



TO: P-12 Education Committee

FROM: Cosimo Tangorra, Jr. *Cosimo Tangorra Jr.*

SUBJECT: 2015 Elementary and Secondary Education Act (ESEA)
Waiver Renewal Application

DATE: March 9, 2015

AUTHORIZATION(S): *Eugene P. Berlin*

SUMMARY

Issue for Decision

Should Department staff submit an Elementary and Secondary Education Act (ESEA) Waiver Renewal Request to the United States Department of Education (USDE), covering the 2015-16 through 2018-19 school years, and related amendments, based on materials provided to the Board of Regents at its December 2014, February 2015, and March 2015 meetings?

Proposed Handling

This issue will come before the P-12 Education Committee for action at its March 2015 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 United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year. At its February 2014 meeting, the Board of Regents directed the Department to submit its ESEA Renewal Application. On July 31, 2014, USDE approved New York State's ESEA Waiver Renewal Request for

the 2014-15 school year. Since the initial approval of the Waiver in May 2012, offices within the Department have provided frequent updates on core Waiver activities such as the implementation of 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). On November 13, 2014, the USDE issued new guidance for states with approved ESEA Flexibility Waivers describing how states could apply for a three or four year renewal of their approved Flexibility Waivers. States such as New York that were identified by the USDE as having fully implemented the USDE's Flexibility Waiver requirements regarding teacher and principal evaluations were notified that they had the option of applying for a four year renewal, covering the 2015-16, 2016-17, 2017-18, and 2018-19 school years.

In December 2014, the Department provided the Board of Regents with a summary of the requirements for ESEA Renewal for the 2015-16 through 2018-19 school years. At the February 2015 meeting, the Department presented for Board approval recommended revisions to the ESEA Renewal Waiver Request. The members of the Board of Regents asked several clarifying questions regarding the proposed revisions. The Board of Regents approved the Department's request to post the Renewal Request for public comment, and requested that the Department also post its clarifying questions. Additionally, Department staff met with members of the Board of Regents during the month of February to provide answers to the clarifying questions.

Based on a recommendation from the Board of Regents at the February 2015 meeting, the public comment period was extended from February 13 through February 26, 2015. A notice that public comments were being accepted was posted on the State Education Department's Office of Accountability website. In addition, the Office of Accountability emailed notification regarding the opportunity to comment to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and members of the ESEA Renewal Think Tank and the Title I Committee of Practitioners. Other Department offices also shared the notification with list serves that they maintain. It should be noted that because of the extensive interaction with the ESEA Think Tank and other groups prior to the formal issuance of the draft application for public comment, many key stakeholder groups have already shared their perspectives on ESEA flexibility with the Department. A detailed summary of the public comments received and the Department's response are attached to this item. Comments were received from eight organizations, one district, and two individuals during this period.

As a result of the comments received from the public and feedback received from the Board of Regents on the renewal waiver request, the Department has revised or provided additional information on the following waiver provisions:

- Re-identified Local Assistance Plan Schools - Under the proposed ESEA Renewal Waiver, after three consecutive years of identification as a LAP School, the school will be identified as a Focus School, unless a successful appeal is submitted by the district, and must have a DTSDE review. The

identification of the school may also result in the district becoming a Focus District. The results from the DTSDE review must be used as the basis for development of an SCEP that meets all requirements for a Focus School.

- Refinement of the District Comprehensive Improvement Plan, School Comprehensive Education Plan, and Required Set Asides - These refinements, made in connection with a larger process to refine the DCIP and SCEP templates, will ensure that districts and identified schools have a laser-like focus on instructional programs, professional development, and staffing initiatives. For example, districts will be required as part of implementation of a whole school reform model in a Priority School to specifically address the organizational structure that the district will put in place to implement the model, the researched based curriculum that the school will implement, the incentives that will be offered to recruit high performing teachers to work in the school, and the scheduling of the school to ensure that common planning time for professional development is a structured part of the school day.
- Clarified language around Supplemental Educational Services - With respect to SES, New York's ESEA waiver application for the 2015-16 to 2018-19 school years proposes that, rather than being required to provide parents the choice to have their children receive tutorial services from any vendor on the State's approved list that has agreed to serve that district, the district would decide the vendors from among whom parents could choose. As is now the case, districts that wish to enter into contracts with vendors to provide tutorial services to students who attend Priority or Focus Schools could continue to do so using Title I funds. Alternatively, districts could choose to instead use these funds to provide students with expanded learning time or other services. The Department proposes that it would no longer maintain a list of approved SES providers and would remove the current list from its website. Accordingly, staff recommends that the Board of Regents, in conjunction with submission of New York's ESEA waiver application for the 2015-16 to 2018-19 school years, seek a legislative amendment to remove the State statutory requirement that the Commissioner approve SES providers.
- Clarified policy regarding Expanded Learning Time – The waiver language will be amended to state explicitly that Expanded Learning Time programs funded by the State Education Department must include enrichment and acceleration for all program participants, including opportunities for programs such as in music and art.
- In addition to these revisions, staff recommend that the Regents convene a group to develop a proposal regarding ways to support Reward Schools through the provision of additional autonomy, which would include the ability of districts to seek variances from certain provisions of Commissioner's Regulations for these schools.

