

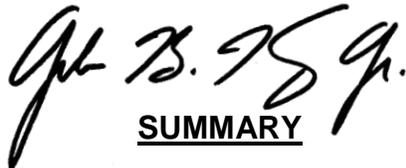


**TO:** P-12 Education Committee

**FROM:** Ken Slentz 

**SUBJECT:** Submission of Elementary and Secondary Education Act (ESEA) Waiver Renewal Request and Related Amendments

**DATE:** February 10, 2014

**AUTHORIZATION(S):**   
SUMMARY

**Issue for Decision**

Should Department staff submit an ESEA Waiver Renewal application and related amendments based on materials provided to the Board of Regents at its November 2013, December 2013, January 2014 and February 2014 meetings?

**Proposed Handling**

This issue will be before the P-12 Education Committee for discussion and action, and before the Full Board for action at the February meeting of the Board of Regents.

**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 with 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 November and December 2013, Department staff provided the Board of Regents with an overview of the process by which states can apply to renew their ESEA Flexibility waivers for the 2014-15 school year and presented possible amendments to the waiver for the Regents consideration. In January 2014, the Board of Regents directed the Commissioner of Education and the New York State Education Department (NYSED or “the 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.

### **Proposed Amendments**

In January 2014, Department staff received approval from the Board of Regents to seek public comment on the following amendments to the approved ESEA waiver related to institutional accountability and testing requirements:

1. Until adaptive assessments are implemented, seek permission from USDE to assess students with disabilities who have significant intellectual delays and substantial difficulties in cognitive areas (who are ineligible for the New York State Alternate Assessment) based on their instructional level rather than their chronological age (Attachment C).
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 D).
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 within a measure in the school or district make AYP by meeting their respective Annual Measureable Objective (AMO) or Safe Harbor (Attachment E). 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 criteria for Reward school identification, 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 as a result of this technical change.
4. Revise the AMOs for Grades 3-8 English language arts (ELA) 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 that were first administered in 2012-13 (Attachment F).

5. Request that the Department be allowed to exempt newly arrived English language learners (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 G).
6. 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 H). [Note: Department staff have modified this recommendation and are now recommending that schools and districts be able to receive additional credit on the Grade 3-8 ELA Performance Index for the performance of ELLs who have received less than three full years of service based on the student's performance on the NYSESLAT.]

### **Public Engagement and Comment on the Waiver Amendments**

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 six 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 and individuals 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. SED staff have spoken with the following national groups: National Association of Learning Disabilities; Education Trust; National Association of State Directors of Special Education; Learning Disabilities Association; Council for Advancement and Support of Education; Council on Exceptional Children; lawyers working on the Children's Online Privacy Protection Act; ACCES (which represents 1,200 disability service providers across the country); Easter Seals; National Disability Rights Network; and the National Council on Learning Disabilities.

Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were

being accepted were posted on the State Education Department's website as well as on the websites of the Office of P-12 Education and the Office of Accountability. 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. Other Department offices also shared the notification with listserves that they maintain. Over 400 comments were received during this period.

As a result of both the feedback received on amendments during meetings and from the public comments, the Department has made the following amendments or provided additional information regarding the amendments:

- Amendment 1 - The Department has refined its proposal to more clearly identify eligibility criteria for the subgroup of students for which this waiver can apply; limited how the scores of students on instructional level assessments can be used for accountability purposes; and has committed to public reporting of both State and district disaggregated data on the use of this assessment for students with disabilities. Additional guidance and professional development for districts, Committees on Special Education and parents will be provided upon approval of the waiver. In particular, the Department has specified five criteria that students must meet in order to be eligible for participation in instructional level testing as well as identified factors such as a student's disability category that may not be used as a basis for determining a student's eligibility; reduced from .93 to .7 percent in English language arts and from 2.34 to 1.5 percent in mathematics the percentage of students whose instructional level scores may be used for accountability purposes; and limited to "partial credit" the adjustment to the Performance Index that would result from a student scoring at or above Level 2 on an instructional level assessment.
- Amendment 2 - The amendment has been revised to provide greater detail regarding how NYSED will more explicitly align the six tenets of the DTSDE and the list of allowable activities. The amendment now explains how NYSED will use the "HEDI" scores assigned to districts and Focus/Priority schools for each DTSDE tenet to prioritize how improvement reserve funds are budgeted. (Improvement reserve funds are an amount equal to five to 15 percent of a Focus District's Title I; Title II; and if the district is identified for the performance of ELL's, Title III funds, that the district must "set aside" and use to support district and school improvement efforts, chosen from a list of allowable activities specified by the Commissioner.) Districts will be required to use a pre-determined portion of their improvement reserve for prioritized and allowable activities that have been mapped to each of the six tenets. Within each tenet, districts will be required to spend a minimum amount of the improvement reserve on one or more of the prioritized activities. The remaining portion of the tenet-specific reserve may be spent on these prioritized activities or on any of the allowable activities that apply directly to the tenet. If a district receives a HEDI rating of "Highly Effective" or "Effective" and 50% or more of reviewed Focus/Priority schools within that district receive HEDI ratings of "Highly

Effective” or “Effective” for a tenet, the district will not be subject to the minimum set-aside for that Tenet. The district will have the flexibility to reallocate those funds to any allowable improvement activity in any tenet. Additionally, if neither a district nor its schools receive a DTSDE review for a particular tenet, the district will have the flexibility to apply the minimum reserve to the non-reviewed tenet or reallocate the minimum reserve to any prioritized or allowable improvement activity in any tenet that was reviewed and rated as “Ineffective” or “Developing.” Districts that can provide a compelling justification may appeal to spend less than the required reserve within a tenet or to spend funds on activities other than those on the allowable list.

