian or Pacific Islander	17704	1356	3021	9546	3781	168	75.3
Black (not Hispanic)	33485	6289	11364	13724	2108	128	47.3
Hispanic	39825	7512	12592	17003	2718	131	49.5
White	99453	6343	18407	52562	22141	169	75.1
Limited English Proficient	11729	4740	4175	2559	255	84	24
Economically Disadvantaged	84524	14412	26164	37724	6224	135	52
Multi-racial	1172	118	250	577	227	159	68.6

High School Math							
Accountability Group	Enrollment	Level 1	Level 2	Level 3	Level 4	Performance Index	% Level 3 + % Level 4
All Students	192531	18188	83487	58307	32549	138	47.2
Students With Disabilities	27845	10091	13286	3073	1395	80	16
American Indian/Alaskan Native	892	129	487	212	64	116	30.9
Asian or Pacific Islander	17704	747	4303	6348	6306	167	71.5
Black (not Hispanic)	33485	5771	20261	6126	1327	105	22.3
Hispanic	39825	6471	22789	8424	2141	110	26.5
White	99453	4958	35145	36841	22509	155	59.7
Limited English Proficient	11729	2969	6276	1771	713	96	21.2
Economically Disadvantaged	84524	11778	45874	19934	6938	118	31.8
Multi-racial	1172	112	502	356	202	138	47.6

Attachment 5: Listing of Priority, Focus and Reward Schools

This list will be provided before or on January 31, 2016.

Attachment 6: Online Resource listing – implementation of CCLS aligned curriculum, and SEA guidelines for and evidence of adoption of local teacher and principal evaluation and support systems.

New York launched www.EngageNY.org in 2011 (redesigned in 2014 based on feedback from teachers) and the site has since become a national resource and has attracted nearly 100 million page views and more than 6 million unique visitors from every state in the nation. Across the country, educators and school leaders turn to EngageNY as a source for comprehensive classroom materials aligned to new college- and career-ready standards. The State anticipates keeping the site running after RTTT and envisions it being even more interactive and serving as a hub for educators to meet online and exchange ideas. (See [Support the Common Core with the Right Instructional Materials](#) and [USDE's feature story on EngageNY.org](#).)

Attachment 7: ESEA Renewal Think Tank Membership

Think Tank Members

Members included representatives from the following organizations:

- Advocates for Children
- Alliance for Quality Education
- Asian American Legal Defense and Education Fund
- Bedford Central School District
- Boards of Cooperative Educational Services (BOCES)
- Commissioner's Advisory Panel (CAP) for Special Education Services
- Conference of Big Five School Districts
- Council of New York Special Education Administrators
- Council of School Supervisors & Administrators (CSA)
- Greece Central School District
- Highland Falls School District
- Learning Disabilities Association of New York State
- New York Charter Schools Association
- New York City Charter School Center
- New York City Department of Education
- New Rochelle Board of Education - Office of Special Education Start
- New York Schools Data Analysis Technical Assistance Group (DATAG)
- New York State Association of School Business Officials
- New York State Bilingual and ESL Committee of Practitioners (Bilingual COP)
- New York State Council of School Superintendents (NYSCOSS)
- New York State Parent Teacher Association
- New York State School Boards Association (NYSSBA)
- New York State United Teachers (NYSUT)
- North East Charter Schools Network
- School Administrators Association of New York State (SAANYS)
- Special Act Schools
- Staff/Curriculum Development Network
- State University of New York (SUNY)
- Syracuse City School District
- The Business Council of New York State, Inc.
- Title I Committee of Practitioners (Title I COP)
- United Federation of Teachers (UFT)
- Webster Central School District
- Yonkers Public Schools

Attachment 8:

Focus District & Focus School Identification Methodologies (Draft)

New York identified Focus Schools based on the following factors, as defined in the ESEA waiver guidance:

- Schools with the lowest achievement of the subgroups in terms of proficiency on the statewide assessments that are part of the state’s differentiated recognition, accountability and support system and are not making progress as defined by New York’s “progress filters.”
- High schools with the lowest Graduation Rate for subgroups that are not making progress as defined by New York’s “progress filters.”

New York identifies Focus Schools using a two-stage process. The state first identifies Focus Districts and Focus Charter Schools with the lowest achieving subgroups for Performance Index (PI) and Graduation Rate that are not demonstrating progress. The state then provides the districts with a list of Focus Schools. The State will identify a minimum of 10 percent of schools statewide and will identify additional schools in the event such identification is necessary so that a minimum of 10 percent of Title I schools are identified as Focus.

The criteria used to identify the Focus Districts, Focus Charter Schools and Focus Schools are described below:

A. District identification based on PI

1. For each district, the combined 2014-15 Performance Index (PI) of ELA and mathematics for each accountable subgroup is determined for the elementary-middle grade level and for the secondary grade level separately.
2. The subgroup’s combined 2014-15 ELA and mathematics Student Growth Percentile (SGP) is determined. If the SGP is above the state average then for the elementary-middle level the subgroup is removed from those for which the district can be identified as a Focus District.

Example:

- District A is accountable for Black, Hispanic and Economically Disadvantaged (ED) subgroups. The combined 2014-15 ELA and Math SGP for Black students is 42, for Hispanic students it is 45, and for ED students it is 48. The state average SGP is 43,¹ 46,1 and 471 respectively.
 - The ED subgroup’s SGP is above the state average; therefore at the elementary-middle level the subgroup’s PI will be removed for those for which the District can be identified. District A can now be identified only for the Black and Hispanic subgroups at the elementary-middle level.
3. If the subgroup’s 2010 4-year, 2011 4-year or 2009 5-year cohort Graduation Rate is above the state average, then for the secondary level the subgroup’s PI is removed from those for which the district can be identified as a Focus District.

¹ State numbers are illustrative in this and other examples. The actual state average will be based on final results for the 2014-15 assessments.

Example:

- District B's 2010 4-year Graduation Rate for Black students is 60, for Asian students it is 72 and for White students it is 77. The state average is 58, 83, 1 and 84, 1, respectively. The Black subgroup's Graduation Rate is above the state average and therefore at the secondary level the subgroup's PI will be removed for the subgroups for which the district can be identified. District B can now be identified only for the White and Asian subgroups at the secondary level, if the PI's for these subgroups is below the cutpoint for preliminary identification.
4. If the subgroup makes a 10 percent gap reduction in PI from the prior year, then the subgroup is removed from consideration for identification for that grade level.
 5. If the subgroup makes a 10 point gain in PI from the prior year, then the subgroup is removed from consideration for identification for that grade level.
 6. Districts that have made the 2013-14 and 2014-15 AYP (both ELA and mathematics) for the preliminarily identified subgroup(s) for a grade level will be removed from consideration as a Focus District for the subgroup(s) within that grade level.

Example:

- District C has been preliminarily identified for the performance of the ED subgroup for the secondary level. The district made AYP (both ELA and mathematics) for the ED subgroup at the secondary level for 2013-14 and 2014-15; therefore the district will not be identified for the ED subgroup for the secondary level.
7. For the elementary-middle and for the secondary levels the lowest performing racial/ethnic subgroup (American Indian, Asian, Black, Hispanic, White, and multi-racial) will be used in the computation of the PI cutpoint for the preliminary identification of racial/ethnic subgroups.

Example:

- District D has elementary-middle 2014-15 combined ELA and mathematics Asian PI of 70, Black PI of 60, Hispanic PI of 50, and White PI of 80. The elementary-middle level race/ethnicity PI for District A will be 50 (minimum PI amongst all the racial/ethnic subgroups) for the purposes of establishing the PI cutpoint for preliminary identification of racial/ethnic subgroups.
8. For the elementary-middle and secondary levels separately, determine the number of districts that have accountability subgroups with PI for the Students with Disabilities (SWD), limited English proficient (LEP), ED, and a race/ethnicity subgroup. The counts are based on the total number of accountable subgroups statewide – without removing any subgroup for reasons stated in steps 2 to 6. Then

determine what five percent² of the total count for each subgroup would be for the elementary-middle and secondary levels.

Example:

- There are a total of 600³ districts with an accountable SWD subgroup for the elementary-middle level in the state. Five percent of 600 is 30. This is the count of low-achieving districts that needs to be identified for PI for SWD subgroup for the elementary-middle level.
9. For the SWD subgroup sort the PI in descending order. Remove the districts that have met one of the progress filters outlined in steps 2 to 6. From the bottom count the required number.

Example:

- Select the bottom 30 districts for the SWD subgroup (based on 600 districts that are accountable for students with disabilities at this grade level) after removing those that have met one or more of the “progress” filters in steps 2 to 6. These 30 districts are identified for their SWD subgroup. If more than two districts have the same PI (rounded to the nearest decimal point) that has been established as the cut point, then identify all districts at the cut point such that the number of identified districts shall be more than 30.
10. Repeat step 9 for the LEP, ED and race/ethnicity subgroups for the elementary-middle and secondary levels separately. The districts with PI in this list will not include any district that has met one of the progress filters for the respective subgroups in the respective grade levels outlined in steps 2 to 6.
11. If any of the subgroups American Indian, Asian, Black, Hispanic, White, or multi-racial has a PI equal to or less than the cut point for race/ethnicity subgroup (see Step 7), then that subgroup will be identified. This is done separately for the elementary-middle and secondary levels.

Example:

- Statewide there are 7003 districts with an accountable race/ethnicity subgroup for the elementary-middle level. Five percent of 700 is 35. The race/ethnicity PI is sorted in descending order and the bottom 35 districts are selected. The race/ethnicity minimum PI for the district with the highest PI in the selection is the cut point for the racial/ethnic subgroups.
- Any district that has a race or ethnicity subgroup at the elementary-middle level with a PI at or below that cut point will be identified for that subgroup.

B. District identification based on Graduation Rate

12. All the districts with their 2010 4-year Graduation Rate for each accountable subgroup are listed. The subgroup(s) where the Graduation Rate is above the state average is removed for identification as a Focus District for Graduation Rate.

² This percentage is preliminary and for illustrative purposes. The actual percentage that will be used to preliminarily identify districts as Focus may be higher or lower depending on 2014-15 assessment school year results and the number of districts that must be identified so that at least ten percent of all schools in the State are identified as Focus and at least ten percent of all Title I schools in the state are identified as Focus.

³ This number is for illustrative purposes only. The actual count will be based on 2014-15 assessment results.

Example:

- District E has a 2010 4-year SWD Graduation Rate of 47, Hispanic Graduation Rate of 59 and LEP Graduation Rate of 38. The state average is 44, 57, 1 and 40, 1, respectively.
- The SWD and Hispanic Graduation Rates are above the state average and therefore the subgroups will be removed from those for which the district can be considered for identification. The district can still be considered for identification for the LEP subgroup.

13. If the subgroup's 2010 4-year, 2011 4-year or 2009 5-year Graduation Rate is above the state average, then the subgroup is removed from those for which the district can be identified for Graduation Rate.

Example:

- District E is accountable for the Black, LEP and ED subgroups.
- The Black subgroup's 2009 5-year Graduation Rate is above the state average and therefore the subgroup is removed from those for which the district can be considered for identification for Graduation Rate. The district can now be identified only for the LEP and ED subgroups for Graduation Rate.

14. If the subgroup's gain in Graduation Rate from the 2008 4-year graduation rate cohort to 2010 4-year graduation rate cohort is 10 points or more, then the subgroup will be removed from those for which the district can be identified for Graduation Rate.

Example:

- District G is preliminarily identified for the ED subgroup. The subgroup's 2008 4-year Graduation Rate was 20 percent and the 2010 4-year Graduation Rate is 35 percent.
- The subgroup made a 15 point gain and is therefore removed from those for which the district can be considered for identification for Graduation Rate. The district is now not identifiable for any subgroups for Graduation Rate.

15. If the subgroup's gain in Graduation Rate from the 2009 4-year graduation rate cohort to 2010 4-year graduation rate cohort or the 2008 5-year graduation rate cohort to 2009 5-year graduation rate cohort is 10 points or more, then the subgroup will be removed from those for which the district can be identified for Graduation Rate.

16. If the subgroup makes a 10 percent or more gap reduction from the 2009 4-year graduation rate cohort to 2010 4-year graduation rate cohort, then the subgroup will be removed from those for which the district can be identified for Graduation Rate.

17. Districts that have made the 2013-14 and 2014-15 AYP for the preliminarily identified subgroup(s) in Graduation Rate will not be considered for identification as a Focus District for Graduation Rate for those subgroup(s).

Example:

- District H is accountable for the Asian, LEP and ED subgroups for Graduation Rate.
- The LEP subgroup made AYP in 2012-13 and 2013-14; therefore the district will not be considered for identification for the LEP subgroup. The district can now be identified only for the Asian and ED subgroups for Graduation Rate.

18. For each district, the minimum Graduation Rate for the race/ethnicity subgroup is determined using the process described in Step 7.

19. Determine the number of districts that have accountability subgroups with the 2010 4-year Graduation Rate for the Students with Disabilities (SWD), limited English proficient (LEP), ED, and a race/ethnicity subgroup. Then determine what five percent² of the total count for each subgroup would be. The counts are based on the total number of accountable subgroups statewide – without removing any subgroup for reasons stated in steps 12 to 16 above.

Example: There are a total of 4003 districts with an accountable SWD subgroup for Graduation Rate in the state. Five percent of 400 is 20. This is the count of low achieving districts that need to be identified for the SWD subgroup for Graduation Rate.

20. For the SWD subgroup sort the Graduation Rate in descending order. From the bottom count the required number.

21. Repeat step 19 for the LEP, ED and race/ethnicity subgroups.

22. If any of the subgroups American Indian, Asian, Black, Hispanic, White, or multi-racial has a Graduation Rate equal to or less than the cut point for race/ethnicity subgroup, then that subgroup will be identified.

Example:

- Statewide there are 5003 districts with an accountable race/ethnicity subgroup. Five percent of 500 is 25. The race/ethnicity Graduation Rate is sorted in descending order and the bottom 25 districts are selected. The race/ethnicity minimum Graduation Rate for the district with the highest Graduation Rate in the selection is the cut point for the racial/ethnic subgroups.
- Any district that has a race or ethnicity subgroup with a Graduation Rate at or below the cut point will be identified for that subgroup.

23. Districts are identified as Focus Districts if any subgroup is identified either through the PI or Graduation Rate methodology.

24. Special Act Districts are identified only if they have Priority Schools.

25. Districts with Priority Schools automatically become Focus Districts.

C. Focus School Identification

26. All schools in the Focus Districts are preliminarily identified as Focus Schools. Priority Schools and closing schools are then removed from the list.
27. Within a Focus District, any school that has any subgroup at or below the cut points established for Focus Districts will be preliminarily identified as a Focus School. The subgroup identified in the Focus School could be the same subgroup the district was identified for or the subgroup could be different.
28. For elementary and middle schools the 2014-15 Student Growth Percentile (SGP) is determined. If the SGP for the subgroup(s) is greater than the state average that subgroup(s) will be removed as a cause for identification of the school.
29. If the subgroup makes a 10 percent gap reduction in PI from the prior year then the subgroup will be removed as a cause for identification of the school based on its PI for that grade level (i.e., EM or secondary).
30. If the subgroup makes a 10-point gain in PI from the prior year then the subgroup will be removed as a cause for identification of the school based on its PI for that grade level.
31. If the subgroup's 2010 4-year, 2011 4-year or 2009 5-year Graduation Rate is above the state average, then that subgroup will be removed as a cause for identification of the school. This applies to schools identified for PI or for Graduation Rate.
32. If the subgroup makes a 10 percent or more gap reduction from the 2009 4-year graduation rate cohort to 2010 4- year graduation rate cohort, then that subgroup will be removed as a cause for identification of the school.
33. If the subgroup's gain in Graduation Rate from the 2008 4-year graduation rate cohort to 2010 4- year graduation rate cohort is 10 points or more, then that subgroup will be removed as a cause for identification of the school.
34. If the subgroup's gain in Graduation Rate from the 2009 4-year graduation rate cohort to 2010 4-year graduation rate cohort or the 2008 5-year graduation rate cohort to 2009 5-year graduation rate cohort is 10 points or more, then that subgroup will be removed as a cause for identification of the school.
35. Schools that have made the 2013-14 and 2014-15 AYP (ELA and mathematics) for the preliminarily identified subgroup(s) in PI for a grade level will not be identified for the subgroup(s) at that grade level. Similarly schools that have made the 2013-14 and 2014-15 AYP for the preliminarily identified subgroup(s) in Graduation Rate will not be identified for the subgroup(s) in Graduation Rate.
36. Districts may also choose to identify schools that are at or below the cut point (but not on the selected list due to the schools meeting one of the progress filters), with the permission of the Commissioner, as substitutes for or in addition to schools on the selected list.
37. A Focus District with no Focus or Priority School will not be required to identify a Focus School.

D. Focus charter identification

38. Charter schools that have any accountable subgroups with a PI or Graduation Rate at or below the cut points used for Focus Districts and are not removed because of the “progress filters” will be identified as Focus Schools.

Attachment 9:

Priority Schools Identification Methodology (Draft)

New York identified Priority Schools based on the following factors as defined in the ESEA waiver guidance:

- Schools based on the achievement of the “all students” group in terms of proficiency on the statewide assessments that are part of the state’s differentiated recognition, accountability and support system and are not making progress as defined by New York’s “progress filters.” The school must also have shown a lack of progress for the “all students” group over a number of years.
- Secondary schools with a Graduation Rate less than 60 percent for a number of years and not making progress as defined by New York’s “progress filters.”

The state will identify a minimum of five percent of schools statewide and will identify additional schools in the event such identification is necessary, so that a minimum of five percent of Title I schools are identified as Priority.

The criteria used to identify the Priority Schools are described below:

1. Secondary schools that have a 4-year cohort Graduation Rate less than 60 percent for the 2008, 2009 and 2010 cohorts are selected. The state will preliminarily identify all schools meeting this criterion as Priority Schools.
2. For all schools the simple average of 2014-15 Performance Index (PI) for ELA and mathematics for the elementary-middle (EM) and secondary levels are determined separately. If a school does not have 2013-14 PI, then the school is removed from identification as a Priority School based on PI. The school could still be identified for Graduation Rate as outlined in step 1.

Example:

- School A has an elementary-middle ELA PI of 30 and mathematics PI of 40. The average PI for school A will be $(30+40)/2$ is 35.
 - School B has a high school ELA PI of 120 and mathematics PI of 100. The average PI for school B will be $(120+100)/2$ is 110.
3. Sort the 2014-15 PI in descending order. Subtract the average 2013-14 PI from the average 2014-15 PI. This is done for elementary-middle and secondary grade levels separately.
 4. For the elementary-middle schools, select schools from the bottom that have a 2014-15 PI less than or equal to a specific cut point set by the state and a PI gain less than or equal to that set by the state.
 5. For secondary schools, select schools from the bottom that have a 2014-15 PI less than or equal to a specific cut point set by the state and a PI gain less than or equal to that set by the state.
 6. For a school with both elementary-middle and secondary school grade levels, the school will be selected if either of the grade levels meets steps 4 or 5 respectively.

7. The state will preliminarily identify all schools (including non-Title I schools) that meet the criteria in steps 1, 4, 5 or 6.
8. For any school that has elementary-middle grade level, the 2014-15 combined ELA and mathematics Student Growth Percentile (SGP) for the all students subgroup is determined. If the SGP is greater than the 50th percentile, the school is removed from identification as a Priority School for PI (both elementary-middle and secondary level PIs will be removed). The school could still be identified for Graduation Rate.

Example:

- School C has a 2014-15 ELA and mathematics SGP of 48 & 54 percentile respectively. The school's combined SGP of 51 percentile is higher than 50; therefore the school is removed from consideration for identification as a Priority School for PI.
9. Any school that has a majority of its accountability groups' 2014-15 ELA and mathematics combined SGP greater than the state average will be removed from consideration for identification as a Priority School for PI (both elementary-middle and secondary level PIs will be removed). The school could still be identified for Graduation Rate.

Example:

- School D has three subgroups for which it is accountable – Students with disabilities (SWD), Black, and Economically Disadvantaged (ED).
 - The 2014-15 combined ELA and mathematics SWD SGP is 44, Black SGP is 47, and the ED SGP is 42. The 2014-15 combined ELA and mathematics state average for the subgroups are 42⁴, 44⁴ and 47⁴, respectively.
 - School E has majority of subgroups (two out of three groups, or 67 percent) with an SGP greater than state average. The school is removed from consideration for identification as a Priority School for PI.
10. Schools that have made AYP in ELA and math using both 2013-14 and 2014-15 school year data for the all students subgroup for a grade level will not be considered for identification for that grade level. Similarly schools that have made the AYP for graduation rate using both 2013-14 and 2014-15 accountability determinations for the all students subgroup in Graduation Rate will be removed from consideration for identification for Graduation Rate.
 11. Schools that had a 10 percent gap reduction in PI from the prior year will be removed from consideration for identification for PI for that grade level. The school could still be identified for Graduation Rate as outlined in step 1.
 12. Schools that had a 10-point gain in PI from the prior year will be removed from consideration for identification for PI for that grade level. The school could still be identified for Graduation Rate as outlined in step 1.

⁴ State numbers are illustrative in this and other examples. The actual state average will be based on final results for the 2014-15 assessments.

13. Schools that have the 2010 4-year, 2011 4-year or 2009 5-year all students group Graduation Rate at or above 70 will be removed from consideration for identification as a Priority School for both PI and Graduation Rate.
14. Schools that had a 10-point increase in Graduation Rate for the all students group from 2008 4-year to 2010 4-year cohort will be removed from consideration for identification for Graduation Rate. The school could still be identified for PI.
15. Schools that had a 10-point increase in Graduation Rate for the all students group from 2009 4-year to 2010 4-year cohort or 2008 5-year to 2009 5-year cohort will be removed from consideration for identification for Graduation Rate. The school could still be identified for PI.
16. Schools that had a 10 percent gap reduction in Graduation Rate for the all students group from 2009 4-year to 2010 4-year cohort will be removed from consideration for identification for Graduation Rate. The school could still be identified for PI.
17. Schools with special circumstances (transfer schools, special act schools, high schools with 50 percent or more students born outside the U.S. who have had less than three years of U.S. schooling) and schools identified for closure are removed on a case by case basis from consideration for Priority School status.

Attachment 10:

Education Laws of 2011

Education Law § 211. Review of regents learning standards

1. The regents shall periodically review and evaluate the existing regents learning standards to determine if they should be strengthened, modified or combined so as to provide adequate opportunity for students to acquire the skills and knowledge they need to succeed in employment or postsecondary education and to function productively as civic participants upon graduation from high school. Such review and evaluation shall be conducted upon a schedule adopted by the regents, provided that a review and evaluation of the English language arts standards shall be completed as soon as possible, but no later than the end of the two thousand seven--two thousand eight school year.

2. In conducting such reviews, the regents shall seek the recommendations of teachers, school administrators, teacher educators and others with educational expertise on improvements to the standards so that they ensure that students are prepared, in appropriate progression, for postsecondary education or employment.

Education Law § 211-a. Enhanced state accountability system

To more fully implement the requirements of section one thousand one hundred eleven of the elementary and secondary education act of nineteen hundred sixty-five, as amended, and the federal regulations implementing such statute, the regents shall develop and implement an enhanced state accountability system that uses growth measures to the extent required by this section.

1. By the start of the two thousand eight--two thousand nine school year, the regents shall establish, using existing state assessments, an interim, modified accountability system for schools and districts that is based on a growth model, subject to approval of the United States department of education where required under federal law.

2. The regents shall proceed with the development of an enhanced accountability system, with revised or new state assessments, based on an enhanced growth model that, to the extent feasible and consistent with federal law, includes a value-added assessment model that employs a scale-score approach to measure growth of students at all levels. (a) If the regents establish that the assessment scaling and accountability methodology employed have been determined by external experts in educational testing and measurement to be valid and reliable and in accordance with established standards for educational and psychological testing, and (b) the approval of the United States department of education has been obtained where required by federal law, the enhanced growth model shall be implemented no later than the start of the two thousand ten--two thousand eleven school year.

3. In implementing the provisions of subdivisions one and two of this section, the regents shall by July first, two thousand eight, establish targets for improvement of schools and school districts based upon performance on state assessments, graduation rates, and other indicators of progress, such as student retention rates and college attendance and completion rates.

4. As used in this chapter, the following words shall have the following meanings:

a. "Growth model" shall mean the assessment of a cohort of students, or individual students, over time that measures the academic progress made by those students.

b. "Value added assessment model" shall mean a form of growth model that includes an evaluation of the specific effects of programs, and other relevant factors, on the academic progress of individual students over time.

Education Law § 211-b. Consequences for consistent lack of improvement in academic performance

In addition to taking appropriate action pursuant to the regulations of the commissioner and the requirements of federal law, the following actions shall be taken to increase school and district accountability for academic performance:

1. The regents shall expand the scope and improve the effectiveness of the schools under registration review (SURR) process in the two thousand seven--two thousand eight school year and thereafter, so as to ensure that all schools that meet the criteria for identification as SURR shall be so identified. The goal of such expansion shall be to identify as SURR up to a total of five percent of the schools in the state within four years, and to reorganize or restructure schools so identified in cases where such action is appropriate.

2. The regents shall develop a plan for increased support and possible intervention in schools in improvement, corrective action, or restructuring status or in SURR status. Notwithstanding any provision of law to the contrary, the regents shall establish a two-step process as follows:

a. The appointment by the commissioner of a school quality review team to assist any school in school improvement, corrective action, restructuring status or SURR status in developing and implementing a school improvement, corrective action, restructuring, or comprehensive plan for the school. Such team may also conduct resource and program and planning audits and examine the quality of curriculum, instructional plans, and teaching in the schools, the learning opportunities and support services available to students, and the organization and operations of the school. After such review, the team shall provide diagnostic recommendations for school improvement, which may include administrative and operational improvements. The recommendation of such team shall be advisory. The reasonable and necessary expenses incurred in the performance of the team's official duties shall be a charge upon the school district, or charter school, where applicable, that operates the school.

b. The appointment by the commissioner of a joint school intervention team, for schools in (i) restructuring status or (ii) SURR status that have failed to demonstrate progress as specified in their corrective action plan or comprehensive education plan. Administrators and educators from the district or charter school where applicable must be included on the team, as well as any distinguished educator appointed to the district pursuant to [section two hundred eleven-c](#) of this part. Such team shall assist the school district in developing, reviewing and recommending plans for reorganizing or reconfiguring of such schools. The recommendations of such team should be advisory. The reasonable and necessary expenses incurred in the performance of the school intervention team's official duties shall be a charge upon the school district, or charter school where applicable, that operates the school.

