

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 1220(a) (14 **Del.C.** §1220(a))
14 **DE Admin. Code** 103

Regulatory Implementing Order

103 Accountability for Schools, Districts and the State

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State in order to clarify the specific steps in the Review Process in sections 8.2.1 through 8.2.3. This regulation as amended is *exempted* from the Administrative Procedures Act as per 29 **Del.C.** §10113 (2) Rules of Practice and Procedure of the Agency and hence is recommended for final approval.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 103 in order to clarify the specific steps in the Review Process.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 103. Therefore, pursuant to 14 **Del.C.** §§154, 155, and 156, 14 **DE Admin. Code** 103 attached hereto is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 103 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 103 amended hereby shall be in the form attached hereto, and said regulation shall be cited as 14 **DE Admin. Code** 103 in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 17, 2007. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of May 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of May 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire

Richard M. Farmer, Jr., Vice President
Gregory A. Hastings

103 Accountability for Schools, Districts and the State

1.0 Accountability

1.1 Accountability: All public schools, including charter schools, reorganized and career technical school districts and the state shall be subject to the calculation and reporting of Adequate Yearly Progress (AYP) as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq. Additionally, public schools, including charter schools, reorganized and career technical school districts shall be subject to the applicable rewards, sanctions and other accountability activities as prescribed in this regulation.

7 DE Reg. 57 (07/01/03)

10 DE Reg. 89 (07/01/06)

2.0 Adequate Yearly Progress (AYP)

2.1 Adequate Yearly Progress shall be determined by the Department of Education for all public schools, including charter schools, reorganized and career technical school districts and the State on an annual basis. In order for a public school, including a charter school, reorganized or career technical school district or the State to meet AYP, the aggregate student population and each subgroup of students as identified in ESEA, must meet or exceed the target for percent proficient using a confidence interval to be determined by the Department of Education in the state assessments of reading/language arts and mathematics; 95% of the students as an aggregate and within each subgroup must participate in the state assessments of reading/language arts and mathematics, and the respective entity must meet the requirements of the Other Academic Indicator(s) as defined in 2.6. In calculating the percent proficient each year, the state will average the most recent two years of percent proficient (including the current year's percent proficient) and compare the results to the current year percent proficient. The highest percent proficient score will be used to determine the school, district or State AYP status.

2.1.1 Adequate yearly progress shall include three levels: Above Target, Meets Target and Below Target.

2.1.1.1 Above Target shall mean that the school, district or State in the aggregate student population and for each subgroup exceeds the annual target in English language arts and mathematics for percent proficient as defined in 2.3 and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

2.1.1.2 Meets Target shall mean that the school, district or State in the aggregate student population and for each subgroup meets the annual target in English language arts and mathematics with or without the application of a confidence interval for percent proficient as defined in 2.3 or meets the criteria of Safe Harbor defined in 2.5, and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

2.1.1.3 Below Target shall mean that the school, district or State in the aggregate student population and for each subgroup did not meet the annual target in English language arts and mathematics through the application of a confidence interval for percent proficient as defined in 2.3 or does not meet the criteria of Safe Harbor defined in 2.5, or does not meet the criteria for participation as defined in 2.4 or does not meet the criteria of Other Academic Indicator(s) as defined in 2.6.

2.2 Full academic year for accountability:

2.2.1 For school accountability students enrolled continuously in the school from September 30 through May 31 of a school year including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.2 For district accountability students enrolled continuously in the district (but not necessarily the same school), from September 30 through May 31 of a school year, including those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.3 For state accountability students enrolled continuously in the state (but not necessarily the same school or district) from September 30 through May 31 of a school year shall be considered enrolled for a full academic year.

2.3 Proficient: For accountability purposes students who score at Performance Level 3 (Meets the Standard) or above and who have met the requirements of a Full Academic Year as defined in 2.2 shall be deemed proficient. Students who score at Performance Level 2 or Level 1 who have met the requirements of a Full Academic Year as defined in 2.2 shall not meet the definition of proficient.