Recommendation

VOTED: That the Board of Regents directs the Commissioner of Education and the State Education Department to submit an ESEA Waiver Renewal Request for 2015-16 through 2018-19 and associated waiver amendments to the United States Department of Education based upon the materials provided to the Board of Regents in the attachments to this item.

Timetable for Implementation

With the approval of the Board of Regents, staff will incorporate the materials provided to the Board of Regents into the appropriate ESEA Waiver Renewal format and submit the renewal request to the United States Department of Education no later than March 30, 2015.

Attachment

Attachment:

**Summary of Public Comments on
New York State's Elementary and Secondary Education Act (ESEA)
Flexibility Renewal Request
2015-16 through 2018-19**

Public Comments Received on Amendment #1 Regarding Testing of Students with Disabilities

NYSED received comments from four organizations in opposition to the State's proposed amendment regarding testing of students with disabilities. The organizations were *Advocates for Children New York (AFC)*, *Disability Rights New York (DRNY)*, *The Advocacy Institute*, and *the Council of Parent Attorneys & Advocates (COPAA)*. NYSED also received one comment from the NYC DOE regarding the amendment.

Three of the organizations (AFC, DRNY, and COPAA) stated that they were opposing the amendment because it will allow districts to maintain lower standards for students with disabilities and lower expectations for students with disabilities who are otherwise capable of making academic progress.

Three of the organizations (AFC, The Advocacy Institute, and DRNY) stated that allowing below-grade level testing will inflate the achievement scores for students with disabilities, concealing the actual achievement of students with disabilities, and resulting in those students with disabilities not receiving the intensive individualized instruction, special education services, and support as required by the Individuals with Disabilities Education Act (IDEA).

The Advocacy Institute and COPAA both stated that the amendment violates federal law. According to The Advocacy Institute, "This proposal violates the rights of students with disabilities, conflicts with the principles established by the U.S. Dept. of Education (USED) regarding waiving some provisions of the Elementary and Secondary Education Act (ESEA) due to the inaction of Congress to update the law as well as the assurances that NYSED provided to USED as a condition of its initial ESEA Flexibility application. The proposal also violates the rights that students with disabilities are guaranteed under both the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).".

Both the Advocacy Institute and DRNY stated that NYSED did not engage in consultation with stakeholders in preparing the 2015-2016 ESEA Flexibility Renewal Application in the comprehensive manner prescribed by the United States Department of Education Guidelines

Finally, DRNY had two additional comments:

- "The only student-based rationale for NYSED's proposal is that a chronological-age assessment "may not provide as much instructionally actionable information

on student performance or foster the most prudent instructional decisions.” However, according to DRNY, “the Committee on Special Education has more comprehensive data and targeted student evaluations to assist in making “prudent instructional decisions” without relying on the use of state-assessments.

- “NYSED’s definition of students with significant cognitive disabilities is too broad. NYSED indicates below-grade level testing would apply to students with ‘significant cognitive disabilities’ but then defines that term as including students ‘having intellectual or cognitive deficits, such as autism, intellectual disability, traumatic brain injuries, neurodegenerative diseases or severe learning disabilities.’ Under such a definition, students who are ‘intellectually able’ but behaviorally challenged could be eligible for below-grade testing.”

The NYC DOE commented that “until adaptive assessment is in place, administering state assessments at a student’s instructional grade level could benefit a very small subset of these students with disabilities. However, NYCDOE is also concerned that—if implemented too broadly—instructional level testing could engender an inaccurate perception that students with disabilities are incapable of achieving the same standards as their non-disabled peers.”

