**Analysis of Comments from Public**

**on Proposed New 603 CMR 2.00:**

**Accountability and Assistance for Schools and School Districts**

**April 2010**

(Note: unless otherwise indicated, the regulations referred to are the proposed regulations as published for public comment after a vote by the Board of Elementary and Secondary Education on February 23, 2010. References to “1J” and “1K” or to “the statute” are to M.G.L. c. 69, ss. 1J and 1K, as amended by section 3 of St. 2010, c. 12 (“an Act relative to the achievement gap”).)

Key to Abbreviations

AAAC = Accountability and Assistance Advisory Council of the Board of Elementary and Secondary Education

AFT-MA = American Federation of Teachers—Massachusetts

BESE or Board = Board of Elementary and Secondary Education

ESE = Department of Elementary and Secondary Education

FCSN = Federation for Children with Special Needs

JCS = James C.Savage III, Esq. Retired

JC Chairs = Representative Martha M. Walz and Senator Robert A. O’Leary, Chairs of the Massachusetts Legislature’s Joint Committee on Education

JP = John Portz, Professor and Chair, Department of Political Science, Northeastern University, Member of AAAC

MAC = Massachusetts Advocates for Children

MASC = Massachusetts Association of School Committees

MASS = Massachusetts Association of School Superintendents

META = Multicultural Education, Training & Advocacy, Inc.

MSNO = Massachusetts School Nurse Organization

MTA = Massachusetts Teachers Association

TON = Tracy O’Connell Novick, Member, Worcester School Committee

WGEE = Working Group for Educator Excellence

| **Source and Summary of Comment** | **ESE’s Response** | **Recommended Revision** |
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| **General:** |
| **1. JC Chairs:** Expressconcern that several items in sections 1J and 1K are not referred to in the proposed regulations—specifically the process for teacher dismissal, the joint resolution process, the turnaround plan timeline, the process for appealing the appointment of a receiver, and the process for appealing the components of the turnaround plan.**Reason:** These are important parts of the turnaround process that schools and districts must follow closely. If they are not referred to in the regulations, schools and districts will not have the guidance they need to properly implement their turnaround plans. | These regulations are intended a) to fulfill the statute’s various mandates for the Board to adopt regulations; and b) to clarify or amplify the statute where it seems necessary or desirable. It has been ESE’s practice NOT to repeat language from statute in regulation where the statute does not require clarification or elaboration. ESE agrees that schools and districts must have the guidance they need to properly implement their turnaround plans. ESE has begun producing extensive guidance materials that cover parts of the statute not reflected in these regulations, including detailed guidance integrating the regulations and the statute.  | No revision recommended. |
| **2. AFT-MA:** Although regulations are intended to clarify laws, not replicate them, the proposed regulations should place less emphasis on the punitive aspects of the new statute and more emphasis on its positive features, such as the stakeholder process, and strategies for addressing the social and health needs of students, engaging families and the community, and enhancing professional development.**Reason:** The effect of emphasizing “sticks” over “carrots” is to diminish the importance of support and assistance. | As noted above, regulations are intended to clarify laws, not replicate them. Please see response to comment #1. The extensive materials that ESE has begun producing in support of the statute and regulations will particularly emphasize assistance to schools and districts.  | No revision recommended. |
| **3. MTA:** The regulations should be more comprehensive. In particular, they should include provisions on the role of the stakeholder group, the elements of the turnaround plan design, and the provision of supports that address factors external to the school that affect student achievement.**Reason:** Because the regulations do not include anything ESE believed was sufficiently specified in statute, they are not as clear and transparent as they should be. While ESE is planning to produce additional documents that merge statutory and regulatory requirements, such an approach does not allow public review of the materials. | Please see responses to comments ## 1 and 2.  | No revision recommended. |
| **4. MTA:** The statute specifies a comprehensive list of supports that need to be in place for student achievement to improve, which are mostly not included in the regulations, but should be—for example, providing social services to students in underperforming schools and working to engage families and the community. **Reason:** The absence of this support in the regulations makes it too easy to ignore, leaving educators trying to accomplish the goals without the necessary supports. Data from the MASS TeLLS survey makes it very clear that educators see social supports for students as an incentive to work in challenging schools. Without any mention in the regulations, educators will be skeptical that they will exist. | Please see responses to comments ## 1 and 2.  | No revision recommended. |
| **5. MTA:** Throughout the regulations ESE’s responsibilities are qualified by “to the extent funding allows” but the responsibilities of schools, districts and educators have no such limitation. If assistance and support from ESE and other state agencies are necessary for improvement to occur, and their availability is limited by funding, it is not reasonable torequire schools and districts to improve. Educators will need to be convinced that there is a probability of success if they are to choose to work in underperforming schools. | The type of phrase referred to in the comment appears * in 2.03(6)(b) on assistance from ESE to districts and schools in all levels; and
* in 2.05(b)(v), 2.06(6)(e), and 2.06(7)(e) on the assistance to be provided by ESE through turnaround plans for Level 4 and 5 schools and Level 5 districts.