3. A school district that has been identified as requiring academic progress, as defined by 100.2(p)(7) of the commissioner's regulations, or includes one or more schools under registration review, in need of improvement, in corrective action or restructuring status shall be required to submit a district improvement plan to the commissioner for approval. In formulating the district improvement plan, the district shall consider redirecting resources to programs and activities included in the menu of options under [subdivision three of section two hundred eleven-d](#) of this part in the schools so identified. If such options are not adopted in the district improvement plan, the school district shall provide the commissioner with an explanation of such decision which shall be considered by the commissioner in

determining whether to approve such plan. The trustees or board of education shall hold a public hearing before adoption of the district improvement plan and a transcript of the testimony at such hearing shall be submitted to the commissioner for review with the district improvement plan.

4. The commissioner shall develop a plan for intervention in schools under restructuring or SURR status that fail to demonstrate progress on established performance measures and may be targeted for closure. Such plan shall specify criteria for school closure and include processes to be followed, research based options, and alternatives and strategies to reorganizing, restructuring or reconfiguring schools. Such plan shall be developed with input from educators including, but not limited to, administrators, teachers and individuals identified as distinguished educators pursuant to [section two hundred eleven-c](#) of this part.

5. (a) The regents shall ensure that all school districts include in any contract of employment, entered into, amended, or extended with a superintendent of schools, community superintendent or deputy, assistant, associate or other superintendent of schools who has been or will be appointed for a fixed term, a provision requiring that such contract specify that the superintendent shall be required to cooperate fully with any distinguished educator appointed by the commissioner pursuant to [section two hundred eleven-c](#) of this part.

(b) In the case of a superintendent of schools, community superintendent or deputy, assistant, associate or other superintendent of schools who is not appointed for a fixed term, the contract provisions contained in paragraph (a) of this subdivision shall be deemed to apply to such superintendent immediately.

(c) In the case of a charter school, the contract of employment of the principal or headmaster or other chief school officer of the charter school that is entered into, amended or extended shall also be required to include the provisions contained in paragraph (a) of this subdivision. In addition, such contract provisions shall be deemed to apply immediately to any such person not appointed for a fixed term.

Education Law § 211-c. Distinguished educators

The regents shall establish a distinguished educator program that recognizes educational leaders who have agreed to assist in improving the performance of low performing school districts.

1. Building principals, superintendents of schools and teachers including retirees and current employees of school districts, under whose leadership schools have demonstrated consistent growth in academic performance and other individuals who have demonstrated educational expertise, including superior performance in the classroom, shall be eligible for designation by the regents as distinguished educators. Provided, however, individuals employed by for-profit entities shall not be eligible for such recognition.

2. From the pool of distinguished educators designated by the regents pursuant to subdivision one of this section, the commissioner shall appoint distinguished educators who have expressed their willingness to assist low performing districts in improving their academic performance. To the extent practicable, the commissioner shall appoint distinguished educators to assist districts with comparable demographics to the schools or districts that are or were under such educator's leadership.

3. The commissioner may appoint a distinguished educator to a school district;

a. when such district or a school within such district has failed to achieve adequate yearly progress for four or more years;

b. as a member of a joint school intervention team pursuant to [paragraph b of subdivision two of section two hundred eleven-b](#) of this part.

4. The school district to which a distinguished educator is appointed shall cooperate fully with an appointed distinguished educator.

5. An appointed distinguished educator shall assess the learning environment of schools in the district, review or provide assistance in the development and implementation of any district improvement plan and/or any corrective action, restructuring, or comprehensive plan of any school within the district to which the distinguished educator is assigned. Such distinguished educator shall either endorse without change or make recommendations for modifications to any such plan to the board of education, trustees, or chancellor, in a school district in a city of one million or more inhabitants, and the commissioner. Upon receipt of any recommendations for modification, the board of education, trustees, or chancellor shall either modify the plans accordingly or provide a written explanation to the commissioner of its reasons for not adopting such recommendations. The commissioner shall direct the district to modify the plans as recommended by the distinguished educator unless the commissioner finds that the written explanation provided by the district has compelling merit.

6. Appointed distinguished educators shall be deemed ex-officio, non-voting members of the board of education or trustees. In a school district in a city of one million or more inhabitants, any such distinguished educator shall be deemed an ex-officio, non-voting member of the community district education council or the city board, as applicable.

7. The reasonable and necessary expenses incurred by the appointed distinguished educators while performing their official duties shall be paid by the school district.

8. If an appointed distinguished educator is employed by a school district or charter school, it shall be the duty of the board of education or trustees of such school district, the chancellor of a city school district in a city of one million or more inhabitants, or the board of trustees of such charter school to facilitate the efforts of any such appointed distinguished educators in their employ by granting reasonable leave requests and otherwise accommodating their efforts, to the extent such efforts do not substantially interfere with the educator's performance of his or her regular duties.

Education Law § 211-d. Contract for excellence

1. a. Every school district that, as of April first of the base year, has at least one school identified as in corrective action or restructuring status or as a school requiring academic progress: year two or above or as a school in need of improvement: year two shall be required to prepare a contract for excellence if the school district is estimated to receive an increase in total foundation aid for the current year compared to the base year in an amount that equals or exceeds either fifteen million dollars or ten percent of the amount received in the base year, whichever is less, or receives a supplemental educational improvement plan grant. In school year two thousand seven--two thousand eight such increase shall be the amount of the difference between total foundation aid received for the current year and the total foundation aid base, as defined in [paragraph j of subdivision one of section thirty-six hundred two](#) of this chapter.

b. In addition to the school districts required to prepare a contract for excellence under paragraph a of this subdivision, every school district that filed a contract for excellence in the base year shall file a contract for excellence in the current year if such district is estimated to receive a two-year increase, equal to the positive difference of the total foundation aid apportioned for the current year less the total foundation aid base, as defined in [paragraph j of subdivision one of section thirty-six hundred two](#) of this chapter, for the

base year, in an amount that equals or exceeds either twenty-seven million five hundred thousand dollars or twenty percent of such total foundation aid base for the base year; provided however, that this requirement shall apply only to a school district that, as of April first of the base year, has at least one school that has been identified as in corrective action or restructuring status or as a school requiring academic progress: year two or above or as a school in need of improvement: year two.

c. In a city school district located in a city of one million or more inhabitants, a contract for excellence shall be prepared for the city school district and each community district that meets criteria specified in this subdivision.

d. All computations pursuant to paragraphs a and b of this subdivision and subdivision two of this section shall be based upon data included in the computerized school aid run produced by the commissioner in support of the enacted state budget which established the foundation aid formulas for the current year. For purposes of this section, accountability status of schools shall be determined as of April first of the base year, except that if the commissioner determines that the accountability data on file for a school as of April first of the base year was in error and officially adjusts the accountability status of the school after such date, such adjusted data shall be used for the purposes of paragraphs a and b of this subdivision and subdivision two of this section.

e. Notwithstanding paragraphs a and b of this subdivision, a school district that submitted a contract for excellence for the two thousand eight--two thousand nine school year shall submit a contract for excellence for the two thousand nine--two thousand ten school year in conformity with the requirements of subparagraph (vi) of paragraph a of subdivision two of this section unless all schools in the district are identified as in good standing and provided further that, a school district that submitted a contract for excellence for the two thousand nine--two thousand ten school year, unless all schools in the district are identified as in good standing, shall submit a contract for excellence for the two thousand eleven--two thousand twelve school year which shall, notwithstanding the requirements of subparagraph (vi) of paragraph a of subdivision two of this section, provide for the expenditure of an amount which shall be not less than the product of the amount approved by the commissioner in the contract for excellence for the two thousand nine--two thousand ten school year, multiplied by the district's gap elimination adjustment percentage. For purposes of this paragraph, the "gap elimination adjustment percentage" shall be calculated as the sum of one minus the quotient of the sum of the school district's net gap elimination adjustment for two thousand ten--two thousand eleven computed pursuant to chapter fifty-three of the laws of two thousand ten, making appropriations for the support of government, plus the school district's gap elimination adjustment for two thousand eleven--two thousand twelve as computed pursuant to a chapter of the laws of two thousand eleven, making appropriations for the support of the local assistance budget, including support for general support for public schools, divided by the total aid for adjustment computed pursuant to a chapter of the laws of two thousand eleven, making appropriations for the local assistance budget, including support for general support for public schools. Provided, further, that such amount shall be expended to support and maintain allowable programs and activities approved in the two thousand nine--two thousand ten school year or to support new or expanded allowable programs and activities in the current year.

2. a. (i) In a common, union free, central, central high school, or a city school district in a city having less than one hundred twenty-five thousand inhabitants, required to prepare a contract for excellence pursuant to subdivision one of this section and, as of April first of the base year, does not contain any schools identified as in corrective action or restructuring status or requiring academic progress: year three or

above, each contract for excellence shall describe how the sum of the amounts apportioned to the school district in the current year as total foundation aid, in excess of one hundred four percent of the district's foundation aid base, as adjusted for additional amounts payable as charter school basic tuition over such amount payable in the base year, shall be used to support new programs and new activities or redesign or expand the use of programs and activities demonstrated to improve student achievement; provided however, up to fifty percent of additional funding received in the current year may be used to maintain investments in programs and activities listed in paragraph a of subdivision three of this section.

(ii) In a common, union free, central, central high school, or a city school district in a city having less than one hundred twenty-five thousand inhabitants, required to prepare a contract for excellence pursuant to subdivision one of this section and, as of April first of the base year, has at least one school identified as in corrective action or restructuring status or requiring academic progress: year three or above, each contract for excellence shall describe how the sum of the amounts apportioned to the school district in the current year as total foundation aid, in excess of one hundred four percent of the district's foundation aid base, as adjusted for additional amounts payable as charter school basic tuition over such amount payable in the base year, shall be used to support new programs and new activities or redesign or expand the use of programs and activities demonstrated to improve student achievement; provided however, up to thirty-five percent of additional funding received in the current year may be used to maintain investments in the programs and activities listed in paragraph a of subdivision three of this section.

(iii) In a city school district in a city having a population of one hundred twenty-five thousand or more inhabitants but less than one million inhabitants that either receives a supplemental educational improvement plan grant or is required to submit a contract for excellence based solely upon the criteria specified in paragraph b of subdivision one of this section, each contract for excellence shall describe how the sum of the amounts apportioned to the school district in the current year as total foundation aid, and as supplemental educational improvement plan grants, in excess of one hundred four percent of such aid apportioned to the district in the base year, as adjusted for additional amounts payable as charter school basic tuition over such amount payable in the base year, shall be used to support new programs and new activities or redesign or expand the use of programs and activities demonstrated to improve student achievement; provided however, up to fifty percent of additional funding received in the current year may be used to maintain investments in the programs and activities listed in paragraph a of subdivision three of this section.

(iv) In a city school district in a city having a population of one hundred twenty-five thousand or more inhabitants but less than one million inhabitants that satisfies the criteria specified in paragraph a of subdivision one of this section and does not receive a supplemental educational improvement plan grant, each contract for excellence shall describe how the sum of the amounts apportioned to the school district in the current year as total foundation aid, in excess of one hundred three percent of the district's foundation aid base, as adjusted for additional amounts payable as charter school basic tuition over such amount payable in the base year, shall be used to support new programs and new activities or expand the use of programs and activities demonstrated to improve student achievement; provided however, up to twenty-five percent of additional funding received in the current year may be used to maintain investments in the programs and activities listed in paragraph a of subdivision three of this section.

(v) In a city school district in a city having a population of one million or more inhabitants, each contract for excellence shall describe how the amounts apportioned to the school district in the current year as total foundation aid and academic achievement grants, in excess of one hundred three percent of the district's

foundation aid base, as adjusted for additional amounts payable as charter school basic tuition over such amount payable in the base year, shall be used to support new programs and new activities or expand the use of programs and activities demonstrated to improve student achievement; provided however, up to thirty million dollars or twenty-five percent of additional funding received in the current year, whichever is less, may be used to maintain investments in the programs and activities listed in paragraph a of subdivision three of this section.

(vi) Each contract for excellence for a school district that was required to prepare a contract for excellence in the base year shall provide for the expenditure of an amount equivalent to the total budgeted amount approved by the commissioner in the district's approved contract for excellence for the base year; provided that such amount shall be expended to support and maintain allowable programs and activities approved in the base year or to support new or expanded allowable programs and activities in the current year.

(vii)(A) Notwithstanding any other provision of this section to the contrary, a school district that submitted a contract for excellence for the two thousand seven--two thousand eight school year and the two thousand eight--two thousand nine school year and is required to submit a contract for excellence for the two thousand nine--two thousand ten school year but did not fully expend all of its two thousand seven--two thousand eight foundation aid subject to the contract for excellence restrictions during the two thousand seven--two thousand eight school year may reallocate and expend such unexpended funds during the two thousand eight--two thousand nine and two thousand nine--two thousand ten school years for allowable contract for excellence programs and activities as defined in subdivision three of this section in a manner prescribed by the commissioner. For purposes of determining maintenance of effort pursuant to subparagraph (vi) of this paragraph for the two thousand eight--two thousand nine school year, funds expended pursuant to this subparagraph shall be included in the total budgeted amount approved by the commissioner in the district's contract for excellence for the two thousand seven--two thousand eight school year; provided that such amount shall not be counted more than once in determining maintenance of effort for the two thousand nine--two thousand ten school year or thereafter.

(B) Notwithstanding any other provision of this section to the contrary, a school district that submitted a contract for excellence for the two thousand nine--two thousand ten school year but did not fully expend all of its two thousand nine--two thousand ten foundation aid subject to the contract for excellence restrictions during the two thousand nine--two thousand ten school year may reallocate and expend such unexpended funds during the two thousand eleven--two thousand twelve school year for allowable contract for excellence programs and activities as defined in subdivision three of this section in a manner prescribed by the commissioner; provided that such amount shall not be counted more than once in determining any maintenance of effort pursuant to this section.

b. (i) The contract shall specify the new or expanded programs for which additional amounts of such total foundation aid, or grant shall be used and shall affirm that such programs shall predominately benefit students with the greatest educational needs including, but not limited to, those students with limited English proficiency, students in poverty and students with disabilities.

(ii) In a city school district in a city having a population of one million or more inhabitants such contract shall also include a plan to reduce average class sizes, as defined by the commissioner, within five years for the following grade ranges: (A) pre-kindergarten-third grade; (B) fourth-eighth grade; and (C) high school. Such plan shall include class size reduction for low performing and overcrowded schools and also

include the methods to be used to achieve such class sizes, such as the creation or construction of more classrooms and school buildings, the placement of more than one teacher in a classroom or methods to otherwise reduce the student to teacher ratio; provided, however, that notwithstanding any law, rule or regulation to the contrary, the sole and exclusive remedy for a violation of the requirements of this paragraph shall be pursuant to a petition to the commissioner under [subdivision seven of section three hundred ten](#) of this title, and the decision of the commissioner on such petition shall be final and unreviewable.

(iii) A city school district in a city having a population of one million or more inhabitants shall prepare a report to the commissioner on the status of the implementation of its plan to reduce average class sizes pursuant to subparagraph (ii) of this paragraph. Such report shall identify all schools that received funds targeted at class size reduction efforts pursuant to the requirements of this section and provide the following information regarding such schools:

(A) the amount of contract for excellence funds received by each school and the school year in which it received such funds;

(B) a detailed description of how contract for excellence funds contributed to achieving class size reduction in each school that received such funding including specific information on the number of classrooms in each school that existed prior to receiving contract for excellence funds and the number of new classrooms that were created in each school for each year such funding was received, the number of classroom teachers that existed in each school prior to receiving contract for excellence funds and the number of new classroom teachers in each school for each year such funding was received, the student to teacher ratio in each school prior to receiving contract for excellence funds and the student to teacher ratio in each school for each year such funding was received;

(C) the actual student enrollment for the two thousand six--two thousand seven school year, the actual student enrollment for the two thousand seven--two thousand eight school year, the actual student enrollment for the two thousand eight--two thousand nine school year, and the projected student enrollment for the two thousand nine--two thousand ten school year for each school by grade level;

(D) the actual average class sizes for the two thousand six--two thousand seven school year, the actual average class sizes for the two thousand seven--two thousand eight school year, the actual average class sizes for the two thousand eight--two thousand nine school year, and the projected average class sizes for the two thousand nine--two thousand ten school year for each school by grade level; and

(E) the schools that have made insufficient progress toward achieving the class size reduction goals outlined in the approved five year class size reduction plan pursuant to subparagraph (ii) of this paragraph and a detailed description of the actions that will be taken to reduce class sizes in such schools.

Such report shall be submitted to the commissioner on or before November seventeenth, two thousand nine and shall be made available to the public by such date.

c. The contract for excellence shall state, for all funding sources, whether federal, state or local, the instructional expenditures per pupil, the special education expenditures per pupil, and the total expenditures per pupil, projected for the current year and actually incurred in the base year.

3. a. The commissioner shall adopt regulations establishing allowable programs and activities intended to improve student achievement which shall be limited to: (i) class size reduction, (ii) programs that increase student time on task, including but not limited to, academic after-school programs, (iii) teacher and principal quality initiatives, (iv) middle school and high school re-structuring, (v) expansion or replication of effective model programs for students with limited English proficiency, and (vi) full-day kindergarten or prekindergarten. Provided, however, that districts may use up to fifteen percent of the additional funding they receive for experimental programs designed to demonstrate the efficacy of other strategies to improve student achievement consistent with the intent of this section and, in school year two thousand seven--two thousand eight, up to thirty million dollars or twenty-five percent of such additional funding, whichever is less, may be used to maintain investments in programs and activities listed in this subdivision. Any such district seeking to implement an experimental program shall first submit a plan to the commissioner setting forth the need for such experimental program and how such program will improve student performance.

b. The commissioner shall assist school districts that include in their contract for excellence the implementation of incentives, developed in collaboration with teachers in the collective bargaining process, for highly qualified and experienced teachers to work in low performing schools to ensure that such incentives are effective.

4. a. A district's contract for excellence for the academic year two thousand eight--two thousand nine and thereafter, shall be developed through a public process, in consultation with parents or persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to [section two hundred eleven-c](#) of this chapter.

b. Such process shall include at least one public hearing. In a city school district in a city of one million or more inhabitants, a public hearing shall be held within each county of such city. A transcript of the testimony presented at such public hearings shall be included when the contract for excellence is submitted to the commissioner, for review when making a determination pursuant to subdivision five of this section.

c. In a city school district in a city of one million or more inhabitants, each community district contract for excellence shall be consistent with the citywide contract for excellence and shall be submitted by the community superintendent to the community district education council for review and comment at a public meeting.

d. For the two thousand seven--two thousand eight school year, school districts shall solicit public comment on their contracts for excellence.

5. Each contract for excellence shall be subject to approval by the commissioner and his or her certification that the expenditure of additional aid or grant amounts is in accordance with subdivision two of this section.

6. The school district audit report certified to the commissioner by an independent certified public accountant, an independent accountant or the comptroller of the city of New York pursuant to [section twenty-one hundred sixteen-a](#) of this chapter shall include a certification by such accountant or comptroller in a form prescribed by the commissioner and that the increases in total foundation aid and supplemental educational improvement plan grants have been used to supplement, and not supplant funds allocated by the district in the base year for such purposes.

7. The trustees or board of education of each school district subject to this section, or the chancellor in the case of a city school district in a city of one million or more inhabitants, shall assure that procedures are in place by which parents or persons in parental relation may bring complaints concerning implementation of the district's contract for excellence.

a. In a city school district in a city of one million or more inhabitants, such procedures shall provide that complaints may be filed with the building principal with an appeal to the community superintendent, or filed directly with the community superintendent, and that any appeal of the determination of a community superintendent shall be made to the chancellor.

b. In all other districts, such procedures shall either provide for the filing of complaints with the building principals with an appeal to the superintendent of schools or for filing of the complaint directly with the superintendent of schools, and shall provide for an appeal to the trustees or board of education from the determination of the superintendent of schools.

c. The determination of the trustees or a board of education or the chancellor may be appealed to the commissioner pursuant to [section three hundred ten](#) of this title.

8. School districts subject to the provisions of this section shall publicly report the expenditure of total foundation aid in the form and manner prescribed by the commissioner which shall ensure full disclosure of the use of such funds.

9. The department shall develop a methodology for reporting school-based expenditures by all school districts subject to the provisions of this section.

Education Law § 211-e. Educational partnership organizations

1. The board of education of a school district, and the chancellor of the city school district of the city of New York, subject to the approval of the commissioner, shall be authorized to contract, for a term of up to five years, with an educational partnership organization pursuant to this section to intervene in a school designated by the commissioner as a persistently lowest-achieving school, consistent with federal requirements, or a school under registration review.

2. Notwithstanding any other provision of law, rule or regulation to the contrary, and except as otherwise provided in this section, such contract shall contain provisions authorizing the educational partnership organization to assume the powers and duties of the superintendent of schools for purposes of implementing the educational program of the school, including but not limited to, making recommendations to the board of education on budgetary decisions, staffing population decisions, student discipline decisions, decisions on curriculum and determining the daily schedule and school calendar, all of which recommendations shall be consistent with applicable collective bargaining agreements. Such contract shall include district performance expectations and/or benchmarks for school operations and academic outcomes, and failure to meet such expectations or benchmarks may be grounds for termination of the contract prior to the expiration of its term. Such contract shall also address the manner in which students will be assigned to the school, the process for employees to transfer into the school, the services that the district will provide to the school, and the manner in which the school shall apply for and receive allocational and competitive grants.

3. The board of education shall retain the ultimate decision-making authority over the hiring, evaluating, termination, disciplining, granting of tenure, assignment of employees serving in the school as well as with respect to staff development for those employees, together with authority concerning all other terms and conditions of employment, all of which decisions shall be made in a manner consistent with applicable collective bargaining agreements. However, notwithstanding any law, rule or regulation to the contrary, upon the effective date of the contract, the educational partnership organization shall be authorized to exercise all powers of a superintendent of schools with respect to such employment decisions, including but not limited to making recommendations, as applicable, to the board of education in connection with and prior to the board of education making decisions regarding staff assignments, the hiring, the granting of tenure, the evaluating, the disciplining and termination of employees, as well as concerning staff development. The employees assigned to the school shall solely be in the employ of the school district and shall retain their tenure rights and all other employment rights conferred by law, and service in the school shall constitute service to the school district for all purposes, including but not limited to, the requirements for criminal history record checks and participation in public retirement systems. Notwithstanding any other provision of law to the contrary, for purposes of article fourteen of the civil service law, employees in the school shall be public employees of the school district as defined in [subdivision seven of section two hundred one of the civil service law](#) and shall not be deemed employees of the educational partnership organization by reason of the powers granted to the educational partnership organization by this section. All such employees shall be members of the applicable negotiating unit containing like titles or positions for the public school district in which such school is located, and shall be covered by the collective bargaining agreement covering that public school district's negotiating unit, except that the duly recognized or certified collective bargaining representative for that negotiating unit may modify or supplement, in writing, the collective bargaining agreement in consultation with the employees of the negotiating unit working in the school. All such modifications of, or supplements to the collective bargaining agreement are subject to ratification by the employees employed within the school and by the board of education of the public school district, consistent with article fourteen of the civil service law. Upon the effective date of the school district's contract with the educational partnership organization, the educational partnership organization shall be empowered to make recommendations to the board of education with respect to the scope of, and process for making modifications and additions to the collective bargaining agreement.

4. Where a recommendation is made by the educational partnership organization to the board of education pursuant to subdivision two or three of this section, and such recommendation is denied, the board of education shall state its reasons for the denial, which shall include an explanation of how such denial will promote improvement of student achievement in the school and how such action is consistent with all accountability plans approved by the commissioner for the school and the school district. Nothing in this subdivision shall be construed to prevent a board of education from denying a recommendation of the educational partnership organization based upon the board of education's determination that carrying out such recommendation would result in a violation of law or violation of the terms of an applicable collective bargaining agreement. If the board of education rejects a recommendation of the educational partnership organization to terminate a probationary employee assigned to the school or to deny tenure to an employee assigned to the school, it shall be the duty of the board of education to transfer such employee to another position in the school district within such employee's tenure area for which the employee is qualified, or to create such a position.

5. For purposes of this section the following terms shall have the following meanings:

(i) “educational partnership organization” means a board of cooperative educational services, a public or independent, non-profit institution of higher education, a cultural institution, or a private, non-profit organization with a proven record of success in intervening in low-performing schools, as determined by the commissioner, provided that such term shall not include a charter school;

(ii) “board of education” means the trustees or board of education of a school district, or, in the case of a city school district of a city having a population of one million or more, the chancellor of such city district;

(iii) “school district” means a common, union free, central, central high school or city school district, other than a special act school district as defined in [section four thousand one](#) of this chapter.

(iv) “superintendent of schools” means the superintendent of schools of a school district, and, in the case of a city school district of a city having a population of one million or more, a community superintendent and the chancellor of such city district when acting in the role of a superintendent of schools.

Attachment 11: Commissioner's Regulations 100.18 and 100.2(p)

In September 2012, the Board of Regents approved the addition of section 100.18 and amendment of sections 100.2(m), 100.17, 120.3, and 120.4 of the Regulations of the Commissioner of Education to implement New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Request.