- Amendment 3 - the Department did not receive any negative feedback regarding this amendment and therefore has made no changes to the amendment.
- Amendment 4 - the Department has clarified the methodology for how the AMOs for grade 3-8 ELA and math will be set and provided tables with performance indices for the “all students” group and for each subgroup (Attachment F). The methodology establishes AMOs for the “all students” group and for each subgroup that increment annually between 2012-13 and 2016-17, such that by 2016-2017, the AMO for a group is equal to the base year performance of the group plus half of the difference between the base year performance and a Performance Index of 147 in both ELA and mathematics, which represents the 90 percentile of performance by schools for the “all students” group in 2012-13. For example, the base year performance for the economically disadvantaged group is a Performance Index of 57 in Grade 3-8 ELA. The gap between a Performance Index of 147 and a base year performance of 57 is 90. To close that gap in half by 2016-2017 requires that the AMO for 2016-17 be set at 102 (the base year performance of 57 plus the 50% gap reduction of 45 equals 102).
- Amendment 5 – The Department did not receive any negative feedback regarding this amendment, and the only recommendations received were to extend the request for an exemption to three or more years. Therefore, the Department has made no change to this amendment.
- Amendment 6 – the Department has revised the amendment to provide additional detail on how the Grade 3-8 ELA Performance Index will be modified for ELLs. Under this proposal, an ELL who has received three or fewer years of service will receive “partial credit” in the Performance Index if the student makes the scale score gain on the NYSESLAT that constitutes acceptable progress for purposes of the Title III Annual Measurable Achievement Objective (AMAO). ELLs who advance one or more levels on the NYSESLAT (e.g., beginner to intermediate) will receive “full credit” in the Performance Index. This adjustment in the Performance Index is no longer limited to just ELLs who are newly arrived in the United States and have received less than two years of service but now applies to all ELLs who have received less than three full years of service.

### **Recommendation**

The Board of Regents directs the Commissioner of Education and the State Education Department to submit an ESEA Waiver Renewal request 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 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 February 28, 2014.

Attachments

## **Attachment A: 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. 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 as measured by 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 pertaining to 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 teaching and 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 additional time to better 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, ELLs, 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 of teacher and principal observations. 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.

## **Attachment B: 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 ESEA Waiver 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 checklist that specifies the qualifications of each principal that the district proposes to lead the Priority School's turnaround model. The checklist will require districts to attest that they have reviewed 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 subgroups; and 3) making effective changes to staff and providing targeted professional development to ensure that students are receiving rigorous and common core aligned instruction.

## **Attachment C: 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

For the grades 3-8 State assessments currently in use, and until such time as NYSED transitions to adaptive testing, NYSED is requesting approval to more appropriately assess, for instructional, growth and State accountability purposes, the performance of a small subgroup of students whose cognitive and intellectual disabilities preclude their meaningful participation in chronological grade level instruction. These are students who have significant intellectual delays and substantial difficulties in cognitive areas such as memory, language comprehension, reasoning and problem-solving, but who do not meet the State's definition of a student with a severe disability (most significant cognitive disability) appropriate for the State's alternate assessment. These students are likely to be able to meet the State's learning standards over time and make progress in the same curriculum and assessments, but are not likely to reach grade-level achievement in the time frame covered by their individualized education programs (IEP). When students with disabilities are required to participate in an assessment at their chronological age that is significantly misaligned with content learned at their instructional level, the assessment does not provide meaningful accountability, instructional or growth information for purposes of teacher and leader evaluations.

Through this waiver, NYSED requests permission to:

1. Allow school districts to administer the general State assessments to identified students with disabilities (see eligibility criteria below), 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; and
2. Allow the proficient and advanced scores of those students assessed in accordance with their instructional grade levels to be counted at Level 2 for accountability purposes, provided that the number of those scores at the local educational agency (LEA) and at the State levels, separately, does not exceed .7 percent of all students in the grades assessed in English language arts (ELA) and 1.5 percent of all students in the grades assessed in mathematics.

Eligibility Criteria: Eligibility determinations would be made on an individual basis by the Committees on Special Education (CSEs), which include the parents of students with

disabilities. Consideration of eligibility would be limited to students who meet each of the following six criteria:

1. For initial eligibility, students who performed at Level 1 on their most recent State chronological grade State assessment with a raw score, determined by the State, that indicates that at the 90 percent confidence level, the students' correct responses on the assessment questions were based on chance responses **or** students who in the prior year were administered the New York State Alternate Assessment (NYSAA);
2. Students whose individual evaluation information identifies that the student has significant intellectual delays and substantial difficulties in cognitive areas such as memory, language comprehension, reasoning and problem-solving, where the CSE finds that these disability factors are the determinant reasons that the student is not able to reach grade level proficiency in his/her chronological grade level;
3. Students for whom the CSE has determined that, even with extensive modifications to curriculum, instruction and assignments, the student would fail to achieve chronological age-level proficiency;
4. Students whose classroom performance and other achievement data over at least a two-year period of time using multiple valid measures reflecting formal assessment of student progress during instruction (such as benchmark assessments, progress monitoring assessments, and/or standardized norm-referenced tests of achievement) substantiates the student's instructional level of performance and demonstrates that the student's lag in achievement is not due to a lack of appropriate instruction in reading or mathematics; and
5. Students who do not meet the definition of a student with a severe disability who is eligible for the NYSEA.
6. Exclusionary factors: The CSE may not recommend a student for an instructional level assessment based on any of the following factors: the student's intelligence quotient (IQ); disability category; language differences; lack of appropriate instruction in reading and/or math; excessive or extended absences from instruction; cultural or environmental factors; factors related to sensory, motor or emotional disabilities; lack of access to appropriate instructional materials, including assistive technology devices or services; and/or the student's placement where his/her IEP is being implemented.

Determining instructional grade level: If approved, the State would provide guidance to the CSE on how to identify a student's instructional grade level, separately for ELA and math. Such criteria and guidance would include, but not necessarily be limited to:

- a. Annual determinations of instructional grade level;
- b. Separate determinations for ELA and math; and

- c. Determinations based on objective data, in consideration of the results of both standardized and informal inventories of student achievement and data over at least a two-year period of time.

As such, for example, a student could be determined as eligible to participate in an instructional level assessment for math, but not for ELA; and the student could be assessed at two grade levels below his/her chronological grade in one year, but only one year below in the subsequent year.

Maintaining high and appropriate expectations: By requiring that the student participate in the regular State assessment (and not a modified or alternate assessment) and by setting limits on how far below the student's chronological age the student may be assessed and that the student be assessed at the next higher grade level in each subsequent year, the State is maintaining high and appropriate expectations for students to progress and be able to demonstrate their progress in the general education curriculum while also providing the opportunity to generate instructionally meaningful results for these students.