Department’s Response:

The Department appreciates and understands the concerns expressed about high expectations, the quality of specially designed instruction, supports and services, and the need to hold schools accountable to close the achievement gap for all students with disabilities. The Department agrees that the vast majority of students with disabilities have the intellectual abilities to reach grade level proficiency when they are provided with the appropriate instruction, supports, and services and that State policies must drive high expectations for participation and performance for all students with disabilities.

It is for these very reasons that the State believes that its waiver request is appropriate. Students with disabilities are a heterogeneous group with a range of abilities, at varying levels of severity across different domains, which hinder the abilities of these students to achieve at their chronological grade levels. Therefore, how these high standards are taught and assessed is of the utmost importance in reaching this diverse group of students and assuring their academic success. State policy must represent the entire range of students with disabilities, not just those who have severe disabilities and those who can, with accommodations, supports and services, reach grade level proficiency at the same time as their nondisabled peers. There is a subgroup of students who have significant intellectual delays and substantial difficulties in cognitive areas, such as memory, language comprehension, reasoning and problem-solving. The State is not developing a new disability category; rather it is recognizing the range of abilities of students across the disability categories. For these students, these disability-related factors impact the student’s ability to meaningfully participate and progress in the curriculum at the same grade level and proficiency level as his/her chronological age peer group. This subgroup of students has long been a concern of parents, educators, USDE and State officials.

ESEA requires that State assessments provide for “the reasonable adaptations and accommodations for students with disabilities (as defined under section 602(3) of IDEA) necessary to measure the academic achievement of such students relative to State academic content and State student academic achievement standards.” In this proposal, the State is meeting this requirement, making appropriate adaptations based on individual decisions to align instruction and assessment. An assessment that is significantly misaligned with the student’s instructional level provides no meaningful measure of the student’s academic achievement. Further, it is appropriate for State policy makers to be concerned about the social–emotional impact of students with disabilities that result when they consistently cannot show what they have learned and what they can do and, at best, are responding by guessing. State policy cannot leave these students out of the accountability and growth measures, which is the effect when the students’ scores provide no instructional or growth information. State assessments may be for school accountability, but they are also measures of performance for each individual student.

This proposal has been developed to enhance, not lower, the focus on instruction and accountability for this group of students with disabilities by (1) requiring that the student participate in the regular State assessment (and not a modified or alternate assessment); (2) limiting consideration of students for the instructional level assessment, in the first instance, to those whose scores were at the chance level; (3) setting limits on how far below the student’s chronological age the student may be assessed and requiring that the student be assessed at the next higher grade level in each subsequent year; and (4) requiring that at each annual review the recommendation is revisited, and as appropriate, revised based on objective data on the student’s instructional level separately for math and English language arts (ELA). For this subgroup, the State’s proposed policy does promote high expectations for student achievement by providing meaningful results and academic growth information for these students from their participation in State assessments; and by emphasizing that students must be provided instruction, supports and services to accelerate their growth and learning so that they can progressively demonstrate their learning at the next higher grade level assessment. Because of the strict eligibility criteria for students who can be recommended for the instructional level assessment, expectations for other students should not be affected.

There is nothing in the proposed waiver that represents a violation of students civil rights or IDEA. IDEA requires that individual determinations be made on the State assessment in which the student will participate, and parents of students with disabilities have the opportunity to participate in the discussion and recommendation and to appeal if they disagree with the CSE’s recommendation.

The State has calculated the percentage of students with disabilities whose results on the regular ELA and math State assessments reflected chance responses, or guessing. These calculations show that for 2012-13 school year results, .7 percent of all students in the grades assessed in reading/language arts and 1.5 percent of all students in the grades assessed in mathematics performed at the chance level. The State will provide

CSEs with the score that, at the 90 percent confidence level, indicates that the student's score was based solely on guessing. In order to establish a limit as to how many students are eligible for this assessment, CSEs would be limited to considering only students with a raw score on a chronological grade State assessment at or below the State's identified raw score cut point. CSEs would be required to then apply the criteria for documentation of intellectual and cognitive factors affecting the pace and level of instruction and other objective instructional assessment information as outlined in New York's waiver request before reaching the assessment recommendation. We believe these strict and objective criteria are reasonable to establish limitations and yet provide discretion to CSEs to make the appropriate assessment recommendation for the individual student.

