



**TO:** The Honorable the Members of the Board of Regents  
**FROM:** Ken Slentz   
**SUBJECT:** Update on Elementary and Secondary Education Act (ESEA) Waiver Renewal Process and Related Amendments

**DATE:** January 9, 2014

**AUTHORIZATION(S):**

  
SUMMARY

### **Issue for Decision**

Should Department staff issue for public comment a draft ESEA Waiver Renewal application and the related amendments, based on materials provided to the Board of Regents at its November 2013, December 2013, and January 2014 meetings?

### **Proposed Handling**

This item will come before the Full Board for action at its January 2014 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 has 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 In November 2013, the USDE rescinded its September 2013 renewal application process and replaced it with a one year streamlined renewal process for the 2014-15 school year only.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, New York State Education Department staff (NYSED or “the Department”) 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). Department 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.

### **Statewide Achievements Related to ESEA Waiver Implementation**

To receive an extension, USDE is requiring that states submit a formal letter requesting an extension of the approved waiver, and that letter must include information on how the waiver has helped the New York State Education Department positively impact district, school, and student achievement. Although the USDE had informed states in November that it would issue a template for the extension letter in December, as of January 7, 2014 the USDE had not yet issued the template. However, once the template becomes available, the Department will (with Regents approval) highlight the following statewide achievements related to ESEA Waiver implementation.

#### **Principle 1: College- and Career-Ready Expectations for All Students**

New York State is one of two states with approved ESEA waivers that has implemented new State assessments aligned to the Common Core Learning Standards (CCLS). Results from school year 2012-13 assessments showed a decline in student proficiency from prior years, but presented a more realistic view of current performance against college- and career-ready standards. Educators received continued support and training from Teacher Ambassadors, Common Core Advisory Panels, and Network

Team Institutes through conferences, training sessions, field visits, webinars, e-mail updates, field memos on key initiatives, a Race to the Top website, and the EngageNY.org website. The State also made progress developing and releasing effective practice videos to encourage conversations among stakeholders around the CCLS instructional shifts and to provide concrete models of effective CCLS instruction. Although New York's results on the National Assessment of Educational Progress (NAEP) have been largely unchanged for the past decade, between 2011 and 2013 New York improved on all four measures (Grade 4 and 8 reading and math), with gains in Grade 4 math being statistically significant. Consequently, New York looks forward to the 2015 NAEP assessment and making even greater progress in the transition to college- and career-ready standards.

#### Principle 2: System of Differentiated Recognition, Accountability, and Support:

NYSED developed the Diagnostic Tool for School and District Effectiveness (DTSDE) and implemented the tool in 70 districts in the 2012–13 school year. Through the DTSDE process, Integrated Intervention Teams (IIT) or District led review teams gathered evidence of the progress that each Priority or Focus School has made in implementing optimal learning practices as identified by the DTSDE tenets and rated schools in accordance with the DTSDE rubric. State IIT teams generally gave schools higher ratings on Statements of Practice related to how school leaders use resources, how the school develops partnerships to promote social and emotional health, and how the school creates an atmosphere that is welcoming to families. IIT teams found schools had the most room for improvement in how instructional practices are linked to lesson plans and student goals, how teachers are using data to inform their instruction, and how schools are sharing student data with families. Based on feedback and lessons learned from initial implementation, for the 2013-14 school year, the Department has made refinements to the tools used for classroom visits and observations as well as to the logistics of IIT visits, including adding a day for site visits to better provide immediate, actionable feedback. The State is also providing additional opportunities to build the capacity of LEA and school leaders to implement the DTSDE process and to share successful strategies through DTSDE-specific professional learning communities, institutes, and a DTSDE reviewer certification program.

The Department's Office of Accountability and School Turnaround Office worked together to provide oversight and support to schools and LEAs previously identified as persistently lowest achieving and to refine competitive funding opportunities and supports for Focus Districts and their schools. Therefore, NYSED made significant progress in providing support to LEAs to build their capacity to increase student achievement at low-performing schools. The Department made progress implementing the federal 1003(g) School Improvement Grant program in 2012-13 by redesigning the cohort four application process based on lessons learned. The Department decided to issue awards in two rounds to enable schools that needed it to have additional time to prepare prior to initiating full implementation of a model in school year 2013-14. The plans that the Department requires of non-School Improvement Grant (SIG) funded Priority Schools, Focus Schools, Local Assistance Plan (LAP) schools, and Focus Districts must explicitly address the needs of student subgroups that have consistently