2.4 Participation Rate: For accountability purposes in school years 2002-2003 through 2004-2005, the participation rate for each subgroup, all public schools, including charter schools, districts, and the State, shall be the number of students who participate in the DSTP in grades 3,5, 8 and 10 divided by the number of students enrolled in these tested grades during the testing period. Beginning with the 2005-2006 school year the participation rate shall include the number of students who participate in the DSTP in grades 3 through 8 inclusive and grade 10 divided by the number of students enrolled in these tested grades during the testing period. Students exempted by 14 DE Admin. Code 101.9.0 shall be included in the participation rate calculation unless their medical condition prevents them from being in school during the testing period.

2.5 Safe Harbor: For accountability purposes if a school, district or the State fails to meet the target for percent proficient for a given subgroup or for the entity in aggregate, Safe Harbor provisions shall be examined for that group. When the percentage of students in a subgroup not meeting the definition of proficient decreases by at least 10% when compared to the previous year's data, the participation rate for the population is at least 95%, and the subgroup meets the requirements of the Other Academic Indicator(s) as defined in 2.6. the subgroup will have met AYP.

2.6 Other Academic Indicator(s):

2.6.1 High School: For AYP purposes, the Other Academic Indicator(s) shall be graduation rate as defined as the number of students in one cohort who started in the school, the district or the state in 9th grade and graduated four years later or in the time frame specified in the Individual Education Program (IEP), excluding students who earn a GED certificate, divided by the same number plus those that have dropped out during the same four year period.

2.6.1.1 The statewide target for the high school Other Academic Indicator shall be a graduation rate of 90% by the school year 2013-2014. The statewide target for 2003-2004 shall be 75% and shall increase by 1.5% each year until 90% is reached in 2013-2014. Beginning with the school year 2002-2003, if the graduation rate is used for Safe Harbor purposes, the high school shall maintain its graduation rate or show positive progress when compared to the previous year or meet or exceed the statewide target for that school year.

2.6.1.2 A school that does not maintain its graduation rate or show positive progress from the previous year or meet or exceed the statewide target for that school year shall be considered as not meeting AYP for that year.

2.6.2 Elementary and Middle School: For AYP purposes, the Other Academic Indicator for elementary and middle schools shall be determined by improvement of the scores of the low achieving students, defined as students performing below Performance Level 3, in reading and mathematics combined or a decrease in the percent of students scoring at Performance Level 1 in reading and mathematics. The average scale score for the students who perform at Performance Level 1 and 2 in reading and mathematics combined shall be determined for the current and previous years. The scores from the current year will be compared to the previous year to determine if the school has shown progress. A confidence interval determined by the Department of Education shall be applied to the average scale scores when making this determination. Students included in this calculation shall have been in the school for a full academic year.

2.6.2.1 The statewide target for the elementary and middle school Other Academic Indicator shall be 0% of students scoring at Performance Level 1 in reading and mathematics by the school year 2013-2014. Beginning with the school year 2003-2004, when compared to the previous year, the school or subgroup, if used for Safe Harbor purposes, shall maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year.

2.6.2.2 An elementary or middle school that does not maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year shall be considered as not meeting AYP for that year.

2.6.3 For state and district accountability purposes, the state or a district shall be expected to meet the requirements in 2.6.1.2 and 2.6.2.2.

2.7 Annual Objective: The annual objectives for reading/language arts and mathematics shall be

determined by the Department of Education and published annually. The annual objectives shall be the same for all schools, districts and subgroups of students.

2.8 Intermediate Target: There shall be seven intermediate targets with the first intermediate target occurring in the 2004-2005 school year. The second intermediate target shall occur in 2006-2007; the third in 2008-2009; the fourth in 2009-2010; the fifth in 2010-2011, the sixth in 2011-2012 and the seventh in 2012-2013. By the end of the school year 2013-2014, all students in all subgroups shall be proficient in reading/language arts and mathematics. The intermediate targets shall be calculated using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.

2.9 Starting Point: A single statewide starting point shall be calculated for reading/language arts and a single statewide starting point shall be calculated for mathematics using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C.A. §6301 et seq.