Commissioner's Regulation 100.18

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW
YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER E. ELEMENTARY AND SECONDARY EDUCATION
PART 100. ELEMENTARY AND SECONDARY EDUCATION SCHOOL PROGRAM
8 CRR-NY 100.18
8 CRR-NY 100.18

100.18 ESEA accountability system.

(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. 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.

(b) Definitions.

As used in this section:

(1) ESEA means the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. section 6301 et seq.

(2) Elementary and Secondary Education Act (ESEA) waiver shall mean waivers from specified provisions of the Elementary and Secondary Education Act of 1965, as amended, that have been granted for a specified time period to New York State on May 29, 2012 by the Secretary of the U.S. Department of Education pursuant to section 9401 of the ESEA for purposes of ESEA flexibility, and any revisions to and/or extensions of such waivers.

(3) Title I means title I, part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. sections 6301-6327.

(4) Accountability groups shall mean, for each public school, school district and charter school, those groups of students for each grade level or annual high school cohort, as described in paragraph (j)(2) of this section comprised of: all students; students from major racial and ethnic groups, as set forth in subparagraph (bb)(2)(v) of this section; students with disabilities, as defined in section 200.1 of this Title, including, beginning with the 2009-2010 school year, students no longer identified as students with disabilities but who had been so identified during the preceding one or two school years; students with limited English proficiency, as defined in Part 154 of this Title, including, beginning with the 2006-2007 school year, a student previously identified as a limited English proficient student during the preceding one or two school years; and economically disadvantaged students, as identified pursuant to section 1113(a)(5) of the NCLB, 20 U.S.C. section 6316(a)(5) (Public Law, section 107-110, section 1113[a][5], 115 STAT. 1469; 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). The school district accountability groups for each grade level will include all students 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.

(5) School 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.

(6) Special act school district shall mean a school district as defined in subdivision 8 of section 4001 of the Education Law.

(7) 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.

(8) Alternate assessment means a State alternate assessment recommended by the committee on special education, for use by students with disabilities as defined in section 100.1(t)(2)(iv) of this Part in lieu of a required State assessment.

(9) Continuously enrolled means, for grades 3-8, students whose latest date of enrollment occurred after the date prescribed by the commissioner on which BEDS forms are required to be completed and, for grades 9-12, students in the high school cohort, as defined in paragraph (j)(2) of this section.

(10) Significant medical emergency means an excused absence from school during both the regular and makeup examination period for which a 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.

(11) For elementary and middle-level students, participation rate means the percentage of students enrolled on all days of test administration who did not have a significant medical emergency who received valid scores on the State assessments for elementary and middle-level grades, as set forth in paragraph (14) of this subdivision. Beginning with the 2006-2007 school year, a limited English proficient student enrolled in school in the United States (excluding Puerto Rico) for less than one year as of a date determined by the commissioner and who received a valid score on the NYSESLAT may be counted as participating in an elementary or middle level English language arts assessment.

(12) For high school students, participation rate means the percentage of designated students in at least their fourth year of high school, as designated by the commissioner, who received a valid score on the required assessments for high schools, as set forth in paragraph (14) of this subdivision.

(13) Performance criteria shall mean the performance criteria set forth in subdivision (j) of this section.

(14) Performance levels shall mean:

(i) for elementary and middle grades:

(a) level 1 (well below proficient):

(1) not on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student does not have a growth percentile target; or a score of level 1 on a State alternate assessment; or a score of 64 or less, or a comparable score as approved by the Board of Regents, on a Regents examination in mathematics for a student in grade 7 or grade 8;

(2) on track to be proficient: a score of level 1 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 1 on State assessments in science or other State assessments, or a score of level 1 on a State alternate assessment;

(b) level 2 (below proficient):

(1) not on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile does not meet or exceed his or her growth percentile target; or the student does not have a growth percentile target; or a score of level 2 on a State alternate assessment;

(2) on track to be proficient: a score of level 2 on State assessments in English language arts and mathematics, provided that using the student's three-year percentile growth targets as established by the commissioner, the student's growth percentile meets or exceeds his or her growth percentile target;

(3) for science: a score of level 2 on State assessments in science or other State assessments, or a score of level 2 on a State alternate assessment;

(c) level 3 (proficient):

- (1) a score of level 3 on State assessments in English language arts, mathematics and science or a score of level 3 on a State alternate assessment;
- (2) a score of 65 or higher, or a comparable score as approved by the Board of Regents, on a Regents examination in science or mathematics for students in grade 7 or 8 pursuant to section 100.4(d) of this Part;
- (d) level 4 (excels in standards): a score of level 4 on State assessments in English language arts, mathematics and science or a score of level 4 on a State alternate assessment;
- (ii) for high school using Regents examinations based on 2005 learning standards or using a State alternate assessment:
 - (a) level 1 (well below proficient):
 - (1) a score of 64 or less on the Regents comprehensive examination in English or a Regents mathematics examination;
 - (2) a failing score on a State-approved alternative examination for those Regents examinations;
 - (3) a score of level 1 on a State alternate assessment;
 - (4) a cohort member who has not been tested on the Regents comprehensive examination in English or a Regents mathematics examination or State-approved alternative examination for these Regents examinations;
 - (b) level 2 (below proficient):
 - (1) a score between 65 and 74 on the Regents comprehensive examination in English or between 65 and 79 on a Regents examination in mathematics;
 - (2) a score of level 2 on a State alternate assessment;
 - (c) level 3 (proficient):
 - (1) a score between 75 and 89 on the Regents comprehensive examination in English or between 80 and 89 on a Regents examination in mathematics; or a passing score on a State-approved alternative to those Regents examinations;
 - (2) a score of level 3 on a State alternate assessment;
 - (d) level 4 (excels in standards):
 - (1) a score of 90 or higher on the Regents comprehensive examination in English or a Regents mathematics examination;
 - (2) a score of level 4 on a State alternate assessment.
- (iii) for high school using Regents examinations measuring the Common Core Learning Standards:
 - (a) level 1 (does not demonstrate knowledge and skills for Level 2):
 - (1) a score of level 1 on the Regents examination in English language arts or a Regents mathematics examination;
 - (2) a failing score on a State-approved alternative examination for those Regents examinations;
 - (3) a cohort member who has not been tested on the Regents examination in English language arts or a Regents mathematics examination or State-approved alternative examination for these Regents examinations;
 - (b) level 2 (partially meets Common Core expectations, i.e., Local Diploma level):
 - (1) a score of level 2 on the Regents examination in English language arts or a Regents examination in mathematics;
 - (c) level 3 (partially meets Common Core expectations, i.e., Regents diploma level):
 - (1) a score of level 3 on the Regents examination in English language arts or a Regents Examination in mathematics;
 - (d) level 4 (meets Common Core expectations):
 - (1) a score of Level 4 on the Regents examination in English language arts or a Regents examination in mathematics;
 - (2) a passing score on a State-approved alternative examination for those Regents examinations.
 - (e) level 5 (exceeds Common Core expectations):
 - (1) a score of level 5 on the Regents examination in English language arts or a Regents examination in mathematics;
- (iv) Notwithstanding the provisions of this section:
 - (a) For students who attend grade 7 or 8 and take a Regents examination in mathematics in the 2013-2014 school year, but do not take the grade 7 or 8 mathematics assessment, participation and accountability determinations for the school in which the student attends grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on

mathematics assessments taken after the student first enters grade 9. For such students, a score of 65 or above, or a comparable score as approved by the Board of Regents, on a Regents examination in mathematics taken in grade 9 or thereafter will be credited as level 3 for purposes of calculating the high school performance index.

(b) For students who attend grade 7 or 8 and who take both the grade 7 or 8 mathematics assessment and a Regents examination in mathematics during the 2013-2014 school year, participation and accountability determinations for the school such students attend in grade 7 or 8 shall be based upon the student's performance on the grade 7 or 8 mathematics assessment.

(c) Science assessments in grades 7 and 8.

(1) For students who, while attending grade 8, take a Regents examination in science but do not take the grade 8 science intermediate assessment, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the Regents examination in science.

(2) For students who, while attending grade 8, take both the grade 8 science intermediate assessment and a Regents examination in science, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the grade 8 science intermediate assessment.

(3) For students who have taken the grade 8 science intermediate assessment when they attended grade 7 and who take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in which such student attends 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 they attended grade 7 and who do not take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in which the student attends grade 8 shall be based upon the student's performance on the grade 8 science intermediate assessment taken in grade 7.

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

(i) For elementary and middle grades, each student scoring at level 1 who is not on track to be proficient will be credited with 0 points, each student scoring at level 2 who is not on track to be proficient with 100 points, and each student scoring at level 1 or 2 who is on track to be proficient or at level 3 or 4 with 200 points. The performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.

(ii) For high school using Regents examinations based on 2005 learning standards each student scoring at level 1 will be credited with 0 points, each student scoring at level 2 with 100 points, and each student scoring at level 3 or 4 with 200 points. The performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.

(iii) For high school using Regents examinations measuring the Common Core Learning Standards, each student scoring at level 1 and Level 2 will be credited with 0 points, each student scoring at level 3 with 100 points, and each student scoring at level 4 or 5 with 200 points. For high school using the State alternate assessment commencing with the 2013-14 school year, each student scoring at level 1 will be credited with 0 points, each student scoring at level 2 with 100 points, and each student scoring at level 3 or 4 with 200 points. The performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.

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

(17) 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.

(18) Median student growth percentile means the result of rank-ordering the student growth percentile results for an accountability group at the school, district, or State level.

(19) The student growth percentile target means the rate of annual growth necessary in English language arts and mathematics for a student to meet proficiency standards in three years, or by 8th grade, whichever is earlier.

(20) 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 school in which more than 50 percent of currently enrolled students are English language learners who were born outside of the United States and have attended school in the United States for less than three years.

(21) School improvement grant means a grant awarded by the U.S. Department of Education to the New York State Education Department, as a State Education Agency (SEA), pursuant to section 1003(g) of the Elementary and Secondary Education Act of 1965, as amended, and awarded by the department to a local education agency (LEA) as a subgrant.

(22) A whole school reform model means the turnaround model, restart model, transformation model or closure model as set forth in section 100.2(p)(10)(iv) of this Part; or a three year plan that provides for the redesign of a school by implementation of all of the following turnaround elements:

(i) Providing strong leadership by:

(a) reviewing the performance of the current principal;

(b) either replacing the principal if such a change is necessary to ensure strong and effective leadership, or demonstrating to the commissioner that the current principal has a track record in improving achievement and has the ability to lead the turnaround effort; and

(c) providing the principal with operational flexibility in the areas of scheduling, staff, curricula, and budget.

(ii) Ensuring that teachers are able to improve instruction by:

(a) reviewing the quality of all staff and retaining only those who have the ability to be successful in the turnaround effort;

(b) preventing ineffective teachers from transferring to these schools; and

(c) providing job-embedded, ongoing professional development informed by the teacher evaluation and support systems and tied to teacher and student needs.

(iii) Redesigning the school day, week, or year to include additional time for student learning and teacher collaboration, provided that such redesigning shall be consistent with any applicable collective bargaining agreement.

(iv) Strengthening the school's instructional program based on student needs and ensuring that the instructional program is research-based, rigorous, and aligned with common core learning standards.

(v) Using data to inform instruction and for continual improvement, including the provision of time for collaboration on the use of data.

(vi) Establishing a school environment that improves school safety and discipline and addressing other non-academic factors that have an impact on student achievement, such as students' social, emotional, and health needs.

(vii) Providing ongoing mechanisms for family and community engagement.

(23) Integrated intervention team means a school quality review team or joint intervention team appointed by the commissioner, that may include a distinguished educator appointed by the commissioner, to conduct a diagnostic review of a priority or focus school or focus district or a school under registration review.

(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 1st 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 focus district, the commissioner shall determine the accountability status of the newly registered school based upon his 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 1st 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 1st for schools that 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 year, commencing with the 2011-2012 school year test administration results, the commissioner shall review the performance of all public schools, charter schools and school districts in the State. For each performance criterion specified in subdivision (j) of this section, the commissioner shall determine whether each accountability group within a public school, charter school and school district has achieved adequate yearly progress as set forth in subdivision (f) of this section.

(f) Adequate yearly progress.

(1) An accountability group within a public school, charter school or school district shall be deemed to have made adequate yearly progress if the accountability group achieved the performance criterion set forth in subdivision (j) of this section.

(2) For an accountability group within public schools, charter schools or school districts with fewer than 30 students subject to a performance criterion set forth in subdivision (j) of this section, the commissioner shall use the weighted average of the current and prior school year's performance data for that criterion in order to make a determination of adequate yearly progress. No accountability group within a public school, charter school or school district will be held accountable if it consists of fewer than 30 students as long as the "all students" accountability group includes at least 30 students for that school year.

(3) For purposes of determining adequate yearly progress, only the performance of continuously enrolled students in grades 3-8 shall be included for consideration.

(4) An accountability group shall be deemed to have made adequate yearly progress on a performance criterion specified in paragraph (j)(1) of this section if:

(i) the superintendent of the school district or the principal of the charter school has submitted the required student data files to the commissioner pursuant to section 100.2(bb)(2) of this Part or section 119.3(b) of this Title in the timeframe and format specified by the commissioner; and

(ii) for accountability groups consisting of 40 or more students, either:

(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;

(iii) for accountability groups consisting of 30 or more students:

(a) the accountability group met or exceeded, or did not differ significantly as determined by the commissioner, from the annual measurable objective for that criterion; or

(b) the accountability group met or exceeded, or did not differ significantly as determined by the commissioner, from an annual performance target established by the commissioner.

(5) An accountability group within a public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance criterion specified in paragraphs (j)(2) and (3) of this section if:

(i) the superintendent of the school district or the principal of the charter school has submitted the required student data files to the commissioner pursuant to section 100.2(bb)(2) of this Part or section 119.3(b) of this Title in the timeframe and format specified by the commissioner; and

(ii) for elementary and middle levels, 80 percent of students enrolled on all days of the science test administration, who did not have a significant medical emergency, received valid scores; and

(iii) the accountability group within the school or school district, or charter school at the applicable grade levels met or exceeded the performance criteria; or

(iv) the high school cohort met or exceeded the performance criteria.

(6) For each school year, public schools, school districts, and charter schools in which no students or, pursuant to paragraph (2) of this subdivision fewer than 30 students, participate in the State assessments for English language arts or mathematics, or in which the majority of students are not continuously enrolled, 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 paragraph (7) of this subdivision. 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 within the school or school district has made adequate yearly progress. The commissioner shall consider the self-assessment, board recommendation and any other relevant information in determining whether the accountability group within the school or school district made adequate yearly progress.

(7) The accountability status 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 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 or charter 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 the date prescribed by the commissioner on which the BEDS forms are required to be completed until the end of the school year in the highest grade served by the feeder school. In a district, if all schools serving grade 3 make adequate yearly progress for the accountability groups, in a given year, all feeder schools served by the school district will be deemed to have made adequate yearly progress. If one or more schools enrolling students from a feeder school fail to make adequate yearly progress for one or more accountability groups on a performance criterion set forth in subdivision (j) of this section, the commissioner will aggregate the school district's grade 3 results on that criterion by feeder school and determine whether each feeder school made adequate yearly progress on that criterion.

(8) 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 based on the students who are enrolled in the school.

(g) Differentiated accountability for schools and districts.

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

(1) Preliminary identification of priority schools. Preliminary identification of priority schools.

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

(a) the school implemented a transformation, turnaround or restart model in the 2011-2012 school year pursuant to a school improvement grant pursuant to section 100.2(p)(10)(iv)(a) of this Part; or

(b) the school is a high school that has a four year cohort graduation rate for the "all students" group that is less than 60 percent for the 2004, 2005 and 2006 high school graduation cohorts; or

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

(1) had a combined performance index of 111 or below in English language arts and mathematics for the all students group in 2010-2011; and

(2) made a 10 point gain or less in its 2010-2011 combined performance index for the all students group compared to its 2009-2010 combined performance index; and

(3) was identified as in improvement, corrective action, or restructuring during the 2011-2012 school year; and

(4) had a combined median student growth percentile in English language arts and math for the 2009-2010 and 2010-2011 school years combined for the all students group of 50 percent or below; and

(5) had less than 50 percent of the accountability groups in the school have 2010-2011 median student growth percentiles that exceeded the statewide median student growth percentile for that accountability group; or

(d) the school is a high school that:

(1) had a combined performance index of 106 or below in English language arts and mathematics for the all students group; and

(2) was identified as in improvement, corrective action, or restructuring during 2011-2012 school year; and

(3) made a four point gain or less in its 2010-2011 combined English language arts and mathematics performance index for the all students group compared to its 2009-2010 performance index.

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

(2) Preliminary identification of focus districts and schools. Preliminary identification of focus districts and schools.

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

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

(1) For each district and charter school, the combined 2010-11 performance index (PI) of ELA and Math for the elementary-middle and secondary levels for each accountability group, except the all students group, is determined.

(2) For each accountability group, except the all students group, the combined 2009-10 and 2010-11 ELA and Math median student growth percentile is determined. If the accountability group's median student growth percentile is above the combined 2009-10 and 2010-11 statewide average for that accountability group then the performance index of the accountability group is removed from those for which the school district or charter school can be identified as a focus district or focus charter school.

(3) If an accountability group's 2006 four year graduation cohort rate exceeds the statewide average for the accountability group, then the performance index of the accountability group is removed from those for which the school district or charter school can be identified as a focus district or focus charter school.

(4) If a remaining accountability group is among the lowest five percent in the State for combined ELA and math performance index for the 2010-2011 school year, as determined by the commissioner, the district or charter school will be preliminarily identified as a focus district or focus charter school.

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

(1) For each school district and charter school, the 2006 four year graduation cohort rate for each accountability group, except the all students group, is determined. Each such accountability group for which the graduation rate exceeds the statewide rate for that accountability group is removed from consideration as an accountability group for graduation rate for which the school district or charter school can be identified as a focus district or focus charter school.

(2) For each remaining accountability group for which the 2005 five year graduation cohort rate is above the state average for that accountability group, the accountability group is removed from consideration as an accountability group for graduation rate for which the school district or charter school can be identified as a focus district or focus charter school.

(3) For each remaining accountability group, if the accountability group's 2006 four year graduation cohort rate exceeds the 2004 four year graduation cohort rate by at least 10 percent, then the accountability group is removed from consideration as an accountability group for graduation rate for which the school district or charter school can be identified as a focus district or focus charter school.

(4) If any of the remaining accountability groups are among the lowest five percent in the State for graduation rate, as determined by the commissioner, the school district or charter school will be preliminarily identified as a focus district or focus charter school.

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

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

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

Notification of preliminary identification of a priority school, focus district or focus charter school.

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

cohort rate for the "all students" group equals or exceeds 60 percent.

(ii) Charter schools and school districts will be informed of the preliminary status of the school district and schools, and will be provided the opportunity to appeal such preliminary identification, in a format and according to such time line as prescribed by the commissioner.

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

(4) Determination of priority school, focus district or focus charter school status. The commissioner shall review the additional information provided by the school district or charter school and make a determination regarding the designation of the school as a priority school or the school district as a focus district or the charter school as a focus charter school and provide notice to the school district or charter school of the determination.

(5) Identification of focus schools. Identification of focus schools.

(i) Upon identification as a focus district, the commissioner will require the school district to identify a specified minimum number of schools upon which it will focus its support and intervention efforts.

(ii) If the school district has been identified as a focus district solely because it has one or more priority schools in the school district, then the commissioner will provide the school district with the list of schools that are identified as focus schools, which shall consist of those schools whose ELA and math combined performance index for 2010-2011 school year or whose graduation rate for the 2006 graduation rate cohort for an accountability group is at or below cut points established by the commissioner and which are not making progress for that accountability group as determined by the commissioner. The district may petition the commissioner, using such format as the commissioner may prescribe, to substitute for good cause one or more schools on the list with school(s) selected by the district.

(iii) If a school district has been identified as a focus district pursuant to subparagraph (f)(2)(i) of this section, then all of the schools within the school district shall be preliminarily identified as focus schools. The commissioner shall assign the school district a minimum number of schools, as provided in subparagraph (viii) of this paragraph, that must be designated as focus schools based upon the number of non-proficient student results in English language arts and math on 2010-2011 school year assessments and non-graduation results for the 2006 graduation rate cohort for the accountability groups for which the school district has been identified as a proportion of the number of non-proficient results and non-graduate results for all focus districts in the State.

(iv) If a school has fewer than a total of 15 non-proficient student results in the accountability group(s) for which it could be potentially identified, then the school will not be identified for non-proficient student results. If the school has fewer than 15 non-graduation results in the accountability group(s) for which it could be potentially identified, then the school will not be identified for non-graduation results.

(v) If a school has more than 60 percent of its students meeting or exceeding the proficiency standard in ELA and math for all accountability group(s) for which the school could be identified, then the school will not be identified for non-proficient student results. If the school has a graduation rate of 60 percent or more for all accountability group(s) for which the school could be identified, then the school will not be identified for non-graduation results.

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

(vii) The commissioner will provide each focus district identified pursuant to paragraph (4) of this subdivision with two rank-ordered list of schools as follows:

(a) A list rank-ordered based on the percentage of non-proficient and/or non-graduation results for each accountability performance criterion for each accountability group for which the school district has been identified as a focus district.

(b) A list rank-ordered based on the number of non-proficient and/or non-graduation results for each accountability performance criterion for each accountability group for which the school district has been identified as a focus district.

(viii) The minimum number of schools that a focus district must identify as focus schools shall not exceed 85 percent of the elementary and middle schools and 85 percent of the high schools in the school district that have not been identified as priority schools. In the event that all schools in the school district meet the conditions specified in subparagraph (iv), (v) or (vi) of this paragraph, then the school district shall not

receive rank-ordered lists but will be required to identify at a minimum any one school in the school district as a focus school.

(ix) A focus district may choose to:

(a) provide support to all of its schools to address the performance of accountability group(s) on the accountability measure(s) that caused the school district to be identified; or

(b) identify a subset of schools as focus schools from the rank-order lists provided by the commissioner based on:

(1) the number of students in a school who are not proficient in ELA or mathematics or non-graduates in the accountability groups for which the school district was identified;

(2) the percent of students who are not proficient in ELA or mathematics or non-graduates in the accountability groups for which the school district was identified.

(c) The school district must use the selected rank-ordered list to identify at least the minimum, required number of focus schools.

(d) The focus district may petition the commissioner, using such format as he may prescribe, to substitute for good cause one or more lower ranked schools on the list selected by the school district for higher ranked schools. In the case of the city school district of the City of New York, if the chancellor identifies more than the minimum number of schools in a community school district, the chancellor may request that such additional schools be credited towards meeting the minimum number of school requirement in other community school districts within the same county.

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

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

(x) Before placing a transfer high school on the rank-ordered lists of potential focus schools, the commissioner shall review the performance of the school on a case-by-case basis, giving careful consideration to the mission of a particular school, student performance, and the school's ability to effectively serve its students in a turnaround environment. The commissioner will take into account the graduation cohort data, the age and number of credits that members of the cohort have upon admission to the school; and the success of the school in graduating students up to the age of 21.

(6) School requiring a local assistance plan. School requiring a local assistance plan.

(i) Beginning with the 2011-2012 school year results and annually thereafter, a school that has not been designated as a priority or focus school shall be designated as a local assistance plan school if the school:

(a) failed to make adequate yearly progress (AYP) for an accountability group for three consecutive years on the same performance criterion in subdivision (j) of this section; or

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

(c) the school is located in a district that is not designated as Focus and the school meets the criteria for identification as a focus school pursuant to subparagraph (5)(ii) of this subdivision.

(ii) For transfer high schools for which a district has submitted alternative high school cohort data, the commissioner shall review such data to determine whether the school shall be designated as requiring a local assistance plan.

(iii) Districts will be informed of the preliminary status of its schools and will be provided the opportunity to appeal the identification of any preliminarily identified school.

(7) Public notification of identification as a priority or focus school. Public notification of identification as a priority or focus school.

(i) Upon receipt of an accountability designation of priority or focus, the board of education (in New York City, the chancellor or 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 need not be limited to, direct notification, within 30 days of receipt of the commissioner's designation, in English and translated, when appropriate, into the recipient's native language or mode of communication, to persons in parental relation of children attending the school that it has been designated as priority or focus, and disclosure 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 of such designation.

(ii) Each school year during which a school remains under the identification as a priority or focus school, 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 that the school remains a priority or focus school. 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.

(h) Interventions.

(1) District diagnostic review for focus districts. Commencing in the 2012-2013 school year, each focus district shall participate annually in a diagnostic review using a diagnostic tool of quality indicators as prescribed by the commissioner that shall focus on the accountability group(s) for each accountability performance criterion for which the school district and its schools have been identified as priority and/or Focus.

(2) School and district diagnostic review. School and district diagnostic review.

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

(a) For schools designated as priority, the commissioner will appoint an integrated intervention team to conduct an on-site diagnostic school review, at least once within the three year period following designation to inform the development of the district comprehensive improvement plan and school comprehensive improvement plan.

(b) For schools designated as focus and priority in the years in which an integrated intervention team does not conduct an on-site diagnostic review, the school district will be required to annually use a diagnostic tool, in the form and content prescribed by the commissioner, to inform the development of the district comprehensive improvement plan and the school comprehensive education plan.

(c) For schools designated as requiring a local assistance plan, the school, in collaboration with the school district, will be required to annually use a diagnostic tool, in the form and content prescribed by the commissioner, to inform the development of the local assistance plan.

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

(ii) District comprehensive improvement plan.