missed performance targets (and thus led to these schools and districts being identified). To emphasize for schools, districts, parents, and other key stakeholders the importance of targeting the needs of student subgroups that have consistently missed performance targets, NYSED included in the templates to be completed by these schools and districts explicit language indicating that “[school and district plans] must focus on the accountability subgroup(s) and measures for which they have been identified.” By highlighting the requirement to address the needs of subgroups, NYSED has signaled that schools and districts must identify and address the needs of all student subgroups, including students with disabilities, English language learners (ELL), economically disadvantaged students, and all major racial/ethnic subgroups.

### Principle 3: Supporting Effective Instruction and Leadership:

New York is one of the first states in the nation to implement a teacher and principal evaluation system (i.e., Annual Professional Performance Review or “APPR”) that includes student growth, based on assessments of college- and career-readiness, as a significant component of the evaluation system. The State used a rigorous review process to approve districts APPR plans, and every district in the State except New York City had an approved plan to implement during the 2012-13 school year. Approval of APPR plans also contributed to progress in awarding several districts competitive grants to support comprehensive and innovative approaches to turning around the lowest achieving schools and improving the effectiveness and equitable distribution of educators. Based on preliminary statewide results in school year 2012-13, the State reported the following rating distribution for teachers: 91.5 percent are rated Highly Effective (49.7 percent) or Effective (41.8 percent); 4.4 percent are rated Developing; and 1 percent are rated Ineffective. The data for principals show 86.9 percent are rated Highly Effective (26 percent) or Effective (60.9 percent); 7.5 percent are rated Developing; and 2.1 percent are rated Ineffective. These results do not include New York City. The State has continued to train its Network Team members in the use of data to improve instruction. In turn, the Network Teams provided training to school-based inquiry and data-driven instruction teams. Together, these teams train and support educators on the use of data to improve instruction. The State provided professional development at Network Team Institutes for Network Teams, as well as teacher and principal evaluators and evaluation system trainers in September and October 2012 and March 2013 on several aspects needing further refinement, including student learning objectives (SLOs) and inter-rater reliability. Additionally, the State engaged its public and independent colleges and universities with the transition to the CCLS.

New York is redesigning its teacher and school leader preparation programs by instituting clinically grounded instruction, performance-based assessments, and innovative new certification pathways for educators. New York continued development of new certification assessments for teacher and leaders, including soliciting feedback from the field and experts through reviews and field tests. To measure prospective writing and reading analysis skills and readiness to address the learning needs of diverse populations, the State is adding new *Academic Literacy Skills* and *Educating All Students* tests to its certification process. Through these training opportunities, the

State is building awareness of both the certification exams and broader reforms, such as the new educator evaluation systems and college- and career-ready standards that pre-service candidates will need to be prepared to implement when they enter classrooms.

### **Resolution of New York State's Next Step Issues**

In September 2013, the USDE monitored NYS implementation of its approved ESEA Waiver. For each waiver principle, USDE identified key elements that were required under ESEA flexibility and were likely to lead to increased achievement for students. Through examination of documentation submitted by the Department and interviews with Department staff, USDE assessed the effectiveness of implementation of ESEA flexibility in fifteen elements within Principles 1-3. Through the ESEA flexibility extension process, NYSED is required to amend its approved ESEA Waiver application to reflect how the state will resolve any identified issues. USDE found only two areas that required next steps:

1. Issue: NYSED indicated in its approved request for ESEA flexibility that it would issue a press release regarding its Reward Schools. Instead, NYSED posted its list of Reward Schools on its website, but did not issue a press release.

Resolution: NYSED will commit to issuing a press release regarding its Reward Schools on an annual basis, and add language to the waiver regarding possible funding opportunities for Title I Reward Schools that agree to act as resource schools for the Department and for low performing schools.

2. Issue: The State does not have in place a process to ensure that the LEAs that are implementing turnaround principles in a Priority School (1) review the performance of the current principal and (2) replace the principal if such a change is necessary to ensure strong and effective leadership.

