



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

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February XX, 2021

The Honorable Philip H. Rosenfelt
Acting Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-6100

RE: Request for a Waiver of Statutory and Regulatory Requirements of the Elementary and Secondary Education Act (ESEA) on behalf of all LEAs in New York State

Dear Acting Secretary Rosenfelt,

Section 8401 of the Elementary and Secondary Education Act (ESEA), as recently amended by the Every Student Succeeds Act (ESSA) (hereafter referred to as ESSA), provides authority to the Secretary of the United States Department of Education (USDE) to waive certain statutory and regulatory requirements at the request of a State Educational Agency. By way of this letter, the New York State Education Department (NYSED or "the Department") is formally requesting a waiver of the assessment requirements in section 1111(b)(2) for the 2020-21 school year on behalf of all Local Education Agencies (LEAs) in New York State.

As required in Section 8401 of ESSA, NYSED is submitting a formal request, containing the information described in subsection (b)(1) to the USDE for its consideration. This waiver request is being submitted based upon ongoing consultation with LEAs across the State and a review of the impact of the ongoing COVID-19 pandemic. The Department is requesting that LEAs in New York State be granted a waiver of the identified sections for the 2020-21 school year. Below is a detailed plan that addresses each requirement in Section 8401(b)(1) of ESEA/ESSA.

NYSED is requesting this waiver because we have determined the spring 2021 State assessments cannot be safely, equitably and fairly administered to all students across the State given how severely the pandemic has impacted the delivery of instruction to students and adversely affected their social and emotional well-being.

A. Identify the Federal programs affected by the requested waiver.

Assessment requirements in section 1111(b)(2): the requirements to administer all required assessments in school year 2020-21.

B. Describe which Federal statutory or regulatory requirements are to be waived.

The New York State Education Department requests a waiver for the following statutory requirements:

Section 1111(b)(2): Each state must implement a set of high-quality student academic assessments in mathematics, reading or language arts, and science. In the case of mathematics and reading or language arts, these assessments must be administered in each of grades 3 through 8 and at least once in grades 9 through 12. In the case of science, these assessments must be administered not less than one time each during grades 3 through 5; grades 6 through 9; and grades 10 through 12.

Rationale for Waiver Request:

Pursuant to Executive Order 202.4 from New York State Governor Andrew Cuomo, school districts, charter schools, and nonpublic schools were directed to close no later than Wednesday, March 18, 2020, as a result of the outbreak of the Novel Coronavirus (COVID-19) occurring in New York State. As the 2020-21 school year has progressed, LEAs have had to make frequent and often rapid adjustments in the manner that students having been attending school and receiving instruction. This includes schools that have yet to open for in-person instruction as of this writing. The direct result of the ongoing pandemic is that a large portion of our State's student population has been receiving all or nearly all of their schooling remotely through virtual learning. The manner in which instruction has been delivered has varied greatly across districts and schools. The ongoing and at times rapidly worsening COVID-19 pandemic has also caused enormous economic and emotional insecurity for our students and their families and made the task of safely educating our students immensely more challenging.

Among numerous measures that demonstrate the uneven effects of the pandemic on students and their academic achievement and growth, the manner in which schools across the State have provided instruction in the 2020-21 school year is particularly clear. A September 2020 survey of instructional models issued by the Department revealed that nearly 63% of schools planned to start the school year providing hybrid instruction, compared to 20% that planned to provide full in-person instruction and 17% of schools that would provide remote only teaching and learning. While the rate of schools planning remote only learning was the lowest of the three models, those schools providing remote only instruction tended to be located in urban settings and were more likely to serve communities with higher concentrations of students from racial and ethnic subgroups. Students attending schools in four of the five largest districts in the State began the year in remote only teaching and learning. Many of those same schools have yet to open for in-person instruction as of the time of this waiver submission.

In districts that provided families the opportunity to choose between in-person and remote instruction models, data collected by the Department indicate that students of

color were more likely to select remote instruction compared to their White peers and are more likely to continue in remote learning once in-person options are made available. For example, according to New York City Department of Education's October 9, 2020 Learning Preferences Survey, 52% of students – totaling more than 500,000 students – selected remote instruction over blended or in-person options. The same survey data revealed significant differences between racial groups. The families of 43% of Black students and 41% of White students selected remote-only learning, whereas more than 75% of the families of Asian students and about half of the city's Hispanic students selected remote-only learning.

In view of what has transpired, we have determined that the Spring 2021 State assessments cannot be safely, equitably and fairly administered to students in schools across the State. Additionally, we believe that school instructional time would be best focused on supporting students in academics as well as social-emotional health rather than attempting to administer assessments to the limited population of students that are receiving in-person instruction.