The proposal is intended to be an interim measure and will be revisited once State adaptive assessments are available that provide all students opportunities to respond at a level greater than chance on these assessments.

Public Comments received on Amendments #2 and #3 related to the Testing of English Language learners (ELL)

NYSED received comments from three organizations and one district in support of the proposed amendments related to the testing of English Language learners (ELL).

The Internationals Network for Public Schools "commends the New York State Board of Regents and New York State Education Department for recognizing the distinct challenges that newly arrived English language learners (ELLs) face on State tests." In regards to the development of a Performance Index for newly arrived ELLs, the organization also commends "the New York State Board of Regents and New York State Education Department for recognizing the importance of a differentiated Performance Index for ELLs based on their level of language proficiency and the most appropriate measure of their language arts proficiency."

New York State United Teachers also expressed support for the exemption extension amendment, stating that it "continues to support SED's request for a waiver to extend the exemption for newly arrived English language learners from taking English language arts assessments from one year to two years. While the case can be made for a longer period of time we support this critical waiver request."

Advocates for Children of New York (AFC) generally supported both amendments related to the testing of ELLs, but offered suggestions and communicated concerns regarding the amendments:

- Since the NYSESLAT was not designed to be an accountability instrument, the State should ensure that the revised NYSESLAT is scaled appropriately for accountability purposes. Recalibrating the NYSESLAT scoring system at the high school level is particularly needed, as it is currently very difficult for high school students to pass the NYSESLAT (e.g., exit from ELL status).

- The State must ensure that the ESL curriculum districts use to teach ELLs is fully aligned with both the Common Core and the revised NYSESLAT.
- In order for the NLA assessments to be meaningful, the State will need to ensure that all Spanish bilingual programs are content-aligned with the NLA assessments.
- The State should seek funding for NLA assessments for other languages so that all ELLs enrolled in bilingual programs have access to NLA assessments.
- AFC is concerned that the proposed amendment will still result in some beginner and intermediate ELLs taking ELA assessments, even though they do not receive any ELA instruction. The ESL curriculum is not aligned to either general ELA standards or the ELA Regents examination. This is particularly problematic for long-term ELLs who remain at the beginner or intermediate levels for more than two years.
- For all assessments used for ELL accountability purposes (including ELA, NLA and content assessments in other subjects), it is critical that these tests are content validated for ELLs to ensure assessments are appropriate based on research on language acquisition, bilingualism, and cultural competency.
- AFC supports the development of an adjusted performance index for newly arrived ELLs and certain eligible longer-term ELLs who qualify. We believe it will be beneficial to have flexibility to take into account NYSESLAT proficiency level and demographic factors, such as years in ELL programs and Students with Interrupted Formal Education (SIFE) status. However, it will be necessary to ensure that the adjusted index is sufficiently rigorous so that students do not fall through the cracks and the State maintains high standards for ELLs.

NYCDOE commented that it generally agrees with this amendment as it relates to Performance Index calculations, and requests NYSED include NYC DOE in the process of developing this new methodology.

With respect to amendment as it relates to exempting newly arrived ELLs from participating in the ELA assessments for two years, NYCDOE generally agreed with the following caveats:

- The costs of creating a Spanish Language Arts assessment should not be imposed on local education agencies.
- NYSED should provide explicit guidance that the Spanish Language Arts assessment should be administered only to students who are receiving native language instruction in the year that they are being assessed.
- NYSED should take steps to ensure that the Spanish Language Arts assessment will measure students' progress in Native Language Arts, and not students' lack of proficiency in their native language and the quality of their prior schooling.
- NYSED should replace the undefined phrase "strong home language supports" in the original amendment with "providing students with ongoing native language arts instruction to build native language literacy skills." The NYC DOE states that the original phrase does not accurately describe the types of supports English Language Learners should receive as a part of their instruction.

The NYC DOE also recommended that NYSED develop a plan for expanding this recommendation beyond Spanish Language Arts assessments to other high-incidence languages. Further, the NYC DOE states that implementing a Spanish Language Arts assessment alone could impact the district's compliance with Title VI, which mandates that when an accommodation is offered in one foreign language and the district has a critical mass of students who speak another language, the district must offer the same accommodation in that additional language as well.

