



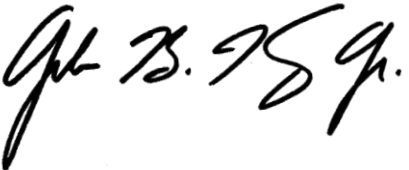


TO: P-12 Education Committee

FROM: Ken Slentz 

SUBJECT: Proposed amendment of Section 100.18 of the Regulations of the Commissioner relating to New York State's ESEA Flexibility Request Renewal application regarding removal of Priority Schools, Focus Districts and Focus Schools from accountability status

DATE: June 16, 2014

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents approve as an emergency action the proposed amendment of section 100.18(i)(1) and (2) of the Commissioner's Regulations to allow the Commissioner to consider additional progress measures, including, but not limited to, Student Growth Performance (SGP) and gap reduction, in determining whether to remove Priority Schools, Focus Districts and Focus Schools from accountability status while also requiring that accountability groups for which a school or district has not been identified perform above the threshold for identification at the time of removal?

Reason(s) for Consideration

To conform the Commissioner's Regulations to New York State's submitted ESEA Flexibility Waiver Renewal Request, with respect to the removal criteria for Priority Schools, Focus Districts and Focus Schools.

Proposed Handling

This item will come before the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action at the June 2014 Regents

meeting, effective June 24, 2014. A copy of the proposed amendment and a statement of the facts and circumstances which necessitate emergency action are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

At the February 2014 meeting, the Board of Regents directed the State Education Department (SED or “the Department”) to submit an ESEA Flexibility Waiver Renewal Request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request relating to determinations of Adequate Yearly Progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology for setting elementary-middle level English language arts and mathematics Annual Measurable Objectives (AMOs).

On April 22, 2014, the USDE approved SED’s request to reset the AMOs. At the April 2014 Regents meeting, the Board of Regents adopted a separate emergency amendment of section 100.18(i)(2) and (j) to implement this part of SED’s Waiver Renewal Request. It is anticipated that the rule will be presented for permanent adoption at the July 2014 Regents meeting.

Earlier this month, USDE informed SED verbally that the request to amend the removal criteria for Priority Schools, Focus Districts and Focus Schools has been approved. SED expects to receive written approval prior to the Board of Regents meeting in June. The proposed June emergency amendment of section 100.18(i)(1) and (2) will implement this part of SED’s Waiver Renewal Request.

USDE review of the remainder of the Waiver Renewal application, relating to determinations of Adequate Yearly Progress (AYP), is still pending.

Background Information

In September 2011, President Obama announced an ESEA regulatory flexibility initiative based upon the Secretary of Education’s authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the USDE during the second round of submissions in mid-February 2012 and designated five members of the Board to help lead the work. On May 29, 2012 the United States Department of Education (USDE) approved New York State’s ESEA Flexibility Waiver Request.

In November and December 2013, Department staff provided the Board of Regents with an overview of the process by which states can apply to renew their ESEA Flexibility waivers for the 2014-15 school year and presented possible amendments to the waiver for the Regents consideration. After discussion by the Board of Regents at its November 2013, December 2013, January 2014 and February 2014 meetings, the Department submitted New York’s ESEA Waiver Renewal Request to the USDE on February 28, 2014. Included in the waiver request was a provision related to the

removal criteria for Priority and Focus Schools that the Department requested become effective for use with 2012-13 school year results.

The proposed rule amends section 100.18(i)(1) and (2) of the Commissioner's Regulations to align it with the ESEA Flexibility Waiver Renewal Request. The purpose of the proposed amendment is to allow the Commissioner to consider additional progress measures, including, but not limited to, Student Growth Performance (SGP) and gap reduction, in determining whether to remove Priority Schools, Focus Districts and Focus Schools from accountability status, while also requiring that accountability groups for which a school or district has not been identified perform above the threshold for identification at the time of removal.

Recommendation

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

VOTED: That paragraphs (1) and (2) of subdivision (i) of section 100.18 of the Regulations of the Commissioner of Education be amended, as submitted, effective June 24, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Commissioner's Regulations to New York State's ESEA Flexibility Waiver Renewal Request with respect to the removal criteria for Priority Schools, Focus Districts and Focus Schools, so that school districts and charter schools may meet school/school district accountability requirements for the 2013-14 school year and beyond in a timely manner.

Timetable for Implementation

If adopted as an emergency rule at the June Regents meeting, the proposed amendment will become effective June 24, 2014 and will remain in effect for 90 days. It is anticipated that the proposed amendment will be presented for permanent adoption at the September 2014 Regents meeting, after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on July 9, 2014 and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

8 NYCRR §100.18(i)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

At its February 2014 meeting, the Board of Regents directed the State Education Department (SED or “the Department”) to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology used to determine elementary-middle level English language arts and mathematics annual measurable objectives (AMO).

On April 22, 2014, the USDE approved SED’s request to reset the AMOs. At the April 2014 Regents meeting, the Board of Regents adopted a separate emergency amendment of section 100.18(i)(2) and (j) (NYS State Register; May 14, 2014; EDU-19-14-00008-EP) to implement this part of SED’s Waiver Renewal Request. It is anticipated that the rule will be presented for permanent adoption at the July 2014 Regents meeting.

Earlier this month, USDE informed SED verbally that the request to amend the removal criteria for Priority Schools, Focus Districts and Focus Schools has been approved. Consistent with the proposed Waiver Renewal Request, the proposed rule amends Commissioner's Regulations section 100.18(i)(1) and (2) to align the Commissioner's Regulations with the submitted ESEA Flexibility Waiver Renewal

Request,. Adoption of the proposed amendment is necessary to ensure a seamless transition to the revised school and school district accountability plan under the Waiver. The amendment will provide school districts with the ability to demonstrate improvements, using progress measures that closely align with the federal school turnaround principles described in Race To The Top and School Improvement Grant requirements.

Because the Board of Regents meets at scheduled intervals, and does not meet during the month of August, the September 15-16, 2014 Regents meeting is the earliest the proposed rule could be presented for regular (non-emergency) adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to immediately conform the the Commissioner's Regulations to New York State's ESEA Flexibility Waiver Renewal Request with respect to the removal criteria for Priority Schools, Focus Districts and Focus Schools, thereby allowing the Commissioner to consider additional progress measures, including, but not limited to, Student Growth Performance (SGP) and gap reduction, in determining whether to remove Priority Schools, Focus Districts and Focus Schools from accountability status while also requiring that accountability groups for which a school or district has not been identified perform above the threshold for identification at the time of removal. Emergency action will also ensure that school districts meet school/school district

accountability requirements for the 2013-2014 school year and beyond in a timely manner.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its September 15-16, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Paragraphs (1) and (2) of subdivision (i) of section 100.18 of the Regulations of the Commissioner of Education are amended, effective June 24, 2014, as follows:

(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, [which will at a minimum require that] and the school [have] 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 two consecutive years by at least 10 index points]. For high schools, the four year or five year cohort graduation rate must equal at least [70] 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.

(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, [which will at a minimum require that] and the school district [have] has a combined performance index in ELA and mathematics for each group for which the school district [was identified] is accountable that exceeds the thresholds for identification [for two consecutive years by at least 10 index points and by at least 10 percent for all groups for which the school district was identified for graduation rate] 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) . . .

(iii) . . .

(iv) . . .

(v) . . .

(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 [by at least 10 index points and by at least 10 percent] for all accountability groups for which the[school district was identified] charter school is accountable for graduation rate.

(b) . . .