Accountability: Based on actual student performance on the 2012-13 CCLS aligned State assessments, the State has calculated the percentage of students with disabilities who achieved a score that reflects that the student's responses were at the chance level (i.e., that the student's correct responses were based on guessing). For ELA, this calculated to be 8,053 out of 186,529 students with disabilities, or .68 percent of all students tested. For math, this calculated to be 17,441 out of 186,636 students with disabilities tested, or 1.47 percent of all students tested. Therefore, .7 and 1.5 percent would be established as the limits for the percentage of students whose proficient and advanced scores could be counted for partial credit for accountability purposes.

Procedural safeguards for students with disabilities: The State will require that, prior to each annual review meeting, parents are notified if the purpose of the meeting is to consider the student for an instructional level assessment and that prior written notice of the CSE's recommendation that the student participate in the instructional level test provide parents with reasons for the recommendation and inform them of their right to disagree with the CSE's recommendation and pursue due process.

Public Reporting: The Department will annually publicly report statewide and LEA information on the number and percent of students with disabilities who participate in the instructional level assessment, disaggregated by grade level, subject and race/ethnicity.

Notes:

- This waiver is proposed as a transitional process to be in effect until such time as adaptive testing in NYS is available to students in grades 3-8.
- Until an 'augmented' third grade assessment is developed, the waiver would apply to students in grades 4-8 only. Students who are chronologically grade 3 would participate in the grade 3 State assessment.
- The request for instructional level testing does not apply at the high school level.

## 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, will likely 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 also 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 assessment of a subgroup of students with disabilities, 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 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 six 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 and individuals 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. SED staff have spoken with the following national groups: National Association of Learning Disabilities; Education Trust; National Association of State Directors of Special Education; Learning Disabilities Association; Council for Advancement and Support of Education; Council on Exceptional Children; lawyers working on the Children's Online Privacy Protection Act; ACCSES (which represents 1,200 disability service providers across the country); Easter Seals; National Disability Rights Network; and the National Council on Learning Disabilities.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were being accepted were posted on the State Education Department's website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank by the Office of Accountability.

Throughout this process, Department staff evolved the proposed waiver to address stakeholder concerns and recommendations. This waiver request has been revised based on comments and recommendations from parents, advocacy organizations, school personnel and others. A detailed summary of the comments received is attached (Attachment I).

## **Attachment D: 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, state, and local 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 from which districts and schools can choose 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 such initiatives 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. These activities are referred to throughout the proposal as "prioritized activities." Set-aside funds not expended during the course of the year will be added to the set-aside requirement for the ensuing year.

In order to create a more explicit alignment, NYSED will use the "HEDI" scores (assigned to districts and Focus/Priority Schools for each DTSDE tenet as Highly Effective, Effective, Developing and Ineffective) to prioritize how improvement reserve funds are budgeted. (Improvement reserve funds are an amount equal to five to 15 percent of a Focus District's Title I; Title II; and if the district is identified for the performance of ELL's, Title III funds, that the district must "set aside" and use to support district and school improvement efforts, chosen from a list of allowable activities specified by the Commissioner.) Districts will be required to use a pre-determined portion of their improvement reserve for prioritized and allowable activities that have been mapped to each of the six tenets. Within each tenet, districts will be required to spend a minimum amount of the improvement reserve on one or more of the prioritized activities. The remaining portion of the tenet-specific reserve may be spent on these

prioritized activities or on any of the allowable activities that apply directly to the tenet. If a district receives a HEDI rating of “Highly Effective” or “Effective” and 50% or more of reviewed Focus/Priority Schools within that district receive HEDI ratings of “Highly Effective” or “Effective” for a tenet, the district will not be subject to the minimum set-aside for that tenet. The district will have the flexibility to reallocate those funds to any allowable improvement activity in any tenet. Additionally, if neither a district nor its schools receive a DTSDE review for a particular tenet, the district will have the flexibility to apply the minimum reserve to the non-reviewed tenet or reallocate the minimum reserve to any prioritized or allowable Improvement activity in any tenet that was reviewed and rated as “Developing” or “Ineffective.” As an additional flexibility districts that can provide a compelling justification may appeal to the Department to spend less than the required reserve within a tenet or to spend funds on activities other than those on the allowable list.

### Rationale

By requiring districts with Priority and Focus Schools to prioritize 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 six 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.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were being accepted were posted on the State Education Department’s website as well as on the websites of the Office of P-12 Education and the Office of Accountability. 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 to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.

## **Attachment E: 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

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

NYSED proposes 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 students” 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 students” group AMO or safe harbor. This is due to the relatively higher AMO set for the “all students” group. To remedy this situation, beginning with the 2012-13 school year results, New York is seeking permission to report, with proper annotation, the “all students” 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 impact 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 six 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.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were being accepted were posted on the State Education Department's website as well as on the websites of the Office of P-12 Education and the Office of Accountability. 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 to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.

## **Attachment F: 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

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

### Brief Description of the Requested Amendment

NYSED proposes to change the baseline year to 2012-13 due to the change in assessment to measure Common Core standards and establish the 2016-17 AMO goal and annual trajectory based on a “best in class” methodology.

### Rationale

The 2012-13 Grades 3-8 State assessments are the first administered to 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 Learning Standards, which more accurately reflect students' progress toward college and career readiness.

The process by which the new AMO's will be created for Grade 3-8 ELA and Grade 3-8 mathematics will be as follows:

Step 1: For each subgroup, find the school at the 20th percentile for Performance Index (PI) ranked by enrollment, which becomes the baseline for computing the AMO's. For example, in grade 3-8 ELA the school at the 20th percentile ranked by enrollment had a PI of 75 for the “all students” group and a PI of 23 for the students with disabilities group.

Step 2: Find the school at the 90th percentile for Performance Index ranked by enrollment for its “all students” group. That is a Performance Index of 147 for both 3-8 ELA and mathematics.