The amount of extra assistance provided to these schools and districts does depend on financial resources. ESE plans to limit the number of schools and districts placed in Levels 4 and 5 to the number to which appropriate assistance can be provided. Whatever the resources available for assistance, however, schools and districts have an obligation to improve student achievement through measures and resources within their control.  | No revision recommended. |
| **6. MTA:** The proposed regulations are inconsistent with the Administrative Procedure Act, M.G.L. c. 30A, s. 2, which requires that any substantive standards established by an agency be promulgated in written regulations. Standards that are mentioned but not included in the regulations include:1. “State targets” in 2.03(5)(c), which must be followed by schools and districts to improve performance;
2. “[A]ny guidelines published by the Department” in 2.03(5)(d), which must be followed in District and School Improvement Plans;
3. A “process approved by the Department” in 2.04(2), which must be used by a district in Level 3 to complete a self-assessment;
4. “One or more district standards” in 2.05(1), for failure to comply with which a district may be placed in Level 4;
5. “[P]rogress the commissioner determines appropriate” to allow a school to be removed from Level 4, in 2.05(10)(b);
6. “District standards and indicators,” which are required to be published in 2.03(4)(b) and which are referred to, with the associated indicators, throughout the regulations, but have yet to be published.
 | ESE believes that the regulations do comply with the Administrative Procedure Act, in that the essential requirements are set forth in the regulations and are amplified through sub-regulatory guidance that ESE publishes. This is consistent with general administrative agency practice. For example, see #4 below.  1. ESE agrees that the reference to “state targets” is unnecessary.2. ESE also agrees that the reference to “any guidelines published by the Department” is unnecessary.3. A “process” is not a substantive standard. The Department anticipates having a variety of such processes for self-assessment, to be used by districts with different needs. 4. The areas of the standards are listed in 2.03(4)(a). The standards, with their associated indicators, have been published on the district review page of the Department’s website at [http://www.doe.mass.edu/sda/review/district/.](http://www.doe.mass.edu/accountability/district-review/documentation.html)5. The specific progress that will allow a school to be removed from Level 4 cannot be published in a regulation: this will be dependent what on the particular challenges are at that school that have caused it to be placed in Level 4. 6. Please see response to item 4 in this comment.   | 1. Recommend deleting “toward meeting state targets” at the end of 2.03(5)(c).2. Recommend deleting “and any guidelines published by the Department” at the end of 2.03(5)(d).3. No revision recommended.4. No revision recommended.5. No revision recommended.6. No revision recommended. |
| **7. MTA:** The organization of the regulations is confusing. School and district sections should be separate. | The guidance materials ESE is producing will provide more than one way for readers to make sense of the responsibilities and opportunities embodied in the Act and these regulations. | No revision recommended. |
| **8. JCS:** There should be separate classes for the students in a school with the top MCAS scores. **Reason:** Otherwise the progress of students with top scores will be impeded by the struggles of other students, and many will become bored and drop out or stop performing well. Grouping would also help the learners who need more support. | Although it does not place students in separate classes, the tiered instruction system referred to in the condition for school effectiveness (CSE) in 2.03(4)(b)(viii) (which is to be incorporated in ESE’s indicators of effective practice) is a method of grouping that supports struggling students, thus also facilitating the progress of their higher-performing classmates. See definition of Tiered Instruction in 2.02 and information on tiered instruction on the ESE website. | No revision recommended. |
| **9. WGEE:** Commends ESE for the regulations as an initial step in ensuring accountability and providing essential assistance for low-performing schools and districts. Hopes that ESE’s further materials will reflect the new education law’s comprehensive approach to improving the educator workforce. Notes that conditions for school effectiveness in 2.03(4)(b), especially (i), (ii), (iv), (vi), (vii), and (xi) are well aligned with the “levers” in WGEE’s platform for educator excellence. WGEE has established criteria for each of these that would be of great use to ESE in establishing the guidelines, protocols, etc. referred to in the regulations, including the framework for district accountability and assistance; the school review protocol and process; the district and school data reviews; assistance from ESE in the form of examples, tools, templates, protocols, and surveys; and benchmarks in turnaround plans. WGEE hopes that ESE will call on it for assistance. | ESE thanks WGEE for the commendation and intends to make use of all available and appropriate sources of assistance.  | N/A |

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| **2.01: Authority, Scope, and Purpose** |
| **10. MASC:** Recommends that 2.01 be amended by inserting at the end:“(4) The scope of these regulations are circumscribed by the terms of Chapter 12 of the Acts and Resolves of 2010, including but not limited to the provision that “an underperforming or chronically underperforming school . . . shall operate in accordance with laws regulating other public schools, except as such provisions may conflict with this secion or any turnaround plans created thereunder.”**Reason:** Chapter 12 explicitly curbs the power of BESE to stray from the law or any of the turnaround plans created thereunder. | It goes without saying that what any agency may provide by regulation is limited by statute. ESE believes it might be confusing to single out one Act from all of the operative law.  | No revision recommended. |

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| **2.02: Definitions** |
| **11. MSNO:**  Suggests that the Department adopt the following definition of “student dismissal rate”:“‘Student dismissal rate,’ A standard indicative of student support under 603 CMR 2.03(4)(a)(v) calculated by the number of unexpected student dismissals, divided by the number of documented school nurse student encounters plus the number of student encounters with non-teaching school personnel for illness, injury or disciplinary reason.”To explain a term used in this definition, it also suggests adopting the following definition of “unexpected student dismissal”:“‘Unexpected student dismissal,’ any early student departure data due to illness, injury or disciplinary reason as documented by a school nurse or any non-teaching school personnel.” **Reason:** Without the inclusion of a definition for “student dismissal rate” in the proposed regulations, schools and school districts will by default arrive at their own definition and calculation of this rate, and the Department will have no means to ascertain its reliability or validity, as required by 2.05(2)(b)(v) and 2.06(1)(b)(4) before it is used in determining the placement of schools in Level 4 or the placement of districts in Level 5. Also, since the statute calls for turnaround plans to have measurable annual goals, including such goals for student dismissal rates, the uniformity, reliability, and validity of this data are needed for the purpose of determining whether progress toward the goals is being made. | ESE does not believe that the regulations are the appropriate place for a technical definition; in addition, the definition in this case is still under development by ESE’s data specialists.  | No revision recommended. |

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| **2.03: Accountability and Assistance for Districts and Schools in All Levels** |
| **12. TON:** Applauds the district standards in 2.03(4)(a). Finds it unfortunate that MCAS is the only measure used for placement of schools in Level 4 or 5, when MCAS tracks with poverty, parental education, and race. The whole set of standards should be used to judge school and district performance.Objects to the lowest 10% of districts being used as the eligible pool for Level 5; there will always be a bottom 10%. The limit of 2.5% for the proportion of districts that may be in Level 5 shows that placement of districts in Level 5 is arbitrary. | Under the proposed regulations, schools may be placed in Level 4 and districts may be placed in Level 4 or 5 on the basis of information from a district review (see 2.05(1), 2.05(2)(b), 2.06(1)(b)(i)), which is based on these standards (see 2.03(4)(a)). The regulations provide for the use of multiple bases in Level 4 placement decisions for schools, as well as Level 5 placement decisions for districts. See 2.05(2)(b) and 2.06(1)(b).The 10% and 2.5% figures are mandated by the statute: 1K(a). Although there will always be a lowest 10% of districts—and a lowest 20% of schools—the regulations do not require any of those districts and schools to be placed in Level 4 or 5. See 2.05(1) and (2)(b), 2.06(1)(b) and (2) (“may place”).  | N/A |