2.10 Subgroup categories: For AYP purposes, subgroup categories shall be delineated as follows: 1) Children with Disabilities (as per IDEA); 2) Economically Disadvantaged Students, as determined by eligibility for free and reduced lunch program; 3) Students with Limited English Proficiency, as determined by the language proficiency assessment; and 4) Race and ethnicity, to be further divided into African American and Black, American Indian and Alaska Native, Asian and Pacific Islander, Hispanic, and White. Such subgroup categories shall include all students eligible for the AYP calculation as further defined throughout this Chapter. The "All" categories shall include all students in the entity for which AYP is calculated and who meet all other eligibility criteria for the AYP calculation.

2.11 AYP Determinations

2.11.1 For each public school, including charter schools, reorganized and career technical school districts, and the State, AYP shall be calculated annually.

2.11.2 School AYP: In order to meet AYP, the school shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.

2.11.3 District AYP: In order to meet AYP, the district shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.

2.11.4 State AYP: In order to meet AYP, the state shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported and used to determine AYP status and accountability ratings.

2.11.5 Under Improvement: A school or district shall be deemed Under Improvement if AYP is not met two consecutive years in the same content area of reading/language arts or mathematics for percent proficient or for participation rate, or if a school or district in the aggregate does not meet the requirements of the Other Academic Indicator(s) as defined in 2.6.

7 DE Reg. 1692 (06/01/04)

10 DE Reg. 89 (07/01/06)

3.0 Accountability School and Accountability District

For AYP purposes, the school or district to which a student's performance is assigned for a full academic year shall be the Accountability School or Accountability District. No student shall have his/her performance assigned to more than one Accountability School or Accountability District in a given school year.

3.1 For a student enrolled in an intradistrict intensive learning center intradistrict special school, or intradistrict special school program operating within one or more existing school facilities, the district has the option of tracking the assessment scores of the students back to the school of residence or to the school or program that is providing the instruction. The school or program shall be the Accountability School. The district shall communicate its decision regarding this option to the State Department of Education by May 15, 2006. The option that the district decides for accountability purposes for one year must remain the same for the second year. Further

provided, the State Department of Education will monitor the assignment of students to ensure students are appropriately assigned. For a student enrolled in interdistrict special schools or programs that have an agreement to serve students from multiple school districts, the special school that provides the instructional program shall be considered the Accountability School for that student. For district accountability purposes, the district of residence shall be the district to which these special school students are included for accountability.

3.2 For a student enrolled in an alternative program pursuant to 14 **Del.C.** Ch. 16 or the Delaware Adolescent Program, the Accountability School or District shall be the school/district that assigned such student to the program or the school or district of residence. The time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School or District.

3.3 For a student who participates in a choice program the Accountability School or District shall be the school or district to which the student has choiced.

3.4 For accountability purposes, a school shall be considered a new school if: less than sixty percent of the students would have been enrolled in the same school together without the creation of the new school; or it is the first year of operation of a charter school; or two or more grade levels have been added to the school or to a charter school's charter.

3.5 If a school is determined not to be a new school, the school shall receive the accountability rating and related consequences of the school in which the majority of students would attend in that year.

7 DE Reg. 1692 (06/01/04)

10 DE Reg. 89 (07/01/06)

4.0 Assessment Criteria

4.1 For a student who takes a portion of the assessment more than once during the school year, the first score shall be included in the AYP calculation; however, provided a student takes a portion of the assessment because of state mandated summer school attendance in grades 3, 5, or 8 in reading, or grade 8 in mathematics, the highest of the student's scores shall be used to recalculate the AYP determination.

4.2 A student who tests with non aggregable conditions as defined in the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency shall have his/her earned performance level included in the calculation of AYP.

4.3 For accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's scoring specifications or otherwise receives an invalid score shall be deemed as not meeting proficiency.

4.4 A student participating in alternate assessments shall have her/his earned performance level included in the AYP calculation consistent with the regulations as prescribed by the federal Elementary and Secondary Education Act (ESEA) 20 U.S. C.A. §6301 et seq. or Individuals with Disabilities Education Act (IDEA).