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

(1) be developed in such format as may be prescribed by the commissioner, and shall be formally approved by the board of education of the school district (in New York City, approved by the chancellor or the chancellor's designee) no later than three months following the designation of the school district as a focus district, except that the commissioner may waive this timeline for good cause, and shall be subject to the approval of the commissioner, upon request;

(2) specify the supports and interventions, from the list of allowable expenditures and activities approved by the department, that the school district will provide to each school in the school district that has been identified as priority or focus school or a school requiring a local assistance plan and the funding sources that will be used for such supports and interventions;

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

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

(5) be made widely available through public means, such as posting on the Internet, distribution through the media, and distribution through public agencies, according to such timeline as may be established by the

commissioner;

(6) be updated annually, including an analysis of achievement of prior year goals, and, as so updated, approved by the board of education (in New York City, approved by the chancellor or the chancellor's designee) and implemented no later than the first day of regular student attendance of each year that the school district remains a focus district;

(7) include a description of goals, targets, activities and timeline for implementation;

(8) require the prior approval of the commissioner for any significant modification of the school district's approved comprehensive improvement plan.

(b) Commencing with the plan for the 2013-2014 school year, the district comprehensive improvement plan shall be developed based on the diagnostic reviews of the school district and schools within the school district.

(c) In lieu of a district comprehensive improvement plan, each charter school identified as a focus school or priority 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 and as determined by the charter school's board of trustees in consultation with the charter school's authorizer.

(iii) Comprehensive education plan.

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

(b) The plan shall:

(1) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee) no later than three months following the designation of the school as priority or focus and shall be subject to the approval of the commissioner, upon request;

(2) be implemented no later than the beginning of the next school year after the school year in which the school was identified or immediately upon approval of the board of education (in New York City, approved by the chancellor or chancellor's designee) if such approval occurs after the first day of regular school attendance;

(3) be updated annually and incorporate the findings of the diagnostic review, and as so updated, be approved by the board of education (in New York City, approved by the chancellor or chancellor's designee) and implemented no later than the first day of regular student attendance of each year that the school remains a priority or focus school, except that for a priority school implementing a whole school reform model the plan shall be annually updated each year of the three year implementation period;

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

(5) be made widely available through public means, such as posting on the Internet, distribution through the media, and distribution through public agencies, according to such timeline as may be established by the commissioner;

(6) include a description of goals, targets, activities and timeline for implementation and, for priority schools implementing a whole school reform model, cover the three year period of the model's implementation;

(7) require the prior approval of the commissioner for any significant modification of the school's approved comprehensive improvement plan.

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

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

(e) In lieu of a comprehensive education plan, each charter school identified as a focus school or priority school shall take such actions as are required by the charter authorizer pursuant to article 56 of the Education

Law, consistent with the charter agreement that each charter school has with its charter authorizer and as determined by the charter school's board of trustees in consultation with the charter school's authorizer.

(iv) Local assistance plans. A school district that has not been identified as focus but in which one or more schools require a local assistance plan shall develop such plan as follows:

(a) The school, with the assistance of the school district, shall conduct a diagnostic review in accordance with clause (2)(i)(c) of this subdivision.

(b) The school shall specify the actions that will be taken to improve the student performance levels of the accountability group(s) for each accountability performance criterion for which the school district has been identified. The local assistance plan shall:

(1) identify the process by which the local assistance plan was developed pursuant to section 100.11 of this Part;

(2) identify the resources that will be provided to each school to implement the plan;

(3) identify the professional development activities that will be taken to support implementation of the plan;

(4) identify the timeline for implementation of the plan; and

(5) be developed in such format as may be prescribed by the commissioner, and formally approved by the board of education of the school district (in New York City, approved by the chancellor or chancellor's designee) no later than three months following the designation of a school as requiring a local assistance plan;

(6) the local assistance plan shall be made widely available through public means, such as posting on the Internet, distribution through the media, and distribution through public agencies, according to such timeline as may be established by the commissioner;

(7) in lieu of a local assistance plan, each charter identified as requiring a local assistance plan 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 and as determined by the charter school's board of trustees in consultation with the charter school's authorizer.

(v) Distinguished educator. In addition to, and notwithstanding the provisions of subparagraphs (i) through (iv) of this paragraph, a school district designated as focus or a school designated as priority or focus may be required to cooperate with a distinguished educator appointed by the commissioner, pursuant to section 100.17(c)(3)(i) of this Part. The distinguished educator shall also provide oversight of the district comprehensive improvement plan or school comprehensive improvement plan and shall serve as an ex-officio member of the board of education. All plans are subject to review by the distinguished educator, who shall make recommendations to the board of education. The board of education shall implement such recommendations, unless it obtains the commissioner's approval to implement an alternate approach.

(vi) Supplemental educational services. Each local educational agency that receives title I funds may make supplemental educational services available to eligible students who attend a school designated priority or focus pursuant to this paragraph, consistent with section 120.4 of this Title.

(vii) Public school choice. Each school district that receives title I funds that has a school designated as priority or focus pursuant to this paragraph, shall provide public school choice consistent with section 120.3 of this Title.

(i) Removal from accountability designation.

(1) Removal of priority school designation. Based upon 2011-2012 and 2012-2013 school year results, and each two consecutive school year period thereafter, a school district or charter school may petition for a school to be removed from priority status if the school meets performance targets established by the commissioner, and the school has a combined performance index in ELA and mathematics for the all students group that exceeds the thresholds for identification as a priority school in the second year of the two year period. For high schools, the four year or five year cohort graduation rate must equal at least 60 percent for two consecutive years, the four year graduation rate cohort must equal or exceed 60 percent in the second year of the two year period and the school must meet the performance targets established by the commissioner, except for transfer high schools, for which the commissioner will establish a graduation rate goal and progress targets based on the specific conditions and circumstances present at each transfer high school. The school must also meet the participation rate requirement in ELA and mathematics for all groups for which it is accountable in the most current school year results that are being used as the basis for the petition.

(i) A school that begins to fully implement a whole-school reform model must complete implementation of the model even after removal from priority designation.

(ii) Schools that are removed from priority status before they begin implementation of a model will not be

required to implement the model.

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

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

(ii) Upon receipt of a petition for revision of status by a focus district, the commissioner will review the status of the school district and each priority and focus school in the school district. If the school district and each priority school and focus school within the school district meet the criteria for removal, the commissioner shall remove the focus designation from the school district and the focus and priority designation from all schools within the school district.

(iii) If the school district meets the criteria for removal, but not every priority or focus school within the school district meets the criteria for removal, the commissioner shall only remove the focus or priority designation from schools that meet the criteria for removal. The school district will remain a focus district and those schools that do not meet the criteria for removal will remain designated as focus or priority schools as applicable. The minimum number of schools that must be designated as focus shall be reduced to reflect this removal.

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

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

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

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

(vi) Removal of focus charter school designation.

(a) Commencing with 2011-2012 and 2012-13 school year results and for each consecutive two year period thereafter, a charter school may petition for the charter school to be removed from focus status if the charter school meets the participation requirement in ELA and math for all accountability groups and the performance targets established by the commissioner, which will at a minimum require that the charter school have a combined performance index in ELA and mathematics for each group for which the charter school was identified that exceeds the thresholds for identification in the second year of the two year period. The charter school must also exceed the graduation rate threshold for identification for two consecutive years for all accountability groups for which the charter school is accountable for graduation rate.

(b) Upon receipt of a petition for removal by a charter school, the commissioner will review the status of the charter school, and if the charter school meets the criteria for removal, the commissioner shall remove the focus designation from the charter school.

(j) Public school, school district and charter school performance criteria.

Each school district and school accountability group shall be subject to the performance criteria specified below:

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

year, except that, beginning with the 2012-2013 school year and thereafter, for each accountability group in elementary/middle-level English language arts and mathematics, an annual measurable objective is a performance index set by the commissioner for the 2012-13 school year that increases annually in equal increments so as to reduce by half the gap by the 2016-17 school year between the performance index of each accountability group in the 2012-13 school year and a performance index of 147.

(2) Annual high school or high school alternative cohort. Annual high school or high school alternative cohort.

(i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, the annual high school cohort for purposes of computing the high school performance index for English language arts and mathematics for any given school year shall consist of those students who first enrolled in ninth grade three years previously anywhere and who were enrolled in the school on the first Wednesday in October of the current school year. The annual school district high school cohort for purposes of determining the high school performance index for ELA and math for any given school year shall consist of those students who first enrolled in ninth grade three years previously anywhere and who were 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 the first Wednesday in October of the current school year. Students with disabilities in ungraded programs shall be included in the annual school district and high school cohort in the third school year following the one in which they attained the age of 17.

(ii) The following students shall not be included in the annual high school cohort: students who transferred to another high school or approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, or criminal justice facility, who left the United States or its territories, or who are deceased; except that, beginning with students who first entered grade 9 in the 2007-2008 school year, the following students will be included in the high school cohort of the school they attended before transferring:

(a) students who transfer to an approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, 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

(b) students who transfer to any high school equivalency preparation program other than those approved pursuant to section 100.7 of this Part.

(iii) The following students shall not be included in the annual school district high school cohort: students who transferred to a high school that is not a component of the school district or to an approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, or criminal justice facility, who left the United States or its territories, or who are deceased; except that, beginning with students who first entered grade 9 in the 2007-2008 school year, the following students will be included in the high school cohort of the school district they attended before transferring:

(a) students who transfer to an approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, 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

(b) students who transfer to any high school equivalency preparation program other than those approved pursuant to section 100.7 of this Part.

(iv) The high school alternative cohort in any given year shall consist of those students enrolled in the high school on the first Wednesday of October three years previously who were still enrolled in the school on the first Wednesday of October two years previously. Transfer high school may voluntarily submit to the commissioner information on the performance of an alternative high school cohort.

(3) Elementary/middle-level science requirements. An annual measurable objective is a performance index set by the commissioner for 2010-11 school year results for each accountability group that increases annually in equal increments so as to reduce by half the gap between the performance index for each accountability group in the 2010-11 school year and reach a goal of a performance index of 200 by the 2016-17 school year.

(4) A high school cohort graduation rate goal established annually by the commissioner, or progress in relation to the previous school year's graduation rate as measured by the four year graduation rate cohort and

the five year graduation rate cohort.

(i) The four year graduation rate cohort for each public school and charter school shall consist of those students (including an ungraded student with a disability) whose first date of entry into grade 9 (anywhere) was four years previously and whose last enrollment in the school did not end because of transfer to another school, death, or leaving the United States. The graduation rate is computed as the number of cohort members who earn a local diploma or Regents diploma by August 31st following the fourth school year after the school year in which the cohort first entered grade 9 divided by the total four year annual graduation rate cohort membership.

(ii) The four year graduation rate cohort for each school district shall consist of those students (including an ungraded student with a disability) whose first date of entry into grade 9 was four years previously (anywhere) and whose last enrollment in the school district did not end because of transfer to another school district, death, or leaving the United States. The graduation rate is computed as the number of cohort members who earn a local diploma or Regents diploma by August 31st following the fourth school year after the school year in which the cohort first entered grade 9 divided by the total four year annual graduation rate cohort membership.

(iii) The five year graduation rate cohort for each public school and charter school shall consist of those students (including an ungraded student with a disability) whose first date of entry into grade 9 (anywhere) was five years previously and whose last enrollment in the school did not end because of transfer to another school, death, or leaving the United States. The graduation rate is computed as the number of cohort members who earn a local diploma or Regents diploma by August 31st following the fifth school year after the school year in which the cohort first entered grade 9 divided by the total five year annual graduation rate cohort membership.

(iv) The five year graduation rate cohort for each school district shall consist of those students (including an ungraded student with a disability) whose first date of entry into grade 9 (anywhere) was five years previously and whose last enrollment in the school district did not end because of transfer to another school district, death, or leaving the United States. The graduation rate is computed as the number of cohort members who earn a local diploma or Regents diploma by August 31st following the fifth school year after the school year in which the cohort first entered grade 9 divided by the total five year annual graduation rate cohort membership.

(v) Students with disabilities in ungraded programs shall be included in the four year annual school district and high school cohort in the fourth school year following the one in which they are assigned a first date of entry into ninth grade.

(vi) Students with disabilities in ungraded programs shall be included in the five year annual school district and high school cohort in the fifth school year following the one in which they are assigned a first date of entry into ninth grade.

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

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

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

(3) Beginning with 2012-13 school year, the commissioner may also place under preliminary registration review any school that has conditions that threaten the health, safety and/or educational welfare of students or has been the subject of persistent complaints to the department by parents or persons in parental relation to the student, and has been identified by the commissioner as a poor learning environment based upon a combination of factors affecting student learning, including but not limited to: high rates of student absenteeism, high levels of school violence, excessive rates of student suspensions, violation of applicable building health and safety standards, high rates of teacher and administrator turnover, excessive rates of referral of students to or participation in special education or excessive rates of participation of students with disabilities in the alternate assessment, 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.

(4) The commissioner may also place under 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 or any school in which excessive percentages of students fail to fully participate in the State assessment program.

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

(6) For each school identified as a poor learning environment and placed under preliminary registration review pursuant to paragraph (3) of this subdivision, the school district shall be given the opportunity to present evidence to the commissioner that the conditions in the school do not threaten the health or safety or educational welfare of students and do not adversely affect student performance.

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

(1) Public school registration review.

(1) Upon placing the registration of a school under review, the commissioner shall warn the board of education (in New York City, the chancellor) that the school has been placed under registration review, and that the school is at risk of having its registration revoked. The commissioner shall include in any warning issued pursuant to this paragraph the actions that must be taken and/or the progress that must be demonstrated in order for a school to be removed from consideration for revocation of registration.

(i) Upon receipt of such warning, the board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public of the issuance of such warning. Such action shall include, but need not be limited to, direct notification, within 30 days of receipt of the commissioner's warning, in English and translated, when appropriate, into the recipient's native language or mode of communication, to persons in parental relation of children attending the school that it has been placed under registration review and is at risk of having its registration revoked, and disclosure by the school district at the next public meeting of the local board of education of such warning.

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

(2) Following the placement of a school under registration review, an integrated intervention team, which may include a distinguished educator, as appointed by the commissioner, pursuant to section 100.17(c)(3)(i) of this Part, shall conduct a diagnostic review of the school and recommend to the commissioner whether the school should:

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

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

(iii) be phased out or closed.

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

the registration be revoked and the school be declared an unsound educational environment pursuant to paragraph (7) of this subdivision.

(4) The commissioner may require a school district to submit such reports and data as the commissioner deems necessary to monitor the implementation of the improvement plan, comprehensive education plan, or closure or phase out plan and to determine the degree to which the school has achieved the progress required by the commissioner. Such reports shall be in a format and in accordance with such timeframe as are prescribed by the commissioner. The commissioner may upon a finding of good cause extend the deadline for submission of a required plan.

(5) Unless it is determined by the commissioner that a school identified for registration review should be phased out or closed, or that a shorter period of time shall be granted, a school placed under registration review shall be given three full academic years to show implement its plan and/or show required progress. The commissioner may establish interim required benchmarks for plan implementation and/or demonstration of required progress. If the school has not taken the required actions and/or demonstrated progress as delineated by the commissioner, the commissioner shall recommend to the Board of Regents that the registration be revoked and the school be declared an unsound educational environment, except that the commissioner may upon a finding of extenuating circumstances extend the period during which the school must demonstrate progress. The board of education of the school district which operates the school (in New York City, the chancellor) shall be afforded notice of such recommendation and an opportunity to be heard in accordance with paragraph (7) of this subdivision.

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

(7) 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 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 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 (k)(3) of this section, remain present in the school.

(3) In the event that a school placed under registration review prior to the 2012-2013 school year demonstrates that it has met its previously established progress targets pursuant to section 100.2(p) of this Part, but is identified in the 2012-2013 school year as priority pursuant to subdivision (g) of this section, the

school shall remain under registration review and shall follow the intervention requirements pursuant to subdivision (h) of this section and meet the targets for removal as a priority school pursuant to subdivision (i) 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 2012-2013 school year demonstrates that it has met its previously established progress targets pursuant to section 100.2(p) of this Part, and is not identified in the 2012-2013 school year as priority 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 (1)(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 content 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 (h) 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.

(6) In the event that a board of education seeks to redesign a school under registration review or a priority school, the board of education (in New York City, the chancellor or chancellor's designee) shall submit to the commissioner a petition and a redesign plan, in such form or format as prescribed by the commissioner, requesting that the redesigned school be approved.

(i) The commissioner may grant such petition, and the school may be approved as redesigned, provided that:

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

(b) parents, teachers, administrators, and community members have been provided an opportunity to participate in the development of the redesign plan; and

(c) upon examination of factors, the commissioner determines that the redesigned school constitutes a new and satisfactory educational program. Such factors may include, but not be limited to, the school mission; school climate; school administration and staff; grade configurations and groupings of students; zoning patterns; curricula and instruction; professional development programs; facilities; and parent and community involvement in decision making. In making a determination the commissioner will consider the academic impact of such redesign on other schools within the school district.

(ii) At the time that a redesigned school is approved, the commissioner shall delineate the student performance results that the school must demonstrate to be removed from registration review and/or priority status. For schools under registration review, if, after the designated period of time, the school has not demonstrated such results as delineated by the commissioner, the commissioner shall recommend to the Board of Regents that the registration be revoked pursuant to paragraph (1)(5) of this section.

Official Compilation of Codes, Rules and Regulations of the State of New York
Title 8. Education

Chapter II. Regulations of the Commissioner

Subchapter E. Elementary and Secondary Education

Part 100. Elementary and Secondary Education School Program

Section 100.2. General school requirements.

(p) *Registration of schools and school/district accountability.* Nonpublic schools may be, and public elementary, intermediate, middle, junior high, and high schools shall be, registered by the Board of Regents pursuant to this subdivision upon recommendation by the commissioner, provided that charter schools shall not be subject to registration pursuant to this subdivision, but shall be held accountable for meeting or exceeding the student performance standards and student assessment requirements applicable

to other public schools in accordance with the provisions of article 56 of the Education Law. No school district may operate a public school whose registration has been revoked by the Board of Regents pursuant to paragraph (10) of this subdivision or has lapsed pursuant to paragraph (3) of this subdivision. Only those public and nonpublic high schools which are registered by the Board of Regents upon recommendation of the commissioner, may issue diplomas and administer Regents examinations, except that charter schools may issue diplomas and administer Regents examinations as authorized by article 56 of the Education Law.

(1) Definitions. As used in this subdivision:

(i) *Accountability groups* shall mean, for each public school, school district and charter school, those groups of students for each grade level or annual high school cohort, as described in paragraph (16) of this subdivision comprised of: all students; students from major racial and ethnic groups, as set forth in subparagraph (bb)(2)(v) of this section; students with disabilities, as defined in section 200.1 of this Title, including, beginning with the 2009-2010 school year, students no longer identified as students with disabilities but who had been so identified during the preceding one or two school years; students with limited English proficiency, as defined in Part 154 of this Title, including, beginning with the 2006-2007 school year, a student previously identified as a limited English proficient student during the preceding one or two school years; and economically disadvantaged students, as identified pursuant to section 1113(a)(5) of the NCLB, [20 U.S.C. section 6316\(a\)\(5\)](#) (Public Law, section 107-110, section 1113(a)(5), 115 STAT, 1469; 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). The school district accountability groups for each grade level will include all students 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.

(ii) *School 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.

(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 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) *Performance index* shall be calculated based on the four student performance levels defined in this subparagraph. Each student scoring at level 1 will be credited with 0 points, each student scoring at level 2 with 100 points, and each student scoring at level 3 or 4 with 200 points. The performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.

(v) *Performance levels* shall mean:

(a) level 1/basic:

(1) for elementary and middle grades:

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

(ii) for the 2005-2006 school year and prior school years, a score for certain limited English proficient students pursuant to subparagraph (14)(viii) of this subdivision, in lieu of the State assessment in English

language arts, that shows level 1 growth on the New York State English as a Second Language Assessment Test (NYSESLAT);

(iii) for the 2004-2005 and prior school years, the score to be reported for a student with a disability who participates in the local assessment option;

(2) for high school:

(i) a score of less than 55 on the Regents comprehensive examination in English or a Regents mathematics examination or a failing score on a State-approved alternative examination for those Regents examinations;

(ii) a failing score on the Regents competency tests in reading or writing; a failing score on the Regents competency test in mathematics;

(iii) a score of level 1 on a State alternate assessment;

(iv) a cohort member who has not been tested; or

(v) for the 2004-2005 and prior school years, the score of a student with a disability who participates in the local assessment option;

(b) level 2/basic proficient:

(1) for elementary and middle grades:

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

(ii) for the 2005-2006 school year and prior school years, a score for certain limited English proficient students pursuant to subparagraph (14)(viii) of this subdivision, in lieu of the State assessment in English language arts, that shows level 2 growth on the NYSESLAT;

(2) for high school:

(i) a score between 55 and 64 on the Regents comprehensive examination in English or a Regents mathematics examination;

(ii) a passing score on the Regents competency test in reading and writing; a passing score on the Regents competency test in mathematics;

(iii) a score of level 2 on a State alternate assessment;

(c) level 3/proficient:

(1) for elementary and middle grades:

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

(ii) for the 2005-2006 school year and prior school years, a score for certain limited English proficient students pursuant to subparagraph (14)(viii) of this subdivision, in lieu of the State assessment in English language arts, that shows level 3 growth on the NYSESLAT;

(2) for high school:

(i) a score between 65 and 84 on the Regents comprehensive examination in English or a Regents mathematics examination;

(ii) a passing score on a State-approved alternative to the Regents examinations set forth in item (i) of this subclause;

(iii) a score of level 3 on a State alternate assessment; and

(d) level 4/advanced:

(1) for elementary and middle grades:

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

(2) for high school:

(i) a score of 85 or higher on the Regents comprehensive examination in English or a Regents mathematics examination;

(ii) a score of level 4 on a State alternate assessment;

(vi) *High school equivalency literacy levels* means the level that a student tested on reading and mathematics assessments approved by the commissioner divided into the following grade levels: 0.0-1.9, 2.0-3.9, 4.0-5.9, 6.0-8.9, 9.0-10.9 and 11.0 and above.

(vii) *Alternate assessment* means a State alternate assessment recommended by the committee on special

education, for use by students with disabilities as defined in section 100.1(t)(2)(iv) of this Part in lieu of a required State assessment.

(viii) *Title I* means title I, part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), [20 U.S.C. sections 6301-6327](#).

(ix) *Continuously enrolled* means, for grades 3-8, students whose latest date of enrollment occurred after the date prescribed by the commissioner on which BEDS forms are required to be completed and, for grades 9-12, students in the high school cohort, as defined in paragraph (16) of this subdivision.

(x) *Significant medical emergency* means an excused absence from school during both the regular and makeup examination period for which a 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) *For elementary and middle-level students, participation rate* means the percentage of students enrolled on all days of test administration who did not have a significant medical emergency who received valid scores on the State assessments for elementary and middle-level grades, as set forth in subparagraph (v) of this paragraph. Beginning with the 2006-2007 school year, a limited English proficient student enrolled in school in the United States (excluding Puerto Rico) for less than one year as of a date determined by the commissioner and who received a valid score on the NYSESLAT may be counted as participating in an elementary or middle level English language arts assessment.

(xii) *For high school students, participation rate* means the percentage of designated students in at least their fourth year of high school, as designated by the commissioner, who received a valid score on the

required assessments for high schools, as set forth in subparagraph (v) of this paragraph.

(xiii) *NCLB* means the No Child Left Behind Act of 2001, Public Law, section 107-110.

(2) Procedure for registration of public schools.

(i) All public elementary, intermediate, middle, junior high schools, and high schools, other than charter schools, in existence on September 1, 2002 shall be deemed registered by the Board of Regents pursuant to this subdivision as of such date.

(ii) A school district that seeks to register a public elementary, intermediate, middle, junior high school or high school which is not registered pursuant to subparagraph (i) of this paragraph 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 June 15th 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 the opening of such school, except that the commissioner may waive this timeline for good cause. The commissioner shall review the petition and shall recommend its approval to the Board of Regents if it is satisfactorily demonstrated that the 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 district reorganization, except where it can be established to the satisfaction of the commissioner that such school is essential to the education welfare of the students.

(a) Where a school registered pursuant to this paragraph is in a district in which one or more schools have been designated as a school in Improvement, Corrective Action or Restructuring, the commissioner shall determine the accountability status of the newly registered school based upon his 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.

(b) 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 commissioner may adjust the accountability status of the affected schools to reflect such organizational changes.

(3) 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.

(4) System of accountability for student success. Each year, commencing with 2002-2003 school year test administration results, the commissioner shall review the performance of all public schools, charter schools and school districts in the State. For each accountability performance criterion specified in paragraph (14) and each performance indicator specified in paragraph (15) of this subdivision, the commissioner, commencing with 2002-2003 school year test administration results, shall determine whether each public school, charter school and school district has achieved adequate yearly progress as set forth in paragraph (5) of this subdivision.

(5) Adequate yearly progress.

(i) A public school, charter school or school district shall be deemed to have made adequate yearly progress on an accountability performance criterion set forth in paragraph (14) of this subdivision if each accountability group within such school or district achieved adequate yearly progress on that criterion.

(ii) In public schools, charter schools or school districts with fewer than 30 students subject to an accountability performance criterion set forth in paragraphs (14) and (15) of this subdivision, the

commissioner shall use the weighted average of the current and prior school year's performance data for that criterion in order to make a determination of adequate yearly progress. No public school, charter school or school district will be held accountable for any other accountability group consisting of fewer than 30 students as long as the "all student" accountability group includes at least 30 students for that school year.

(iii) For purposes of determining adequate yearly progress, only the performance of continuously enrolled students in grades 3-8 shall be included for consideration.

(iv) An accountability group shall be deemed to have made adequate yearly progress on an accountability performance criterion specified in paragraph (14) of this subdivision if:

(a) the superintendent of the school district or the principal of the charter school has submitted the required student data files to the commissioner pursuant to paragraph (bb)(2) of this section or section 119.3(b) of this Title in the timeframe and format specified by the commissioner; and

(b) for accountability groups consisting of 40 or more students, either:

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

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

(c) for accountability groups consisting of 30 or more students:

(1) the accountability group met or exceeded, or did not differ significantly as determined by the commissioner, from the annual measurable objective for that criterion; or

(2) the accountability group met or exceeded, or did not differ significantly as determined by the commissioner, from an annual performance target established by the commissioner and the accountability group met or exceeded the third performance indicator at that grade level, as defined in paragraph (15) of this subdivision.