Step 3: Compute 50% of the gap between the PI from Step 2 and the baseline for each subgroup. For example, for the “all students” group in ELA  $147-75$  equals a gap of 72, 50% of which is 36. For students with disabilities  $147-23= 124$ , 50% of which is 62.

Step 4: Add the result from Step 3 to the baseline from Step 1 to get the target for each subgroup. For example, for the “all students” group for grade 3-8 ELA  $75 + 36 = 111$ , which becomes the 2016-17 school year target. For students with disabilities  $23 + 62 = 85$ , which becomes the 2016-17 target for this group for grade 3-8 ELA.

Step 5: Divide the number in Step 3 by 5. For example for the “all students” group for grade 3-8 ELA  $36/5 = 7.2$ . For students with disabilities  $62/5 = 12.4$ . This becomes the annual increment for the group.

Step 6: Add the number from Step 1 to the number from Step 5. This becomes the AMO for 2012-13. For the “all students” group for grade 3-8 ELA,  $75 + 7.2 = 82$ . For students with disabilities,  $23 + 12.4 = 35$ .

Step 7: Add the number from Step 6 to the number from Step 5 to set the remaining AMO's for 2013-14 through 2016-17.

Below are the AMO's based on this “best in class” methodology. Note that in the event that the Board of Regents adopts Amendment 6 pertaining to modifying the Performance Index to include NYSESLAT results for ELL's, the Department will recompute these AMO's for the 2014-15 through the 2016-17 school years before submitting this amendment to USDE.

### Revised Grades 3-8 ELA Annual Measurable Objectives from 2012-13 to 2016-17

Subgroup	Baseline	2012-13	2013-14	2014-15	2015-16	2016-17
All Students	75	82	89	97	104	111
Students with Disabilities	23	35	48	60	73	85
American Indian/Alaska Native	50	60	69	79	89	99
Asian or Native Hawaiian/Other Pacific Islander	113	116	120	123	127	130
Black or African American	49	59	69	78	88	98
Hispanic or Latino	56	65	74	83	92	102
White	100	105	109	114	119	124
Limited English Proficient	27	39	51	63	75	87
Economically Disadvantaged	57	66	75	84	93	102
Mixed Race	76	83	90	97	104	112

### Revised Grades 3-8 Math Annual Measurable Objectives from 2012-13 to 2016-17

Subgroup	Baseline	2012-13	2013-14	2014-15	2015-16	2016-17
All Students	71	79	86	94	101	109
Students with Disabilities	25	37	49	62	74	86
American Indian/Alaska Native	50	60	69	79	89	99
Asian or Native Hawaiian/Other Pacific Islander	132	134	135	137	138	140

<b>Subgroup</b>	<b>Baseline</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>
Black or African American	40	51	61	72	83	94
Hispanic or Latino	53	62	72	81	91	100
White	94	99	105	110	115	121
Limited English Proficient	31	43	54	66	77	89
Economically Disadvantaged	53	62	72	81	91	100
Mixed Race	64	72	81	89	97	106

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 six 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.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were being accepted were posted on the State Education Department’s website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, the Office of Accountability emailed notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.

## **Attachment G: Amendment Regarding Testing Exemption for English language learners and Creation of a Native Language Arts Assessment**

### 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 ELLs. 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 skills 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 pertaining to use of native language arts assessments, 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 the 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. 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 six 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.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were being accepted were posted on the State Education Department's website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, the Office of Accountability emailed notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.

## **Attachment H: Including the Performance on the NYSESLAT in the Grade 3-8 Performance Index for English language learners Who Have Received Less than Three Years of Service**

### 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 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 to make appropriate determinations of progress and growth towards proficiency. New York State is implementing an aggressive agenda for ELLs that holds districts and schools accountable and sets high expectations for ELL student instruction.

ELLs in New York State take both the ELA examination and the State's English language proficiency test (NYSESLAT) until they reach proficiency on the NYSESLAT. Beginning in 2014-15, New York State plans to give credit in the Grade 3-8 ELA Performance Index to students who would have received partial or no credit using the ELA test results (i.e., students who scored at Performance Level 1 or 2) and who have shown progress in learning English on the NYSESLAT examination (per requirements of Title III AMAO 1). Specifically, ELLs who have received less than three full years of LEP services and make progress from one year to the next on AMAO 1 by achieving a higher Performance Level on the NYSESLAT would be given full credit in the Performance Index (i.e., would be credited with 200 points) and students who make progress on AMAO 1 by increasing their score by a set number of scale score points from one year to the next but do not achieve a higher Performance Level would be given partial credit in the Performance Index (i.e., would be credited with 100 points). In 2012-13, for the subset of ELLs with less than three full years of LEP services, only 4% of ELLs performed at Level 3 or 4 on the ELA exam (and received full credit in the Performance Index calculation), 22% performed at Level 2 and received partial credit, and 74% received no credit. Using the new methodology, of the 74% of ELLs who under the current Performance Index calculation using ELA scores only received no credit, the fraction of those ELLs who receive full credit in the Performance Index due to their progress on NYSESLAT increases to 46%, while the fraction who receive partial credit increases to 16%, and the fraction who receive no credit drops to 38%. Of the 22% of ELLs who under the current Performance Index calculation using ELA scores only received partial credit, 52% would receive full credit in the Performance Index due to their progress on NYSESLAT.

If data on the identification of students who have interrupted formal education is determined to be sufficiently reliable, the Department will request that these students who have had less than three full years of LEP services receive

“full credit” in the Grade 3-8 Performance Index if the students make either the specified scale score gain or increase one level on the NYSESLAT. Since students with interrupted formal education enter the school system with significant gaps, a gain in scale score is a significant growth and schools and districts should be awarded full credit for such progress.

Upon approval of this amendment, New York will revise its Annual Measurable Objectives for Grade 3-8 ELA to reflect the increase in the Performance Indices of the “all students” and each applicable accountability group that will result in the incorporation of these results into the Performance Index.

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 is specifically designed for this population.

For ELLs in their first three years of receiving services, the Performance Index would be modified only for language arts accountability purposes; the expectations and measures for math would not change. For newly arrived students with annual NYSESLAT scores in consecutive years, the Performance Index would be based solely on their NYSESLAT performance.

