



**TO:** P-12 Education Committee  
**FROM:** Ken Slentz   
**SUBJECT:** Elementary and Secondary Education Act (ESEA) Waiver  
Renewal Process and Related Amendments

**DATE:** December 9, 2013

**AUTHORIZATION(S):**

  
SUMMARY

Issue for Discussion

The purpose of this item is to update the Board of Regents on the development by State Education Department staff (NYSED or "the Department") of an ESEA Waiver Renewal application and related amendments, as required by the United States Department of Education (USDE).

Reason(s) for Consideration

To inform the Board of Regents regarding work on New York State's ESEA Waiver Renewal for USDE and associated amendments described within this item.

Proposed Handling

This item will come before the P-12 Education Committee for discussion at its December 2013 meeting.

Background Information

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the USDE during the second round of submissions in mid-February 2012 and designated five members of the Board to help lead the work. On May 29, 2012 the United States Department of Education (USDE) approved New York State's ESEA Flexibility Waiver Request. Since its approval, Department staff have provided the Board of Regents frequent updates on core Waiver activities, such as the implementation of the teacher and principal evaluation systems, implementation of the

Common Core Learning Standards, creation of Common Core aligned assessments, and implementation of the Diagnostic Tool for School and District Effectiveness (DTSDE).

In September 2013, the USDE offered states with approved ESEA Flexibility waivers the opportunity to renew those waivers for the 2014-15 and 2015-16 school years. In November 2013, the USDE rescinded its September 2013 renewal application process and replaced it with a one year streamlined renewal process for the 2014-15 school year only. Under this process, states with approved waivers:

- Must submit a letter to USDE requesting an extension for 2014-15 and describe how the waiver has helped the State Educational Agency (“SEA”) to be more effective and has contributed to improved student achievement.
- Must resolve any State-specific “next step” issues as a result of USDE monitoring.
- May submit amendments to the state’s approved plan to take effect in 2014-15 as part of the renewal process.
- Must consult with stakeholders before submitting a flexibility renewal request that includes amendments.

When New York submitted its initial waiver request, USDE informed states that the waiver period would be the 2012-13 and 2013-14 school years, with the ability of states to receive an extension for the 2014-15 school year upon demonstration that the state had effectively implemented its waiver. Based on that information, New York had crafted its initial application as a three year plan covering the 2012-13, 2013-14 and 2014-15 school years. Consequently, Department staff believes it is only necessary to make modest and limited amendments to the renewal application for the 2014-15 school year (the last year of the initially envisioned three year cycle). Staff envisions that more substantial amendments will need to be made to the next renewal application, as it will address waiver activities for the 2015-16 school year and beyond.

In addition to fulfilling the requirements for renewal outlined by USDE, with Regent’s approval, Department staff proposes to develop for Board of Regents consideration the following amendments to the approved ESEA waiver related to institutional accountability and testing requirements. If approved, these amendments would take effect in the 2014-15 school year:

1. Until adaptive assessments are implemented, seek permission from USDE to assess students with significant cognitive disabilities (who are ineligible for the New York State Alternate Assessment) based on their instructional level rather than their chronological age. The Department would issue criteria and guidance for the identification of the population of students for whom this flexibility would apply, and criteria to identify the instructional levels for English language arts (ELA) and mathematics for these students. The Department would also limit the number of grade levels below the student’s chronological grade level at which the student could be assessed (e.g., two years), and require that the students be assessed at a higher grade level for each subsequent year. Proficient and

advanced scores of those students assessed in accordance with their instructional grade levels may be used for accountability purposes, provided that the number of those scores at the Local Educational Agency and at the State levels, separately, does not exceed a specified percent (e.g., two percent) of all students in the grades assessed in reading/language arts and in mathematics. NYSED will create an explicit alignment between the six tenets of the DTSDE and the twenty-two Title 1 allowable activities that districts and schools can choose from when creating a District Comprehensive Improvement Plan (DCIP) and/or a School Comprehensive Education Plan (SCEP). The enhanced alignment will help Districts select and prioritize allowable activities to be funded by Title I, II and III that directly support their areas of need based on the results of DTSDE reviews. Districts with Priority and Focus Schools will be required to prioritize funds for implementation of initiatives such as Curriculum Development and Support, Teacher Practices and Decisions, Expanded Learning Time and Community School Programs, as a way to increase academic opportunities and student and family access to support services. Set-aside funds not expended during the course of the year will be added to the set-aside requirement for the ensuing year.