Department Response:

The Department is encouraged by the comments received as they were generally supportive. The Department believes that these changes to the testing and accountability system for ELLs will provide the State with better information about the progress of ELLs and will hold schools and districts accountability for their progress.

In response to the concerns raised that the two year exemption for newly arrived ELLs is not sufficient, the Department has looked at data on how ELLs in their second year of services perform on the ELA assessment. Such data provides a compelling case that the ELA assessment for such ELLs is not accurately measuring their skills and ability. For such students, 74% received a level 1 on the ELA assessment. The Department shares the concerns raised in some of the comments that the ELA may not be a sufficient measure of progress for ELLs beyond their first two years. The proposal to create an adjusted performance index is being developed precisely to address this concern. The Department believes that an adjusted performance index for ELLs beyond their first two years should take into account students' years of service, demographic factors, whether the student has interrupted formal education, and their NYSESLAT scores.

In response to concerns raised about alignment between the NYSESLAT, ESL curriculum and ELA instruction, the Department has several initiatives that aim to address these concerns. As part of the Bilingual Common Core Initiative, the Department has developed the Bilingual Common Core Progressions, which are new English as a Second Language and Native Language Arts Standards that are aligned to the Common Core. Once finalized, the Department will begin to develop ESL and Native Language Arts curriculum aligned to the Common Core. This curriculum will provide guidance to schools and districts that will ensure rigorous Common Core instruction is provided to ELLs in both ESL and Bilingual Education programs. In addition, the Regents have recently adopted significant amendments to Part 154 of Commissioner's Regulations. As part of these amendments, ELLs will be exposed to integrated language and content instruction through co-teaching of ESL and ELA, as early as their first year of instruction. The Department believes that the amended regulations will ensure that ELLs will have instruction aligned to the Common Core and that the ELA exam will provide meaningful information about students' growth towards proficiency after three years of instruction.

In response to comments received regarding expanding the option for language arts assessments in languages other than Spanish, the Department very much supports this

suggestion. The Department does not plan to request funds from districts to pay for the development or implementation of additional Native Language Arts Assessments. Instead, the Department is seeking to secure needed funding from other sources. The Department believes that beginning with Spanish will ensure that two-thirds of ELLs whose home language is Spanish will have the opportunity to demonstrate their language arts skills in Spanish as determined by local authorities.

In response to questions raised about guidance for providing Spanish-speaking ELLs with the opportunity to take the Spanish Language Arts assessment, the Department agrees with the comments raised and looks forward to collaborating with the field to develop such guidance for the new assessment.

Finally, with regard to the comments and questions raised about the proposed development of an adjusted Performance Index, the Department will work with stakeholders to develop this adjusted Performance Index through existing partnerships. The Department looks forward to collaborating with the field in the development of this proposal.

Public Comments Received on Amendment #3: Performance Index “credit” for CTE

The New York State Education Department received one comment from one district on this amendment.

The NYC DOE supports the proposed amendment. However, NYC DOE notes that “the list of approved assessments in this amendment does not recognize all of the rigorous CTE programs throughout the state. For example, less than half of NYCDOE’s state-approved programs use one of the thirteen assessments included in the amendment. The amendment fails to credit schools that have implemented such programs, which the state has previously recognized as preparing students well for college and career, simply because none of the approved assessments are relevant to the industry related to their career pathways. NYSED should address this inequity and seek additional ways to include CTE programs that are preparing students to successfully enter the workforce even in the absence of assessments. Further, NYSED has not yet identified approved industry certifications for some of the career clusters—including software engineering, pharmacy assisting, and health information technology — that have recently been recognized as adding clear economic value to the state. Because the amendment does not give schools credit for programs related to these industries, it creates a disincentive for schools to implement such programs.”

Department Response:

The 13 technical assessments originally approved were done as “proof of concept” in determining comparability to the rigor of Regents examinations. The Department continues efforts to identify additional technical assessments that are comparable and have value in the New York State labor market.

Public Comments Received on the Identification of and Interventions in Priority Schools, Focus Schools, and Local Assistance Plan Schools

The New York State Education Department received comments from two organizations and two districts related to the identification of and interventions in Priority, Focus and Local Assistance Plan Schools.