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| **2.03(4)(b): Conditions for School Effectiveness (specific comments )** |
| **13. MASC:** Suggests revising 2.03(4)(b)(vi) and (xi) as follows:(vi) Principal’s staffing authority: The principal has the authority to make staffing decisions based on the School Improvement Plan and student needs, subject to district personnel policies, budgetary restrictions, the approval of the superintendent and the provisions of applicable law. (xi) Strategic use of resources and adequate budget authority: The principal makes effective and strategic use of district and school resources and has sufficient budget authority to do so subject to applicable law.**Reason:** The authority of the principal is “cabined” by M.G.L. c. 71, ss. 34, 37, and 59B as it relates to budget and personnel authority, as noted in *Newton School Committee v. Newton School Custodians Association*, 438 Mass. 739, 747 (2003) and acknowledged in ESE’s 1994 Advisory on School Governance. | The regulations, including both 2.03(4)(b)(vi) and (xi), are intended to be read as consistent with state law. The conditions for school effectiveness, including these two, are conditions that districts and schools are to implement using the procedures established by law. ESE does not believe there is a need to make special mention of applicable law in these two conditions. | Recommend revising the end of 2.03(4)(b)(vi) by replacing “needs” with:“needs, subject to district personnel policies, budgetary restrictions and the approval of the superintendent”. |
| **14. MAC, FCSN, META:** Recommend that 2.03(4)(b)(ix) be revised by adding language as follows:“(ix) Students’ social, emotional, and health needs: The school creates a safe school environment and makes effective use of a system for addressing the social, emotional, and health needs of its students that is consistent with and organized according to the Behavioral Health and Public Schools Framework developed by the Department in accordance with Section 19 of Chapter 321 of the Acts of 2008. The school uses a range of disciplinary actions to create a safe school environment which balance the need for accountability with the need to teach appropriate behavior.”**Reasons: 1)** The standards and indicators will be made more powerful by alignment with the Behavioral Health and Public Schools Framework, which enables schools to combine academic approaches with an organizational change structure for addressing these student needs. **2)** The standards and indicators will better address the achievement gap by requiring schools to implement strategies that result in fewer exclusions from school for disciplinary reasons. | ESE agrees that language relating to the behavioral health and public schools framework should be added to this Condition for School Effectiveness, to strengthen the Condition by linking it to the important work being done on this framework. We note that similar language in House Bill 4571 on bullying prevention requires that a model bullying prevention and intervention plan to be developed by the Department be “consistent with and organized according to” the framework. Since the Condition deals with more than behavioral health, however, we recommend adding this language to the Condition in a slightly revised form.ESE believes that the expanded form of this Condition for School Effectiveness in the fourth indicator under the Student Support standard already sufficiently addresses school discipline. See 2009-10 District Standards and Indicators at <http://www.doe.mass.edu/accountability/district-review/documentation.html> | Add the following definition to 2.02: **Behavioral health and public schools framework** shall mean the framework developed by the Task Force on Behavioral Health and Public Schools pursuant to St. 2008, c. 321, s. 19, to “promote[ ] collaboration between schools and behavioral health services and promote[ ] supportive school environments where children with behavioral health needs can form relationships with adults and peers, regulate their emotions and behaviors, and achieve academic and nonacademic school success and reduce[ ] truancy and the numbers of children dropping out of school.”Revise 2.03(4)(b)(ix) as follows: “(ix) Students’ social, emotional, and health needs: The school creates a safe school environment and makes effective use of a system for addressing the social, emotional, and health needs of its students that reflects the behavioral health and public schools framework.”  |
| **15. MAC, FCSN, META:** Recommend that a new subparagraph (xii) be added to 2.03(4)(b) as follows:(xii) Achievement of students with disabilities: For students with disabilities, in addition to the aforementioned (i)-(xi), the school provides these students with all the special education services they require in the least restrictive environment; provides to these students full access to the general curriculum and full participation in all teaching methods, programs, and services designed to improve educational outcomes for nondisabled students in the school, to be incorporated,including necessary accommodations and services, in each student’s IEP or 504 Plan as appropriate; and ensures that parents, including limited-English proficientparents, can fully participate in Team meetings regarding their children with disabilities.**Reason:** Implementation of these conditions would decrease the achievement gap. | Special education is already precisely and specifically regulated in all of the areas mentioned in this suggested addition. ESE considers adding this subparagraph to this separate set of regulations to be unnecessary and possibly confusing. | No revision recommended. |