Resolution: NYSED will describe its process for ensuring that districts with Priority Schools implementing the turnaround principles meet the requirements related to review of and, if necessary, replacement of the principal. The Department will require that districts with Priority Schools submit, as part of each Priority School's Comprehensive Educational Plan, a rationale for each principal that the district proposes to lead the Priority School's turnaround model. The rationale must include data on the selected principal's effectiveness and experience in the following areas: 1) leading successful turnaround of low performing schools; 2) making effective changes to school curriculum and programs to address low performing sub groups; and 3) making effective changes to staff and providing targeted professional development to ensure that students are receiving rigorous and common core aligned instruction.

## **Proposed Amendments**

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 (the full text of these amendments can be found in Attachments A-F):

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 (Attachment A).
2. Create an explicit alignment between the DTSDE rubric ratings and the list of 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) in order to help Districts select activities that best address areas of need (Attachment B).
3. Make a technical change to the computation of Adequate Yearly Progress (AYP) for the "all students" group. New York will seek permission to allow the "all students" group in a district or school to be reported as making AYP if all the accountable subgroups in the school or district make AYP by meeting their respective AMO or Safe Harbor (Attachment C). Based on the 2011-12 school year results, a total of 322 schools would have benefitted from this amendment. Since making AYP is one of the requirements to be a Reward school, these schools could have become eligible to be considered for Reward Status if they met the other criteria. However, other than for reporting purposes and eligibility for Reward School designation, there would be no other accountability implications for this technical change.
4. 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 (Attachment D).
5. Request that the Department be allowed to exempt newly arrived ELLs from participating in the ELA assessments for two years and use the New York State English as a Second Language Achievement Test (NYSESLAT) for accountability purposes for these students (Attachment E). Additionally, Request permission to develop a Performance Index for newly arrived ELLs in their first two years in the United States, beginning in 2014-15. For these students, growth towards proficiency in language arts will be calculated based on rigorous expectations on the NYSESLAT assessment (Attachment F).

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

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding 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 drafted 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. To date, The ESEA Waiver Renewal Think Tank has met five times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited 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 consulted with the Commissioner's Advisory Panel for Special Education and with representatives from the thirteen Special Education Parent Centers funded by NYSED.

This month, Department staff seeks approval to issue a draft of New York's ESEA Waiver Flexibility renewal request and its related amendments, so that a period of formal public comment may be opened from approximately January 16 through January 27, 2014. At the February 10-11, 2014 meeting of the Board, Department staff will present the final draft of the ESEA Waiver Flexibility Request for approval to submit to the USDE. In addition to a formal solicitation of public comment, Department staff will continue to meet with key stakeholder groups and with the ESEA Waiver Renewal Think Tank. At the February meeting, staff will provide the Board of Regents with a summary of public comments and any suggested revisions to the application based on those comments.

### **Recommendation**

The Board of Regents directs the Commissioner of Education and the State Education Department to issue for public comment a draft ESEA Waiver Renewal request, with related amendments, based upon the materials provided to the Board of Regents at its November 2013, December 2013, and January 2014 meetings.

### **Timetable for Implementation**

With the approval of the Regents, staff will release the January 2014 draft renewal request for public comment from approximately January 16 – January 27, 2014, engage in additional stakeholder consultation as described in this item and submit a final draft waiver renewal request with related amendments for action by the Regents in February 2014.

Attachments

## **Attachment A: Amendments Regarding Testing Requirements for Students with Disabilities**

### Flexibility Element(s) Affected by the Amendment

1.C Develop and administer annual, statewide, aligned, high-quality assessments that measure student growth.

### Brief Description of the Element as Originally Approved

See pages 36 – 37. Originally, the State did not propose a waiver for the assessment of students with disabilities.

### Brief Description of the Requested Amendment

There is a group of students with significant cognitive disabilities who cannot demonstrate what they know and can do on the general grade level assessments, even with accommodations. These are students who are not eligible for the State's alternate assessment based on alternate academic achievement standards. This subgroup of students can make significant progress, but are not likely to reach grade-level achievement in the time frame covered by their individualized education programs (IEP).

NYSED is applying for a waiver to allow school districts to administer the general State assessments to these students with disabilities, but at their appropriate instructional grade levels, provided that (1) the State assessment administered to the student is not more than two grade levels below the student's chronological grade level; and (2) the student is assessed at a higher grade level for each subsequent year. The student's instructional grade level would be calculated annually and separately for English Language Arts (ELA) and math.

Allow the proficient and advanced scores of those students assessed in accordance with their instructional grade levels be used for accountability purposes, provided that the number of those scores at the LEA and at the State levels, separately, does not exceed the .93 percent of all students in the grades assessed in ELA and 2.37 percent of all students in grades 3-8 assessed in Math.