4.5 Schools with more than one tested grade shall receive a single accountability rating.

4.6 Student performance in a tested grade shall be apportioned in equal weights to each grade in a standards cluster, except that Kindergarten shall be weighted at 10% and grade 10 shall be weighted at 100%. Beginning with the school year 2005-2006 students in grades 4, 5, 6, 7, 8, and 10 will count 100%. Students in grade 3 will continue to be weighted to each grade in the K to 3 standards cluster.

4.7 For AYP purposes the reading/language arts percent proficient shall be based on a combination of the reading and writing DSTP assessments. The reading percent proficient scores shall be weighted to count 90% and the writing percent proficient scores shall be weighted to count 10%.

4.8 For AYP purposes, the mathematics percent proficient shall be based on 100% of the DSTP mathematics assessment.

7 DE Reg. 1692 (06/01/04)

10 DE Reg. 89 (07/01/06)

5.0 State Progress Determinations

Each school and district shall receive a State Progress Determination of Above Target, Meets Target or Below Target. The State Progress shall be determined by improvement in the composite score of the reading, mathematics, science and social studies DSTP assessments combined. The composite score range shall be from 25 to 125 and is determined by the following formula: Composite Score = 25 (reading score x reading weight) + (math score x math weight) + (science score x science weight) + (social studies score x social studies weight) where: Reading score = (5 x % of students in level 5 in reading) + (4 x % of students in level 4 in reading) + (3 x %

of students in level 3 in reading) + (2 x % of students in level 2 in reading) + (1 x % of students in level 1 in reading); Math score = (5 x % of students in level 5 in math) + (4 x % of students in level 4 in math) + (3 x % of students in level 3 in math) + (2 x % of students in level 2 in math) + (1 x % of students in level 1 in math)]; Science score = (5 x % of students in level 5 in science) + (4 x % of students in level 4 in science) + (3 x % of students in level 3 in science) + (2 x % of students in level 2 in science) + (1 x % of students in level 1 in science); Social Studies = (5 x % of students in level 5 in social studies) + (4 x % of students in level 4 in social studies) + (3 x % of students in level 3 in social studies) + (2 x % of students in level 2 in social studies) + (1 x % of students in level 1 in social studies). Each of the subject areas shall be weighted equally at 25%. A two year average of the composite score shall be used if it is higher than the current year's composite score.

5.1 Above Target shall mean that the school or district has a minimum composite score of 75.00 for the current year; or the school or district has demonstrated a growth of 6.00 or more points when comparing last year's composite score to the current year's composite score provided the composite score is 45.00 or more.

5.2 Meets Target shall mean that the school or district with a composite score of 61.00 or less than 75.00 in the current year, shall demonstrate a growth of 1.00 or more points when comparing last year's composite score to the current year's composite score. For a school or district with a composite score of 45.00 but less than 61.00 in the current year, the school or district shall demonstrate a growth of 2.00 or more points when comparing last year's composite score to the current year's composite score.

5.3 Below Target shall mean that the school or district has a composite score of less than 45.00; or the school or district does not meet the criteria of 5.2.

7 DE Reg. 1692 (06/01/04)

10 DE Reg. 89 (07/01/06)

6.0 Performance Classifications

Schools and districts shall receive one of five levels of performance classification annually which shall be based on a combination of AYP determinations and State Progress determinations.

6.1 Superior: A school or district's performance is deemed excellent. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement and is a combination of Above Target for AYP and Above Target for State Progress or Above Target for AYP and Meets Target for State Progress or Meets Target for AYP and Above Target for State Progress.

6.2 Commendable: A school or district's performance is deemed above average. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement. Combinations of Above Target for AYP and Below Target for State Progress or Meets Target for AYP and Meets Target for State Progress shall be rated as Commendable. A school or district with a combination of Meets Target for AYP and Below Target for State Progress shall be determined Commendable for no more than one year; if this same combination exists for the school or district in the following year, the school or district shall be rated Academic Review.

6.3 Academic Review: A school or district's performance is deemed acceptable. Schools or districts in this category are not Under Improvement. Combinations of: Below Target for AYP and Above Target for State Progress; or Below Target for AYP and Meets Target for State Progress shall be rated as Academic Review for no more than one year; if the same combination exists for the school or district in the following year, the school or district shall be rated Academic Progress unless the provisions of 6.5 or 6.6 are met. A school or district with a combination of Below Target for AYP and Below Target for State Progress shall be rated as Academic Review unless the provisions of 6.5 and 6.6 are met.