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| **2.04: Levels 1-3** |
| **16. JP:** 2.04 is very short, yet most districts and schools will be at one of Levels 1-3. Therefore it is important that the supplementary material to come from ESE cover these levels.  | ESE is planning extensive guidance for districts and schools in Level 3, as well as rubrics, self-assessments, surveys, tools, etc. useful for districts and schools in all three of these levels. | N/A |
| **17. MTA:** The language of 2.04(1) is not clear. Districts should not be placed in Levels 1-3 based on the most severe accountability status of any one of the district’s schools.**Reason:** Such a system of placement is inconsistent with the labeling of districts under ESEA and the definition of accountability status in 2.02. It is not reasonable for a district with no accountability status as a district—such as Newton, Hopkinton, Duxbury, Medway, or Wayland—to be placed in Level 3 because it has one school in corrective action or restructuring for failure to make AYP for a subgroup. Such a provision will result in over-identification rendering presence in the Level meaningless. | ESE sees each district as ultimately responsible for ensuring effective education in each of its schools. ESE also sees one of its own key responsibilities as building the capacity of each district to ensure effective education in each of its schools. Therefore, tying a district’s accountability and assistance level for levels 1, 2 and 3 to the performance of its lowest achieving school is necessary. Changes ESE is proposing for the definitions for Levels 1, 2, and 3 provide a more persuasive and clear rationale for assigning districts to the accountability level of their most struggling school for levels 1, 2, and 3. Levels 1 and 2 are tied to federal accountability designations, but Level 3 is tied to the requirement in state law to identify the lowest performing 20% of schools in the Commonwealth. Districts with one or more schools at Level 3 (among the lowest performing 20% of schools) need more assistance and direction from ESE. The number of districts placed at Level 3 will not be “ever-expanding” as it would have been if the definition for Level 3 relied on the federal accountability definitions of “corrective action” and “restructuring” since the number of schools identified for “corrective action” and “restructuring” continues to grow.    | Recommend revising 2.04, Accountability and Assistance for Districts and Schools in Levels 1-3, as in the attached Track Changes version of the regulations. |
| **18. AFT-MA:** Schools and districts should not be placed in Levels 1-3 based on their accountability status under No Child Left Behind (NCLB).**Reason:** Thecore measure of NCLB, adequate yearly progress, or AYP, has been widely discredited and has practically no meaning. The recent federal blueprint to reauthorize ESEA eliminates AYP altogether. Using this measure will result in overidentification of “failing” or “struggling” schools, contributing to the false perception that Massachusetts public schools are in crisis. | Please see response to comment #17. | Please see recommendation for revision of 2.04 under comment #17. |

