

**Analysis of Comments from Public
on Proposed Amendment to 603 CMR 2.03(3),
on Placement of Schools in Level 4**

Note: In addition to the revisions based on public comments described in the grid below, ESE has made several technical changes to the regulation since the Board last saw it, at its February meeting.

Key to Abbreviations

Chair Walz = Representative Martha M. Walz, House Chair of the Massachusetts Legislature’s Joint Committee on Education

MSNO = Massachusetts School Nurse Organization

MTA = Massachusetts Teachers Association

Source and Summary of Comment	ESE’s Response	Recommended Revision
<p>1. Chair Walz: Expresses concern over how the pool of schools eligible for Level 4 will be determined before July 1, 2011, and asks whether it will be determined solely based on 2.03(3)(b)(i), which refers to “school MCAS performance over a four-year period . . .,” specifically CPI and percentages of students in Warning/Failing.</p>	<p>Regulation 2.03(3)(b) tracks the statute, which says until July 1, 2011, schools are eligible for Level 4 placement if they score in the lowest 20% statewide “on a single measure developed by the department that takes into account student performance data.” Consequently the pool of schools eligible for Level 4 will be determined solely by 2.03(3)(b)(i) until July 1, 2011.</p> <p>The statute provides that as of July 1, 2011, improvement in student academic performance shall also be a factor in determining the eligible pool. We have included that factor verbatim in the revised 2.03(3)(b)(ii).</p>	<p>No revision recommended.</p>

Source and Summary of Comment	ESE's Response	Recommended Revision
<p>2. Chair Walz: Suggests in 2.03(3)(b)(ii) that “improvement in school MCAS performance as represented by change in CPI (for years available, up to four)” be revised to “improvement in student academic performance.”</p> <p>Reason: Because of concern with how the proposed regulations address the growth model, and for consistency with the language in the statute (in new M.G.L. c. 69, s. 1J(a), passed by St. 2010, c. 12, s. 3, which reads, in part:</p> <p>“Schools that score in the lowest 20 per cent statewide among schools serving common grade levels on a single measure developed by the department that takes into account student performance data and, beginning on July 1, 2011, improvement in student academic performance, shall be deemed eligible for designation as underperforming or chronically underperforming.”</p>	<p>The Department agrees with this change.</p>	<p>In 2.03(3)(b)(ii) “improvement in student academic performance” will replace “improvement in school MCAS performance as represented by change in CPI (for years available, up to four)”.</p>
<p>3. Chair Walz: Suggests that the Board include a provision in the regulations requiring the Department to notify all school committees that oversee a school that is eligible for placement in Level 4.</p> <p>Reason: Such notice would focus the school committee’s attention on the school and lead to an effort to improve the school’s performance in order to avoid Level 4 status.</p>	<p>The Department agrees that such notification would be desirable.</p>	<p>At the end of 2.03(3)(b), add:</p> <p>“The Department shall notify districts when it is determined that any of their schools is eligible for placement in Level 4. The notification shall be made to the school committee, superintendent, and local teachers’ union or association president, and the</p>

Source and Summary of Comment	ESE's Response	Recommended Revision
		principal of any school eligible for Level 4 placement.”
<p>4. MTA: Suggests the deletion of the phrase “but not limited to” at the end of the main part of subsection (c).</p> <p>Reason: In a fair and transparent process, schools and districts should have a complete understanding of the metrics by which they will be judged and labeled. Whatever data the Board wishes to judge schools by must be included in the regulation.</p>	<p>The Department had included the phrase “but not limited to” in anticipation of the development of valid and reliable measures of the proficiency gap, mobility, and other factors that could be useful in distinguishing those low-performing schools that require intense intervention from those that do not. We agree that fair notice is important and have deleted the phrase. If the Department develops additional quantitative measures in the future, the Board could consider adding them to the regulations at that time.</p>	<p>Delete “but not limited to” at the end of the main part of subsection (c).</p>
<p>5. Chair Walz: Expresses concern about the inclusion of growth model language in 2.03(3)(c), which has to do with criteria for selecting Level 4 schools from the pool of eligible schools. Asks whether it is the intention of the Board to use the growth model in determining Level 4 and 5 schools, as well as in determining the pool of schools eligible for Levels 4 and 5.</p> <p>Reason: The law is specific that the growth model, since it is new, not be used until July 1, 2011; it is also specific</p>	<p>The Department agrees that growth model data should not be used to determine the lowest-performing 20% (the schools eligible for placement in Level 4) until July 1, 2011. Since the Department and school districts now have two years of growth data, however, superintendents</p>	<p>No revision recommended.</p>