To ensure appropriate time for dissemination of guidance to Committees on Special Education who would make IEP recommendations for student participation in the instructional level State assessment, this waiver would go into effect during the 2014-15 school year.

### Rationale

Until the State can develop and implement adaptive assessments, NYSED requests to more appropriately assess, for instructional and State accountability purposes, the performance of students with significant cognitive disabilities who cannot, because of the severity of their disabilities, participate in chronological grade level instruction. These students, while they do not meet the State's definition of a student with a significant cognitive disability appropriate for the State's alternate assessment, may be

able to meet the State's learning standards over time. However, these students need to be provided with instruction with special education supports and services at a pace and level commensurate with their needs and abilities and their individual rates of learning. When students with disabilities are required to participate in an assessment at their chronological age significantly misaligned with content learned at their instructional level, the assessment may not provide as much instructionally actionable information on student performance or foster the most prudent instructional decisions. For these students, State assessments do not provide meaningful measures of growth for purposes of teacher and leader evaluations.

NYSED holds all schools and students to high expectations and believes this waiver will lead to more appropriate instruction and assessment of students, while ensuring that students with disabilities participate in the general curriculum and the same State assessments, but closer to their instructional levels in order to obtain instructionally relevant information from the assessments.

The State has calculated the percentage of students who have participated in the chronological age assessments and found that in school year 2012-13, .93 percent perform at chance level on the ELA exams and approximately 2.37 percent of students score at chance on the Math exams.

The State would establish criteria, based on objective and valid data, for demonstrating that the student's current level of performance is two or more years below his/her chronological grade level and demonstrating the student's progress (or lack of progress) over a sufficient period of time. The state would also create a profile of a student who, based on individual evaluation information identifies the student as having intellectual or cognitive deficits, such as autism, intellectual disability, traumatic brain injuries, neurodegenerative diseases or severe learning disabilities.

To provide further safeguards, the State would require:

- A determination by CSE that the student does not meet the State's definition of a student with disabilities who is eligible for the State's Alternate Assessment; and
- Documentation that shows that the student would need extensive modifications and accommodations to curriculum, instruction and assignments to access the curriculum and that even with such services, the CSE is reasonably certain that the student would fail to achieve chronological age-level proficiency; and
- Documentation of notices to the student's parent of the recommendation and the reasons for the recommendation; and
- Assurances that the student will not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum and that the student will be provided instruction in in the general curriculum with his/her chronological age peers by a highly qualified teacher.

The waiver will support continued focus on ensuring students with disabilities graduate college- and career-ready by ensuring more meaningful State assessment results; support efforts to improve all schools in the State; and support closing of achievement

gaps between student subgroups by better identifying the subgroups of students with disabilities and their performance levels.

### Process for Consulting with Stakeholders and Summary of Comments on the Students with Disabilities Assessment Waiver Request

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding 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 drafted 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. To date, The ESEA Waiver Renewal Think Tank has met five times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited feedback on the waiver through meetings with a wide variety of organizations, including the Commissioner’s Advisory Panel for Special Education (of which the majority of members are parents of students with disabilities), representatives of each of the State’s 13 Special Education Parent Centers and federal Parent and Training Information Centers (PTIs), Title I Committee of Practitioners, the English Language Learners Leadership Group, the DTSDE Training Group, and the District Superintendents.

Throughout this process, Department staff evolved the proposed waiver to address stakeholder concerns and recommendations, which were primarily to develop objective criteria to identify the subgroup of students with disabilities who would be eligible for this waiver and to ensure that students with disabilities would continue to have access to the general curriculum in the least restrictive environment. This waiver request has been strongly supported by both parent and advocacy organizations and school personnel throughout the State.

## **Attachment B: Amendment Regarding Alignment of DTSDE Rubric Ratings with DCIP/SCEP Allowable Expenses**

### Flexibility Element(s) Affected by the Amendment

2D.iii Describe the meaningful interventions aligned with the turnaround principles that the LEA with Priority Schools will implement.

2E.iii Describe the process and timeline the SEA will use to ensure that its LEAs with one or more Focus Schools will identify the specific needs of the SEA's Focus Schools and their students and provide examples of and justifications for the interventions Focus Schools still will be required to implement to improve the performance of students who are the furthest behind.