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| **2.05: Level 4** |
| **19. AFT-MA:** Recommends that all reference to Level 4 districts be eliminated from the regulations.**Reason:** There is no statutory basis for designation of Level 4 districts. | The regulations on Level 4 districts are aimed at giving reasonable warning to districts that they are at risk of placement in Level 5. They are aimed at preventing districts from having to be placed in Level 5 and put under receivership. Districts may be placed in Level 4 if they fall in the lowest 10 percent of districts statewide, and a district review shows “serious or widespread deficiencies, relating to one or more district standards, that are likely to have a substantial negative effect on the educational achievement of students attending school in the district and place the district at risk of being placed in Level 5 if deficiencies are not addressed effectively and in a timely manner.” 2.05(1)The regulations provide for ESE to help Level 4 districts through a variation of the district improvement planning process provided for in M.G.L., c. 69, s. 1I and 2.03(5). In addition, they provide for Level 4 districts that have their District Improvement Plans approved by ESE to receive priority for ESE assistance. See 2.05(8).It is agreed that there is no provision for Level 4 districts in the statute; however, ESE is promulgating the regulations relating to Level 4 districts through its authority under M.G.L. c. 69, s. 1B, to promulgate regulations as necessary to fulfill the purposes of chapter 69. We note that in the version of 603 CMR 2.00 proposed to be replaced by these regulations, 2.04(4)(a) and (b)(1) and (2) set forth a system for the improvement of districts declared by the Board to be underperforming, even though the previous s. 1K only mentions a determination by the Board that a district “has consistently failed to improve the performance of students attending school in the district” as a precursor to declaring the district chronically underperforming—a mention similar to the reference in the new 1K(a) to the determination by the Board that a school district has scored in the lowest 10 percent statewide, also a precursor to declaring the district chronically underperforming. | No revision recommended. |
| **20. MTA:** The regulations referring to Level 4 districts are inconsistent with M.G.L. c. 69. Therefore ESE may not impose such legal obligations on school districts: Level 4 districts cannot be created by regulatory fiat. **Reason:** M.G.L. c. 69 does not provide for underperforming districts, only for chronically underperforming districts.  | Please see response to comment #19. | No revision recommended. |
| **21. AFT-MA:** The criteria for selecting Level 4 schools from the pool of eligible schools are too broad and should be made more transparent.**Reason:** These criteria give the commissioner too much discretion, undermining efforts to create a transparent, easily understandable selection process and so undermining public trust. The criteria should be as clear and easy to understand as possible. | Since the February vote of the Board to solicit public comment on the full set of regulations proposed to replace 603 CMR 2.00, the Board has voted to adopt a different form of the regulation for the placement of schools in Level 4 than that included in that full set. It voted to solicit public comment on a regulation for the placement of schools in Level 4 in January, ahead of the process for the full set of regulations, and voted to adopt this regulation, as revised, in March. One revision to this regulation is the deletion of the phrase “but not limited to” that appeared in 2.05(2)(b)[[1]](#footnote-1) of the February full set of regulations after “on the basis of quantitative data including.” This deletion means that all of the quantitative data to be used in the selection of Level 4 schools now are laid out in the regulation. As explained in the analysis of public comments on this one regulation provided to the Board in March: “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.”A second revision to the placement regulation is the deletion of the phrase “any of” that appeared in 2.05(2)(c) of the February full regulations. Its successor, 2.05(2)(b), now begins: “The commissioner may place a school in Level 4 on the basis of quantitative data including:” The deletion means that the commissioner no longer has the discretion to pick and choose which of the five categories of quantitative data laid out in the regulation to use to select a school for Level 4. | The criteria for placing eligible schools in Level 4 have already been narrowed and made more transparent. No further revision recommended. |
| **22. MASC:** States that for a school designated by the Board as chronically underperforming before 2010 to be placed in Level 4 (see 2.05(2)(e)), it must at least have previously met the public comment and school committee approval provisions of 1J(b), which allows for an expedited turnaround plan for schools that have been previously designated as underperforming and where the district has a turnaround plan that has had a public comment period and approval of the school committee.**Reason:** Under the third paragraph of 1J(a), “before a school is designated chronically underperforming by the commissioner, a school must be designated underperforming and fail to improve.” | The statute authorizes the Board to adopt “regulations allowing the commissioner to designate a school as underperforming or chronically underperforming . . ..” (1J(a)) if the school falls into the lowest 20 percent. 2.05(2)(e) affects two schools, the Kuss and Lord Middle Schools in Fall River. These 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. 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. ESE believes that 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.The cited provision of 1J(b) does not apply because 2.05(2)(e) does not provide for an expedited turnaround plan. The cited provision of 1J(a) does not apply because 2.05(2)(e) does not provide for the designation of such a previously designated school as chronically underperforming, but rather as underperforming (Level 4). | No revision recommended. |
| **23. MTA:** 1J does not support placement in Level 4 of a school previously designated by the Board as chronically underperforming. See 2.05(2)(e).**Reason:** The twoschools identified under this proposed regulation are not underperforming based on the performance data specified in these regulations. | Please see response to comment #22. | No revision recommended. |
| **24. MTA:** The twoschools identified under this proposed regulation are not eligible for grant funds under the federal School Turnaround Grant. Placing these schools in Level 4 without the capacity to provide more than a small amount of assistance is a misguided strategy that may well make the schools less attractive to educators.**Reason:** The twoschools identified under this proposed regulation, 2.05(2)(e), are not underperforming based on the low-performing definitions established by the federal School Turnaround Grant.  | Other grant opportunities have been identified for these two schools. | No revision recommended. |
| **25. MTA:** The regulations should stipulate that the turnaround plans for Level 4 and 5 schools and Level 5 districts be authorized for three years. **Reason:** Educators should have a reasonable time period to accomplish change and improve student achievement. A three-year plan is consistent with the statute, the federal School Improvement Grant Program and effective practice; the exit criteria specified in 2.05(10) and 2.06 (10) require improvement in student achievement for three years; a time period less than three years would not provide a fair opportunity to improve.  | In each case, the statute provides that the turnaround plan “shall be authorized for a period of not more than 3 years.” 1J(j), 1J(t), 1K(f) Since the statute leaves open the possibility of a turnaround plan being less than three years, ESE believes that the question of the duration of the plan should be left to the process given in the statute for each of these plans. The exit criteria specified in 2.05(10) are not mandatory. See 2.05(10)(b). | No revision recommended. |
| **26. MASC:** Requests that the regulations be revised to reflect that the commissioner has the statutory authority to designate a school as underperforming, but is significantly limited in his ability to substitute his judgment for that of the superintendent. **Reason:** 1J(b) provides that on designation of a school as underperforming, the superintendent, with the approval of the commissioner, shall create a turnaround plan for the school. It is reasonable to view the commissioner’s authority over the turnaround plan as limited to his commencement of the process leading to such a plan and not control over the elements of the plan. | Under 1J(b) the superintendent is required to carry out the turnaround planning process for any school that has been designated as underperforming (Level 4). The commissioner’s approval is not, therefore, simply to commence the process. | No revision recommended. |
| **27. JC Chairs:** Urge revision of 2.05(5)(a) and 2.05(5)(c) to reflect the role of the stakeholder group and the authority of the superintendent in Level 4 schools, and to remove the authority given to the commissioner to set goals for the turnaround plan.**Reason:** Although the statute clearly gives the commissioner the authority to approve the final turnaround plan in Level 4 schools, this approval authority does not extend to unilaterally setting goals at the beginning of the planning process. It is imperative that the stakeholder group participate in the discussion of the goals, since for these school turnarounds to be successful, they need considerable community buy-in. | ESE agrees that 1J(b) provides the commissioner with approval authority over the turnaround plan: “Upon the designation of a school as an underperforming school . . .the superintendent of the district, with approval by the commissioner, shall create a turnaround plan for the school . . ..” ESE is amenable to implementing that authority by means of approval by the commissioner of the turnaround plan at the end of the process of creating it rather than by goal-setting at the beginning of the process. ESE now realizes that there is language in 1J(f) that sets forth the procedure by which the commissioner is to approve (or disapprove) the turnaround plan.  | Recommend deleting 2.05(5)(a) and (c) and adding three new paragraphs to 2.05(5), now lettered (c),(d), and (e). Please see the attached Track Changes version of the regulations. |
| **28. AFT-MA:** The regulations should be revised to remove authorities granted to the commissioner in 2.05(5)(a), 2.05(5)(c), and 2.05(10)(a).**Reason:** These authorities do not exist in the statute. The law is clear that the superintendent, not the commissioner, is in charge of developing turnaround plans, including the setting of “measurable annual goals.” | With respect to 2.05(5)(a) and (c), please see response to comment #27.ESE has developed 2.05(10)(a) pursuant to the authority given in 1J(y), which provides in part: “The board of elementary and secondary education shall adopt regulations regarding: (1) the conditions under which an underperforming or chronically underperforming school shall no longer be designated as an underperforming or chronically underperforming school; and (2) the transfer of the operation of an underperforming or a chronically underperforming school from a superintendent or an external receiver, as applicable, to the school committee.” Under 2.05(10)(a) and (b), the commissioner defines conditions required for the Level 4 school to have its designation removed. Similar provisions with respect to Level 5 schools may be found in 2.06(10)(a) and (b). ESE sees no need to revise any of these provisions. | With respect to 2.05(5)(a) and (c), please see recommended revision under comment #27.With respect to 2.05(10)(a), no revision recommended. |
| **29. MTA:** The following provisions in the regulations are inconsistent with c.69:* 2.05(5)(a), under which the commissioner arrogates to himself the right to “determine goals for the academic and other progress” in the school .This violates 1J generally, and specifically 1J(j), [which provides for the superintendent or receiver, as applicable, to develop annual goals for each component of the plan].
* 2.05(5)(c), under which the commissioner is given the authority to verify that the plan includes appropriate annual goals.
* 2.05(10)(c), under which the commissioner may remove a school from Level 4 “at any time.” 1J(j) and (k) give the superintendent the authority to set goals and to determine annually whether or not they are met.