2. Make a technical change to the computation of Adequate Yearly Progress (AYP) for the “all students” group. During the first year of implementation of the new Annual Measurable Objectives (“AMOs”) (2011-12 school year results), Department staff noticed an anomaly where some schools made all the subgroup level AMOs, but did not make the “all students” group AMO or Safe Harbor. This is due to the relatively higher AMO set for the “all students” group. To remedy this situation, beginning with the 2013-14 school year results, New York would seek permission to allow the “all students” group in a district or school to make AYP if all the accountable subgroups in the school or district make AYP by meeting their respective AMO or Safe Harbor.
3. Revise the AMOs for Grades 3-8 English language arts and mathematics to reflect the lower percentages of students who scored at or above Level 2 and at or above Level 3 on the Common Core aligned assessments first administered in 2012-13. The implementation of these new assessments requires that the trajectory by which the gap will be closed by half for the “all students” group and each subgroup between a Performance Index of 200 (which indicates that all students are at or above proficiency) and the 2012-13 baseline be revised.

While Department staff move forward with developing a draft renewal application for the 2014-15 school year, Department staff will also engage with key stakeholders to develop potential recommendations regarding the following issues for consideration by the Board of Regents for incorporation into New York’s 2015-16 school year accountability plans:

1. Incentivize participation in Career and Technical Education (CTE) Programs. For example, for accountability purposes, when students complete an approved CTE program and pass the Chancellor's advisory panel-recommended CTE exam in

addition to passing the ELA or mathematics Regents with a minimum score of 65, student performance would be included in the Performance Index for ELA or mathematics at Level 3, indicating college- and career- readiness.

2. Provide greater flexibility in testing requirements for English language learners (ELLs). For example, develop and implement a Native Language Arts test for Spanish speaking ELLs who are newly or recently arrived to the United States and use these results for accountability purposes.
3. Explore integrating the New York State English as a Second Language Achievement Test (NYSESLAT) into the State's accountability system. Such integration will ensure that schools with a significant cohort of English language learners are afforded a more appropriate opportunity to get credit for student growth aligned to the student's English language development.
4. Develop a uniform statewide definition of chronic absenteeism and begin to report this information. Consider in future years using data on chronic absenteeism as a factor in accountability designations. For example, if a Priority or Focus School has met other criteria to be removed from identification, but still has high rate of chronic absenteeism, the school would not be removed from Priority or Focus designation.
5. Ensure that districts comply with current art, music, physical education, and technology requirements. For example, as a condition for receiving State and federal funds, districts would be required to certify that they are complying with Commissioner's Regulations regarding providing students with the required amount of course work in the arts, physical education, and technology.
6. Revise the methodologies for identification, determining progress, and removal from identification of Focus Districts, Priority Schools and Focus Schools. For example, incorporate into the high school accountability system the growth metrics used for high school principals for evaluation purposes to ensure strong alignment between institutional and school leader evaluation at the high school level.
7. Move towards public reporting of college success metrics on school report cards, such as numbers of students taking Advanced Placement (AP) and International Baccalaureate (IB) courses, college enrollment rates, and college success rates. By the 2015-16 school year, seek to incorporate these metrics into the accountability system.
8. Revise the DTSDE, DCIP, and SCEP processes. For example, create a three year cycle in which a Department-led Integrated Intervention Team (IIT) or, where an IIT visit does not take place, the District-led team, conducts a DTSDE review every three years that results in recommendations that will be used to develop a three-year DCIP and SCEP. In the two school years between State-led IIT or district-led visits, "growth visits" are conducted by the district to assess

implementation of the strategies and practices outlined in the SCEP and the degree to which implementation is resulting in an increase in effective practices aligned to the tenets of the DTSDE rubric