### Brief Description of the Element as Originally Approved

Districts with Priority and Focus Schools use the results of the DTSDE reviews to inform comprehensive educational planning and use the District Comprehensive Improvement Plan and the School Comprehensive Education Plans to outline how the district will use federal and state funding to positively impact student achievement across identified subgroups.

### Brief Description of the Requested Amendment

NYSED will create an explicit alignment between the six tenets of the DTSDE and the list of 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 systemic planning training, curriculum development and support, teacher practices and decisions, expanded learning time and/or 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.

### Rationale

By requiring districts with Priority and Focus Schools to prioritize their funding to meet the needs identified by the DTSDE process and to implement programs that have been proven to positively impact student achievement, NYSED will ensure that districts are making progress towards serving students in the most effective manner possible.

### Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding 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 drafted 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. To date, The ESEA Waiver Renewal Think Tank has met five times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited 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.

## **Attachment C: Amendment Regarding Making A Technical Change to the Computation of Adequate Yearly Progress (AYP) for the “All Students” Group**

### Flexibility Element(s) Affected by the Amendment

2B.i— Provide the new AMOs and an explanation of the method used to set these AMOs.

### Brief Description of the Element as Originally Approved

See page 84. Originally, in order for the school or district to make AYP for the all students group, the all students group had to have a Performance Index that met or exceeded the Effective Annual Measurable Objective (EAMO) or safe harbor target even if the school or district had made AYP for all other subgroups for which the school or district was accountable on a performance measure.

### Brief Description of the Requested Amendment

We propose to change this requirement so that if a school or district makes AYP for all subgroups for which the school or district is accountable on a performance measure, then the all student group will also be deemed to have made AYP for that measure.

### Rationale

During the first year of implementation of the new AMOs (2011-12 school year results), New York noticed an anomaly where some schools made all the subgroup level AMOs within a measure, but did not make the “all student” group AMO or safe harbor. This is due to the relatively higher AMO set for the “all student” group. To remedy this situation, beginning with the 2012-13 school year results, New York is seeking permission to report, with proper annotation, the “all student” group in a district or school as having made AYP if all the accountable subgroups (for that measure) in the school or district respectively make AYP by meeting the AMO or safe harbor. These schools will have a green check mark (√) instead of the red mark (X) on the report card indicating that the all students group made AYP for the respective measure, with a further notation that AYP was made based on the performance of subgroups. In terms of accountability decisions, these schools will become eligible to be considered for Reward status, provided they also meet the other criteria required of Reward Schools. This change will have no effect on the identification of Priority, Focus, or Local Assistance Plan Schools.

### Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding 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 drafted 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. To date, The ESEA Waiver Renewal Think Tank has met five times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited 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.

## **Attachment D: Amendment Regarding Revising the AMOs for Grades 3-8 English language arts and Mathematics**

### Flexibility Element(s) Affected by the Amendment

2B.i— Provide the new AMOs and an explanation of the method used to set these AMOs.

### Brief Description of the Element as Originally Approved

See pages 75-78. Originally, the grades 3 – 8 ELA and Math AMOs were set on the baseline data of 2010-11.

### Brief Description of the Requested Amendment

We propose to change the baseline year to 2012-13 due to the change in assessment to measure Common Core standards.

### Rationale

The 2012-13 Grades 3-8 State assessments are the first for New York State students to measure the Common Core Learning Standards that were adopted by the State Board of Regents in 2010. The percentage of students deemed proficient is significantly lower than in prior years. This change in scores — which will effectively create a new baseline of student learning — is largely the result of the shift in the assessments to measure the Common Core Standards, which more accurately reflect students' progress toward college and career readiness.

### Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding 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 drafted 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. To date, The ESEA Waiver Renewal Think Tank has met five times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited 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.

## **Attachment E: Amendments Regarding Testing for English language learners**

### Flexibility Element(s) Affected by the Amendment

1.C. Develop and administer annual, statewide, aligned, high-quality assessments that measure student growth.

### Brief Description of the Element as Originally Approved

See pages 36 – 37. Originally, the State did not propose a waiver for the assessment of English language learners.

### Brief Description of the Requested Amendment

NYSED is applying for a waiver to better capture and measure growth in Language Arts for English Language Learners. NYSED is not seeking a waiver from Math testing requirement for ELLs. The State currently relies exclusively on the English Language Arts assessments to make language arts accountability determinations for ELLs. The State is proposing a new approach that will exempt a subgroup of ELL students from taking the English Language Arts assessment, either because they are newly arrived or because they can demonstrate language arts knowledge and skills on a Native Language Arts assessment.