C. Describe how the waiving of such requirements will advance student academic achievement.

Waiving the requirement to administer assessments will allow schools the necessary flexibility to attend to students' social-emotional health and focus on teaching and learning and community needs during a time when instructional modalities have varied widely, both across the State and within schools. In addition, allowing the time ordinarily needed for administering assessments to be used for instruction will ensure that students are receiving the maximum amount of learning possible and help to minimize gaps in learning that have resulted from the disruptions caused by the ongoing COVID-19 pandemic. Ultimately, not administering the tests will reduce student anxiety and will create opportunities for schools to utilize more innovative, meaningful, and holistic assessments to measure student growth and mastery of State learning standards.

For English Language Learners (ELLs), NYSED plans to make its spring 2021 English Language Proficiency (ELP) assessment available for administration to those students who are able to test in-person (while not requiring it for those who cannot safely and fairly participate). This will offer students the opportunity to exit ELL status if appropriate and ensure that the appropriate levels of English as a new language services continue to be provided to students in the upcoming school year. NYSED will work with LEAs to maximize the number of ELL students who can participate in this assessment by exploring test administration policy changes and expansion of the test administration period. Removal of the federal requirements for ELP testing would allow NYSED to offer the most flexibility to LEAs to ensure that students can test to best inform educational programming decisions.

D. Describe the methods the State educational agency, local educational agency, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan.

NYSED recognizes that the intention of ESEA's assessment requirements is to provide essential data for parents, teachers, school leaders, and the public about how public schools are performing. Given the realities of how the COVID-19 pandemic has disrupted education, NYSED is confident that the SEA and LEAs can best provide the necessary supports for students and schools most in need through avenues other than large-scale assessments.

In summer 2020, every public school in the State had to develop with community input and disseminate a comprehensive reopening plan for the 2020-21 school year. These comprehensive plans detailed how the school would attend to a significant number of mandatory assurances. Specific to this waiver application, several of the assurances addressed teaching and learning, social emotional well-being, special education, bilingual education and world languages, and technology and connectivity. These plans had to detail how the school would assure the continuity of learning through regular substantive interaction between teachers and students; alignment of instruction to the New York State Learning Standards; and routine scheduled times for students to interact and seek feedback and support from their teachers. In developing their reopening plans, equity had to be at the heart of all school instructional decisions. The plan also had to provide clear opportunities for instruction that are accessible to all students whether delivered in-person, remotely or through a hybrid model of instruction.

As a result of the comprehensive school reopening strategy for the 2020-21 school year, students will demonstrate mastery of State learning standards through their coursework, local assessments, their graduation, and post-secondary plans, as they do every year. In addition, all public schools will be required to use their district-developed procedures to identify those students who will be entitled to receive academic intervention services in the upcoming school year. NYSED has made a significant number of instructional resources available to LEAs that allow educators to prioritize students' needs, both academic and social-emotional, and focus on key areas that will prepare students for future success.

As explained above, NYSED plans to make its spring 2021 ELP assessment available for administration to those ELLs who are able to attend school in person at least some days of the week so that they can demonstrate the progress they have made.

NYSED has a robust data collection and reporting system that provides parents and the public with data on how students are achieving and progressing. This system is not limited to test result data and includes detailed information on student enrollment, attendance, course completion, and graduation as well as school climate. Additionally, the best source of information about student achievement remains that which is provided by the LEA. NYSED will continue to require LEAs to report on student achievement as well as other important school-level variables.

E. Include only information directly related to the waiver request.

Section 8401(b)(3)(A) requires NYSED to: (1) provide the public and any interested local educational agency in the State with notice and a reasonable opportunity to comment and provide input on the request, to the extent that the request impacts the local educational agency; (2) submit the comments and input to the Secretary, with a description of how the State addressed the comments and input; and (3) provide notice and a reasonable time to comment to the public and local educational agencies in the manner in which the applying agency customarily provides similar notice and opportunity to comment to the public. NYSED has fulfilled this requirement by:

- Providing notice and information to the public regarding this request for a waiver on their website at: <http://www.nysed.gov/essa/accountability-and-assessment-waivers-public-comment>. In accordance with normal procedures of the Department, the public was provided with ten (10) business days to provide comments.
- Distributing notification of the waiver request and solicitation of comments via email to all district superintendents, school superintendents, charter school officials, and nonpublic school representatives. In accordance with normal procedures of the Department, LEA representatives were provided with ten (10) business days to provide comments.
- Distributing notification of the waiver request and solicitation of comments via email to the State's Title I Committee of Practitioners. In accordance with normal procedures of the Department, members of the Committee of Practitioners were provided with ten (10) business days to provide comments.

Evidence of public postings and email communication by NYSED has been enclosed for review and consideration.

F. Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describe how the State educational agency, local educational agency, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi).

As described above, the requested waiver will allow LEAs to continue to provide services to all students by ensuring that instructional time can be used for immediate academic and social-emotional needs created by COVID-19, including the needs of students with disabilities, English Language Learners, and economically disadvantaged students.

Should you have any questions or need additional information, please feel free to contact me directly at 518-XXX-XXXX.

Sincerely,

DRAFT