6.4 Academic Progress: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.

6.5 Academic Progress Under Improvement: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall have met AYP for one year while the school or district is Under Improvement. If a school or district was classified as Academic Watch the prior year, all accountability sanctions from that prior year remain in effect.

6.6 Academic Watch: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.

6.7 Academic Watch Under Improvement: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not have met AYP for two or more consecutive years in the same content area as described in 2.11.5 and shall be Under Improvement.

7 DE Reg. 1692 (06/01/04)

10 DE Reg. 89 (07/01/06)

7.0 Schools or Districts that are classified as Under Improvement

7.1 Accountability sanctions for schools that are classified as Under Improvement:

7.1.1 Under Improvement Year 1, a school shall review and modify its current School Improvement Plan outlining additional specific school improvement activities to be implemented beginning in this same year. A school designated as Title I shall provide supplemental services to students according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.

7.1.2 Under Improvement Year 2, a school shall continue to review and modify the School Improvement Plan as needed. A school designated as Title I shall offer federal ESEA Choice. In addition a Title I school shall provide supplemental services according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts or mathematics assessments.

7.1.3 Under Improvement Year 3, a school shall continue with the activities as per 7.1.2. In addition, all schools shall be subject to corrective action as outlined by federal ESEA requirements.

7.1.4 Under Improvement Year 4, a school shall continue with the activities as per 7.1.3. In addition, the school shall develop a plan for restructuring as outlined by federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the school's performance and shall consult with the State Board of Education prior to making comment.

7.1.5 Under Improvement Year 5, a school shall continue with the activities as per 7.1.2. In addition, the school shall implement the restructuring plan as outlined by federal ESEA requirements.

7.2 Accountability sanctions for districts that are classified as Under Improvement:

7.2.1 Under Improvement Year 1, a district shall develop and implement a District Improvement Plan.

7.2.2 Under Improvement Year 2, a district shall evaluate and modify the District Improvement Plan and shall incorporate such plan into the Consolidated Application.

7.2.3 Under Improvement Year 3, a district shall continue with the activities outlined in 7.2.2. In addition the district shall develop a corrective action plan as outlined by Federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the district's performance and shall consult with the State Board of Education prior to making comment.

7.2.4 Under Improvement Year 4, a district shall continue with the activities as outlined in 7.2.3. In addition the district and the Department of Education shall evaluate the corrective action plan and make appropriate modifications as needed.

7 DE Reg. 1692 (06/01/04)

10 DE Reg. 89 (07/01/06)

8.0 Review Process

A school or district may review school or district level data, including academic assessment data upon which the proposed classification is based. The school or district shall present statistical evidence or other substantive reasons why the classification should be changed before the final classification will be determined.

8.1 The school or district must file a written notice of review with the Secretary no later than 15 calendar days after receiving preliminary notification of its proposed classification. The request for review shall state with specificity the grounds for the review, and shall be signed by the principal or lead authority of the school, or the signature of the Superintendent of the district. This request for review shall include all supporting evidence and documentation and shall be clear and concise.

8.2 Upon receipt of a written notice of review, ~~the Department of Education shall conduct a review of the evidence or other substantive reasons presented by the school or district,~~ the Secretary shall refer the review to his or her designee.

8.2.1 The designee shall be responsible for bringing the review forward to the Review Advisory Committee. The Review Advisory Committee shall be composed of a minimum of three members and assigned by

the Secretary.

8.2.2 The Review Advisory Committee shall conduct a review of the statistical evidence or other substantive reasons presented by the school or district.

8.2.3 The Review Advisory Committee shall make a recommendation to the Secretary about whether the proposed classification should remain as is or should be changed.

8.3 The Department of Education shall make a final determination within 30 calendar days from the written notice of review on the proposed classification of the school or district based on the evidence or other substantive reasons presented by the school or district.

7 DE Reg. 1692 (06/01/04)

10 DE Reg. 89 (07/01/06)

10 DE Reg. 1795 (06/01/07) (Final)