NYSED is applying for a waiver to:

1. Exempt newly arrived ELLs from participating in the ELA assessments for two years.
2. Create Spanish Language Arts assessments and allow districts to offer this assessment as a local option when it would best measure the progress of Spanish-speaking ELLs.

NYSED has historically allowed newly arrived ELLs to be exempt from ELA testing for their first year of instruction. In light of the new Common Core Learning Standards, NYSED seeks to extend this exemption to two years in order to afford ELLs the time needed to acquire a sufficient level of English such that they can demonstrate their knowledge and skills on the Common Core ELA assessments. This exemption will allow New York State to better measure the progress of ELLs by utilizing the New York State English as a Second Language Achievement Test (NYSESLAT) as a way of measuring ELL progress in the first two years of their instruction in the United States. By extending the exemption for one additional year, districts would be given sufficient time to work intensively with ELLs to develop their English language without being held accountable for results on an ELA assessment that will not sufficiently capture those instructional gains in developing the English language needed to meaningfully participate in the Common Core.

In addition to extending the exemption from the ELA assessments for newly arrived students, New York State has a sizable ELL population and a strong tradition of innovative native language arts educational initiatives. Yet, the State's accountability system has historically relied on ELL students taking assessments only in English, e.g., the NYSESLAT (a test of English proficiency) and (in most cases) the State's ELA Grade

3-8 and English Regents (high school) exams, to determine their progress in language arts.

Although NYSED does not foresee a change to the State's accountability system during the 2014-15 school year, NYSED has been extensively investigating with other states the possibility of developing a new Common Core native language arts assessment program that will initially be in Spanish beginning in the 2015-16 school year, and may extend to other language groups thereafter.

If NYSED and partner states are able to secure funding to develop a new Common Core native language arts assessment program<sup>1</sup>, NYSED will seek to incorporate the new assessment into the State's accountability plans beginning in the 2015-16 school year at the earliest. The State would offer this assessment as a local option to districts to allow Spanish-speaking ELLs who have attended school in the United States for less than three consecutive years to be tested in Spanish in lieu of the ELA assessment, and on a case by case basis for an additional two years in Spanish if such an assessment would better allow the student to demonstrate their knowledge of language arts.

#### Rationale:

ELLs, by virtue of the definition that identifies these students as developing in their understanding and use of English, have a limited ability to demonstrate what they know and can do on the English Language Arts assessments, even with accommodations. Unlike accommodations provided to ELLs on other content area assessments, such as math, translations of the ELA assessments are not provided to ELLs. Any progress in language development, therefore, is not captured by the ELA assessments, which require a high level of English language development in order to demonstrate knowledge and skills on the assessments. However, if given the opportunity to demonstrate their knowledge and skills of language arts in their native language, these students will make significant progress in language development, which will prepare them to be successful on the ELA exams.

The NYSESLAT exam is an appropriate exam for newly arrived ELLs to demonstrate progress because it is rigorous, aligned to the Common Core and highly correlated with ELA performance.

In 2012-13, the NYSESLAT exam was updated to be more closely aligned to the CCLS, and in 2014-15 school year, the NYSESLAT will be fully aligned to the Common Core. As such, the NYSESLAT will be the most appropriate tool to assess the language development of ELLs such that they can be successful on a Common Core ELA assessment. The performance of ELLs on the NYSESLAT will be a true indication of their progress towards developing the English language needed to demonstrate their knowledge and skills on the ELA assessment.

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<sup>1</sup> In order to develop a Native Language Arts assessment in Spanish, the State Education Department will need to receive additional State funding from the legislature. The Board of Regents has requested funding to support this initiative in its 2014-15 State School Aid Proposal, which can be found at <http://www.regents.nysed.gov/meetings/2013Meetings/December2013/1213saa11.pdf>

Historically, student performance on the NYSESLAT exam has been highly correlated to performance on the ELA assessments. That is, the NYSESLAT has served as a gate keeper such that once ELLs test out of the NYSESLAT they tend to outperform their non-ELL peer group on every measure, including ELA assessments. In fact, in some cases, the NYSESLAT exam is more difficult to pass than the ELA assessments and some ELLs demonstrate proficiency on the ELA exam, but do not demonstrate proficiency on the NYSESLAT. Thus, the NYSESLAT is a rigorous measure that can be used for two years until students have developed sufficient English language skills to demonstrate their knowledge and skills on the ELA assessments.