In its comments, the New York City Department of Education (NYC DOE) urged NYSED to use multiple measures when determining the accountability statuses of schools and districts (through identification methodologies, Performance Index calculations, progress filters, and Annual Measureable Objectives). “NYCDOE firmly believes that a school accountability system based primarily on state test scores paints an oversimplified and inaccurate picture of school quality. Districts that have the capacity to do so should be given flexibility to incorporate qualitative measures—such as school visits and constituent surveys—into school accountability. And while the rubrics and survey questions used in such measures should be approved by NYSED to ensure rigor, districts should be permitted to use existing local measures to fulfill these requirements.” In addition, NYC DOE believes that NYSED should “also lower the impact of failing to meet the Adequate Yearly Progress (AYP) participation rate requirements with respect to Local Assistance Plan (LAP) School and Reward School identification methodology as well as Priority and Focus School removal criteria in light of this growing opt out trend.” In relation to the proposed simplified graduation rate requirement for removal for Priority Schools, Focus Districts, and Focus Schools, the NYC DOE supported the proposal but recommended that NYSED “reconsider the methodology used to establish graduation cut points to determine whether they are setting rigorous but realistic goals for high schools within the state.”

Finally, the NYC DOE would like NYSED to seek approval to incorporate growth metrics into high school accountability methodology—including both the Mean Growth Percentile (MGP) and a Growth in Regents Exams Passed (GRE) metrics used in the Annual Professional Performance Review (APPR). NYC DOE recommends that the GRE metric should be revised so that students that meet the five required Regents plus a rigorous substitute such as a CTE endorsement, Associate’s Degree, Regents Alternative or Arts endorsed diploma should count as if they had passed eight Regents.

Priority Schools

The NYC DOE urged NYSED to “incorporate multiple measures of school quality, college and career readiness metrics, and attendance rates” into the Department’s Priority School identification methodology. The NYC DOE also expressed support for NYSED’s proposal to sunset the current list of Priority Schools and identify a new list of schools based on those schools that are among the lowest five percent in the State using 2014-15 school year assessment data.

The NYCDOE recommended that NYSED grant a district’s appeal to exempt from SURR identification any re-identified Priority School for which the district can

demonstrate that it has already proactively implemented a dramatic whole- school reform strategy to improve school and student performance, and that includes rigorous benchmarks set forth by the district, such as NYCDOE’s School Renewal Program. The NYC DOE stated that in such cases, the district should be allowed sufficient time to assess the impact of the interventions underway, before additional interventions are implemented.

The *New York State United Teachers (NYSUT)* requested that the State reconsider the time-line and release the new Priority School list during the summer following the administration of the tests. The current timetable in the waiver has the State publishing its new list in January or February of 2016.

In the area of interventions, NYSUT proposed that NYSED add two additional school intervention models for Priority Schools: the community schools model and the teacher learning community model.

The *United Federation of Teachers (UFT)* submitted a comment regarding the re-identification of Priority Schools. According to the UFT, “at least some of the re-identified schools are sure to be among the schools with the most disproportionate number of high-need students. These can be identified as schools where the average student needs are one standard deviation or more above the average need for all state or city schools. In the NYC middle schools that fit this definition, one out of every five children has been in temporary housing in the past two years; one third have disabilities that make learning difficult, and a full 15% have such significant learning disabilities that they must be taught in separate classes. When one school has so many students with so many needs, then progress becomes more difficult for all students.”

In order to address this issue, the UFT proposes that NYSED amend its waiver request: “The state should stipulate in its waiver that no school with a disproportionate number of high need students shall be subject to the more extreme whole school reform. Instead, the state should mandate that the LEA take steps to remediate the disproportionality in these schools, and exempt them from punitive measures until such time as the LEA addresses the issue. UFT further explains that “not all Priority schools would be subject to the stipulation. The only schools affected would be those whose concentration of need is great enough to place it one standard deviation or more above the state or district average. The precise metric should be determined with the state’s metric task force, but should include considerations for the following factors: percent of students in poverty; temporary housing, students with IEPs; and ELL status. For schools where incoming assessment scores exist (such as middle and high schools), the scores should be factored in.”

Focus Schools

The NYC DOE supports NYSED’s efforts to simplify the Focus School identification process and requests that NYSED develop a flexible approach to the Focus School identification process that takes into account New York City’s unique structure.