9. Revise the process by which Focus Districts are given a required set-aside amount to be used to support allowable programs and activities and modify the rules governing how the set-aside must be used. For example, Focus Districts might be required to demonstrate they have addressed all areas of need identified by their DTSDE reviews before they can use set-aside funds on other allowable activities.
10. Extend the DCIP/SCEP timeline requirement to a three-year plan to enable LEAs to prioritize among short-term, mid-range, and longer-term goals and require that districts better demonstrate how all funding sources are being used to address DTSDE findings and implement the DCIP and SCEP.

### **Work on the Renewal Application with Stakeholders**

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations are helping the Department respond to the requirements of the Renewal application. During the first week of November, an external “Think Tank” was convened, and members were asked to be thought partners with the Department as it drafts its response to the renewal requirements. A large portion of the members of the ESEA Renewal Think Tank also participated in the original ESEA Waiver Think Tank that guided the creation of New York State’s approved ESEA Waiver application. In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff are soliciting feedback on the waiver through meetings with a wide variety of organizations, including the Title I Committee of Practitioners, the English Language Learners Leadership Group, the DTSDE Training Group, and the District Superintendents.

Since one of the most significant amendment proposals involves the assessment of students with disabilities, staff from the Office of Special Education has consulted with the Commissioner's Advisory Panel for Special Education (additional information regarding the panel can be found at this site: <http://www.p12.nysed.gov/specialed/cap/membership.htm>) and with representatives from the thirteen Special Education Parent Centers funded by NYSED. Information on the Special Education Parent Centers can be found at this website: <http://www.p12.nysed.gov/specialed/techassist/parentcenters.htm>.

Both representatives of the Commissioner's Advisory Panel for Special Education and the Special Education Parent Centers noted the concerns being expressed by many parents about the State's requirement that their children participate in a State assessment that is not appropriate for them and the frustration that results for the students. Both groups also stressed the need for high standards and expectations for students with disabilities. There was also concern that there are many students who

are being recommended for the State's alternate assessment who should be participating in regular State assessments, but at a grade level closer to their instructional level.

Both groups were supportive of NYSED's efforts to obtain approval from USDE to administer the State assessments at the student's instructional level, provided that (1) the State establishes limitations and clear and objective criteria to determine which students would be appropriate for this assessment flexibility; (2) decisions about instructional level are based on objective data and determined annually; (3) there be a limit as to how many years below chronological age grade level a student could be assessed (there was general agreement with two years as the appropriate limit); (4) the timetable for implementation is such that the State ensures that Committees on Special Education have sufficient advance information and guidance to provide appropriate recommendations at the student's annual review meetings; and (5) there be a cap (based on review of State assessment data) on the percent of students with disabilities scoring proficient and advanced for school accountability purposes.

**Next Steps:**

With the approval of the Regents, the Department will move forward with preparation of a renewal application and associated amendments as described below:

Renewal Application Timeline

Month	Activities
December	<ul style="list-style-type: none"> <li>• Present Renewal plan of action to the Board of Regents.</li> <li>• Present Amendments and Renewal Plan of Action to the Committee of Practitioners.</li> <li>• Continue work with ESEA Think Tank and associated work groups.</li> </ul>
January	<ul style="list-style-type: none"> <li>• Finalize Renewal Amendments and Letter with the approval of the Board of Regents.</li> <li>• Post proposed Amendments and Renewal Letter to SED website for public comment.</li> </ul>
February	<ul style="list-style-type: none"> <li>• Submit Amendments and Renewal Letter to USDE for approval.</li> </ul>