



TO: The Honorable the Members of the Board of Regents

FROM: Jhone M. Ebert

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SUBJECT: Every Student Succeeds Act (ESSA) State Plan

DATE: September 7, 2017

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents approve the revised draft Every Student Succeeds Act (ESSA) State Plan and associated waivers for submission to the United States Department of Education (USDE) by September 18, 2017?

Proposed Handling

This issue will come before the Full Board of Regents for action at its September 2017 meeting.

Background Information

On December 10, 2015, the Every Student Succeeds Act (ESSA) was signed into law by President Obama. This bipartisan measure reauthorized the 50-year-old Elementary and Secondary Education Act (ESEA), which provides federal funds to improve elementary and secondary education in the nation's public schools and requires states and school districts, as a condition of funding, to take a variety of actions to ensure all children, regardless of race, income, background, or where they live, receive the education they need to prepare them for success in postsecondary education, careers, and citizenship. New York receives approximately \$1.6 billion annually in funding through ESSA.

In order to respond to the requirements of ESSA, the Department, with the guidance of the Board of Regents, has taken a two-pronged approach to the development of the draft ESSA plan. First, the Department has engaged stakeholders through the Title I Committee of Practitioners (COPs), the ESSA Think Tank, Regional public meetings held in the fall and in the winter, and surveys on concepts for possible inclusion in the draft plan. Second, the Board of Regents and the Department have sought the advice of national organizations and experts, such as the Council of Chief State School Officers (CCSSO); Brustein & Manasevit (a law firm recognized for its federal education regulatory and legislative practice); Linda Darling-Hammond from the Learning Policy Institute, and Scott Marion from the National Center for the Improvement of Educational Assessment.

In working with both stakeholders and national experts, the Department has developed several core documents that have served as the basis for the development of the draft state plan. The Department and the Think Tank collaborated to draft and refine the Characteristics of Highly Effective Schools, Guiding Principles, and an extensive list of High Concept Ideas. Once drafted, the Department surveyed the Think Tank, COPs, and the field for feedback on these documents. Last school year, the Department posted an online survey to gather stakeholders' preferences on potential indicators of school quality and/or student success, which received over 2,400 responses.

District Superintendents statewide assisted the Department by hosting Regional ESSA meetings in the fall and the winter. Over 120 fall and winter regional in-person meetings were held across the state in coordination with the state's 37 Boards of Cooperative Educational Services (BOCES) and the superintendents of the state's five largest City School Districts. These meetings were attended by more than 4,000 students, parents, teachers, school and district leaders, school board members, and other stakeholders and provided the Department with an additional opportunity to solicit feedback from meeting participants.

In March 2017, the Board of Regents held a public ESSA retreat. Members worked with national experts, Linda Darling-Hammond and Scott Marion, to define a mission for the ESSA work, as well as discuss their views on what should be included in the new accountability system. In April 2017, the Board of Regents were provided with an update on the draft plan and discussed the importance of emphasizing diversity and inclusion within the draft plan. In May 2017, staff asked the Board of Regents to approve the draft ESSA plan for posting and to allow the Department to begin accepting public comment upon the plan.

On May 8, 2017, the Board of Regents released for public comment and review the state's draft ESSA plan. The public comment period was open from May 9 through June 16, 2017. The draft plan and a summary of the plan were posted to the Department's website, and a press release was provided to the media. In addition, the Office of Accountability emailed notification regarding the opportunity to comment to BOCES District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and members of the ESSA Think

Tank and the Title I Committee of Practitioners. Other Department offices also shared the notification with list serves that these offices maintain. The Department accepted comments via email at ESSAcomments@nysed.gov and via mail. The Department also hosted 13 public hearings on the plan from May 11 through June 16, 2017. At the 13 Public Hearings held, there were more than 270 speakers who provided the Department with their feedback. Over 1,000 comments were received on the draft plan during the public comment period.

In July, staff provided the Board of Regents with a summary of the comments received, and recommendations for revisions to the draft plan. Also in July, the Department provided the Governor with a copy of the draft plan to review for 30 days, as required by federal statute. (Attachment A)

Related Regents Items:

October 2016: [Every Student Succeeds Act \(ESSA\) State Plan Development Activities](#)

November 2016: [Development of New York's Every Student Succeeds Act State Plan](#) and [ESSA State Plan High Concept Ideas](#)

December 2016: [Development of New York's Every Student Succeeds Act \(ESSA\) State Plan](#)