(v) A public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance indicator specified in paragraph (15) of this subdivision if:

(a) the superintendent of the school district or the principal of the charter school has submitted the required student data files to the commissioner pursuant to paragraph (bb)(2) of this section or section 119.3(b) of this Title in the timeframe and format specified by the commissioner; and

(b) the "all students" accountability group in the school or school district at the applicable grade levels or high school cohort met or exceeded the performance indicator and, for elementary and middle levels, and beginning in 2005-2006 for the elementary- middle level, 80 percent of students enrolled on all days of the science test administration, who did not have a significant medical emergency, received valid scores.

(vi) For each school year, public schools, school districts, and charter schools in which no students or, pursuant to subparagraph (ii) of this paragraph fewer than 30 students, participate in the required State assessments for English language arts or mathematics, or in which the majority of students are not continuously enrolled, 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 subparagraph (viii) of this paragraph. 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 school or school district has made adequate yearly progress. The commissioner shall consider the self-assessment, board recommendation and any other relevant information in determining whether the school or school district made adequate yearly progress.

(vii) The school accountability status 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 by contract, the grade three State assessment results for each feeder school student will be attributed to the feeder school as well as to the school or charter 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 the date prescribed by the commissioner on which the BEDS forms are required to be completed until the end of the school year in the highest grade served by the feeder school. In a district, if all schools serving grade three make adequate yearly progress in a given year, all feeder schools served by the district will be deemed to have made adequate yearly progress. If one or more schools enrolling students from a feeder school fail to make adequate yearly progress on a criterion set forth at subparagraphs (14)(iii) and (vi) of this subdivision, the commissioner will aggregate the district's grade three results on that criterion by feeder school and determine whether

each feeder school made adequate yearly progress on that criterion. If a feeder school fails to make adequate yearly progress on the same criterion for two consecutive years, the school will be designated as a school in Improvement (year 1).

(6) Differentiated Accountability for Schools.

(i) Except as provided in subparagraph (ii) of this paragraph, beginning with the 2009-2010 school year and thereafter, public schools, and charter schools that receive funds under title I, that failed to make adequate yearly progress (AYP) pursuant to this subparagraph shall be designated into accountability phases and phase categories as follows:

(a) Accountability phases.

(1) Improvement phase.

(i) A school that fails to make AYP for two consecutive years on the same accountability performance criterion in paragraph (14) of this subdivision or the same accountability indicator in paragraph (15) of this subdivision shall be designated in the next school year as a school in Improvement (year 1) for that accountability performance criterion/accountability indicator.

(ii) A school that is designated as a school in Improvement (year 1) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Improvement (year 2) for that accountability performance criterion/accountability indicator.

(2) Corrective Action phase.

(i) A school that is designated as a school in Improvement (year 2) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified as a school in Improvement (year 2) shall be designated in the next school year as a school in Corrective Action (year 1) for that accountability performance criterion/accountability indicator.

(ii) A school that is designated as a school in Corrective Action (year 1) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Corrective Action (year 2) for that accountability performance criterion/accountability indicator.

(3) Restructuring phase.

(i) A school that is designated as a school in Corrective Action (year 2) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Restructuring (year 1) for that accountability performance criterion/accountability indicator.

(ii) A school that is designated as a school in Restructuring (year 1) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Restructuring (year 2) for that accountability performance criterion/accountability indicator.

(iii) A school that is designated as a school in Restructuring (year 2) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be

designated in the next school year as a school in Restructuring (advanced) for that accountability performance criterion/accountability indicator.

(b) Phase categories.

(1) Improvement phase. Schools designated in Improvement shall be assigned to a category upon entry into the phase as follows:

(i) Basic:

(a) schools that fail to make AYP for one accountability group within one accountability performance criterion, but not the all students group; or

(b) schools that fail to make AYP for one of the accountability indicators, but met the accountability performance criterion.

(ii) Focused:

(a) schools that fail to make AYP for more than one accountability performance criterion, but not the all students group; or

(b) schools that fail to make AYP for more than one accountability student group within an accountability performance criterion, but not the all students group;

(iii) Comprehensive:

(a) schools that fail to make AYP for the all students group on any accountability performance criterion; or

(b) schools that fail to make AYP for every accountability group, except the all students group, within an accountability criterion for which there are at least two accountability groups other than the all students group; or

(c) schools that fail to make AYP for an accountability performance criterion and for an indicator.

(2) Corrective Action or Restructuring phase. Schools designated in Corrective Action or Restructuring shall be assigned to a category upon entry into the phase as follows:

(i) Focused:

(a) schools that fail to make AYP for one of the accountability indicators, but met the accountability performance criterion; or

(b) schools that fail to make AYP for more than one accountability performance criterion, but not with the all students group; or

(c) Schools that fail to make AYP for one or more accountability groups within an accountability performance criterion, but not the all students group.

(ii) Comprehensive:

(a) schools that fail to make AYP for the all students group on any accountability performance criterion;
or

(b) schools that fail to make AYP for every accountability group, except the all students group, within an accountability performance criterion for which there are at least two accountability groups other than the all students group; or

(c) schools that fail to make AYP for an accountability performance criterion and for an accountability indicator.

(c) The commissioner shall designate a school's overall accountability status as the most advanced phase for which it has been identified on an accountability performance criterion/accountability indicator and, within that designated phase, shall assign the highest category, provided that such category may not be reduced in a subsequent year of a phase.

(d) Upon a finding of exceptional or uncontrollable circumstances, the commissioner may delay for a period of one year the designation of a school under this paragraph.

(ii) Special transition provisions for schools in operation during the 2008-2009 school year and for schools under registration review. Notwithstanding the provisions of subparagraph (i) of this paragraph:

(a) For each public school that was in operation during the 2008-2009 school year and for each charter school that was in operation and received funds under title I during the 2008-2009 school year, the commissioner shall designate the school's accountability phase and phase category for the 2009-2010 school year, based upon the school's accountability status for the 2008-2009 school year and the school's adequate yearly progress (AYP) status for the 2007-2008 and 2008-2009 school years;

(b) Notwithstanding the provisions of clause (a) of this subparagraph, a school that is identified for registration review pursuant to paragraph (9) of this subdivision during a school year in which it is designated as a school in Improvement or Corrective Action shall, in the next school year, be designated as a school in Restructuring (year 1)/Comprehensive and shall be subject to the requirements of subclause (iv)(c)(2) of this paragraph.

(iii) Removal from accountability designation. A school that makes adequate yearly progress for two consecutive years on the accountability performance criterion/accountability indicator for which it has been identified shall be removed from accountability designation for that accountability performance criterion and/or accountability indicator.

(iv) Interventions.

(a) Improvement phase schools.

(1) School quality review. Each school upon initial designation for the Improvement phase shall participate in a school quality review, to include at a minimum a self-assessment of the educational program, using quality indicators in a form and content prescribed by the commissioner. The school quality review shall focus on the accountability group(s) for each accountability performance criterion and/or accountability indicator for which the school has been identified.

(2) School improvement plan. A school improvement plan, in such format as may be prescribed by the commissioner, shall be developed based on the school quality review and cover a two year period. The plan shall:

(i) be formally approved by the board of education (in New York City, both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district) no later than three months following the designation of the school in the Improvement phase and shall be subject to the approval of the commissioner, upon request;

(ii) be implemented no later than the beginning of the next school year after the school year in which the school was identified or immediately upon approval of the board of education if such approval occurs after the first day of regular school attendance;

(iii) be updated annually and, as so updated, approved by the board of education and implemented no later than the first day of regular student attendance of each year that the school remains in improvement. If, in the second year of improvement, the school fails to make AYP with a different accountability group for which the school is subsequently designated for improvement or is subsequently designated for improvement for a different accountability performance criterion or indicator, the school shall modify the plan consistent with the highest accountability category and also address the additional group(s), criterion or indicator;

(iv) for a school designated as Improvement/Basic, the plan shall also include a description of activities and timeline for implementation. The district shall be responsible for oversight and support of the plan;

(v) for a school designated as Improvement/Focused, the plan shall, consistent with State law, also include one or more of the actions set forth in section 6316 (b)(3)(A)(i-x) of the NCLB, [20 U.S.C. section 6316\(b\)\(3\)\(A\)\(i-x\)](#) (Public Law, section 107-110, section 1116(b)(3)(A)(i-x), 115 STAT. 1480-1481; 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), in accordance with a written report by the school quality review team; and

(vi) for a school designated as Improvement/Comprehensive, the plan shall, consistent with State law, also include all of the actions set forth in section 6316 (b)(3)(A)(i-x) of the NCLB, [20 U.S.C. section 6316\(b\)\(3\)\(A\)\(i-x\)](#) (Public Law, section 107-110, section 1116(b)(3)(A)(i-x), 115 STAT. 1480-1481; 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), in accordance with a written report by the school quality review team. Such report may include a recommendation that the school engage the services of a content area consultant.

(3) On-site review. Except as provided in paragraph (9) of this subdivision, in addition to the school quality review and prior to the development of the school improvement plan required under clause (a) of this subparagraph:

(i) for a school designated as Improvement/Focused, the school shall be required to participate in an on-site review that shall be conducted by a school quality review team, with district representation, appointed by the commissioner. The review shall focus on the accountability group(s), accountability performance criterion and/or indicator for which the school was identified. The district shall be responsible for oversight and support of the plan;

(ii) for a school designated as Improvement/Comprehensive, the school shall be required to participate in an intensive on-site review that shall be conducted by a school quality review team, with district representation, appointed by the commissioner. The review shall focus on the systemic issues at the school that have caused the school to be designated for Improvement. The district shall be responsible for oversight and support of the plan.

(b) Corrective Action phase schools.

(1) Curriculum audit. Except as provided in paragraph (9) of this subdivision, each school, upon initial designation for the Corrective Action phase, shall participate in a curriculum audit to assess the school's educational program. The curriculum audit shall be in a form and content prescribed by the commissioner and shall focus on the accountability group(s) for each accountability performance criterion and/or accountability indicator for which the school was identified. The school shall be assisted by a school quality review team, with district representation, appointed by the commissioner.

(2) Corrective action plan. A corrective action plan, in such format as may be prescribed by the commissioner, shall be developed and cover a two-year period. The district and school quality review team shall provide oversight and support for implementation of a corrective action plan. The plan shall:

(i) be formally approved by the board of education (in New York City, both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district) no later than three months following the designation of the school in the Corrective Action phase and shall be subject to the approval of the commissioner, upon request;

(ii) be implemented no later than the beginning of the next school year after the school year in which the school was identified or immediately upon approval of the board of education if such approval occurs after the first day of regular school attendance;

(iii) be updated annually and incorporate the findings of the audit and any other action required to be taken by the district pursuant to this subclause and, as so updated, approved by the board of education and implemented no later than the first day of regular student attendance of each year that the school remains in corrective action. If, in the second year of corrective action, the school fails to make AYP with a different accountability group for which the school is subsequently designated for corrective action or is subsequently designated for corrective action on a different accountability performance criterion or indicator, the school shall modify the plan consistent with the highest accountability category and also address the additional group(s), criterion or indicator;

(iv) include, to the extent consistent with State law, at least one of the actions set forth at section 6316(b)(7)(C)(iv)(I-VI) of the NCLB, [20 U.S.C. section 6316\(b\)\(7\)\(C\)\(iv\)\(I-VI\)](#) (Public Law, section 107-110, section 1116(b)(7)(C)(iv)(I-VI), 115 STAT. 1484; 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). The district shall identify and provide the support(s) required to implement any new curriculum, including professional development;

(c) Restructuring phase schools.

(1) Assessment of educational program. Each school shall participate in an assessment of the educational program by a joint intervention team appointed by the commissioner which shall include district representation and may include a distinguished educator. The team shall assess the educational program and make recommendations.

(2) Restructuring plan. A two year restructuring plan shall be developed and implemented by the district, focusing on the subgroup(s) for the accountability performance criterion and/or accountability indicator for which the school was identified. The district shall provide oversight and support for the plan, with the assistance of the Department. Such restructuring plan shall require the school to make fundamental reforms, such as significant changes in the staff, governance, or organization and may include a plan to

close or phase out the school, and shall:

(i) be formally approved by the board of education (in New York City, both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district) no later than three months following the designation of the school in the Restructuring phase and also shall be subject to the approval of the commissioner; and

(ii) be implemented no later than the beginning of the next school year after the school year in which the school was identified or, to the extent practicable, immediately upon approval of the board of education if such approval occurs after the first day of regular school attendance.

(3) Distinguished educator. In addition to, and notwithstanding the provisions of, subclauses (1) and (2) of this clause, a school designated as Restructuring/Comprehensive shall cooperate with a distinguished educator assigned by the commissioner. The distinguished educator shall also provide oversight of the restructuring plan and shall serve as an ex-officio member of the board of education. All plans are subject to review by the distinguished educator who shall make recommendations to the board of education. The board shall implement such recommendations unless it obtains the commissioner's approval otherwise.

(d) Each improvement, corrective action and restructuring plan, and each updated plan, shall be developed, to the extent appropriate, consistent with section 100.11 of this Title.

(e) The commissioner may require that any plan, or subsequent modification of a plan, be submitted for prior approval.

(v) Supplemental education services. Each local educational agency that receives title I funds shall make supplemental education services available to eligible students who attend a school designated in Improvement, Corrective Action or Restructuring pursuant to this paragraph, consistent with section 120.4 of this Title.

(vi) Title I public school choice. Each local educational agency that receives title I funds that has a school designated in Improvement (year 2); Corrective Action; or Restructuring pursuant to this paragraph, shall provide public school choice consistent with section 120.3 of this Title.

(7) Districts requiring academic progress.

(i) Commencing with 2003-2004 school year results, a district that failed to make adequate yearly progress on all applicable criteria in paragraph (14) of this subdivision in a subject area, or all applicable indicators in subparagraphs (15)(i) through (iii) of this subdivision, or the indicator in subparagraph (15)(iv) of this subdivision, for two consecutive years shall be designated as a "district requiring academic progress." A district improvement plan in such format as may be prescribed by the commissioner shall be developed by each district requiring academic progress. Such district improvement plan shall be formally approved by the board of education (in New York City, both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district) no later than three months following the identification of the district as requiring academic progress and submitted to the commissioner for approval. The plan shall be implemented no later than beginning of the next school year after the school year in which the school district was identified as requiring academic progress or immediately, to the extent practicable, upon approval of the board, if such identification occurs after the first day of regular student attendance. Such plan shall be developed in consultation with parents, school, staff, and others. The plan shall be revised annually and resubmitted to the commissioner for approval no later than July 31st of each school year in which the district remains identified as requiring academic progress. Any modification of the district's approved improvement plan shall require

the prior approval of the commissioner.

(ii) Commencing with 2003-2004 school year results:

(a) a district identified as requiring academic progress for failing to make adequate yearly progress on all applicable criterion in paragraph (14) of this subdivision in a subject area shall be removed from such status if it makes adequate yearly progress for two consecutive years on any criterion in the subject area for which it is identified;

(b) a district identified as requiring academic progress for failing to make adequate yearly progress on every applicable indicator set forth at subparagraphs (15)(i) through (iii) of this subdivision shall be removed from such status if it makes adequate yearly progress for two consecutive years on any applicable indicators; and

(c) a district identified as requiring academic progress for failing to make adequate yearly progress on the indicator set forth at subparagraph (15)(iv) of this subdivision shall be removed from such status if it makes adequate yearly progress for two consecutive years on such indicator; provided that for a district requiring academic progress that is removed from such status based on 2002-2003 and 2003-2004 results, such district shall have made adequate yearly progress in 2002-2003 on each criterion or indicator for which it was identified.

(iii) Except as provided in subparagraph (vi) of this paragraph, a local educational agency (LEA) that received funds under title I for two consecutive years during which the LEA did not make adequate yearly progress on all applicable criteria in paragraph (14) of this subdivision in a subject area, or all applicable indicators in subparagraphs (15)(i) through (iii) of this subdivision, or the indicator in subparagraph (15)(iv) of this subdivision, shall be identified for improvement under section 1116(c) of the NCLB, [20 U.S.C. section 6316\(c\)](#) and shall be subject to the requirements therein (Public Law, section 107-110, section 1116[c], 115 STAT. 1487-1491; 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).

(iv) Except as provided in subparagraph (vi) of this paragraph, at any time following the identification of an LEA for improvement, the commissioner may further identify the local educational agency for corrective action under section 1116(c)(10) of the NCLB, [20 U.S.C. section 6316\(c\)\(10\)](#). The commissioner shall identify such LEA for corrective action if, by the end of the second full school year the LEA has failed to make adequate yearly progress. The commissioner may delay identification of an LEA for corrective action for a period of one year pursuant to section 1116(c)(10)(F) of the NCLB, [20 U.S.C. section 6316\(c\)\(10\)\(F\)](#) (Public Law, section 107-110, section 1116[c][10], 115 STAT. 1489-1491; 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).

(v) Commencing with 2003-2004 school year results, an LEA identified for improvement or corrective action that is removed from status as a district requiring academic progress pursuant to subparagraph (ii) of this paragraph shall no longer be subject to the requirements of section 1116(c) of the NCLB, [20 U.S.C. section 6316\(c\)](#) (Public Law, section 107-110, section 1116[c], 115 STAT. 1487-1491; 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).

(vi) Notwithstanding any other provision of law, an LEA subject to the provisions of subparagraphs (iii) and (iv) of this paragraph which accountability status is dependent upon the 2005-2006 assessment results for grades 3-8 and which does not receive notice of such status until after the first day of regular

attendance for the 2006-2007 school year, shall immediately commence implementation, to the extent practicable, of any plan required to be implemented pursuant to section 1116(c) of the NCLB.

(8) High performing and rapidly improving schools and districts.

(i) Commencing with 2003-2004 school year results, the commissioner shall annually identify as “high performing“ public schools, school districts, and charter schools in which:

(a) the school or district meets or exceeds the benchmarks established by the commissioner pursuant to subparagraph (14)(ix) of this subdivision; and

(b) the school or district has made adequate yearly progress on all applicable criteria and indicators in paragraphs (14) and (15) of this subdivision for two consecutive years.

(ii) Commencing with 2004-2005 school year results, the commissioner shall annually identify as “rapidly improving“ public schools, school districts, and charter schools in which:

(a) the school or district is below the benchmark established by the commissioner pursuant to subparagraph (14)(ix) of this subdivision;

(b) the school or district has improved its performance by an amount determined by the commissioner during the past three years on each applicable criterion in paragraph (14) of this subdivision in which it is below the benchmark established by the commissioner; and

(c) the school or district has made adequate yearly progress on all applicable criteria and indicators in paragraphs (14) and (15) of this subdivision for three consecutive years.

(iii) The commissioner may elect not to identify a school or district as high performing or rapidly improving if the school or district is held accountable for the performance of three or fewer accountability groups on each applicable criterion.

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

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

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

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

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

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

restructuring, whichever number of schools is greater; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) 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, excessive transfers of students to alternative high school and high school equivalency programs and excessive use of uncertified teachers or teachers in subject areas other than those for which they possess certification.

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

(vi) Beginning in the 2010-2011 school year, for each school identified for preliminary registration review pursuant to subparagraphs (ii) and (iii) of this paragraph, the local school district shall be given the opportunity to present to the commissioner additional assessment data, which may include, but need not be limited to, valid and reliable measures of: the performance of students in grades other than those in which the State tests are administered; the performance of limited English proficient students and/or other students with special needs; and the progress that specific grades have made or that cohorts of students in the school have made towards demonstrating higher student performance. For each school identified as a poor learning environment and placed under preliminary registration review pursuant to subparagraph (iv) of this paragraph, the district shall be given the opportunity to present evidence to the commissioner that the conditions in the school do not threaten the health or safety or educational welfare of students and do not adversely affect student performance. The district may also provide relevant information concerning extraordinary, temporary circumstances faced by the school that may have affected the performance of students in the school on the State tests.

(vii) The commissioner shall review the additional information provided by the district and determine which of the schools identified for preliminary registration review pursuant to subparagraphs (ii) and (iii) of this paragraph, or identified as poor learning environments pursuant to subparagraph (iv) of this paragraph, shall be placed under registration review.

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

(ix) For schools required to conduct a self-assessment pursuant to subparagraph (5)(vi) of this subdivision, the commissioner upon review of the self-assessment may make a determination that the school shall be placed under registration review.

(10) Public school registration review.

(i) Upon placing the registration of a school under review, the commissioner shall warn the board of education (in New York City, the chancellor) that the school has been placed under registration review, and that the school is at risk of having its registration revoked. The commissioner shall include in any warning issued pursuant to this subparagraph an explicit delineation of the progress that must be demonstrated in order for a school to be removed from consideration for revocation of registration. Upon receipt of such warning, the board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public of the issuance of such warning. Such action shall include, but need not be limited to, direct notification, within 30 days of receipt of the

commissioner's warning, in English and translated, when appropriate, into the recipient's native language or mode of communication, to persons in parental relation of children attending the school that it has been placed under registration review and is at risk of having its registration revoked, and disclosure by the district at the next public meeting of the local board of education of such warning. Each school year during which a school remains under registration review, by June 30th or at the time of a student's initial application or admission to the school, whichever is earliest, the board of education shall provide direct notification to parents or other persons in parental relation to children attending the school that the school remains under registration review and is at risk of having its registration revoked. Such notification shall include a summary of the actions that the district and school are taking to improve student results and an explanation of any district programs of choice, magnet programs, transfer policies, or other options that a parent or a person in parental relation may have to place the child in a different public school within

the district. Such notification shall include the timelines and process for parents exercising their rights to school choice.

(ii) Following the placement of a school under registration review, or following the identification of a school as persistently lowest-achieving in the 2009-2010 school year, a joint intervention team, as appointed by the commissioner, shall assist the school district in which such school is located in selecting an intervention pursuant to subparagraph (iv) of this paragraph. The district shall develop a new restructuring plan, or update an existing restructuring plan, that shall, in addition to the requirements pursuant to subclause (6)(iv)(c)(2), describe the implementation of the intervention. Such plan shall be in a format as prescribed by the commissioner. The district shall update the plan annually for implementation no later than the first day of the regular student attendance of each school year that the designation continues. The school shall implement the intervention in accordance with a timeline prescribed by the commissioner, and no later than the beginning of the next school year following the school's identification for registration review, provided that the commissioner may upon a finding of good cause extend the timeline for implementing elements of such plan beyond the date prescribed therein.

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

(iv) Interventions.

(a) A school that is identified pursuant to subparagraph (9)(ii) of this subdivision as persistently lowest-achieving in the 2010-2011 school year or thereafter and placed under registration review, and a school that is identified pursuant to subparagraph (9)(ii) as persistently lowest-achieving in the 2009-2010 school year, shall implement one of the following interventions, in a format and timeline as approved by the commissioner:

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

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

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

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

(B) select new staff;

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

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

(v) Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new "turnaround office" in the LEA or SEA, hire a "turnaround leader" who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;

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

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

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

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

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

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

(4) Transformation model. Implementation of the transformation model may include, but is not limited to, the following actions as approved by the commissioner; in addition, the school shall be encouraged to partner with an external intermediary or "lead partner" that may assist the school with planning and implementation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A school as described in subparagraph (9)(iii) of this subdivision that is placed under registration review in the 2010-2011 school year or thereafter, shall implement a plan, in a format and timeline as approved by the commissioner, that shall, at a minimum, meet the requirements of a restructuring plan pursuant to subclause (6)(iv)(c)(2) of this subdivision and include at least one of the actions of a transformation or turnaround model.

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

(vi) Unless it is determined by the commissioner that a school identified for registration review should be phased out or closed, or that a shorter period of time shall be granted, a school placed under registration

review shall be given three full academic years to show progress. If, after three full academic years of implementing a restructuring plan, the school has not demonstrated progress as delineated by the commissioner in the warning pursuant to subparagraph (i) of this paragraph, the commissioner shall recommend to the Board of Regents that the registration be revoked and the school be declared an unsound educational environment, except that the commissioner may upon a finding of extenuating circumstances extend the period during which the school must demonstrate progress. The board of education of the school district which operates the school (in New York City, the chancellor) shall be afforded notice of such recommendation and an opportunity to be heard in accordance with subparagraph (iv) of this paragraph. Upon approval of revocation of registration by the Board of Regents, the commissioner will develop a plan to ensure that the educational welfare of the pupils of the school is protected. Such plan shall specify the instructional program into which pupils who had attended the school will be placed, how their participation in the specified programs will be funded, and the measures that will be taken to ensure that the selected placements appropriately meet the educational needs of the pupils. The commissioner shall require the board of education to implement such plan.

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

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

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

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

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

(b) Within 15 days of receiving notice of the recommendation to revoke registration, the board of education may submit a written response to the commissioner's recommendation. The response shall be in the form of a written statement which presents the board of education's position, all evidence and information which the board of education believes is pertinent to the case, and legal argument. If the board of education desires, it may include in its response a request for oral argument. Such response must be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.

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

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

(i) In the event that a school has demonstrated the progress necessary to be removed from registration review, the superintendent may petition the commissioner to remove the school from registration review. If such petition is based upon results of the "all student" group on the English language arts and mathematics assessments or graduation rate, such petition shall be submitted pursuant to a date prescribed

by the commissioner but no later than December 31st of the calendar year in which such assessments were administered, except that the commissioner may for good cause accept a petition submitted after such date. A school shall not be removed from registration review if, in the commissioner's judgment, conditions that may contribute to a poor learning environment, as identified in paragraph (9) of this subdivision, remain present in the school.

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

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

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

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

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

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

(12) Registered nonpublic high school registration review.

(i) The registration of a registered nonpublic high school shall be placed under review under the following circumstances:

(a) when the school scores below the registration review criterion on one (or more) of the measures adopted by the Board of Regents, and the student achievement on such measures or other appropriate indicators has not shown improvement over the preceding three school years, as determined by the commissioner; or

(b) when sufficient other reason exists, as determined by the commissioner, to warrant a review of the school's registration.