**Reason:** While 1J(b) provides that the superintendent must secure the “approval” of the commissioner to create a turnaround plan upon designation of a school as underperforming, this simply ensures that the commissioner sanction the superintendent’s initiation of the turnaround process. This terse pronouncement places no substantive responsibilities on the commissioner. The general statement that the commissioner approve the initiation of the turnaround process should not be read to supersede the explicit powers of the superintendent when it comes to improving underperforming schools in his district. | Please see response to comment #26. With respect to 2.05(5)(a) and (c), please see response to comment #27.With respect to 2.05(10)(c), ESE believes that the mandate of 1J(y) that the Board adopt regulations regarding “the conditions under which an underperforming . . . school shall no longer be [so] designated” provides the authority to determine when the designation may be lifted. The intent of the regulation is to allow the designation to be lifted as soon as possible. In order to make sure that the superintendent is consulted on the timing, however, ESE is recommending a revision to this language. | Recommend adding “After consultation with the superintendent,” at the beginning of 2.05(10)(c) so that it reads as follows: “After consultation with the superintendent, the commissioner shall remove a school from Level 4 when, at any time, the commissioner determines,” etc. |
| **30. MASS:** The regulations are generally consistent with the statute in relation to the authority of the superintendent and the commissioner. However, the regulations do not preserve, with the statute’s specificity, the superintendent’s role in administering an underperforming school. Where there are ambiguities in the regulations concerning the role of the superintendent and the commissioner, the specific powers granted to the superintendent by statute should prevail. | Any grant by the statute of specific powers to the superintendent or commissioner is taken as given, without necessity of repetition, by the regulations. The regulations do not replicate all of the provisions of the statute. See response to comment #1. | No revision recommended. |
| **31. MTA:** The exit criteria for Level 4 and 5 schools and Level 5 districts (in 2.05(10) and 2.06(10) and (12)) should be revised 1) to include improvement in promotion rates and 2) to delete, for high schools, increase in the percentage of graduates enrolled in higher education within one year of graduation.**Reason:** Promotion rates are referred to in the statute. Enrollment in higher education is not appropriate for an exit criterion because 1) higher education is not a goal for every student and 2) enrollment in higher education depends on many factors, for instance financial resources, that are outside a school or district’s control.  | Promotion rates are referred to in the statute, but not in connection with exit criteria. ESE does not want to include any item as an exit criterion that might create any unintended consequences: for instance, any incentive for schools to promote students who should not be promoted. ESE agrees, for the reasons given, that a broader measure than enrollment in higher education would be more appropriate, and, further, recognizes that the data necessary to establish such a measure is not currently available. | Recommend revising the exit criteria in 2.05(10) and (12) and 2.06(10) and (12) by replacing “a greater percentage of graduates enrolled in higher education within one year of graduation” by “a measure of postsecondary success, once the Department identifies one that is sufficiently reliable, valid, and timely.” |
| **32. MTA:** The commissioner, in deciding whether to remove a school or district from Level 4 or 5, should not consider capacity. **Reason:** Capacity is not within the commissioner’s authority since the statute establishes improvement as the criterion. Using undefined criteria does not provide clear direction for improvement efforts.  | The statute in 1J(y) and 1K(i) requires the Board to adopt regulations providing for the removal of the designation of a Level 4 or 5 school or a Level 5 district. These subsections of the statute do not state that improvement is the sole criterion or even mention improvement; they leave the criteria for removal of these designations to the Board. “Capacity” is not undefined: the regulations make specific reference to the capacity to continue making progress without the accountability and assistance provided by being in Level 4 or 5. Unless the school or district has this capacity, it would be detrimental to the education of its students to remove the designation.  | No revision recommended. |
| **33. AFT-MA:** Urges the Board to rethinkthe proposed regulations, which, at 2.05(11) for Level 4 schools, 2.06(11) for Level 5 schools, and 2.06(13) for Level 5 districts, provide for transitional periods after removal from Level 4 or 5. **Reason:** It is unjust to retain potentially punitive features of the turnaround plan for an uncertain amount of time, at the discretion of the commissioner, even after schools or districts improve enough to be removed from Level 4 or 5. These features may set aside the collective bargaining and due process rights of the educators who are responsible for the school or district improvement. | These features will not necessarily be retained—and in the case of a Level 4 school, the superintendent must propose their continuance and the commissioner must consider any opposition from the school committee or teachers’ union before allowing any of them to continue. The interests of the students in having the progress made at their school or district continue must be balanced against educators’ concerns about the continuation of changes in their collective bargaining or due process rights.In order to provide more of a limitation on these transitional periods, ESE is suggesting a revision to the regulations adding a required review of the continuing features if they are still in place two years after the removal from the level. Please see response to comment #34, also. | Recommend revising 2.05(11), 2.06(11), and 2.06(13) by adding a new paragraph (e):“(e) Two years after the removal of the school [or district] from Level 4 [or Level 5], if any of the continuing features of the turnaround plan has yet to be discontinued, the commissioner shall conduct a review of the school [or district] to determine whether such continuing feature or features should remain in place or be discontinued.”  |
| **34. MTA:** While 1J(y) and 1K (i) authorize retaining turnaround plan “measures” if the commissioner believes the measures would contribute to the continued improvement of the school, restriction of collective bargaining and due process rights must be strictly construed. **Reason:** Without explicit language that would impose these restrictions upon teachers in schools and districts that are no longer underperforming or chronically underperforming, they cannot be inferred. It is antithetical to improvement of education to punish those teachers who contributed to it, and a disincentive to teachers to teach in Level 4 and 5 schools and districts. | Please see response to comment #33. Since the provisions in 1J(y) and 1K(i) (requiring the Board to adopt regulations allowing a school or district to retain measures adopted in a turnaround plan) are not necessary except for measures that would be in contravention of the law but for 1J and 1K, ESE concludes that the intent of the statute was to allow such measures as changes in collective bargaining and due process rights to continue. | Please see recommended revision under comment #33. |