Beginning in 2015-16, New York will work to develop a Performance Index for ELL students taking the new Spanish Language Arts assessment. For these students, growth towards 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 students’ levels of language proficiency. New York will also work to develop a revised Performance Index for ELLs under which 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 a student has had 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 students’ 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 students’ 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 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. These students, however, can make significant progress in language development as determined on the NYSESLAT that 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 students have 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 towards 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 who 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 as 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 six 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.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were being accepted were posted on the State Education Department’s website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, the Office of Accountability emailed notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.

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

## **Attachment I: Detailed Summary of Public Comments on the Amendments**

### **Amendment 1:**

Three hundred and thirty seven (337) written public comments were received on this proposal, most in opposition and some in support. Comments in support were received from several of the State's special education parent organizations, the Commissioner's Advisory Panel for Special Education; the New York City Department of Education; the Council of New York State Special Education Administrators; representatives of institutions of higher education; and many individual parents, teachers and school administrators. Comments in opposition were received from many national and State advocacy organizations, including the State's Association of Learning Disabilities, Advocates for Children, the Autism National Committee, Disability Rights New York (Disability Advocates, Inc.), United Federation of Teachers, six national parent centers, the National Center for Special Education in Charter Schools, and the Consortium for Citizens with Disabilities. Many individual parents of children with disabilities and some individuals with disabilities also wrote in opposition. Others provided comment but did not take a position to oppose or support, but rather sought greater detail to inform their position.

Those supporting the proposal included the State's Commissioner's Advisory Panel for Special Education (which includes representatives of parents education officials, private schools, charter schools, teachers, individuals with disabilities, institutions of higher education, corrections agencies and providers of transition services and vocational rehabilitation); several of the State's special education parent centers; the Council of New York State Special Education Administrators; and several individual parents, teachers and administrators. Some stated that more valid data can be obtained from assessing a child at their instructional level, providing teachers, parents and others the ability to track the content knowledge of a child and more accurately ascertain the student's rate of growth; the waiver is consistent with the longstanding Council for Exceptional Children Policy on Assessment and Accountability; and NYSED has provided objective data and has proposed appropriate criteria to ensure the waiver is used only for those students with cognitive and intellectual disabilities that preclude the student's ability to demonstrate mastery of chronological-age level learning standards.

Many commented in support that the proposal will address the negative social and emotional effects on students when they take a test that is not at their appropriate instructional grade level and beyond their current ability levels. Commenters reported students showing "anxiety, crying, upset stomachs and complete shut downs..." and that "students and parents frequently become frustrated, resigned and disheartened when required to participate in a state assessment process that is not aligned with their day to day instruction, often leading to significant angst and anxiety and even subsequent behavior issues." One commented that by "giving leeway in what grade level test these students take, the state will allow actual growth to be measured and allow the child an opportunity to feel confident about their abilities."

Special education school administrators commented that there should be no debate about the need to provide this subgroup of children with instruction and special

education supports and services at a pace and level commensurate with children's needs, abilities and individual rates of learning. The proposal supports closing of achievement gaps between student subgroups by better identifying the subgroups of students with disabilities and their performance levels.

A Director of Graduate Special Education and member of the Council for Exceptional Children wrote in support of the amendment, stating that "concerns that testing students at their instructional level will cause educators to 'dumb down' their expectations is unwarranted" and "assessing students beyond their instructional level causes frustration and emotional belittling for students with special needs..., encourages teachers to teach to the test, ignoring life skills and gaps in development."

The majority of the comments received were sent as part of a form letter, some of which were adapted by the commenters. The form letter states that the writer is opposed because it will lower standards; violate the rights of students with disabilities; take students off track for graduation; and limit opportunities and potential for New York's disadvantaged students, including students with disabilities and those who are poor or racial minorities. These letters further stated that the term "students with significant cognitive disabilities who are ineligible for the state's alternate assessment" was not well defined and not supported by current Individuals with Disabilities Education Act (IDEA) identification rates in New York; the emphasis should be on improving instruction, accommodations, and assistive technology; most students with disabilities have above average intelligence; instruction should make the playing field level and not set standards lower than their capabilities; and that the proposal would disproportionately affect African American and Latino boys in urban districts around the State.

Advocates for Children wrote in opposition to the proposed waiver because it would allow districts to lower standards and expectations for students with disabilities who are otherwise capable of making academic progress. Advocates for Children further commented that the State's participation criteria and procedural safeguards would be insufficient to effectively prevent the inappropriate use of the amendment and, in the absence of adequate monitoring and oversight, would not prevent abuse of below grade-level testing. Advocates for Children stated that the cap for accountability purposes would not limit the number of students who could be given a below-grade level assessment.

The State Learning Disabilities Association wrote in opposition due to the ambiguity in the proposal as to the group of children who could be included and the organization's belief that below grade level assessments are inappropriate for children with learning disabilities and a concern that the waiver would relieve the school of the responsibility of providing appropriate instruction for children with learning disabilities, unnecessarily stigmatizing the child with below grade status and "burdening the child with needing to catch-up in subsequent years."

The Autism National Committee opposed the waiver request stating concerns that it may deny students the ability to receive a high school diploma and prevent them from developing the skills and knowledge to be college and career ready.

One national learning disability organization wrote in opposition to the proposed waiver stating that parents do not want lower academic standards and that the proposal would take students off track, set lower standards that will inevitably mean that most of those students will not be taught the skills and bodies of knowledge expected for all students, at the levels expected for all students, and leave them permanently behind. The organization was also concerned that the proposal exceeds current statutory and regulatory authority; attempts to create an entirely new category of students not recognized by federal law; and uses a flawed methodology to set lower goals and expectations for students as compared to other student groups by further adjusting the annual measurable objectives (AMOs).

A national council representing parent attorneys and advocates wrote in opposition to the proposal, stating the proposal directly conflicts with federal law and damages the civil rights of children eligible under IDEA. The council stated that because the State has an alternate assessment for students with the most significant cognitive disabilities there is no need to create “a new category of IDEA of eligible students,” ESEA distinctly prohibits the use of ‘out-of-level’ testing as part of state assessments, and the proposal would promote “abuse and overuse of lowered standards and expectations” and support “the myth that most students with disabilities can’t learn or achieve with their peers.” The council also stated that the proposal recommends a flawed methodology to set lower achievement goals for IDEA students by allowing further adjustments to the AMOs and could take IDEA eligible students off track for a regular high school diploma as early as third grade and relegate them to lower career and college expectations simply because these children receive special education services.