(ii) On an ongoing basis consistent with clauses (i)(a) and (b) of this paragraph, and after consultation with the appropriate nonpublic school officials, the commissioner shall identify the nonpublic high schools whose registration shall be placed under review. When a nonpublic high school is identified for registration review, the commissioner shall offer technical assistance to the school in the development of a school improvement plan. The commissioner shall require that:

(a) the nonpublic school develop a school improvement plan which will address the areas in which the school has been determined to be in need of assistance;

(b) the school improvement plan be submitted to the department no later than June 30th of the school year in which the commissioner required such a plan; and

(c) the school improvement plan be implemented no later than the first week of classes in the September next following the close of the school year in which the plan was approved by the commissioner.

(iii) If, after a time period established by the commissioner in consultation with the appropriate nonpublic school officials, the nonpublic high school under registration review has not demonstrated progress on the registration criteria in question, the commissioner shall formally notify the appropriate nonpublic school officials that the school is at risk of having its registration revoked. Upon receipt of such warning, the nonpublic school officials shall notify the parents of children attending the school under registration review of the issuance of such warning.

(iv) If, after a further time period established by the commissioner in consultation with the appropriate nonpublic school officials, the nonpublic high school under registration review has not demonstrated progress as determined by the commissioner, the commissioner shall recommend to the Board of Regents that the registration be revoked. The governing body and the chief administrative officer of the nonpublic school shall be afforded notice of such recommendation and an opportunity to be heard in accordance with the procedures set forth in subparagraph (10)(viii) of this subdivision, except that such procedure shall be afforded to the governing body and chief administrative officer of the nonpublic school. Upon approval of revocation of registration by the Board of Regents, the commissioner in consultation with the appropriate nonpublic school officials will develop a plan to ensure that the educational welfare of the pupils of the school is protected.

(13) Nonpublic school accountability performance criteria.

(i) The registration of a registered nonpublic school may be placed under registration review when its students score below the following criteria on the measures of student achievement specified below:

Measure	Criteria
Pupil Evaluation Program (PEP) Tests	
Grade 3 Reading	65 percent above statewide reference point (SRP)
Grade 3 Mathematics	75 percent above statewide reference point (SRP)
Grade 6 Reading	65 percent above statewide reference point (SRP)
Grade 6 Mathematics	70 percent above statewide reference point (SRP)
Preliminary competency testing requirements, Grade 8 or 9	
Grade 8 Reading	85 percent above statewide reference point (SRP)
Grade 9 Reading	84 percent above statewide reference point (SRP)
Regents competency testing requirements	
Reading	25 percent Failure rate
Writing	25 percent Failure rate

Mathematics	40 percent Failure rate
Dropout Rate	10 percent or higher

(14) Public school, school district and charter school accountability performance criteria. Each district and school accountability group, as defined in subparagraph (1)(i) of this subdivision shall be subject to the performance criteria specified below:

(i) Elementary level English language arts. Annual measurable objectives, based on a performance index, set at 123 in 2002-03 and 2003-04 and 131 in 2004-2005.

(ii) Middle level English language arts. Annual measurable objectives, based on a performance index, set at 107 in 2002-03 and 2003-04 and 116 in 2004-2005.

(iii) Elementary-middle level English language arts. Annual measurable objectives, based on a performance index, set by the commissioner in 2005-2006 and, beginning in 2008-2009, increasing annually in equal increments through 2009-2010 and then reset at 122 in 2010-2011 and increasing annually in equal increments so as to reach 200 in 2013-2014.

(iv) Elementary level mathematics. Annual measurable objectives, based on a performance index, set at 136 in 2002-03 and 2003-04 and 142 in 2004-2005.

(v) Middle level mathematics. Annual measurable objectives, based on a performance index, set at 81 in 2002-03 and 2003-04 and 93 in 2004-2005.

(vi) Elementary-middle level mathematics. Annual measurable objectives, based on a performance index, set by the commissioner in 2005-2006 and, beginning in 2008-2009, increasing annually in equal increments through 2009-2010 and then reset at 137 in 2010-2011 and increasing annually in equal increments so as to reach 200 in 2013-2014.

(vii) High school English language arts and mathematics requirements. Annual measurable objectives, based on the performance index of the high school cohort defined in paragraph (16) of this subdivision, set at 142 in English language arts and 132 in mathematics in 2002-03 and 2003-04, and incremented annually thereafter as necessary so that in 2013-2014 the index shall be 200.

(viii) For the 2002-2003 through the 2005-2006 school year test administrations, for purposes of the commissioner's annual evaluation of public schools, public school districts, and charter schools, the following limited English proficient students may be considered to be meeting performance criteria in elementary or middle-level English language arts if they demonstrate a specified increment of progress on the New York State English as a Second Language Achievement Test (NYSESLAT) for their grade level. For limited English proficient students who have attended school in the United States (not including Puerto Rico) for fewer than three consecutive years, districts and charter schools may administer the NYSESLAT to such students in lieu of the required State assessment in English language arts. Districts or charter schools may, on an individual basis, annually determine to administer the NYSESLAT in lieu of the required assessment in English language arts to limited English proficient students who have attended school in the United States (not including Puerto Rico) for four or five consecutive school years. No exemption is available beyond the student's fifth year and the student must take the required English language arts assessment.

(ix) For each criterion (subparagraphs [i] through [vii] of this paragraph), the commissioner shall also establish a benchmark against which the performance of the accountability group, *all students*, defined in subparagraph (1)(i) of this subdivision, will be measured. This benchmark will be used in recognizing

high-performing schools and districts, determining which school districts are required to develop local assistance plans as described in paragraph (m)(6) of this section and for identifying those schools that are subject to registration review pursuant to paragraph (9) of this subdivision.

(15) Additional public school, school district, and charter school accountability indicators.

(i) Elementary science indicator: For the 2002-2003 through 2004-2005 school years:

(a) an index of 100 that may be incremented annually, as the commissioner deems appropriate, or progress in relation to performance in the previous school year; and

(b) beginning in 2004-05, 80 percent of students enrolled on all days of the test administration, who did not have a significant medical emergency, received valid scores.

(ii) Middle-level science indicator: For the 2002-2003 through 2004-2005 school years:

(a) an index of 100 that may be incremented annually, as the commissioner deems appropriate, or progress in relation to performance in the previous year; and

(b) beginning in 2004-05, 80 percent of students enrolled on all days of the test administration, who did not have a significant medical emergency, received valid scores.

(iii) Elementary-middle science combined indicator: For the 2005-2006 school year and thereafter:

(a) an index of 100 that may be incremented annually, as the commissioner deems appropriate, or progress in relation to performance in the previous year; and

(b) 80 percent of students enrolled on all days of the test administration, who did not have a significant medical emergency, received valid scores.

(iv) A high school graduation rate established annually by the commissioner, or progress in relation to the previous school year's graduation rate. The graduation rate is the percentage of the annual graduation rate cohort that earns a local or Regents diploma by August 31st following the third school year after the school year in which the cohort first entered grade 9, except that in a school in which the majority of students participate in a department-approved, five-year program that results in certification in a career or technology field in addition to a high school diploma, the graduation rate shall be the percentage of the annual graduation rate cohort that earns a local diploma by August 31st following the fourth school year after the school year in which the cohort first entered grade 9.

(16) Annual high school or high school alternative cohort.

(i) Beginning in the 2005-2006 school year, except as provided in clauses (a) and (b) of this subparagraph, the annual high school cohort for purposes of determining adequate yearly progress on the criteria set forth at subparagraph (14)(vii) of this subdivision and identifying schools for registration review pursuant to paragraph (9) of this subdivision for any given school year shall consist of those students who first enrolled in ninth grade three school years previously anywhere and who were enrolled in the school on the first Wednesday in October of the current school year. The annual district high school cohort for purposes of determining such adequate yearly progress for any given school year shall consist of those students who first enrolled in ninth grade three school years previously anywhere and who were enrolled in the district or placed by the district committee on special education or by district officials in educational programs outside the district on the first Wednesday in October of the current school year.

Students with disabilities in ungraded programs shall be included in the annual district and high school cohort in the third school year following the one in which they attained the age of 17.

(a) The following students shall not be included in the annual high school cohort: students who transferred to another high school or approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, or criminal justice facility, who left the United States or its territories, or who are deceased; except that, beginning with students who first entered grade 9 in the 2002-03 school year, the following students will be included in the high school cohort of the school they attended before transferring:

(1) students who transfer to an approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, 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

(2) students who transfer to any high school equivalency preparation program other than those approved pursuant to section 100.7 of this Part.

(b) The following students shall not be included in the annual district high school cohort: student who transferred to a high school that is not a component of the district or to an approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, or criminal justice facility, who left the United States or its territories, or who are deceased; except that, beginning with students who first entered grade 9 in the 2002-03 school year, the following students will be included in the high school cohort of the district they attended before transferring:

(1) students who transfer to an approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, 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

(2) students who transfer to any high school equivalency preparation program other than those approved pursuant to section 100.7 of this Part.

(ii)

(a) For purposes of determining adequate yearly progress on the indicator set forth at subparagraph (15)(iv) of this subdivision, the graduation rate cohort for each public school, school district, and charter school for each school year from 2002-03 through 2006-2007 shall consist of all members of the school or district high school cohort, as defined in subparagraph (i) of this paragraph, for the previous school year plus any students excluded from that cohort solely because they transferred to an approved alternative high school equivalency or high school equivalency preparation program.

(b) Commencing with the 2007-08 school year, for purposes of determining adequate yearly progress on the indicator set forth at subparagraph (15)(iv) of this subdivision:

(1) the graduation rate cohort for each public school and charter school shall consist of those students who first enrolled in grade 9 anywhere three school years previously or, if an ungraded student with a disability, first attained the age of 17 three school years previously, and who have spent at least five

consecutive months, not including July and August, in the school since first entering grade 9 and whose last enrollment in the school did not end because of transfer to another school, death, court-ordered transfer, or leaving the United States.

(2) the graduation rate cohort for each public school district shall consist of those students who first enrolled in grade 9 anywhere three school years previously or, if an ungraded student with a disability, first attained the age of 17 three school years previously, and who have spent at least five consecutive months, not including July and August, in the district since first entering grade 9 and whose last enrollment in the district did not end because of transfer to another district, death, court-ordered transfer, or leaving the United States.

(iii) The high school alternative cohort in any given year shall consist of those students enrolled in the high school on the first Wednesday of October three years previously who were still enrolled in the school on the first Wednesday of October two years previously. Schools in which more than half the students enrolled have previously been enrolled in another high school or in which more than half the enrollment is receiving special education services may voluntarily submit to the commissioner information on the performance of an alternative high school cohort.

(17) Identification of programs for high school equivalency program review.

(i) Each year, commencing with 2002-03 school year test administration results, the commissioner shall review the performance of all alternative high school equivalency programs and high school equivalency programs for high school equivalency program review.

(ii) The commissioner shall identify those programs that have the lowest percentage of students meeting the following criteria:

(a) students under the age of 21 who complete 150 hours of instruction who receive a high school equivalency diploma if the student upon entering the program is assessed on an instrument approved by the commissioner to have a reading and mathematics level at or above grade nine;

(b) students under the age of 21 who complete 150 hours of instruction who receive a high school equivalency diploma or advance one high school equivalency literacy level in reading or mathematics if the student upon entering the program is assessed on an instrument approved by the commissioner to have a reading or mathematics level below grade nine; and

(c) students under the age of 21 who complete fewer than 150 hours of instruction who receive a high school equivalency diploma or continue in the program during the subsequent school year.

(iii) In programs in which fewer than 20 students are subject to the criteria in subparagraph (ii) of this paragraph, the commissioner may review prior years' performance of the program in order to make a determination whether the program shall be considered farthest from meeting the criteria. In calculating the performance of a program, the commissioner may exclude from consideration students who complete fewer than 12 hours of instruction.

(iv) The commissioner may also place under high school equivalency program review any program for which a district or board of cooperative educational services fails to provide in a timely manner the student's performance data required by the commissioner to conduct the annual assessment of the high school equivalency program.

(v) For each high school equivalency program identified as having the lowest percentage of students

meeting the high school equivalency performance criteria, the local school district or board of cooperative educational services shall be given the opportunity to present to the commissioner additional information.

(vi) The commissioner shall review the available data, including additional information provided by the district or board of cooperative educational services and determine which of the high school equivalency programs identified as having the lowest percentage of students meeting the criteria of high school equivalency performance established by the commissioner, are most in need of improvement and shall be placed under high school equivalency program review.

(18) High school equivalency program approval review.

(i) Upon placing a high school equivalency program under high school equivalency program review, the commissioner shall notify the district or board of cooperative educational services that the high school equivalency program has been identified for high school equivalency program review, and that the program may not receive approval for continued operation. The commissioner shall include in any notification issued pursuant to this subparagraph an explicit delineation of the progress that must be demonstrated in order for the high school equivalency program to be removed from program review status. Upon receipt of such notification, the district or board of cooperative educational services shall take appropriate action to notify the general public of the issuance of such warning. Such action shall include, but need not be limited to, direct notification, within 30 days of receipt of the commissioner's warning, in English and translated, when appropriate, into the recipient's native language or mode of communication, to persons in parental relation of children attending the program that it has been placed under high school equivalency program review and is at risk of not receiving an approval for program continuance, and disclosure of such warning by the district, or board of cooperative educational services at its next public meeting. By June 30th of each school year during which a program remains under high school equivalency program review, or at the time of a student's initial application or admission to the program, whichever is earliest, the district or board of cooperative educational services shall provide direct notification to parents or other persons in parental relation to children attending the high school equivalency program that the program remains under high school equivalency program review and is at risk of not receiving continuance approval. Such notification shall include a summary of the actions that the district or board of cooperative educational

services are taking to improve student results.

(ii) Following the identification of a high school equivalency program for high school equivalency program review the commissioner shall require that a corrective action plan be developed by the district superintendent of the board of cooperative educational services or superintendent of the district and submitted to the commissioner for review and approval; such corrective action plan shall be in a format prescribed by the commissioner and shall be submitted to the commissioner according to the timeframes established by the commissioner. The department shall periodically monitor the implementation of the corrective action plan. The commissioner may require a school district or board of cooperative educational services to submit such reports and data as the commissioner deems necessary to monitor the implementation of the corrective action plan.

(iii) Unless it is determined by the commissioner that a shorter period of time shall be granted, a high school equivalency program placed under high school equivalency program review shall be given two full academic years to show progress. If, after this period of time, the high school equivalency program under high school equivalency program review has not demonstrated progress as delineated by the commissioner in the notification pursuant to subparagraph (i) of this paragraph, the commissioner shall render a decision not to approve subsequent applications from the district or board of cooperative educational services for the operation of the high school equivalency program, except that the

commissioner may upon a finding of extenuating circumstances extend the period during which the high school equivalency program must demonstrate progress.

(19) Removal of high school equivalency programs from high school equivalency program review.

(i) In the event that a high school equivalency program has demonstrated the progress necessary to be removed from high school equivalency program review, the commissioner shall make such determination and notify the school district or board of cooperative educational services of the decision.

(ii) A district or board of cooperative educational services that has been denied approval to operate a high school equivalency program may after a period of one year submit a new application. The application shall be in a format approved by the commissioner and must ensure that:

(a) the school's chief administrative officer has designated a staff member to provide leadership to the program;

(b) the class size does not exceed 15 students for the first year of program;

(c) quarterly progress reports will be submitted for the first year;

(d) a minimum of 20 hours of staff development will be offered to all teachers and administrators involved with the program; and

(e) such other information as required by the commissioner.

Attachment 12:

New York State Student Growth Percentile Methodology

-A Technical Overview and Impact

Introduction

To develop a new-generation accountability system that incorporates student academic growth, the New York State Education Department (NYSED) adopted the student growth percentile (SGP) methodology (Betebenner, 2008, 2009, 2011) to measure student growth and make determinations about whether non-proficient students have made sufficient growth to be on track to proficiency in 3 years or by grade 8, whichever comes first. This paper provides an overview of student growth percentiles and percentile growth trajectories methodology as they are applied in New York State in the text of the Grades 3-8 testing program, and summarizes the SGP and percentile trajectory results and the impact they have on the accountability system.

SGP expresses student growth in a normative sense in that it describes how (a)typical a student's growth is by examining his/her current achievement relative to his/her academic peers - those students beginning at the same place. That is, a student growth percentile examines the current achievement of a student relative to that of other students who have, in the past, "walked the same academic path" (Betebenner, 2011). For example, if a student scores 670 on the 2010 test and scores 700 on the 2011 test, and the score of 700 normatively places the student at the 75th percentile in the 2011 conditional score distribution among students who started with the same score of 670 in 2010, the student gets an SGP of 75, which means the student's progress met or exceeded that of approximately 75 percent of the students who started from the same place. This methodology works well with the New York State Grades 3-8 testing program because the Grades 3-8 tests are not vertically scaled.

Student Growth Percentile Estimation

In New York State SGP calculation, up to three years of prior achievement data were used. Calculation of a student's growth percentile is performed using R, a language and environment for statistical computing with an SGP package (Betebenner & Vanlwaarden, 2012). SGP calculation is based upon estimating the conditional density associated with a student's current achievement score using the student's prior achievement history. By examining a student's current achievement with regard to the conditional density, the student's growth percentile normatively situates the student's outcome in the current year, taking into account the student's prior achievement. The percentile result reflects the likelihood of such an outcome, given the student's prior achievement (Betebenner, 2011).

Quantile regression is used to establish curvi-linear functional relationships between the cohort's prior scores and the cohort's current scores. Whereas linear regression methods model the conditional mean of a response variable Y , quantile regression is more generally concerned with the estimation of the family of conditional quantiles of Y . The techniques are ideally suited for estimation of the family of conditional quantile functions (i.e. reference percentile curves). Using quantile regression, the conditional density associated with each student's prior scores is derived and used to situate the student's most recent score (Betebenner, 2011). Specifically, for each grade by subject cohort, quantile

regression is used to establish 100 (1 for each percentile) curvi-linear functional relationships between the prior scores and the current score.

For example, given 3 years of prior assessment data, regression equations relating students' Grade 4, grade 5, and grade 6 prior scores and their grade 7 scores are generated. The result of these 100 separate analyses is a single coefficient matrix that can be employed as a look-up table that relates prior student achievement to current student achievement for each percentile. Using the coefficient matrix, one can plug in any grade 4, 5, and 6 prior-year score combination to the functional relationship to get the percentile cutpoints for the Grade 7 conditional achievement distribution associated with that prior score combination. These cutpoints are the percentiles of the conditional distribution associated with the individual's prior achievement (see Betebenner, 2012 for mathematical details for SGP estimation).

Percentile Growth Projections/Trajectories

Percentile growth trajectory is the process of establishing the threshold of growth for each student to reach a future achievement target. In New York State, the percentile growth target for all students is to reach proficiency in three years or by 8th grade, whichever comes first. The percentile growth target stipulates the rate of growth necessary for each student to reach proficiency in three years; i.e., growth-to-proficiency.

Using the coefficient matrices generated from the SGP analysis, a 3-year percentile growth target is calculated for each student. Specifically, the following coefficient matrices produced in the SGP calculations are used to calculate the percentile growth target:

- **Grade 4** Using grade 3 prior achievement
- **Grade 5** Using grade 4, and grades 3 & 4 prior achievement
- **Grade 6** Using grade 5, grades 4 & 5, and grades 3, 4, & 5 prior achievement
- **Grade 7** Using grade 6, grades 5 & 6, and grades, 4, 5, & 6 prior achievement
- **Grade 8** Using grade 7, grades 6 & 7, and grades 5, 6, & 7 prior achievement

Once the percentile growth targets are established, the students' actual growth, also expressed in SGP metric, are compared to their three-year percentile growth targets to determine whether the non-proficient students are on track to proficiency in three years or by grade 8, whichever comes first. For example, a non-proficient 3rd grader would be expected to be proficient by grade 6. The first check, or growth adequacy judgment of whether the student is on track to proficiency, occurs in grade 4, when the student's growth between grade 3 and grade 4 is reported and compared against the student's percentile growth target. If the student's actual growth percentile meets or exceeds his or her growth target; i.e., 3-year growth-to-standard target, then the student is deemed on track to reach proficiency for the year. Otherwise, the student is deemed not on track. It should be noted that if this 4th grader keeps the same rate of growth in the next two years, the student will be proficient by grade 6. If the

student does not meet the growth target in the next two years, he/she will not be proficient by grade 6. (See Betebenner, 2012 for more details of percentile growth projections/trajectories)

Data Validation and Inclusion/Exclusion Rules

- A valid, unique student identifier is required to allow matching student achievement records over time.
- A valid scale score on the New York State grades 3-8 tests from a single content area in consecutive years and consecutive grades is required. That is, for calculation of a student growth percentile in a given year and given content area, the student must have a record in that year and at least one record from the previous year in the grade preceding the current year grade.
- Students with duplicate records (duplicate ID numbers) on the New York State assessment in a given year are considered invalid.
- Students without normal progression of grades or grade assessment scores, such as those who repeated grades or skipped grades between the current and previous years, were excluded from the SGP/percentile growth projections.
- All grade 3 students are excluded from the SGP/percentile growth projections because they do not have prior testing scores.
- For calculating district median SGPs, students who were not enrolled in a district for the full academic year were excluded.
- For calculating school median SGPs, students who were not enrolled in a school for the full academic year were excluded.

Tables 1 and 2 present the number of students included in the 2011 New York State SGP calculations for ELA and math respectively. As stated earlier, Grade 3 students were not included in the SGP calculations because they do not have any prior achievement history. As a result of the data validation and inclusion/exclusion rules stated above, approximately 94% of the total students in grades 4 through 8 have SGP scores, and approximately 6% do not have SGPs in each grade and each subject area.

Table 1. 2011 Number of Students in ELA SGP Calculations

Grade	Number of Students	Number of Students with SGP	Number of Students without SGP
4	197,133	186,109	11,024
5	200,259	189,785	10,474
6	198,225	186,762	11,463
7	200,262	187,127	13,135
8	201,387	188,927	12,460
Grade 4- 8 Total	997,266	938,710	58,556

Table 2. 2011 Number of Students in Math SGP Calculations

Grade	Number of Students	Number of Students with SGP	Number of Students without SGP
4	198,702	187,512	11,190
5	202,408	187,752	14,656
6	200,177	188,545	11,632
7	201,531	188,689	12,842
8	203,186	189,740	13,446
Grade 4- 8 Total	1,006,004	942,238	63,766

Summary of SGP Results

Table 3 presents the disaggregated 2011 ELA median SGP by student subgroup, and percentage of students meeting or exceeding standards associated with each subgroup. The results indicate that female students showed a higher growth rate than their male counterparts (median SGP of 52nd percentile vs the 48th percentile); special education students and students from low income families grew significantly slower (median SGPs of 42nd percentile and 47th percentile respectively) than their counterparts. Among the racial and ethnic groups, Asian American students showed the highest growth rate (59th percentile), while the American Indian and African American students showed the lowest growth rate (45th percentile). Among the Need/Resource groups, students from the Big 4 cities (i.e. Buffalo, Rochester, Syracuse, and Yonkers) and high-need urban/suburban districts had significantly lower growth rates (42nd percentile and 43rd percentile respectively) while the low-need districts displayed the highest growth rate (55th percentile).

Table 4 presents the disaggregated 2011 mathematics median SGP by student subgroup, and the percentage of students meeting or exceeding standards associated with each subgroup. Similar patterns were found.

Table 3. 2011 ELA Median SGP and Achievement Level by Student Subgroup

Group	Subgroup	Median SGP	N Count	% Meets/ Exceeds Standard	% Exceeds Standard
Gender	Female	52	459591	58.5	4.2
	Male	48	479119	48.9	2.5
ELL	LEP Eligible	49	50022	10.8	0.1
	Never LEP/ELL	50	888688	56.0	3.5
SWD	General Ed.	51	794344	60.9	3.9
	Special Ed.	42	144366	13.6	0.2
Poverty	Not low-income family	52	458100	46.4	5.3
	Low-income family	47	480610	39.7	1.5
Race/Ethnicity	American Indian or Alaska	45	4430	40.8	1.6
	Asian	59	71255	67.4	6.9
	Black or African American	45	171013	34.9	1.0
	Hispanic or Latino	47	201219	37.2	1.2
	Multiracial	51	5542	58.6	5.3
	Native Hawaiian/Other Pac.	54	1085	53.4	5.4
	White	51	484166	64.2	4.8
Need/Resource Category	New York City	51	314826	46.6	2.7
	Large Cities	42	38825	29.5	0.8
	Urban/Suburban High-Need	43	70283	40.5	1.3
	Rural	45	55097	47.6	2.0
	Average-Need	50	291106	60.3	3.6
	Low-Need	55	148814	75.4	6.8
Grade	Grade 4	48	186109	57.8	2.5
	Grade 5	50	189785	55.0	4.5
	Grade 6	50	186762	57.2	4.1
	Grade 7	50	187127	49.5	3.7
	Grade 8	50	188927	48.7	1.9
Prior Achievement Level	Below Standard	51	104613	2.6	0.0
	Meets Basic Standard	50	336353	26.4	0.1
	Meets Proficiency Standard	50	411744	76.7	3.6
	Exceeds Proficiency Standard	49	102402	95.8	16.0
Statewide	Total	50	938710	53.6	3.4

Table 4. 2011 Mathematics Median SGP and Achievement Level by Student Subgroup

Group	Subgroup	Median SGP	N Count for SGP	% Meets/ Exceeds Standard	% Exceeds Standard
Gender	Female	51	461294	66.4	25.1
	Male	49	480944	64.1	25.3
ELL	LEP Eligible	51	59659	33.2	6.4
	Never LEP/ELL	50	882579	67.4	26.5
SWD	General Ed.	51	797413	72.2	29.0
	Special Ed.	42	144825	26.8	4.3
Poverty	Not low-income family	53	454699	77.8	34.4
	Low-income family	47	487539	53.5	16.6
Race/Ethnicity	American Indian or Alaska	46	4438	52.3	13.6
	Asian	64	72752	83.6	47.4
	Black or African American	43	171786	44.0	9.8
	Hispanic or Latino	46	205299	50.2	12.4
	Multiracial	50	5492	64.1	24.3
	Native Hawaiian/Other Pac.	52	1114	65.2	26.4
	White	52	481357	73.2	28.7
Need/Resource Category	New York City	50	319529	61.8	24.3
	Large Cities	38	39344	34.6	7.4
	Urban/Suburban High-Need	42	70934	52.9	12.9
	Rural	45	55161	57.7	15.3
	Average-Need	51	289854	71.3	26.4
	Low-Need	57	147342	84.4	42.2
Grade	Grade 4	49	187512	67.7	27.2
	Grade 5	50	187752	66.7	22.6
	Grade 6	50	188545	64.3	27.0
	Grade 7	50	188689	66.2	31.3
	Grade 8	50	189740	61.4	17.9
Prior Achievement Level	Below Standard	50	70498	4.2	0.2
	Meets Basic Standard	50	291051	31.3	1.8
	Meets Proficiency Standard	50	351050	80.7	20.3
	Exceeds Proficiency Standard	50	246248	98.1	65.6
Statewide	Total	50	942238	65.2	25.2

Summary of Percentile Growth Projections/Trajectories Results

Table 5 summarizes the 2011 number and percent of students who were on track to be proficient in ELA in three years or by grade 8, whichever comes first, as a share of all below-proficient students (Columns 3 & 4) and as a share of all students (Column 5 & 6) respectively. The results show significantly lower on-track rates for the below-proficient male students (25%), LEP students (15%), special education students (13%), and students from low-income families (23%) than the on-track rates for their counterparts. Among the racial/ethnic groups, the on-track rates for below-proficient Asian American students (37%) and White students (32%) were much more likely to be on track than students from the other racial/ethnic groups. Students from the Big Four Cities had a much lower on-track rate (18%) than did students from the low-need districts (over 40%). Below-proficient students in grade 7 were much less likely to be on track than students in Grades 3, 4, 5, or 6. Finally, only 9% of the students who were below standard (Level 1 students in 2010) were on track to proficiency in 2011, compared to 31% of the students who met basic standard (Level 2 students in 2010) who were on track in 2011.