Exempting newly arrived ELLs from ELA assessments for two years will not lower expectations for Common Core ELA instruction for ELLs. NYSED holds all schools and students to high expectations and in doing so the State has launched a Bilingual Common Core Initiative. In Spring 2012, NYSED launched the Bilingual Common Core Initiative to develop new English as a Second Language and Native Language Arts Standards aligned to the Common Core. As a result of this process, NYSED is developing New Language Arts Progressions (NLAP) and Home Language Arts Progressions (HLAP) for every NYS Common Core Learning Standard in every grade. Beginning in 2014-15, all ELA and ESL/Bilingual teachers will be expected to provide Common Core instruction to ELLs aligned to the Progressions.

At the core of Bilingual Common Core Initiative is the idea that in addition to being a series of grammatical structures, language is also a social practice (Street, 1985; Pennycook, 2010). Therefore, language learning in an academic context is not solely about mastery over grammatical structures or isolated vocabulary, but also about the development of competency in the language specific to each academic discipline. In order for this development of competency to occur, students must participate in a language socialization process that includes both explicit and implicit guidance by mentors who are more proficient in the language of the academic discipline (Duffy, 2010) as well as an engagement with the ways of thinking in each academic discipline through exposure to content-specific texts (Snow, Griffin, and Burns, 2007). What this means is that in a history class students are treated as historians and in science class students are treated as scientists and are provided with both explicit and implicit guidance on the language structures and practices associated with the discourse of the content-area being taught (Walqui & Heritage, 2012).

Given the high demands of the Common Core, the appropriateness of the NYSESLAT to measure progress for newly arrived ELLs and the high expectations and rigor expected by the State for all ELLs, allowing for an additional year exemption will further the State's instructional goals and accurately measure student growth in language arts for newly arrived ELLs.

In addition to requesting a two year exemption for newly arrived ELLs, for a subgroup of ELLs who are Spanish-speakers and who can demonstrate their language arts knowledge and skills in Spanish, NYSED is proposing that beginning in 2015-16, districts be allowed to offer this assessment as a local option when it would best measure the progress of Spanish-speaking ELLs.

With the implementation of the Common Core, the development of new NYS Native Language Arts standards (the Home Language Arts Progressions) discussed in the State's original waiver, and the proposed development of a Spanish Language Arts assessment, the State will have developed the resources needed to support strong Common Core instruction and assessment in the home language. For schools offering Bilingual Education programs or strong home language supports aligned to the Common Core in Spanish, it is most appropriate to measure language arts proficiency for such students through a Spanish Language Arts assessment. In doing so, the State would allow such students to demonstrate mastery of grade-level-appropriate language arts standards in their home language, while they are acquiring English.

#### Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding 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 drafted 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. To date, The ESEA Waiver Renewal Think Tank has met five times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited 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.

## **Attachment F: Developing a Performance Index for Newly Arrived English language learners**

### Flexibility Element(s) Affected by the Amendment

2.A. Differentiated recognition, accountability, and support system.

### Brief Description of the Element as Originally Approved

See pages 64 – 65. Originally, the State did not propose a differentiated accountability metrics for measuring progress of ELLs.

### Brief Description of the Requested Amendment

In order to accurately capture ELLs student growth in language arts, a combination of assessments must be used in order to make appropriate determinations of progress and growth towards proficiency. NYSED is applying for a waiver that would create a differentiated Performance Index for ELLs based on their level of language proficiency and the most appropriate measure of their language arts proficiency. NYS is implementing an aggressive agenda for ELLs which holds districts and schools accountable and sets high expectations for ELL student instruction.

As the State fully aligns the NYSESLAT exam to the Common Core Learning Standards and begins to develop additional assessment tools that can best capture growth towards proficiency for ELLs in language arts, the accountability system should be changed accordingly. A new accountability approach will allow students to demonstrate growth towards proficiency through appropriate measures and will hold schools and districts accountable to more appropriate measures of progress for ELLs as the test are specifically designed for this population

NYSED is applying for a waiver to:

1. Beginning in 2014-15, develop a Performance Index for newly arrived ELLs in their first two years in the United States. For these students, growth towards proficiency in language arts will be calculated based on rigorous expectations on the NYSESLAT assessment.
2. Beginning in the 2015-16 school year, develop a Performance Index for ELLs who have been in the United States for more than two years. For these students, growth towards proficiency in language arts will be calculated based on rigorous expectations on the ELA assessment that are differentiated based on their level of proficiency on the NYSESLAT exam and demographic factors such as the number of years a student has received ESL/Bilingual services and whether student has had interrupted formal education.
3. Beginning in 2015-16, develop a Performance Index for ELL students taking the Spanish Language Arts assessment. For these students, growth towards for proficiency in language arts will be measured based on rigorous expectations on the Spanish Language Arts assessment and performance on the NYSESLAT exam based on their level of language proficiency.