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| **2.06: Level 5** |
| **35. JC Chairs:** Are concerned with how 2.06(1)(a)(ii) addresses the growth model in terms of placing districts in Level 5, and suggest that “improvement in district MCAS performance as represented by change in CPI (for years available**,** up to four)” be revised to “improvement in student academic performance.”**Reason:** For consistency with the parallel revision made in March to what is now 2.05(2)(a)(ii), made in order to track the language in 1J(a). | ESE agrees with this revision, with the change of one word from “performance” to “achievement” in order to track the slightly different language of the statute in 1K(a). | Recommend revising 2.06(1)(a)(ii) to replace “improvement in district MCAS performance as represented by change in CPI (for years available, up to four)” with “improvement in student academic achievement.” |
| **36. AFT-MA:** 2.06(2)(a)(ii)violates the statute by giving the commissioner the authority to place Level 4 schools in Level 5 in cases where they have failed to improve “substantially” rather than failed to improve.**Reason:** Thestatute, in 1J(a), provides: “Before a school is designated chronically underperforming by the commissioner, a school must be designated underperforming and fail to improve.” At the very least, a school that is improving should remain at Level 4.  | ESE notes that in 1J(a) the Board is mandated to ensure that the regulations it adopts for the designation of a school as underperforming or chronically underperforming take into account “multiple indicators of school quality . . . such as student attendance, dismissal rates and exclusion rates, promotion rates, graduation rates or the lack of demonstrated **significant improvement** for 2 or more consecutive years in core academic subjects . . ..” [bolding supplied]ESE believes that the language of 2.06(2)(a)(ii) captures the intent of the statute. However, ESE is amenable to revising the language of this regulation to track the statute more closely. | Recommend revising 2.06(2)(a)(ii) (relettered as (2)(b)) to substitute “make significant improvement” for “improve substantially,” as follows:“that the school has failed to make significant improvement and that conditions in the district make it unlikely that the school will make significant improvement unless it is placed in Level 5. |
| **37. MTA:** 2.06(2)(a) violates c. 69 by permitting the commissioner to place a Level 4 school in Level 5 if it has improved—but has not improved substantially—and conditions in the district make it unlikely that it will improve substantially unless it is placed in Level 5. **Reason:**  1J(a) states: “Before a school is designated chronically underperforming by the commissioner, a school must be designated underperforming and fail to improve.**”** There is no authority in the statute to designate a school as chronically underperforming if it has improved. | Please see response to comment #36.  | Please see recommended revision under comment #36. |
| **38. AFT-MA:** Questions giving the commissioner the authority, in 2.06(2)(b), to place a Level 4 school in Level 5 if the school or the district fails to comply with one or more requirements of the new education law. **Reason:** There appears to be nothing in the statute that permits this power. Even if there were, the action would be unfair to frontline educators, who would see their collective bargaining and due process rights further eroded under Level 5 status, even though the lack of compliance would likely occur at the district or administrative level. | 2.06(2)(b) was aimed at the possible, but ESE hopes, extremely rare case where a school or district fails to comply with the law, in such a way that the whole turnaround plan process envisioned by 1J is put in jeopardy. ESE understands the point, however, that it is the turnaround plan process for Level 4, not Level 5, that should be taking place in such a case. Instead of placing the school in Level 5 in the case of egregious failure to comply with 1J, ESE will use other means, including the withholding of funds, to induce the school or district to comply with the law. | Recommend deleting 2.06(2)(b) and relettering the rest of 2.06(2) accordingly. |
| **39. JC Chairs:** Are concerned that 2.06(2)(b) would give the commissioner the ability to place a Level 4 school in Level 5 “at any time if the school or district fails to comply with one or more of the applicable requirements.”**Reason:** Under 1J(a), to be placed in Level 5, a school “must be designated underperforming and fail to improve.” The intent was for a school to remain in Level 4 for three years before it could be placed in Level 5, since schools need three years to have a fair chance to turn around. | Please see response to comment #38.  | Please see recommended revision under comment #38. |
| **40. MTA:** 2.06(2)(b) violates c.69 by permitting the commissioner to place a Level 4 school in Level 5 “at any time” if the school or district does not comply with c. 69, the school has failed to improve and the school or district’s noncompliance puts the school at risk. If the Department determines that a superintendent has failed to implement a turnaround plan or failed to provide what is needed for implementation, the Department should require that the school committee terminate the superintendent for cause.**Reason:** Nothing in the statute permits the commissioner to place a school in Level 5 under these circumstances. Also, this noncompliance in many cases would occur at the district or administrative level. Given the serious consequences for educators in Level 5 schools, this provision could result in punishing the staff for the refusal of a superintendent to comply with requirements. | Please see response to comment #38. ESE has no authority to require a school committee to terminate a superintendent for cause. | Please see recommended revision under comment #38. |
| **41. JP:** When the commissioner places a school in Level 5 under 2.06(2), the school committee, public, etc. should have an express opportunity to be heard, similar to the opportunity afforded by 2.06(1)(f) before the Board places a district in Level 5. **Reason:** A public process is important for this action, also. | ESE agrees that an opportunity should be provided. Since it is the commissioner who places a school in Level 5, the opportunity to be heard should be in a meeting with the commissioner or a designee. Because of the nature of such a meeting, the regulation should refer to “family members of students at the school” rather than “members of the public.” Also, teachers should be represented in the meeting through the teachers’ association or union president or designee. See response to next comment.  | Add, as 2.06(2)(c):“School, school district, and municipal officials, including the school committee, as well as the local teachers’ union or association president or designee and family members of students at the school, shall have an opportunity to meet with the commissioner or his or her designee before the commissioner places a school in Level 5.”  |
| **42. MTA:** 2.06(1)(f) should be revised to add the local association/union president or designee to those afforded the opportunity to be heard before the Board places a district in Level 5. **Reason:** Designation as a Level 5 district has a substantial impact on teachers and they should be afforded an equal opportunity to be heard.  | ESE agrees that this opportunity should be afforded teachers, both for Level 5 districts and for Level 5 schools (see response to comment #41). | Revise 2.06(1)(f) as follows: “School district and municipal officials, including the school committee, as well as the local teachers’ union or association president or designee and members of the public, shall have an opportunity to be heard by the Board before final action by the Board to place the district in Level 5.”  |
| **43. JC Chairs:** Recommend revising 2.06(3)(b), on Level 5 district receivers, to remove the language providing that the commissioner shall define the scope of the receiver’s powers and may modify them from time to time. Also recommends revising the definition of Receiver accordingly.**Reason:** Under1K(a), the receiver “shall have full managerial and operational control over such district.” For the receiver to have the ability to turn around a chronically underperforming district, the receiver’s powers must be comprehensive. | ESE agrees that the starting premise for a receiver for a Level 5 district is that the receiver will have the powers and control stated in the statute. ESE believes that it is not in conflict with the statute and is important for the commissioner in certain cases to be able to appoint a receiver for a Level 5 district with less than all of the powers of the superintendent and school committee and less than full managerial and operational control over the district. In such cases, the receiver will be needed to deal, e.g., with one particular issue, or one particular set of schools, and there is no need for the superintendent and school committee to cede all of their powers. Circumscribing the powers of the receiver in selected cases where that is possible may help the district, at the end of the receivership, experience a smooth transition to governing the district without the receiver.ESE recommends revising 2.06(3)(b) to begin it by stating the usual premise mentioned above.Please see response under comment #44, also. | Recommend revising 2.06(3)(b) as follows: “(b) The receiver shall have the powers provided to the receiver by M.G.L. c. 69, § 1K, including all of the powers of the superintendent and school committee and full managerial and operational control over the district, provided that the district shall remain the employer of record for all other purposes, and provided further that the commissioner may define the scope of the receiver’s powers up to those set forth in M.G.L. c. 69, § 1K, based on conditions in the district or its schools.. The commissioner may from time to time modify the scope of the receiver’s powers based on conditions in the district or its schools.”Recommend revising the definition of “receiver” in 2.02 as shown in the attached Track Changes version of the regulations. |
| **44. MTA:** 2.06(3)(b), which permits the commissioner to define the scope of the receiver’s powers in Level 5 districts “up to and including all of the powers of the superintendent and school committee,” should be revised so that it does not supersede the district’s role as employer, except as that role is limited by 1K.**Reason:** 1K(a) provides the authority to appoint a receiver “with all the powers of the superintendent and school committee.”1K(a) also confirms that the school district remains the employer “for all other purposes.”  | The second paragraph of 1K(a) provides in part: “An external receiver designated by the board to operate a district under this subsection shall have full managerial and operational control over such district; provided, however, that the school district shall remain the employer of record for all other purposes.” ESE will place the provision from the statute about the district remaining the employer of record into the regulation.  | Please see recommended revision under comment #43. |
| **45. JC Chairs:** Recommend that the regulations specify that the turnaround plan for a Level 5 district must focus on the schools and policies which caused the chronic underperformance, as stated in 1K(b). | ESE agrees with this revision, especially since it offers the opportunity to clarify that districts may be placed in Level 5 because of either particular schools or district policies and practices or both. ESE has added a reference to the most recent district review report, following up on the requirement in 1K(a) that before a district may be placed in Level 5, “the commissioner shall appoint a district review team . . . to assess and report on the reasons for the underperformance and the prospects for improvement, unless such an assessment has been completed by a district review team within the previous year that the commissioner considers adequate.” See also 2.06(1)(d). | Recommend revising 2.06(7) by * adding the following new paragraph (a):