Table 6 summarizes the percent of students who are on track to be proficient in mathematics in three years or by grade 8, whichever comes first, as a share of all below-proficient students (Column 3 & 4) and as a share of all students (Column 5 & 6) respectively. Similar patterns were found for the student subgroup. Approximately 14% of students who were below standard (Level 1 students in 2010) were on track to proficiency in 2011, compared to 40% of the students who met basic standard (Level 2 students in 2010) who were on track in 2011.

Table 5. 2011 Percentage of Students On Track to Proficiency in ELA by Subgroup

Group	Subgroup	Below Proficient Students		All Students	
		N Count	% On Track	N Count	% On Track
Gender	Female	188373	29.1	459591	11.9
	Male	237130	24.7	479119	12.2
ELL	LEP Eligible	45308	15.3	50022	13.9
	Never LEP/ELL	380195	28.0	888688	12.0
SWD	General Ed.	302422	32.4	794344	12.3
	Special Ed.	123081	12.6	144366	10.7
Poverty	Not low-income family	140674	34.1	458100	10.5
	Low-income family	284829	23.0	480610	13.6
Race/Ethnicity	American Indian or Alaska	2530	22.1	4430	12.6
	Asian	22143	36.9	71255	11.5
	Black or African American	108705	21.5	171013	13.7
	Hispanic or Latino	122977	22.7	201219	13.9
	Multiracial	2212	28.2	5542	11.3
	Native Hawaiian/Other Pac.	450	27.6	1085	11.4
	White	166486	31.6	484166	10.9
Need/Resource Category	New York City	169628	25.9	314826	14.0
	Large Cities	26477	17.9	38825	12.2
	Urban/Suburban High-Need	39154	21.6	70283	12.0
	Rural	26813	24.2	55097	11.8
	Average-Need	110138	30.2	291106	11.4
	Low-Need	36511	39.9	148814	9.8
Grade	Grade 4	82474	36.3	197133	15.2
	Grade 5	80260	32.4	200259	13.0
	Grade 6	87462	31.3	198225	13.8
	Grade 7	83735	19.0	200262	7.9
Prior Achievement Level	Below Standard	104613	9.1	104613	9.1
	Meets Basic Standard	336353	30.9	336353	30.9

Table 6. 2011 Percentage of Students On Track to Proficiency in Mathematics by Subgroup

Group	Subgroup	Below proficient Students		Total Students	
		N Count	% On Track	N Count	% On Track
Gender	Female	167797	38.2	461294	13.9
	Male	178353	34.0	480944	12.6
ELL	LEP Eligible	44376	31.5	59659	23.5
	Never LEP/ELL	301774	36.7	882579	12.5
SWD	General Ed.	237220	42.1	797413	12.5
	Special Ed.	108930	22.7	144825	17.1
Poverty	Not low-income family	109978	43.0	454699	10.4
	Low-income family	236172	32.7	487539	15.9
Race/Ethnicity	American Indian or Alaska	2053	30.2	4438	14.0
	Asian	12769	49.9	72752	8.8
	Black or African American	95708	29.4	171786	16.4
	Hispanic or Latino	101376	33.4	205299	16.5
	Multiracial	1964	35.6	5492	12.7
	Native Hawaiian/Other Pac.	351	39.9	1114	12.6
	White	131929	41.6	481357	11.4
Need/Resource Category	New York City	131041	35.8	319529	14.7
	Large Cities	25271	23.1	39344	14.9
	Urban/Suburban High-Need	34565	31.3	70934	15.2
	Rural	23684	34.3	55161	14.7
	Average-Need	89264	41.7	289854	12.8
	Low-Need	26707	49.1	147342	8.9
Grade	Grade 4	74746	47.8	198702	18.0
	Grade 5	67377	42.0	202408	14.0
	Grade 6	65043	38.0	200177	12.4
	Grade 7	70715	32.0	201531	11.2
Prior Achievement Level	Below Standard	70498	13.8	70498	13.8
	Meets Basic Standard	291051	39.5	291051	39.5

Potential Impact on Accountability

Table 7 shows the 2011 percentage of students who were on track/not on track to be proficient in 3 years or by grade 8 as a share of the total number of students in each grade (Column 3 and 4) and the percentage of on-track students in each of the achievement levels as a share in the total students in each grade (Columns 5-8). All percentages were based on the total number of students in each grade (Column 1). Grade 3 and Grade 8 are not included in the table. As stated earlier, grade 3 students do not have SGPs because they do not have prior achievement scores. For grade 8 students, on track to be proficient means the same as students scoring proficient in grade 8.

As shown in Table 7, a total of 12.5% of all grades 4-7 students were on track to proficiency in 2011 and 29.5% were not on track (Column 3 & 4, grades 4-7 totals). For mathematics, a total of 14% of all grades 4-7 students were on track in 2011 and 20.7% were not on track (Column 3 & 4, grades 4-7 totals). The on track students who met or exceeded standard (Levels 3 or 4) in 2011 make up approximately 10% of all grades 4-7 students in both ELA and mathematics (Columns 7 & 8, grades 4-7 totals). The percentage of all grade 4-7 students who were on track but not proficient in 2011 were 2.9% for ELA and 4.2% for math (Column 6, grades 4-7 totals).

In summary, adding the growth component will have a very moderate impact on the new generation accountability system. Specifically, the approximately 10% of all grades 4-7 students who were on track and proficient in 2011 are counted as proficient under both the old and the new accountability systems. The additional value that the growth component would add to the new accountability system is the 2.9% of students in ELA and the 4.2% of students in mathematics who were on track, but below proficient. Under the new accountability system, these students will be counted the same as proficient students.

Table 7. Achievement Level Distribution of Students Who Are On Track to Proficiency

GRADE	TOTAL N	On Track Status		Achievement Level of On Track Students As a Share of All students			
		% of Total On Track	% of Total Not On Track	% Level 1	% Level 2	% Level 3	% Level 4
Grade 4 ELA	197133	15.2	26.7	0.0	3.3	11.8	0.1
Grade 5 ELA	200259	13.0	27.1	0.0	4.5	8.4	0.1
Grade 6 ELA	198225	13.8	30.3	0.0	2.0	11.8	0.1
Grade 7 ELA	200262	7.9	33.9	0.0	1.9	6.0	0.0
Grades 4-7 ELA	795879	12.5	29.5	0.0	2.9	9.5	0.1
Grade 4 Math	198702	18.0	19.6	0.0	5.2	11.6	1.2
Grade 5 Math	202408	14.0	19.3	0.0	5.1	8.6	0.3
Grade 6 Math	200177	12.4	20.1	0.0	4.8	7.2	0.4
Grade 7 Math	201531	11.2	23.9	0.0	1.8	8.9	0.6
Grades 4-7 Math	802818	13.9	20.7	0.0	4.2	9.1	0.6

References

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Attachment 13: Example of how NY will report accountability results under this waiver.

The New York State Education Department (NYSED) is committed to making data available and easy to use. This site provides a first step in publicly reporting educational data so all interested parties can be better informed as they work to advance student achievement.

Users of this site can access statewide data reports or view reports for an individual school, district, BOCES, or county using the navigation bar at the top of the page. New data will be added when available.

Please visit <http://data.nysed.gov> .

Attachment 14:

Rewards School Identification Technical Documentation

New York identifies a school as high performing if the “all students” group achieves all applicable State standards, and the school makes AYP on applicable performance measures. A school can be identified as rapidly improving, if the school makes AYP on applicable performance measures and the school demonstrates a specified amount of improvement.

A. High Performing Schools

1. Schools are first grouped into elementary/middle schools and high schools. Schools with both elementary/middle and high school levels will have the data analyzed for each of the levels separately. A school can be identified for the performance of its elementary/middle level or its secondary level.
2. Adequate Yearly Progress (AYP) – The school must have made AYP for all accountability groups for which the school was accountable for the 2013-14 and 2014-15 school years.
3. Gap Closing – The closing of gap from 2013-14 to 2014-15 is measured between the subgroup students and students who are not members of the subgroup for English Language Arts, Mathematics, Science and Graduation Rate. The difference between the largest gap in performance in 2013-14 between students who are members of an accountability group and students who are not members of the accountability group and the largest gap in performance in 2014-15 between students who are members of an accountability group and students who are not members of the accountability group is computed. The largest gap cannot increase by more than four points from 2013-14 to 2014-15. However, if the largest gap increased more than four points, the school can still meet the criterion if the performance of the subgroup with the largest gap is at the 90th percentile or more.
 - a. For all schools, the gap between each subgroup and students who are not members of that accountability group was calculated for all subgroups for all measures in 2013-14 and 2014-15.

Example: The school’s elementary/middle level PI for the Hispanic accountability group is 134 in 2014-15, and the PI for students who are not in Hispanic accountability group is 168. The gap in between these two groups is 34 points.

- b. The largest accountability group gap for both years was calculated.
- c. The difference in the largest gap was calculated next to determine if any gaps had increased more than four points between the two years.
- d. If the largest gap increased for the same subgroup by more than four points then the percentile of the performance for the subgroup with the largest gap is considered. The percentile must be at the 90th or higher percent. If there are multiple subgroups with the same largest gap then all the subgroups have to be at the 90th percentile or more.
- e. Gaps in accountability groups were considered across all levels for which the school was accountable. A K-12 school could not meet this criterion if the elementary/middle PI gaps were reduced, but the high school PI gaps grew more than 4 points in the same time period.

Largest Gap Example

An example of a school NOT making the criteria:

2013-14 Black PI	2013-14 Not Black PI	2013-14 Black Gap	2013-14 Hispanic PI	2013-14 Not Hispanic PI	2013-14 Hispanic Gap	2014-15 Black PI	2014-15 Not Black PI	2014-15 Black Gap	2014-15 Hispanic PI	2014-15 Not Hispanic PI	2014-15 Hispanic Gap
140	170	30	138	172	34	120	152	32	125	165	40

In 2013-14, the largest gap was 34 points for the Hispanic accountability group. In 2014-15 the largest gap was 34 points for the Hispanic accountability group. The largest gap for an accountability group is six points higher for the same accountability group in 2014-15; this is higher than the four point cut off. However, the school can still meet the criterion if the performance of the Hispanic subgroup with the largest gap is at the 90th percentile or more. The school's Hispanic subgroup PI was at the 85th percentile of all schools in the state. The school did not meet the maximum gap criterion and therefore cannot be identified as a Reward School.

An example of a school making the criteria:

2013-14 Black PI	2013-14 Not Black PI	2013-14 Black Gap	2013-14 Hispanic PI	2013-14 Not Hispanic PI	2013-14 Hispanic Gap	2014-15 Black PI	2014-15 Not Black PI	2014-15 Black Gap	2014-15 Hispanic PI	2014-15 Not Hispanic PI	2014-15 Hispanic Gap
140	160	20	138	172	34	155	160	5	118	142	24

In 2013-14, the largest gap was 34 points for the Hispanic accountability group. In 2014-15 the largest gap was 24 points for the same accountability group. Since the largest gap is ten points lower than in 2013-14, the school has met the gap closing criterion. Thus, this school can be a Reward School if it meets all other criterion.

4. Performance Index (PI) – The school's combined unweighted ELA and math PI must place the school in the top 20 percent of all schools with PIs at that level (elementary/middle or high school) in the State.
 - a. All schools with a combined ELA and math PI are given a percentile rank for school years 2013-14 and 2014-15. Schools that are in the top 20 percent in the State for both years are considered to have met this criterion.
 - b. The percentiles are determined for elementary/middle and secondary levels separately.

Example: If School A's combined elementary/middle level PI for 2013-14 is 177, which places the school in the 83th percentile of elementary/middle schools. In 2014-15, if the school's PI is 139, which places the school in the 86th percentile for that year.

5. Growth for elementary/middle schools – a school's average combined ELA and math student growth percentiles (SGP) for the all students group for 2013-14 and for 2014-15 must exceed 50. (SGP is based upon grade 4-8 ELA and math assessment results.)
 - a. The school must have a SGP for ELA and for Math for each of the years in order to be eligible to become a Reward School.

Example: If the school's ELA SGP is 54 and Math SGP is 62 in 2013-14, which when averaged equals 58. If in 2014-15, the ELA SGP is 52 and Math SGP is 60, which when averaged equals 56. The school met the criterion because the school's average SGP for 2013-14 and for 2014-15 exceeds 50.

6. Bottom Quartile Student Growth for elementary/middle schools – students in the bottom quartile of the school last year must demonstrate above average growth in the current year.
 - a. As a first step, every student within a school was ranked by unadjusted SGP in 2013-14 to determine which students made up the bottom quartile for that particular school. Note: Students who were above the statewide average could be in the bottom quartile for that school.
 - b. Next, the average SGP of the bottom quartile students was calculated within subject, and then averaged across subjects in 2014-15 to create a single percentile measure from 1-99, the same way the growth measure was calculated above.
 - c. Schools met this criterion if the average growth percentile for bottom quartile students when averaged for ELA and math as measured by the previous year’s growth percentile exceeds 50.

Example: If in 2014-15, the school’s bottom quartile average ELA growth percentile is 65 and 60 for Math, which when averaged equals 62.5. The school exceeded 50 and, therefore, met this criterion.

Note: For an elementary/middle school to be measured on this criterion, the school needed to have at least 8 student results in the bottom quartile for either ELA or mathematics. A school that had insufficient results to be assessed on this measure could not be designated a reward school at the elementary/middle level based on 2014-15 school year results.

7. Graduation Rate for secondary schools – a secondary school must have a 2010 4-Year cohort graduation rate that exceeds 80%, and the school must also exceed the state average for students graduating with either a Regents diploma with advanced designation or a Career and Technical Education (CTE) endorsement.
 - a. Using 2010 four year cohort graduation data that includes diploma codes (for advanced designation and CTE), a school-level graduation rate for students with these types of diplomas was calculated for all schools with graduates.
 - b. Next, the state average for students graduating with these diplomas was calculated, and a determination was made as to whether the school exceeded the State average for students with either a Regents diploma with advanced designation or a CTE endorsement.
 - i. A school meets this criteria if it exceeded either the State average for students graduating with advanced designation OR a CTE endorsement.

Example: A school has a 2010 4-Year cohort graduation rate of 85 percent and a graduation rate for students with Regents Diplomas with CTE endorsement of 8 percent and a graduation rate for students with Regents Diplomas with Advanced Designation of 28 percent. The 2010 4-Year cohort State average graduation rate is 3 percent for Regents Diplomas with CTE endorsement and 30 percent for Regents Diplomas with Advanced Designation. Since the school’s 4-Year cohort graduation rate exceeds 80% and the percent of students graduating with a Regents Diploma with CTE endorsement exceeds the State average, the school has met this criterion.

8. Graduating At-Risk Students for secondary schools – the percentage of the students in the 2010 four year graduation cohort who scored Level 1 (L1) or Level 2 (L2) on an ELA or mathematics exam in Grade 8 and who subsequently graduated within four years of first entry in Grade 9 exceeded the State average for these students.
 - a. Students 8th grade assessment data from 2009-10 were first related to graduation data provided to the state for 2014-15.
 - b. Using these data, a school-level graduation rate for all students who scored a L1 or L2 on either the ELA or Math assessment in 8th grade was calculated.

- c. The State average graduation rate for these students was calculated next, and the difference between the two was calculated to determine if the school exceeded the State average.
 - i. Schools that did not have 30 or more L1 or L2 students to be measured on this criterion but had a cohort graduation rate above 80% were deemed to have met this criterion.
 - ii. Students were considered L1 or L2 if they scored in one of those performance categories in either subject and could be included in this calculation if they scored a Level 3 on one assessment.

Example: A school's 2010 four year cohort graduation rate for the L1 and L2 students is 74.4 percent, and the State average is 65 percent. The school met this criterion because it exceeded the state average by 9.4 percent.

B. High Progress Schools

1. Schools are first grouped into elementary/middle schools and high schools. Schools with both elementary/middle and high school levels will have data analyzed for each of the levels separately.
 - a. A school can be identified as a High Progress School for the performance of its elementary/middle level or its secondary level.
2. Adequate Yearly Progress (AYP) – same rules as applied to high performing schools.
3. Performance Index (PI) – the school's combined unweighted ELA and math for the all students group PI places the school among the top ten percent in the State in terms of gains between the 2014-15 and 2013-14 school years.
 - a. All schools with a combined PI are given a percentile rank for school years 2013-14 and 2014-15. The difference between each school's percentile rank for the two years was calculated.
 - i. The differences are calculated separately for the elementary and secondary levels.
 - b. Next, each school was given a percentile rank based on the difference in the percentile ranks between the two years.
 - i. The percentile ranks are calculated separately for the elementary and secondary levels.
 - c. Schools that were in the top 10 percent were considered to have made this criterion.

Example: If a school's combined PI for 2013-14 is 146 and 157 for 2014-15, which places the school in the 50th and 62nd percentile each year, respectively. The difference in the percentile rank is 12 percentile points, which places the school in the top 10 percent of schools in 2014-15.

4. Gap Closing – same rules as applied to high performing schools.
5. Growth – same rules as applied to high performing schools.
6. Bottom Quartile Student Growth – same rules as applied to high performing schools.
7. Graduation Rate – a school must have a 2010 4-Year cohort graduation rate that exceeds 60% and must also exceed the state average for students graduating with either a Regents diploma with advanced designation or a Career and Technical Education (CTE) endorsement.
8. Graduating At-Risk Students – Same rules as applied to high performing schools.

Attachment 15:

**ESEA Flexibility Waiver Amendment Requests
Submitted to the United States Department of Education
March 2015**

**1: Amendments Regarding Testing Requirements for
Students with Disabilities**

Flexibility Element(s) Affected by the Amendment

1.C Develop and administer annual, statewide, aligned, high-quality assessments that measure student growth.

Brief Description of the Element as Originally Approved

See pages 36 – 37. Originally, the State did not propose a waiver for the assessment of students with disabilities. The proposed amendment is referenced on page 94-95 of the redlined waiver proposal.

Brief Description of the Requested Amendment

For the grades 3-8 State assessments currently in use, and until such time as NYSED transitions to adaptive testing, NYSED is requesting approval to more appropriately assess, for instructional, growth and State accountability purposes, the performance of a small subgroup of students whose cognitive and intellectual disabilities preclude their meaningful participation in chronological grade level instruction. These are students who have significant intellectual delays and substantial difficulties in cognitive areas such as memory, language comprehension, reasoning and problem-solving, but who do not meet the State's definition of a student with a severe disability (most significant cognitive disability) appropriate for the State's alternate assessment. These students are likely to be able to meet the State's learning standards over time and make progress in the same curriculum and assessments, but are not likely to reach grade-level achievement in the time frame covered by their individualized education programs (IEP). When students with disabilities are required to participate in an assessment at their chronological age that is significantly misaligned with content learned at their instructional level, the assessment does not provide meaningful accountability, instructional or growth information for purposes of teacher and leader evaluations.

Through this waiver, NYSED requests permission to:

1. Allow school districts to administer the general State assessments to identified students with disabilities (see eligibility criteria below), but at their appropriate instructional grade levels, provided that (1) the State assessment administered to the student is not more than two grade levels below the student's chronological grade level; and (2) the student is assessed at a higher grade level for each subsequent year; and
2. Allow the proficient and advanced scores of those students assessed in accordance with their instructional grade levels to be counted at Level 2 for accountability purposes, provided that the number of those scores at the local

educational agency (LEA) and at the State levels, separately, does not exceed .7 percent of all students in the grades assessed in English language arts (ELA) and 1.5 percent of all students in the grades assessed in mathematics.

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Eligibility Criteria: Eligibility determinations would be made on an individual basis by the Committees on Special Education (CSEs), which include the parents of students with disabilities. Consideration of eligibility would be limited to students who meet each of the following six criteria:

1. For initial eligibility, students who performed at Level 1 on their most recent State chronological grade State assessment with a raw score, determined by the State, that indicates that at the 90 percent confidence level, the students' correct responses on the assessment questions were based on chance responses **or** students who in the prior year were administered the New York State Alternate Assessment (NYSAA);
2. Students whose individual evaluation information identifies that the student has significant intellectual delays and substantial difficulties in cognitive areas such as memory, language comprehension, reasoning and problem-solving, where the CSE finds that these disability factors are the determinant reasons that the student is not able to reach grade level proficiency in his/her chronological grade level;
3. Students for whom the CSE has determined that, even with extensive modifications to curriculum, instruction and assignments, the student would fail to achieve chronological age-level proficiency;
4. Students whose classroom performance and other achievement data over at least a two-year period of time using multiple valid measures reflecting formal assessment of student progress during instruction (such as benchmark assessments, progress monitoring assessments, and/or standardized norm-referenced tests of achievement) substantiates the student's instructional level of performance and demonstrates that the student's lag in achievement is not due to a lack of appropriate instruction in reading or mathematics; and
5. Students who do not meet the definition of a student with a severe disability who is eligible for the NYSAA.
6. Exclusionary factors: The CSE may not recommend a student for an instructional level assessment based on any of the following factors: the student's intelligence quotient (IQ); disability category; language differences; lack of appropriate instruction in reading and/or math; excessive or extended absences from instruction; cultural or environmental factors; factors related to sensory, motor or emotional disabilities; lack of access to appropriate instructional materials, including assistive technology devices or services; and/or the student's placement where his/her IEP is being implemented.

Determining instructional grade level: If approved, the State would provide guidance to the CSE on how to identify a student's instructional grade level, separately for ELA and math. Such criteria and guidance would include, but not necessarily be limited to:

- a. Annual determinations of instructional grade level;
- b. Separate determinations for ELA and math; and

- c. Determinations based on objective data, in consideration of the results of both standardized and informal inventories of student achievement and data over at least a two-year period of time.

As such, for example, a student could be determined as eligible to participate in an instructional level assessment for math, but not for ELA; and the student could be assessed at two grade levels below his/her chronological grade in one year, but only one year below in the subsequent year.

Maintaining high and appropriate expectations: By requiring that the student participate in the regular State assessment (and not a modified or alternate assessment) and by setting limits on how far below the student's chronological age the student may be assessed and that the student be assessed at the next higher grade level in each subsequent year, the State is maintaining high and appropriate expectations for students to progress and be able to demonstrate their progress in the general education curriculum while also providing the opportunity to generate instructionally meaningful results for these students.

Accountability: Based on actual student performance on the 2012-13 CCLS aligned State assessments, the State has calculated the percentage of students with disabilities who achieved a score that reflects that the student's responses were at the chance level (i.e., that the student's correct responses were based on guessing). For ELA, this calculated to be 8,053 out of 186,529 students with disabilities, or .68 percent of all students tested. For math, this calculated to be 17,441 out of 186,636 students with disabilities tested, or 1.47 percent of all students tested. Therefore, .7 and 1.5 percent would be established as the limits for the percentage of students whose proficient and advanced scores could be counted for partial credit for accountability purposes.

Procedural safeguards for students with disabilities: The State will require that, prior to each annual review meeting, parents are notified if the purpose of the meeting is to consider the student for an instructional level assessment and that prior written notice of the CSE's recommendation that the student participate in the instructional level test provide parents with reasons for the recommendation and inform them of their right to disagree with the CSE's recommendation and pursue due process.

Public Reporting: The Department will annually publicly report statewide and LEA information on the number and percent of students with disabilities who participate in the instructional level assessment, disaggregated by grade level, subject and race/ethnicity.

Notes:

- This waiver is proposed as a transitional process to be in effect until such time as adaptive testing in NYS is available to students in grades 3-8.
- Until an 'augmented' third grade assessment is developed, the waiver would apply to students in grades 4-8 only. Students who are chronologically grade 3 would participate in the grade 3 State assessment.
- The request for instructional level testing does not apply at the high school level.