The Advocacy Institute wrote in opposition to the proposal, providing the following comments:

- New general assessments (PARCC and Smarter Balanced) “will facilitate the valid, reliable, and fair assessment of students with disabilities, including those for whom alternate assessments based on modified academic achievement standards were intended.”
- The limitation on the number of proficient and advanced scores that may be used for accountability purposes does not limit the numbers of students with disabilities who could take a given assessment below their assigned grade. Use of the proposed methodology to determine the numbers of students performing at the chance level does not reveal how many of those students are students with disabilities and using this year as a basis for determining new assessment policy is statistically flawed because the scores of all subgroups of students declined significantly on the first assessments aligned to the Common Core Learning Standards in 2012-13.
- The proposal would allow the New York State Education Department (NYSED) to incorporate the poor performance of students with disabilities that was the result of the shift in the assessments to measure the Common Core Standards; allowing some students with disabilities to be assessed below their enrolled grade level and then use that data to measure the school/district/State against these differentiated (lower) targets flies in the face of the intention of school

accountability and allows NY to 'double down' on its expectations for students with disabilities; NYSED failed to explain how it would continue to report on student proficiency rates as required by USDOE for purposes of the IDEA State Performance Plan; and the proposal would negatively impact comparability across states.

- NY did not clarify how students with significant cognitive disabilities are different than those eligible for the alternate assessment.
- The primary purpose of state assessments is to hold schools accountable, not to provide 'instructionally relevant information.' PARCC is developing formative assessments that are intended for this purpose. NY schools are not barred from administering below grade state assessments for purposes of obtaining instructionally relevant information in addition to the student's participation in the state assessment for his enrolled grade for accountability.
- Below level testing would inevitably result in lower expectations for students with disabilities because the individualized education program (IEP) teams would align the expectations for students who are tested below their age grade. The waiver violates Section 504 of the Rehabilitation Act of 1973 because the waiver sets lower standards for certain students with disabilities. A finding that a student is reasonably certain to fail to achieve chronological age-level proficiency is not sufficient reason to take the student out of the assessment for his enrolled grade. Rather it is a basis for providing additional instructional services through more intensive interventions and extended learning time.
- NYSED failed to address how a student with a disability in 3rd or 4th grade who is found to need a below-grade assessment would be included in the assessment system. Since State assessments begin at 3rd grade, this could lead to significant numbers of students in the lower grades being excluded from state assessments.
- NYSED's proposed procedural safeguards were of concern because parents are full and equal participants in decisions made by the committee on special education (CSE) and providing parents with 'documentation' and 'reasons for the recommendation' violates their rights under IDEA.
- It would be inappropriate to use the performance information that would result from below-grade testing to determine if schools/districts are 'closing the achievement gap.'
- NYSED has failed to adequately involve stakeholders in the development of this proposal by limiting the public comment period to ten days that included a national holiday and should make public all comments submitted on this proposal.

Disability Rights New York wrote to oppose the request stating that if the State was providing students with disabilities with reasonable testing accommodations, the proposal would be unneeded and that NYSED's rationale does not support the need.

SPAN opposed the waiver request stating that these tests should be used with most students with disabilities; there are not ten percent of students with disabilities who have significant disabilities; schools and districts can already use tests other than "NCLB accountability tests"; angst in NY among parents does not justify lowering expectations

for students with disabilities; and that just because schools are not currently teaching students with disabilities appropriately so that they can achieve does not mean that schools should get a pass on accountability. Supporting the comments of the Advocacy Institute, they further state, as others above did, that the proposal would have a negative effect on expectations and that there are other students who are not performing at grade level, including students of certain race/ethnicities, limited English proficient students and low income students.

Everyone Reading wrote in opposition supported the comments of the Advocacy Institute, the Council of Parent Attorneys and Advocates and the National Center for Learning Disabilities.

The United Federation of Teachers wrote in opposition because the regulations that are “at the root” of the problem relate to group size and functional grouping for students with disabilities (e.g., maximum group sizes for instruction in resource room and related services) and the maximum range of three years in ELA and math for grouping students in special classes.

The New York State United Teachers (NYSUT) wrote that it has “previously supported assessments for students with disabilities that are aligned with their instructional level rather than their chronological grade level” but that the proposal, in its current design, lacks sufficient information and detail on the student’s eligibility and on how the calculations of “chance level” percentages were made. NYSUT questioned how more accessible general assessments would resolve the continuing concern that general grade-level assessments may be too difficult and inappropriate for measuring learning for those students who are functioning only slightly above those participating in the NYSAA.

The Education Trust commented that NYS should clearly articulate the criteria by which students would be eligible for testing at their instructional, rather than chronological grade level; make public the best available estimates of how many students would be eligible for instructional grade-level testing, disaggregated by race/ethnicity, income and English language learning status and reported at the state and district levels; commit to reporting the percentage of students tested at their instructional grade level on publicly available school and district report cards; commit to revisiting this policy when NY implements an assessment that is fully aligned with the State’s college-and career-ready standards; and articulate the revised AMOs in grades 3-8 for all groups of students.

The New York City Department of Education recommended that NYSED establish clear criteria to ensure that students with disabilities are held to appropriately high expectations and expand the proposal to allow students at the higher end of eligibility for alternate assessments who have previously been identified for alternate assessments to be considered for instructional level testing by the CSE. NYCDOE also recommended that instructional level testing results for the first year form a new baseline and not be used in making teacher accountability or growth determinations and that no changes be made to how teachers will be held accountable for their students’

performances on these assessments that would require districts to seek re-approval of its APPR. Lastly NYCDOE recommended that, given the time and effort that would be required to properly train CSEs on the policy, that web resources and written guidance be available and that ELA and math test results be provided to districts not later than the end of the 2013-14 school year.