January 2017: [Development of the New York State Every Student Succeeds Act Plan](#) and [ESSA State Plan High Concept Ideas](#) and [Proposed "High Concept Idea" Summaries -- Supports and Improvements for Schools 12/1/2016](#) and [Survey of School Quality and Student Success Indicators](#)

March 2017: [ESSA Public Retreat](#)

April 2017: [April 4 Board of Regents Meeting on ESSA](#)

May 2017: [Overview of New York's Draft Every Student Succeeds Act Plan](#)

June 2017: [Feedback from Every Student Succeeds Act \(ESSA\) Public Hearings and an Update on the Next Generation Learning Standards](#)

July 2017: [Proposed Changes Final Draft Plan - Commissioner's Presentation to the Board, State Dashboards, Next Generation Assessment Systems, and Social, Emotional, Health, Mental Health, and Attendance Issues](#), and [Stakeholder Feedback Analysis](#)

Governor's Office Review of Plan

Throughout the ESSA plan development process, the Department has held regular meetings with representatives of the Governor's office, including former Deputy Secretary Jere Hochman, and the Legislature. The Department is appreciative of their attendance at several ESSA Think Tank meetings and their participation in discussions with the Commissioner and her staff. The Governor's and legislative staff gave their valuable time and attention to familiarize themselves with the draft as it evolved through several iterations.

As required by ESSA, on July 31, 2017, the Department submitted the draft ESSA plan to the Governor. Following the 30-day review period, the Governor returned the plan to the Department without taking action.

Waivers

At the same time the ESSA plan is submitted to the USDE, the Department recommends that the Board of Regents direct the Department to submit requests for waivers to the ESSA statute in three areas. In brief, the three waivers will request permission for New York State to:

1. Allow middle school students who take mathematics or science Regents examinations to be exempted from taking the associated grade level assessments and use the Regents examination results for the purposes of making school accountability and participation rate determinations. Currently ESSA only provides this "double testing" flexibility to grade 8 students who take a high school examination in mathematics. (Attachment B)
2. Continue to exempt, for one year, newly arrived English Language Learners/Multilingual Learners (ELLs/MLLs) from taking the English language arts (ELA) examination, and not include the results of the first administration of the ELA examination to these students in the state accountability system. Without a waiver, the results from this first administration would have to be used for accountability purposes. (Attachment C)
3. Allow a small number of students with the most significant cognitive disabilities to take examinations better aligned to instructional level of the students, not grade level assessments. (Attachment D)

These waivers are referenced in the state's draft ESSA plan and the Department was required to post them for public comment prior to their submission to the United States Department of Education. The Department posted the waivers on the NYSED ESSA webpage, and accepted comments from August 25 through September 8, 2017.

All three of the waivers have previously been submitted to the USDE as part of the state's ESEA Flexibility Waiver, which outlined the state's school and district accountability plan from 2012 – 2016. Although the USDE has not approved the

Students with Disabilities or English Language Learner waivers in the past, the Department is required by Education Law 305(48) to submit the waivers, thereby “ensuring accountability for the performance of such students in appropriate ways.” The waiver regarding middle school math testing had been approved by USDE during the ESEA Flexibility period, and New York has had a “double testing” science waiver since the early days of No Child Left Behind. However, the USDE requires that the State resubmit this waiver under ESSA.

Each of these waivers have been referenced within the State’s draft ESSA plan and discussed at length by the Board of Regents and with stakeholders across the state. The Department issued a press release regarding the public comment period on August 25, 2017. Subsequently, the notice was posted on the Department’s social media accounts and website, distributed to members of the state’s Title I Committee of Practitioners and the ESSA Think Tank, as well as sent out to the field to superintendents and principals through the Senior Deputy Commissioner’s e-mail newsletter. The public comment period will end on Friday, September 8. As of Thursday, September 7, thirteen comments had been received. Staff believe that the largest number of comments will likely be received on the last day of the comment period. In general, the comments that have been received are in support of the waivers. However, there were three comments from special education advocacy groups opposed to the waiver related to testing students with the most significant cognitive disabilities.

Recommendation

VOTED: The Board of Regents directs the Commissioner of Education and the State Education Department to submit to the United States Department of Education (USDE) the revised draft ESSA Consolidated Application and the associated waivers by no later than September 18, 2017.

Next Steps

After the Board approves the submission of the ESSA plan and the associated waivers, the Department will submit the ESSA plan and waivers to USDE by September 17, 2017. It is anticipated that USDE will provide feedback to the Department in December 2017. Final approval of the state’s ESSA plan will likely happen in early 2018. Once New York’s plan is approved, the Department will submit amendments to Commissioner’s Regulations necessary to implement the plan for consideration by the Board of Regents.