NYCDOE also strongly agrees with NYSED's proposed change to Focus School removal and replacement methodology that would eliminate the requirement that districts replace a Focus School that meets the criteria for school removal with another school if the Focus District in which it is located does not meet the criteria for district removal.

Finally, the NYC DOE proposes that for re-identified Focus Schools, "any external review resulting from the school's re-identification as a Focus School, as well as the school's revisions of its SCEP, should be laser-focused on helping the school improve student achievement for the specific subgroup(s) for which the school failed to make AYP." Further, NYCDOE proposes that a district with re-identified Focus Schools be provided the flexibility to use the district's existing process for evaluating principals in these schools in lieu of the Department's proposed school leader checklist, if such a process is already in use by the district.

Local Assistance Plan Schools

NYSUT supports SED's request for flexibility to make available 1003(a) School Improvement funds to Title 1 LAP Schools. The funds should be used for training for LAP Development Teams on use of data and its implications for developing improvement goals and strategies to achieve said goals to ensure the plans quality in addressing the targeted need(s). Too often these plans are developed for compliance purposes and have little relevance to the needs of students and teachers in the affected schools. Additionally, NYSUT would like NYSED to revise its proposed waiver request to ensure that when a Local Assistance Plan School is identified as a Focus School after three consecutive years as LAP, the district does not become a Focus District.

Timothy Eagen, the Superintendent of Kings Park Central School District states, "One potential pitfall across NYS is the "opt out" or "refusal" movement. Despite our best efforts to test all of our students in grades 3-8, schools failing to make the 95% tested mark for three consecutive years will certainly have an issue. Many more schools will certainly be identified as LAP, and possibly as Focus Schools." Mr. Eagen also believes that NYSED should revise its request to "hold Charter Schools accountable" in the same way as public schools.

The NYC DOE strongly objects to NYSED's proposal that schools identified as LAP for three consecutive years be identified as Focus Schools for the 2015-16 school year. NYC DOE stated that "LAP School identification methodology is not designed to identify the lowest performing schools in the state. Using this methodology to identify additional Focus Schools diverts resources away from schools that are truly in need of supports and interventions." The NYC DOE goes on to state that if the proposal would result in schools identified as LAP for three consecutive years due solely to a failure to meet AYP participation requirements would be designated Focus Schools, regardless of their performance and growth metrics. NYC DOE recommends that if NYSED proceeds with this proposal, it should allow NYCDOE Quality Reviews to stand in place of DTSDE reviews. The NYC DOE states that "the Quality Review rubric and protocols are strongly aligned with those of the DTSDE and therefore, Quality Reviews are appropriate substitutes for state-led reviews."

The NYC DOE does support NYSED's proposal to provide 1003(a) School Improvement Grants to Title I LAP Schools.

Required Set Asides and Supplemental Educational Services (SES)

NYSUT would also like NYSED to revise the waiver application to provide greater emphasis on professional development: "Schools that are more successful focus on instructional improvement, not compliance or monitoring activities. Under the waiver application, districts will be required to use five to fifteen percent of their Title I funds for school choice and 200 hours of extended learning time to students in Priority Schools. Professional development should be added to this required list."

The NYC DOE stated that "currently, the costs of meeting the obligations associated with addressing all federal and state mandates for Priority and Focus Schools goes well beyond the NYCDOE's 5-15% set aside and allocated Title I 1003(a) funding. While NYCDOE meets these obligations utilizing these and other funds, NYCDOE could benefit from additional resources to support these activities."

Department Response:

The Department appreciates the comments received regarding the identification of Priority and Focus Schools, Focus Districts, and Local Assistance Plan Schools, and the related proposed supports and interventions. Although the Waiver covers the 2015-16 through 2018-19 school years, the Department fully expects to continuously monitor and refine its approach to working with low achieving schools. As part of this process of continuous improvement, the Department will continue to engage with stakeholders around the methodologies used to identify schools and the best supports and interventions to provide identified schools and districts. Many of the comments do not require modification of the ESEA waiver but can be addressed as appropriate at the time that conforming regulations are adopted by the Board of Regents or through the business rules and guidance developed by the Department.

Release of the New List of Priority & Focus Schools and Focus Districts

The Department would like to release the new list prior to the start of the 2015-2016 school year. However, in order to base accountability status determinations on 2014-15 school year assessment data, and to ensure that districts have adequate time to submit and then verify assessment data, the Department will not be able to issue a new list of Priority & Focus Schools and Focus Districts until January 2016.