Some of the State's parent center representatives commented that they hear from parents about the traumas that tests create for struggling learners with disabilities and wonder whether the answer lies with improving tests. Compliance with IEPs and the quality of instruction continue to be significant issues, especially in economically challenged communities, and there was concern that this waiver might inadvertently enable schools to be even less accountable to these students and unintentionally reinforce lower expectations for those students with disabilities who test below grade level because they have not been instructed properly or provided with appropriate supports. Without improving the skills of educators at the front line, more and more students could fall into this gap.

Many sought a student profile example or more specific criteria that a student must meet to be eligible for this waiver. Some wrote that the waiver did not provide enough flexibility to allow any student with an IEP to be exempt from the Common Core curriculum and assessments. A few sought greater flexibility to provide a State assessment more than two years below his/her chronological age grade level, stating that the expectation that students will grow a whole year academically in a school year to be ready for testing in the next grade level is unrealistic.

Others commented that assessing children who are two or more grade levels behind academically with their chronological age assessment has long been a concern for educators and parents; the waiver will provide more accountability as the data gleaned from the assessment will have more meaning; the criteria that the student be assessed at the next higher grade level in the subsequent year provides the expectation that students continue to progress academically and addresses the concern of lower expectations.

Other comments with regard to the proposed cap for accountability purposes, included: the percent of proficient and advanced scores of students assessed in accordance with their instructional grade levels being used for accountability purposes should be lower in order to prevent an overuse of this option by schools because districts and schools vary in the number of students with disabilities who would meet the criteria to qualify for instructional level testing and that NYSED should provide a waiver application process similar to the process in place now for districts to apply to exceed the one percent cap for the alternate assessment.

Many stated that further dialogue, guidance and professional development are needed to address concerns and prepare for implementation, if approved. Parents will need training and resources provided by NYSED to understand the implications for their child and clear guidelines will need to be provided to schools on how to determine who is responsible for this child in terms of Annual Professional Performance Reviews (APPR).

Department 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, that hinder the abilities of these students to benefit from general education. 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 the Individuals with Disabilities Education Act) 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 .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 restricted 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. The Department believes 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.

In response to public comment, the Department has refined its proposal to more clearly identify eligibility criteria for the subgroup of students for which this waiver can apply; limited how the scores of students on instructional level assessments can be used for accountability purposes; and committed to public reporting of both State and district disaggregated data on the use of this assessment for students with disabilities. Additional guidance and professional development for districts, CSEs and parents will be provided upon approval of the waiver.

The proposal is intended to be an interim measure and will be revisited once State assessments (developed either through PARCC or the State) are available that provide all students opportunities to respond at a level greater than chance on these assessments.

**Amendment 2:**

The only comment that the Department received on the amendment regarding Alignment of DTSDE Rubric Ratings with DCIP/SCEP Allowable Expenses came from the New York City Department of Education (NYCDOE). While NYCDOE agreed with the creation of an explicit alignment between the six tenets of the DTSDE and the twenty-two Title 1 allowable activities from which districts and schools may choose in developing their DCIPs and SCEPs, NYCDOE recommended that several changes be made to the amendment to provide Priority and Focus Schools greater flexibility in the activities they incorporate into their plans to meet the Focus District set aside requirement.

Department Response:

The Department revised the amendment to provide greater detail regarding how NYSED will create a more explicit alignment between the six tenets of the DTSDE and the list of allowable activities. The amendment now explains how NYSED will use the “HEDI” scores assigned to districts and Focus/Priority Schools for each DTSDE tenet to prioritize how improvement reserve funds are budgeted. Districts will be required to use a pre-determined portion of their improvement reserve for prioritized and allowable activities that have been mapped to each of the six Tenets. Within each Tenet, districts will be required to spend a minimum amount of the improvement reserve on one or more of the prioritized activities. The remaining portion of the Tenet-specific reserve may be spent on these prioritized activities or on any of the allowable activities that apply directly to the Tenet. If a district receives a HEDI rating of “Highly Effective” or “Effective” and 50% or more of reviewed Focus/Priority Schools within that district receive HEDI ratings of “Highly Effective” or “Effective” for a Tenet, the district will not be subject to the minimum set-aside for that Tenet. The district will have the flexibility to reallocate those funds to any allowable improvement activity in any Tenet. Additionally, if neither a district nor its schools receive a DTSDE review for a particular Tenet, the district will have the flexibility to apply the minimum reserve to the non-reviewed Tenet or reallocate the minimum reserve to any prioritized or allowable Improvement activity in any Tenet that was reviewed and rated as “Ineffective” or “Developing.” As an additional flexibility districts that can provide a compelling justification may appeal to spend less than the required reserve within a Tenet or to spend funds on activities other than those on the allowable list.

**Amendment 3:**

The Department received only a few comments regarding Making A Technical Change to the Computation of Adequate Yearly Progress (AYP) for the “All Students” Group. One was from the NYCDOE supporting the change and another from a parent who

opposed the amendment because it could lead to lower standards for students with disabilities.

Department Response:

The Department did not make any changes to the amendment.

**Amendment 4:**

The Department also received only a few comments Regarding Revising the AMOs for Grades 3-8 English language arts and Mathematics. Comments generally were either supportive of the amendment, such as that from the New York City Department of Education, or requested that the Department provide more information on what the Annual Measurable Objectives will be and/or the methodology by which they will be sent.

Department Response:

In response to those comments, The Department has clarified the methodology for how the AMOs will be set and provided tables containing the performance indices for the “all students” group and for each subgroup (Attachment F). The methodology establishes AMOs for the “all students” group and for each subgroup that increment annually between 2012-13 and 2016-17, such that by 2016-2017, the AMO for a group is equal to the base year performance of the group plus half of the difference between the base year performance and a Performance Index of 147 in both ELA and mathematics, which represents the 90 percentile of performance by schools for the ‘all students’ group in 2012-13.

**Amendments 5 and 6:**

Five (5) written public comments were received on these two proposals from a total of six (6) organizations. The comments received were supportive with some additional requests. Comments were received from Advocates for Children, Asian American Legal Defense and Education Fund, Internationals Network for Public Schools, New York City Department of Education, New York Immigration Coalition, and New York State United Teachers.