Source and Summary of Comment	ESE's Response	Recommended Revision
<p>in requiring that the growth model be used to determine the pool of eligible schools, not necessarily the schools to be placed in Level 4.</p>	<p>and others in the field advised strongly that the Department should use those data, among others, to determine which schools in the eligible pool should be placed in Level 4. We believe this regulation is responsive to the field and consistent with the law.</p>	
<p>6. MSNO: Suggests the addition of “dismissals” to the list of criteria in 2.03(3)(c)(3) [now 2.03(3)(c)(v)] used to determine placement of schools in Level 4.</p> <p>Reason: Chapter 12 of the Acts of 2010 consistently includes student dismissals as one criterion for identifying underperforming and chronically underperforming schools. The Legislature included this measure as a means for reducing the resource inefficiency when students are not in the classroom ready to learn.</p>	<p>Subsection (a) of the new M.G.L. c. 69, s. 1J, passed by St. 2010, c. 12, s. 3, provides that “In adopting regulations allowing the commissioner to designate a school as underperforming or chronically underperforming, the board shall ensure that such regulations take into account multiple indicators of school quality in making determinations regarding underperformance or chronic underperformance, such as student attendance, <i>dismissal rates</i> and exclusion rates, promotion rates, graduation rates . . .” [Italics supplied]</p> <p>Accordingly, the regulation on placement of schools in Level 4, equivalent to designating them as</p>	<p>Revise what is now 2.03(3)(c)(v) to add “dismissal”:</p> <p>“(v) other indicators of school performance including student attendance, dismissal, suspension, exclusion, and promotion rates . . .”</p> <p>(This revision had already been made to the regulation as submitted to the Board in February.)</p>

Source and Summary of Comment	ESE's Response	Recommended Revision
	underperforming, should refer to dismissal rates.	
<p>7. Chair Walz: Suggests deletion of the language “upon the determination of each indicator’s reliability and validity” in 603 CMR 2.03(3)(c)(v), which enumerates indicators of school performance to be used in determining placement of schools in Level 4, including student attendance, etc.</p> <p>Reason: Asks why there is a need to qualify the validity of data such as student attendance, dismissal, suspension, exclusion, and promotion rates; asks how their reliability and validity will be determined.</p>	<p>To maintain the integrity and fairness of the process, we believe it is important to determine the reliability and validity of each additional indicator before it is included. For instance, ESE does not yet collect data on student dismissals (in contrast to suspensions and expulsions), and DPH collects health-related “dismissal” data only for some schools. We do not want to rely on incomplete or inaccurate data. Further, including additional factors without first determining their reliability and validity could create unintended consequences. For example, if student attendance is a factor in determining Level 4 placement, we would want to be sure it does not create an incentive for schools to encourage the withdrawal of high-mobility students whose attendance may put the school’s status at risk.</p> <p>To determine reliability and</p>	<p>No revision recommended.</p>

Source and Summary of Comment	ESE's Response	Recommended Revision
	<p>validity, the Department's Office of Strategic Planning, Research, and Evaluation will continue to study these indicators and their correlation with low performance as well as their accuracy.</p>	
<p>8. MTA: Does not believe that the Board has the statutory authority to implement 603 CMR 2.03(3)(e), which provides that “[a]ny school designated by the Board as chronically underperforming prior to 2010 may be placed in Level 4.”</p> <p>Reason: This provision affects two schools, the Kuss and Lord Middle Schools in Fall River, whose performance has improved to the extent that neither of them would be identified through the metrics articulated in subsections (a) and (b) [subsections (b) and (c) in the revised regulation].</p>	<p>The statute authorizes the Board to adopt “regulations allowing the commissioner to designate a school as underperforming or chronically underperforming” (M.G.L. c. 69, s.1J(a)) if the school falls into the lowest 20 percent. The Kuss and the Lord Middle Schools both fall into the lowest 20 percent and consequently are eligible for placement in Level 4. 603 CMR 2.03(3)(e) is a valid regulation allowing the commissioner to designate a school as underperforming.</p> <p>These two schools are two of only three schools in the entire Commonwealth whose challenges were so severe that that Board declared them chronically underperforming. We believe that</p>	<p>No revision recommended.</p>

Source and Summary of Comment	ESE's Response	Recommended Revision
	in order for the recent progress at both of these schools to be sustained and accelerated, the requirements outlined in the law for Level 4 schools are essential.	