For ELLs in their first two years of instruction, the Performance Index would be modified only for language arts accountability purposes, the expectations and measures for math would not change. For such newly arrived students, the Performance Index would be based solely on their NYSESLAT performance.

For ELLs after two years of instruction, beginning in 2015-16, the Performance Index would also be modified only for language arts accountability purposes; the expectations and measures for math would not change. A Performance Index will be developed that creates rigorous expectations on the ELA assessment based on their level of English language proficiency, as determined by the NYSESLAT, and demographic factors that will impact growth and performance such as the number of years of ESL/Bilingual services and whether they are Students with Interrupted Formal Education.

NYSED will work with a team of ELL experts and statewide stakeholders to use performance data to determine appropriate outcomes for ELLs on the ELA assessments, based on their level of language proficiency and demographic factors that can be accurately identified through existing data collection systems. The Performance Index would then be adjusted such that schools and districts would be held accountable for making progress with ELLs based on new benchmarks on the ELA assessments according to their English Language proficiency level. As such, schools that are making significant progress with ELLs on the NYSESLAT and are demonstrating appropriate growth on the ELA assessment would not be penalized in the state's accountability system if their students are not yet proficient on the ELA assessment based on their level of English proficiency.

For ELLs who would be eligible to take the Spanish Language Arts assessment, beginning in 2015-16, the Performance Index would also be adjusted only for language arts accountability purposes; the expectations and measures for math would not change. A Performance Index will be developed that creates rigorous expectations for growth and performance on the Spanish Language Arts exam and the NYSESLAT exam. Thus, districts and schools would be held accountable for both progress in language arts in Spanish and English language development aligned to the Common Core Learning Standards.

Rationale:

ELLs, by virtue of the definition that identifies these students as developing English, have a limited ability to demonstrate what they know and can do on the English Language Arts assessments, even with accommodations. Unlike accommodations provided to ELLs on other content area assessments, such as math, translations of the ELA assessments are not provided to ELLs. The NYSESLAT has served a gate keeper such that once ELLs test out of the NYSESLAT they tend to outperform their non-ELL peer group on every measure, including ELA assessments. These students, however, can make significant progress in language development as determined on the NYSESLAT which will prepare them to be successful on the ELA exams. This progress in language development, however, is not captured by the ELA assessments which require a high level of English language development in order to demonstrate knowledge and skills on the assessments. In addition, many ELLs can demonstrate

Language Arts knowledge and skills in their home language. As such, an accountability system that determines growth for proficiency for ELLs in language arts based only on the ELA assessments is not appropriate.

Creating an accountability system that is differentiated to appropriately set high expectations for ELLs based on whether they are new arrivals, can demonstrate proficiency in their home language, or are at different levels of language development will create rigorous expectations for schools and districts and allow schools and districts making progress to be recognized for such growth.

Creating this differentiated accountability system will ensure that schools and districts making progress are not penalized in the accountability system because they have high numbers of ELLs not yet proficient on the ELA assessments. Without this provision, some schools and districts are being identified as Focus and Priority Schools in part because they have a high number of ELLs in their schools.

The NYSESLAT exam is an appropriate exam for newly arrived ELLs to demonstrate progress because it is rigorous, aligned to the Common Core and highly correlated with ELA performance. The NYSESLAT has served a gate keeper such that once ELLs achieve proficiency on the NYSESLAT, these students tend to outperform their non-ELL peer group on every measure, including ELA assessments. Thus using the NYSESLAT exam in the language arts accountability system is an appropriate measure that should be incorporated into the Performance Index.

#### Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding 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 drafted 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. To date, The ESEA Waiver Renewal Think Tank has met five times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited 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.

Please note that for proposals that will be more fully developed for 2015-16, NYSED will develop a similar consultation process with stakeholders.