***Use of the NYSESLAT to Determine Progress in Language Arts for ELLs within 2 Years of Arrival***

Advocates for Children and Asian American Legal Defense and Education Fund submitted joint comments that were very similar and were both in support of the amendments. Both organizations stated that the NYSESLAT is a more accurate instrument for ELL accountability than the ELA assessment for first and second-year ELLs. However, both organizations raised concerns about using the ELA assessment for some ELL students after two years of ESL/Bilingual Education services who remain in the beginner or intermediate category and therefore do not receive ELA instruction based on current regulations. Both organizations also urged the Department to ensure the alignment of ESL curriculum to the Common Core and the NYSESLAT. Both

organizations also urged the Department to ensure the new NYSESLAT is appropriately scaled if it is to be used for accountability purposes. Finally, both organizations raised concerns about the content validity of the ELA assessment for ELLs.

New York State United Teachers (NYSUT) submitted comments that supported expanding the exemption for ELLs from the ELA assessment, but encouraged the Department to consider exempting ELLs from the ELA assessments for three years. NYSUT raised concerns that some ELLs would be inappropriately forced to participate in the ELA assessment after two years, particularly if the Spanish Language Arts assessment does not become available in the 2015-16 school year.

The Internationals Network for Public Schools and the New York Immigration Coalition submitted joint comments. Both organizations support the Department's goal to exempt newly arrived ELLs from participating in the ELA assessment for two years. Both organizations stated that a four year exemption with teacher discretion to extend would be preferable, but stated that they understood the Department was working within the constraints of the federal process.

### ***Spanish Language Arts Assessment***

Advocates for Children and the Asian American Legal Defense and Education Fund both submitted comments in support of the creating of a Spanish Language Arts assessments and allowing districts to offer this assessment as a local option when it would best measure the progress of Spanish-speaking ELLs. Both organizations urged the Department to ensure that all Spanish bilingual programs are content aligned with the new exam and asked the Department to secure funding to develop similar assessments in other languages for which bilingual programs are offered.

New York State United Teachers submitted comments in support of a Spanish Language Arts assessment and recommended that the Department develop assessments for other home languages as well.

Internationals Network for Public Schools and the New York Immigration Coalition both supported the development and use of a Spanish Language Arts assessment but advocated that the Department develop assessments in languages other than Spanish and consider developing performance assessments for ELLs as an alternative tool.

The New York City Department of Education submitted comments that generally agreed with the Department's proposal but asked the Department to: (1) ensure that the cost of creating the Spanish Language Arts assessment not be imposed on local educational agencies, (2) requested explicit guidance on the use of the assessment only for students receiving Spanish language instruction in the year in which they are being assessed, and (3) asked the Department to ensure that the new assessment would measure progress in Spanish Language Arts and not lack of proficiency in Spanish or the quality of students' prior schooling.

## ***Revised Performance Index for ELLs***

Advocates for Children and the Asian American Legal Defense and Education Fund submitted comments in support of the development of an adjusted performance index for ELLs and asked for the opportunity to provide input as the Department develops the adjusted performance index. Both organizations cautioned that the adjusted index must be sufficiently demanding to ensure that the Department maintains high standards for ELLs.

Internationals Network for Public Schools and the New York Immigration Coalition submitted comments in support of an adjusted performance index for 3-8 only and indicated that they would oppose adding additional performance indices for ELA for ELLs in high school under the current exam structure.

The New York City Department of Education submitted comments that generally agreed with the Department's proposal to develop an adjusted performance index and asked to be included in the process of developing this new adjusted performance index.

### **Department Response:**

The Department is encouraged by the comments received as they were generally supportive of the three proposals contained in Amendments 5 and 6. The Department believes that these changes to New York's testing and accountability system for ELLs will provide better information about the progress of ELLs and will hold schools and districts accountable 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. For the 2014-15 school year, the Department has amended its proposal so that NYSESLAT results can be incorporated into the Grade 3-8 Performance Index for students who have received less than three years of service, has clarified that the NYSESLAT results will not be used to make adjustments to the High School ELA Performance Index, and has specified how students may receive additional "part credit" or "full credit" on the Grade 3-8 ELA Performance Index based on 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 been developing 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 Department has engaged in an extensive review of Commissioner's Regulations Part 154. If the Board of Regents adopts the Department's recommended revisions to Commissioner's Regulations, 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. This proposed revision will ensure that ELLs in their third year of instruction will have received several years of ELA instruction. The Department believes that such a change 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 and will be making every effort to secure funding. 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. The Department has been able to identify a few other states with which to collaborate to develop a joint Spanish Language Arts exam, which will help with cost implications. The Department will also seek funding to develop additional language arts assessments in other languages.

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 and through our 2015-16 ESEA waiver application process. The Department looks forward to collaborating with the field in the development of this proposal for 2015-16.

### **Other Comments on the ESEA Renewal Request**

During the comment period, the Department also received suggestions from the School Administrators Association of New York State (SAANYS) regarding possible amendments that the New York State Education Department could explore for the 2015-16 school year. The SAANYS recommended that NYSED recognize the High School Equivalency Diploma as a form of successful school completion and that the Department consider basing the high school graduation rate on all students who remain

enrolled in school and graduate with a high school diploma, or its equivalent, regardless of the number of years they take to complete their secondary education program.

The New York City Department of Education also suggested in its formal comment on the ESEA Renewal Request that NYSED include provisions that reduce duplication and unnecessary burden on districts and schools. In particular, to avoid the imposition of duplicative reviews on NYCDOE Priority and Focus Schools, NYSED should allow NYCDOE Quality Reviews to stand in place of all NYSED-led Diagnostic Tool for School and District Effectiveness (DTSDE) reviews. NYCDOE asserts that the Quality Review and Developing Quality Review rubric and protocols are strongly aligned with those of the DTSDE; therefore, Quality Reviews and Developing Quality Reviews are appropriate substitutes for state-led reviews.

*Department Response:*

The Department appreciates the additional comments and suggestions submitted by stakeholders. The Department intends to continue the ESEA Renewal Think Tank as a way to prepare for renewal of the ESEA Waiver for 2015-16. These comments and suggestions will be discussed at future meetings.