Rationale

Until the State can develop and implement adaptive assessments, NYSED requests to more appropriately assess, for instructional and State accountability purposes, the performance of students with significant cognitive disabilities who cannot, because of the severity of their disabilities, participate in chronological grade level instruction. These

students, while they do not meet the State's definition of a student with a significant cognitive disability appropriate for the State's alternate assessment, will likely be able to meet the State's learning standards over time. However, these students need to be provided with instruction with special education supports and services at a pace and level commensurate with their needs and abilities and their individual rates of learning. When students with disabilities are required to participate in an assessment at their chronological age significantly misaligned with content learned at their instructional level, the assessment may not provide as much instructionally actionable information on student performance or foster the most prudent instructional decisions. For these students, State assessments also do not provide meaningful measures of growth for purposes of teacher and leader evaluations.

NYSED holds all schools and students to high expectations and believes this waiver will lead to more appropriate assessment of a subgroup of students with disabilities, while ensuring that students with disabilities participate in the general curriculum and the same State assessments, but closer to their instructional levels, in order to obtain instructionally relevant information from the assessments.

The waiver will support continued focus on ensuring students with disabilities graduate college- and career-ready by ensuring more meaningful State assessment results; support efforts to improve all schools in the State; and support closing of achievement gaps between student subgroups by better identifying the subgroups of students with disabilities and their performance levels.

Process for Consulting with Stakeholders and Summary of Comments on the Students with Disabilities Assessment Waiver Request

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding to the requirements of the Renewal application. During the first week of November, an external "Think Tank" was convened, and members were asked to be thought partners with the Department as it drafted its response to the renewal requirements. A large portion of the members of the ESEA Renewal Think Tank also participated in the original ESEA Waiver Think Tank that guided the creation of New York State's approved ESEA Waiver application. To date, The ESEA Waiver Renewal Think Tank has met six times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited feedback on the waiver through meetings with a wide variety of organizations, including the Commissioner's Advisory Panel for Special Education (of which the majority of members are parents of students with disabilities and individuals with disabilities), representatives of each of the State's 13 Special Education Parent Centers and federal Parent and Training Information Centers (PTIs), Title I Committee of Practitioners, the English Language Learners Leadership Group, the DTSDE Training Group, and the District Superintendents. SED staff have spoken with the following national groups: National Association of Learning Disabilities; Education Trust; National Association of State Directors of Special Education; Learning Disabilities Association; Council for Advancement and Support of Education; Council on Exceptional Children; lawyers working on the Children's Online Privacy Protection Act; ACCSES (which represents 1,200 disability service providers across the country); Easter Seals; National Disability Rights Network; and the National Council on Learning Disabilities.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was first accepted between January 16, 2014 and January 27, 2014. The proposed amendment was posted again (as part of the ESEA Renewal proposal for 2015-16 through 2018-19) to the Department website, and public comment was received between February 13, 2015 and February 26, 2015. Notices that public comments were being accepted were posted on the State Education Department's website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank by the Office of Accountability.

Throughout this process, Department staff evolved the proposed waiver to address stakeholder concerns and recommendations. This waiver request has been revised based on comments and recommendations from parents, advocacy organizations, school personnel and others. A detailed summary of the comments received is attached (Attachment I).

2: Amendment Regarding Testing Exemption for English language learners and Creation of a Native Language Arts Assessment

Flexibility Element(s) Affected by the Amendment

1.C. Develop and administer annual, statewide, aligned, high-quality assessments that measure student growth.

Brief Description of the Element as Originally Approved

See pages 36 – 37. Originally, the State did not propose a waiver for the assessment of English language learners. This proposed amendment is referenced on page 95 of the redlined waiver.

Brief Description of the Requested Amendment

NYSED is applying for a waiver to better capture and measure growth in language arts for ELLs. NYSED is not seeking a waiver from math testing requirement for ELLs. The State currently relies exclusively on the English language arts assessments to make language arts accountability determinations for ELLs. The State is proposing a new approach that will exempt a subgroup of ELL students from taking the English language arts assessment, either because they are newly arrived or because they can demonstrate language arts knowledge and skills on a Native Language Arts assessment.

NYSED is applying for a waiver to:

1. Exempt newly arrived ELLs from participating in the ELA assessments for two years.
2. Create Spanish Language Arts assessments and allow districts to offer this assessment as a local option when it would best measure the progress of Spanish-speaking ELLs.

NYSED has historically allowed newly arrived ELLs to be exempt from ELA testing for their first year of instruction. In light of the new Common Core Learning Standards, NYSED seeks to extend this exemption to two years in order to afford ELLs the time needed to acquire a sufficient level of English such that they can demonstrate their knowledge and skills on the Common Core ELA assessments. This exemption will allow New York State to better measure the progress of ELLs by utilizing the New York State English as a Second Language Achievement Test (NYSESLAT) as a way of measuring ELL progress in the first two years of their instruction in the United States. By extending the exemption for one additional year, districts would be given sufficient time to work intensively with ELLs to develop their English language skills without being held accountable for results on an ELA assessment that will not sufficiently capture those instructional gains in developing the English language needed to meaningfully participate in the Common Core.

In addition to extending the exemption from the ELA assessments for newly arrived students, New York State has a sizable ELL population and a strong tradition of innovative native language arts educational initiatives. Yet, the State's accountability system has historically relied on ELL students taking assessments only in English, e.g., the NYSESLAT (a test of English proficiency) and (in most cases) the State's ELA Grade 3-8 and English Regents (high school) exams, to determine their progress in language arts.

Although NYSED does not foresee a change to the State's accountability system during the 2014-15 school year pertaining to use of native language arts assessments, NYSED has been extensively investigating with other states the possibility of developing a new

Common Core native language arts assessment program that will initially be in Spanish beginning in the 2015-16 school year, and may extend to other language groups thereafter.

If NYSED and partner states are able to secure funding to develop a new Common Core native language arts assessment program⁵, NYSED will seek to incorporate the new assessment into the State's accountability plans beginning in the 2015-16 school year at the earliest. The State would offer this assessment as a local option to districts to allow Spanish-speaking ELLs who have attended school in the United States for less than three consecutive years to be tested in Spanish in lieu of the ELA assessment, and on a case by case basis, for an additional two years in Spanish if such an assessment would better allow the student to demonstrate their knowledge of language arts.

Rationale:

ELLs, by virtue of the definition that identifies these students as developing in their understanding and use of English, have a limited ability to demonstrate what they know and can do on the English language arts assessments, even with accommodations. Unlike accommodations provided to ELLs on other content area assessments, such as math, translations of the ELA assessments are not provided to ELLs. Any progress in language development, therefore, is not captured by the ELA assessments, which require a high level of English language development in order to demonstrate knowledge and skills on the assessments. However, if given the opportunity to demonstrate their knowledge and skills of language arts in their native language, these students will make significant progress in language development, which will prepare them to be successful on the ELA exams.

The NYSESLAT exam is an appropriate exam for newly arrived ELLs to demonstrate progress because it is rigorous, aligned to the Common Core, and highly correlated with ELA performance.

In 2012-13, the NYSESLAT exam was updated to be more closely aligned to the CCLS, and in the 2014-15 school year, the NYSESLAT will be fully aligned to the Common Core. As such, the NYSESLAT will be the most appropriate tool to assess the language development of ELLs such that they can be successful on a Common Core ELA assessment. The performance of ELLs on the NYSESLAT will be a true indication of their progress towards developing the English language needed to demonstrate their knowledge and skills on the ELA assessment.

Historically, student performance on the NYSESLAT exam has been highly correlated to performance on the ELA assessments. That is, the NYSESLAT has served as a gate keeper such that once ELLs test out of the NYSESLAT they tend to outperform their non-ELL peer group on every measure, including ELA assessments. Thus, the NYSESLAT is a rigorous measure that can be used for two years until students have developed sufficient English language skills to demonstrate their knowledge and skills on the ELA assessments.

Exempting newly arrived ELLs from ELA assessments for two years will not lower

⁵ In order to develop a Native Language Arts assessment in Spanish, the State Education Department will need to receive additional State funding from the legislature. The Board of Regents has requested funding to support this initiative in its 2014-15 State School Aid Proposal, which can be found at <http://www.regents.nysed.gov/meetings/2013Meetings/December2013/1213saa11.pdf>

expectations for Common Core ELA instruction for ELLs. NYSED holds all schools and students to high expectations and in doing so the State has launched a Bilingual Common Core Initiative. In spring 2012, NYSED launched the Bilingual Common Core Initiative to develop new English as a Second Language and Native Language Arts Standards aligned to the Common Core. As a result of this process, NYSED is developing New Language Arts Progressions (NLAP) and Home Language Arts Progressions (HLAP) for every NYS Common Core Learning Standard in every grade. Beginning in 2014-15, all ELA and ESL/Bilingual teachers will be expected to provide Common Core instruction to ELLs aligned to the Progressions.

At the core of Bilingual Common Core Initiative is the idea that in addition to being a series of grammatical structures, language is also a social practice (Street, 1985; Pennycook, 2010). Therefore, language learning in an academic context is not solely about mastery over grammatical structures or isolated vocabulary, but also about the development of competency in the language specific to each academic discipline. In order for this development of competency to occur, students must participate in a language socialization process that includes both explicit and implicit guidance by mentors who are more proficient in the language of the academic discipline (Duffy, 2010) as well as an engagement with the ways of thinking in each academic discipline through exposure to content-specific texts (Snow, Griffin, and Burns, 2007). What this means is that in a history class students are treated as historians and in science class students are treated as scientists and are provided with both explicit and implicit guidance on the language structures and practices associated with the discourse of the content-area being taught (Walqui & Heritage, 2012).

Given the high demands of the Common Core, the appropriateness of the NYSESLAT to measure progress for newly arrived ELLs and the high expectations and rigor expected by the State for all ELLs, allowing for an additional year exemption will further the State's instructional goals and accurately measure student growth in language arts for newly arrived ELLs.

In addition to requesting a two year exemption for newly arrived ELLs, for a subgroup of ELLs who are Spanish-speakers and who can demonstrate their language arts knowledge and skills in Spanish, NYSED is proposing that beginning in 2015-16, districts be allowed to offer this assessment as a local option when it would best measure the progress of Spanish-speaking ELLs.

With the implementation of the Common Core, the development of new NYS Native Language Arts standards (the Home Language Arts Progressions) discussed in the State's original waiver, and the proposed development of a Spanish Language Arts assessment, the State will have developed the resources needed to support strong Common Core instruction and assessment in the home language. For schools offering Bilingual Education programs or strong home language supports aligned to the Common Core in Spanish, it is most appropriate to measure language arts proficiency for such students through a Spanish Language Arts assessment. In doing so, the State would allow such students to demonstrate mastery of grade-level-appropriate language arts standards in their home language while they are acquiring English.

Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

Stakeholders from across the State, representing teachers, administrators, parents, and

community based organizations have assisted the Department in responding to the requirements of the Renewal application. During the first week of November, an external “Think Tank” was convened, and members were asked to be thought partners with the Department as it drafted its response to the renewal requirements. A large portion of the members of the ESEA Renewal Think Tank also participated in the original ESEA Waiver Think Tank that guided the creation of New York State’s approved ESEA Waiver application. To date, The ESEA Waiver Renewal Think Tank has met six times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited feedback on the waiver through meetings with a wide variety of organizations, including the Title I Committee of Practitioners, the English Language Learners Leadership Group, the DTSDE Training Group, and the District Superintendents.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was first accepted between January 16, 2014 and January 27, 2014. The proposed amendment was posted again (as part of the ESEA Renewal proposal for 2015-16 through 2018-19) to the Department website, and public comment was received between February 13, 2015 and February 26, 2015. Notices that public comments were being accepted were posted on the State Education Department’s website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, the Office of Accountability emailed notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.

3: Including the Performance on the NYSESLAT in the Grade 3-8 Performance Index for English language learners Who Have Received Less than Three Years of Service

Flexibility Element(s) Affected by the Amendment

2.A. Differentiated recognition, accountability, and support system.

Brief Description of the Element as Originally Approved

See pages 64 – 65. Originally, the State did not propose differentiated accountability metrics for measuring progress of ELLs. This proposed amendment is referenced on pages 94-95 in the redlined waiver.

Brief Description of the Requested Amendment

In order to accurately capture ELLs student growth in language arts, a combination of assessments must be used in to make appropriate determinations of progress and growth towards proficiency. New York State is implementing an aggressive agenda for ELLs that holds districts and schools accountable and sets high expectations for ELL student instruction.

ELLs in New York State take both the ELA examination and the State’s English language proficiency test (NYSESLAT) until they reach proficiency on the NYSESLAT. Beginning in 2014-15, New York State plans to give credit in the Grade 3-8 ELA Performance Index to students who would have received partial or no credit using the ELA test results (i.e., students who scored at Performance Level 1 or 2) and who have shown progress in learning English on the NYSESLAT examination (per requirements of Title III AMAO 1). Specifically, ELLs who have received less than three full years of LEP services and make progress from one year to the next on AMAO 1 by achieving a higher Performance Level on the NYSESLAT would be given full credit in the Performance Index (i.e., would be credited with 200 points) and students who make progress on AMAO 1 by increasing their score by a set number of scale score points from one year to the next but do not achieve a higher Performance Level would be given partial credit in the Performance Index (i.e., would be credited with 100 points). In 2012-13, for the subset of ELLs with less than three full years of LEP services, only 4% of ELLs performed at Level 3 or 4 on the ELA exam (and received full credit in the Performance Index calculation), 22% performed at Level 2 and received partial credit, and 74% received no credit. Using the new methodology, of the 74% of ELLs who under the current Performance Index calculation using ELA scores only received no credit, the fraction of those ELLs who receive full credit in the Performance Index due to their progress on NYSESLAT increases to 46%, while the fraction who receive partial credit increases to 16%, and the fraction who receive no credit drops to 38%. Of the 22% of ELLs who under the current Performance Index calculation using ELA scores only received partial credit, 52% would receive full credit in the Performance Index due to their progress on NYSESLAT.

If data on the identification of students who have interrupted formal education is determined to be sufficiently reliable, the Department will request that these students who have had less than three full years of LEP services receive “full credit” in the Grade 3-8 Performance Index if the students make either the specified scale score gain or increase one level on the NYSESLAT. Since students with interrupted formal education enter the school system with significant gaps, a gain in scale score is a significant growth and schools and districts should be awarded full credit for such progress.

Upon approval of this amendment, New York will revise its Annual Measurable Objectives for Grade 3-8 ELA to reflect the increase in the Performance Indices of the “all students” and each applicable accountability group that will result in the incorporation of these results into the Performance Index.

As the State fully aligns the NYSESLAT exam to the Common Core Learning Standards and begins to develop additional assessment tools that can best capture growth towards proficiency for ELLs in language arts, the accountability system should be changed accordingly. A new accountability approach will allow students to demonstrate growth towards proficiency through appropriate measures and will hold schools and districts accountable to more appropriate measures of progress for ELLs as the test is specifically designed for this population.

For ELLs in their first three years of receiving services, the Performance Index would be modified only for language arts accountability purposes; the expectations and measures for math would not change. For newly arrived students with annual NYESLAT scores in consecutive years, the Performance Index would be based solely on their NYSESLAT performance.

Beginning in 2015-16, New York will work to develop a Performance Index for ELL students taking the new Spanish Language Arts assessment. For these students, growth towards proficiency in language arts will be measured based on rigorous expectations on the Spanish Language Arts assessment and performance on the NYSESLAT exam based on students’ levels of language proficiency. New York will also work to develop a revised Performance Index for ELLs under which growth towards proficiency in language arts will be calculated based on rigorous expectations on the ELA assessment that are differentiated based on their level of proficiency on the NYSESLAT exam and demographic factors such as the number of years a student has received ESL/Bilingual services and whether a student has had interrupted formal education.

NYSED will work with a team of ELL experts and statewide stakeholders to use performance data to determine appropriate outcomes for ELLs on the ELA assessments, based on students’ level of language proficiency and demographic factors that can be accurately identified through existing data collection systems. The Performance Index would then be adjusted such that schools and districts would be held accountable for making progress with ELLs based on new benchmarks on the ELA assessments according to students’ English Language proficiency level. As such, schools that are making significant progress with ELLs on the NYSESLAT and are demonstrating appropriate growth on the ELA assessment would not be penalized in the state’s accountability system if their students are not yet proficient on the ELA assessment based on their level of English proficiency.

For ELLs who would be eligible to take the Spanish Language Arts assessment, beginning in 2015-16, the Performance Index would also be adjusted only for language arts accountability purposes; the expectations and measures for math would not change. A Performance Index will be developed that creates rigorous expectations for growth and performance on the Spanish Language Arts exam and the NYSESLAT exam. Thus, districts and schools would be held accountable for both progress in language arts in Spanish and English language development aligned to the Common Core Learning Standards.

Rationale:

ELLs, by virtue of the definition that identifies these students as developing English, have a limited ability to demonstrate what they know and can do on the English Language Arts assessments, even with accommodations. Unlike accommodations provided to ELLs on other content area assessments, such as math, translations of the ELA assessments are not provided to ELLs. The NYSESLAT has served as a gate keeper such that once ELLs test out of the NYSESLAT they tend to outperform their non-ELL peer group on every measure, including ELA assessments. These students, however, can make significant progress in language development as determined on the NYSESLAT that will prepare them to be successful on the ELA exams. This progress in language development, however, is not captured by the ELA assessments, which require students have a high level of English language development in order to demonstrate knowledge and skills on the assessments. In addition, many ELLs can demonstrate language arts knowledge and skills in their home language. As such, an accountability system that determines growth towards proficiency for ELLs in language arts based only on the ELA assessments is not appropriate.

Creating an accountability system that is differentiated to appropriately set high expectations for ELLs who are at different levels of language development will create rigorous expectations for schools and districts and allow schools and districts making progress to be recognized for such growth.

Creating this differentiated accountability system will ensure that schools and districts making progress are not penalized in the accountability system because they have high numbers of ELLs not yet proficient on the ELA assessments. Without this provision, some schools and districts are being identified as Focus and Priority Schools in part because they have a high number of ELLs in their schools.

The NYSESLAT exam is an appropriate exam for newly arrived ELLs to demonstrate progress because it is rigorous, aligned to the Common Core and highly correlated with ELA performance. The NYSESLAT has served as a gate keeper such that once ELLs achieve proficiency on the NYSESLAT, these students tend to outperform their non-ELL peer group on every measure, including ELA assessments. Thus using the NYSESLAT exam in the language arts accountability system is an appropriate measure that should be incorporated into the Performance Index.

Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding to the requirements of the Renewal application. During the first week of November, an external "Think Tank" was convened, and members were asked to be thought partners with the Department as it drafted its response to the renewal requirements. A large portion of the members of the ESEA Renewal Think Tank also participated in the original ESEA Waiver Think Tank that guided the creation of New York State's approved ESEA Waiver application. To date, The ESEA Waiver Renewal Think Tank has met six times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited feedback on the waiver through meetings with a wide variety of organizations, including the Title I Committee of Practitioners, the English Language Learners Leadership Group, the DTSDE Training Group, and the District Superintendents.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was first accepted between January 16, 2014 and January 27, 2014. The proposed amendment was posted again (as part of the ESEA Renewal proposal for 2015-16 through 2018-19) to the Department website, and public comment was received between February 13, 2015 and February 26, 2015. Notices that public comments were being accepted were posted on the State Education Department's website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, the Office of Accountability emailed notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.

Please note that for proposals that will be more fully developed for 2015-16, NYSED will develop a similar consultation process with stakeholders.

4. Amendment Regarding Providing Schools and Districts with “Full Credit” on the Performance Index for each Student who passes ELA and Math exams and a Board of Regents approved Career and Technical Education Assessment

Flexibility Element(s) Affected by the Amendment

2.B - Set Ambitious But Achievable Annual Measureable Objectives (p. 92 -97 of New York’s ESEA Waiver Renewal Request)

2.C.i – Describe the SEA’s methodology for identifying highest performing and high progress schools as reward schools. (p.98 – 101 of New York’s ESEA Waiver Renewal Request)

Brief Description of the Element as Originally Approved

Pursuant to Commissioner’s Regulations 100.18 and New York’s approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver schools and districts earn “full credit” in the English language arts and mathematics Performance Index when a student achieves a score indicating college- and career-readiness (i.e., Level 3), which is defined currently as a score of 75 or higher on the Regents Comprehensive Examination in English Language Arts or a score of 80 or higher on a Regents examination in mathematics.

Also in accordance with New York’s ESEA Flexibility waiver, in order for a high school to qualify as a Reward School the school must exceed either the State average for students graduating with Regents diplomas with advanced designation or CTE endorsements.

Brief Description of the Requested Amendment

The New York State Education Department proposes to revise the computation of New York’s High School Performance Index so that a student who passes the Regents examinations in English language arts, mathematics, science and two social studies examinations, and a Regent’s Technical Assessment Advisory Panel-recommended technical assessment (see attached list) will receive a college and career ready designation and earn a school and district “full credit” on the High School Performance Index in English language arts and mathematics, even if such student did not achieve 75/80 (i.e., Level 3) or higher on the associated Regents examinations.

Rationale

At the October 2012 P-12 Education Committee meeting a study was commissioned with Stephen Hamilton at Cornell and William Symonds at Harvard to identify 10-25 assessments that are of sufficient quality and rigor to serve in place of a NYS Regents examination for student enrolled in rigorous CTE programs. Mr. Hamilton and Mr. Symonds served as members of the Technical Assessment Review Panel, a group charged with developing a methodology for determining comparability of a select group of CTE technical assessments with Regents examinations.

The panel used four criteria for determining comparability of technical assessments:

1. The assessment provides credible evidence that the student is college and career ready. Following are some sources of credibility:
 - (a) The assessment is recognized by employers in an industry sector. Ideally, a passing score provides a credential that will qualify the student for at least entry-level employment in the industry. Priority will be given to nationally-recognized credentials.
 - (b) If the assessment is normally completed at the postsecondary level, a cut score has

been established for high school students that signifies the student is ready to take credit-bearing courses at the postsecondary level.

(c) The assessment is widely recognized by postsecondary institutions within New York, for admissions and/or credit.

2. The assessment includes academic as well as technical learning. The following factors are considered:

(a) The examination covers a broad range of learning. Narrow technical examinations are not by themselves sufficient. Breadth may be achieved by “bundling” multiple examinations.

(b) The examination measures some of the knowledge and skills that comprise the Common Core State Standards, such as reading of technical materials or application of mathematical principles.

(c) The rigor of the assessment is comparable to that of Regents examinations.

3. The assessment is for an occupation in a career cluster that is recognized by the State Education Department and is of clear economic value to the state of New York. The following factors are considered:

(a) The occupation is in high demand, meaning that a significant number of people are already employed in the occupation and/or that employment is increasing.

(b) The occupation generally pays experienced workers “a living wage.” At the very least, entry-level workers are paid above the minimum wage.

(c) The number of students eligible to take this assessment is large enough to warrant the Regents’ recognition.

4. The assessment meets the following technical requirements:

(a) The examination is aligned with existing knowledge and practice and updated regularly (every four years in most cases).

(b) The examination has acceptable psychometric properties. It is properly validated and free from ethnic or gender bias. A technical manual meeting testing industry standards is available for public inspection. (c) The examination questions are secure and administration oversight comparable to a Regents examination.

(d) The organization responsible for the examination is considered credible by the State Education Department; e.g., makes standards publicly available, trains proctors, is affiliated with trade groups, provides data for instructional improvement, responds quickly to technical concerns and user questions.

The list of identified CTE assessments that met the outlined requirements is attached.

These findings were delivered to the Chancellor’s Blue Ribbon Commission at a July 2, 2013 convening of the Commission. Members of the Commission strongly agreed with the Panel’s conclusion that recognizing high-quality CTE examinations would raise the bar for high school graduation. These examinations often require a higher level of academic proficiency than passing a Regents exam with a score of 65 percent. The research report presented by the Panel goes on to say, “CTE examinations that tangibly demonstrate college readiness – in the sense that postsecondary institutions grant course credit, advanced standing or admission to students who pass the examination – should be recognized as holding students to a higher standard than Regents examinations using 65% as a passing score.” Recognizing CTE exams would also encourage students to earn certificates that demonstrate to industry employers that they are “career ready.” Unfortunately, the current Regents examinations do not provide a comprehensive measure of career readiness. Giving schools and districts accountability credit for such performance would eliminate any disincentives within the accountability system for

schools and districts to encourage students (especially students from underserved populations) to participate in such programs.

Students who demonstrate college and career readiness by passing rigorous CTE examinations in one of the 13 Blue Ribbon Panel-approved CTE content areas for a variety of reasons may not have passed the Regents examinations in English language arts and a Regents examination in mathematics at a level that earns their school and district “full credit” for these students’ performance on the High School Performance Index used for institutional accountability. In these cases, schools and districts are not receiving appropriate acknowledgement for the efforts that have been made to successfully prepare students for college and careers as demonstrated by students passing rigorous CTE examinations and completing the associated CTE coursework.

The effect of this change is expected to be modest. For the 2009 4-year accountability cohort there were 3,570 students who passed a CTE examination and whose highest Regents examination score in either English language arts and/or mathematics was at Level 2. This represents 1.6% of the members of the accountability cohort. However, at present, the Department’s information system does not indicate whether a student passed any of the 13 Blue Ribbon Panel approved assessments or another CTE examination. Therefore, the actual number of students whose score would have been adjusted is something less than 1.6%. If this amendment is approved, SED will begin to collect information on the specific CTE examination that a student has passed. Therefore, we estimate the change in the high school Performance Indices in ELA and math will likely increase by no more than one index point if this change is implemented.

Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

The proposed amendment was first posted to the Department website for public comment between June 25, 2014 and July 3, 2014. The proposed amendment was posted again (as part of the ESEA Renewal proposal for 2015-16 through 2018-19) to the Department website, and public comment was received between February 13, 2015 and February 26, 2015. Notices that public comments were being accepted were posted on the State Education Department’s website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, the Office of Accountability emailed notification regarding the opportunity to comment to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.