Re-identification of Priority Schools

The Department will be exploring refining the requirements for newly identified Priority schools to include a requirement to provide the Department with an analysis of current enrollment patterns. This will enable the Department to work with districts on enrollment issues prior to re-identification. Additionally, it should be noted that in cases where the Department has assessed that enrollment practices are negatively impacting re-identified schools, the district may be required to cease "over the counter" enrollment in the re-identified school for the period of the intervention.

Addition of School Intervention Models and Emphasis on Professional Development

In the Department's 1003(g) School Improvement Grant application to USDE for 2014-15 funding, staff will be proposing an Innovation Framework Model. The "framework" requires schools to adopt one of three design pathways, including the College Design Pathway, the Community-Oriented Design Pathway, and the Career and Technical Education Design Pathway. A school created under the Community-Oriented Design Pathway is a public school with an integrated focus on academics, services, supports and opportunities that leads to improved student learning, stronger families, and healthier communities. It is child-centered and all partners are integrated into the governance and decision-making bodies. Effective community schools continually develop a set of four key capacities: comprehensiveness, collaboration, coherence, and commitment. Typical programming is based on an assessment of the community's needs and resources, and may include parent engagement and involvement, adult education, medical/ dental/mental health/and social services, early childhood, and/or community and economic development. Additional guidance for this design framework may be found at: Building Community Schools: A Guide for Action at: <http://www.p12.nysed.gov/turnaround/CommunitySchools.html>.

Within the Department's SIG application, the Department requires districts, regardless of the intervention model chosen, to prioritize professional development for teachers and administrators. Applicants must identify and describe any district-wide training programs designed to build the capacity of teachers and leaders to be successful in leading dramatic change in low-achieving schools. The Department is submitting its application to the USDE for review on March 11, 2015.

The Department is also engaged in refining the District Comprehensive Improvement Plan and School Comprehensive Education Plan to ensure that districts and schools have a laser-like focus on improving academic achievement for the subgroups for which they were identified. This includes emphasizing the importance of targeted, imbedded professional development for staff and administrators.

Local Assistance Plan Schools

The Department and the Board of Regents are committed to ensuring progressive improvement in all low achieving schools. To that end, the Department has determined that three consecutive years of identification as a Local Assistance Plan School requires the more rigorous intervention associated with identification as a Focus School. The Department will continue to allow districts to appeal school and district accountability determinations during the preliminary identification stage. Districts that are able to demonstrate that a school is not performing at the level of a Focus School will have their appeals upheld.

Public Comments Received on the Annual Professional Performance Review for Teachers and Administrators

The New York State Education Department received one comment opposing the State's Annual Professional Performance Review (APPR) for Teachers and Administrators, and

one comment related to the Department's proposed Double Testing Waiver and its impact on APPR.

Andrew Greene, Co-President of Suffolk County Middle Level Principal Association, commented that "Educators should be accountable for results and they indeed have an obligation to continue to grow as an educator and help students succeed. The problem is the current system makes no sense, is one that no one can explain, and it has created a terrible culture for students and teachers. This cannot be the path that we choose. Let's be smart. All districts should institute an evaluation system that is done with fidelity, based on the latest research on effective teaching and learning practices, and a commitment to ongoing training for all staff. Let's not engage in unethical behavior by judging 50% of a teachers "score" through the use of unproven and reliable models-models which could lead to the firing of great teachers."

The *NYC DOE* stated that it supports NYSED's efforts to seek approval of a waiver to exclude grade 7 and 8 students who take high school math Regents from also being required to take the grade level mathematics assessment that would be in place for the 2015-19 school years. However, the NYCDOE continues to strongly advocate that, for teachers of students who did not take the grade 7 or 8 exam due to the waiver, their students' Regents results be incorporated into the state growth scores included their APPR.

Department Response:

The Department believes that all stakeholders – teachers, administrators, parents and districts – are responsible for the academic success of students. The Annual Professional Performance Review (APPR) provides educators with a process by which teachers who need additional support can receive it – targeted to their unique needs. To clarify, the current APPR process, outlined in Education Law 3012-c, is not based upon districts using state assessment growth data as 50% of a teacher or administrator's rating.

The Department is moving forward with plans to incorporate Grade 8 Regents math results into the state provided growth score.