(a) focus, pursuant to M.G.L. c. 69, s. 1K(b), on any Level 5 school or schools in the district and, using the most recent district review report as a guide, on any district policies or practices that have contributed to the placement of the school or schools or district in Level 5;* and revising the lettering of the following paragraphs.
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| **46. JP:** Notes that the Board places a district in Level 5 (under 2.06(1)(b)), but that the regulations (2.06(12)(c) and (d)) give the commissioner the power to remove it. | 1K(a) requires that a declaration that a district is chronically underperforming (Level 5) be made by the Board, but there is no statutory requirement that removal of a district from this status be made by the Board. (See 1K(i).) ESE believes that allowing the commissioner to make this decision may allow for speedier removal; also, since 1K(i) provides for the commissioner to make the removal decision in the case of a petition by the school committee, it seems appropriate for the commissioner to decide in other circumstances, also.  | N/A |
| **47. JP:** Queries whether there should be a process, similar to that in 2.06(14) for a Level 5 district, for a Level 5 school to use to petition to be removed from Level 5.  | ESE notes that 1K(i) provides for the petition by the school committee of a Level 5 district detailed in 2.06(14), but that the statute does not provide for any such petition in the case of a Level 5 school. ESE also notes 1) that though Level 5 status for a district always results in receivership, a Level 5 school does not necessarily have a receiver; 2) that receivership for a district is considerably more intrusive than receivership for a single school; and 3) that there will probably be a considerably greater number of Level 5 schools than Level 5 districts.  | No revision recommended. |

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| **2.07: Mathematics Content Assessments at Level 4 and Level 5 Schools** |
| **48. MTA:** Is concerned that the Math Content Assessment is an unnecessary barrier that will work against attracting strong educators to commit to work in underperforming schools.**Reason:** School and district administrators have numerous opportunities to assess an educator’s knowledge of a subject. Further, the regulations as revised no longer provide for ESE to pay for the assessment, and they now allow teachers to be required to take the exam annually—both disincentives for teachers to work in underperforming schools. | ESE believes that the regulations do not impose an unreasonable requirement on teachers: 1) The possible requirement of taking the Math Content Assessment has now been confined to teachers at Level 4 and 5 schools. 2) Whereas taking the Math Content Assessment was required for all teachers in Low-Performing Mathematics Programs under the previous version of the regulations, under these proposed regulations flexibility is given to the superintendent or commissioner or receiver as to whether to make the requirement (2.07(1)); the flexibility as to whether to make the requirement for a particular teacher remains (2.07(3)(b)).  3) teachers who have certain appropriate qualifications (see 2.07(3)(a)) are not to be required to take the Assessment. 4) It may be appropriate to have a teacher take the assessment more than once, but the regulation as written limits the frequency.ESE accepts its responsibility to make the assessment available at no cost to the district.  | Recommend revising the definition in 2.02 of Mathematics content assessment as follows: **“Mathematics content assessment**: A diagnostic assessment of mathematics content knowledge approved by the Department that mathematics teachers at a Level 4 or Level 5 school may be required to take, at no cost to the district or the teacher for the assessment instrument or its scoring.” |

1. 2.05(2)(b) and 2.05(2)(c) as they appeared in the full regulations voted on by the Board in February have now been consolidated; they appear as 2.05(2)(b) in the regulations being presented to the Board at its April meeting. [↑](#footnote-ref-1)