THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

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December 1, 2021

Hon. Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-6100

RE: Request for a Waiver of Statutory and Regulatory Requirements of the Elementary Secondary Education Act (ESEA) on behalf of all LEAs in New York State

Dear Secretary Cardona:

Section 8401 of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) (hereafter referred to as ESSA), provides authority to the Secretary of the United States Department of Education (USDE) to waive certain statutory and regulatory requirements at the request of a State Educational Agency. By way of this letter, the New York State Education Department (NYSED or "the Department") is formally requesting a waiver of the accountability requirements in Sections 1111(c)(4), 1111(d)(2)(C)-(D), and 1003(b)(1)(a) on behalf of all Local Education Agencies (LEAs) in New York State.

As required in Section 8401 of ESSA, NYSED is submitting a formal request, containing the information described in subsection (b)(1) to the USDE for its consideration. This waiver request is being submitted based upon ongoing consultation with LEAs and other stakeholders across the state and a review of the impact of the ongoing COVID-19 pandemic. The Department is requesting New York State be granted a waiver of the identified sections for the 2021-22 school year. Below is a detailed plan that addresses each requirement in Section 8401(b)(1) of ESEA/ESSA.

A. Identify the Federal programs affected by the requested waiver.

Title I, Part A Improving Basic Programs Operated by Local Educational Agencies Subpart 1- Basic Program Requirements, Section 1111 State Plans and Title I-Improving the Academic Achievement of the Disadvantaged, Section 1003 School Improvement.

B. Describe which Federal statutory or regulatory requirements are to be waived.

NYSED requests a waiver for the following statutory requirements:

- Accountability and school identification requirements in Sections 1111(c)(4) and1111(d)(2)(C)-(D): the requirements that a State annually meaningfully

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differentiate all public schools and the requirements to identify schools for comprehensive and targeted support and improvement and additional targeted support and improvement.

- School improvement requirements in Section 1003(b)(1)(a): the requirements that a State not allocate less than 95 percent of that amount to make grants to local educational agencies on a formula or competitive basis, to serve schools implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d).

C. Describe how the waiving of such requirements will advance student academic achievement.

New York State's Commitment to Diversity, Equity, and Inclusion

Numerous studies examining the effects of the pandemic have demonstrated that certain subgroups of students measured by the ESSA accountability system – students of color, students with disabilities (SWD), English language learners (ELL), and economically disadvantaged students – have been disproportionately affected by deep disparities in academic opportunity and mental health challenges.[1] As school communities of New York State continue to face the ongoing and differentiated impacts of the COVID-19 pandemic, the Board of Regents and NYSED are committed to making the promotion of diversity, equity, and inclusion the cornerstones of recovery. NYSED has responded to the needs of these students with policies that strengthen school communities and increased resources that can be used to drive evidence-based support.

At its April 2021 meeting, the New York State Board of Regents introduced a new Diversity, Equity, and Inclusion framework for New York State schools that will serve as the basis for forthcoming policy. The Board of Regents and the Department believe it is critically important to establish and communicate to all New Yorkers expectations for all students and all entities under the University of the State of New York. In a draft framework titled, "The NYS Board of Regents Framework on Diversity, Equity, and Inclusion in New York's Schools: A Call to Action"[2] presented at that meeting, the Board of Regents asserted:

> The Department, and the schools and districts it oversees, must use data to establish clear expectations for students and their families. They must set goals and targets that are connected to academic attainment and growth. The work we do must always focus on outcomes – and the outcome that matters most in our education system is student learning. ***However, merely reporting the numbers can cause us to focus on the symptoms of structural, institutional, and systemic inequities, losing sight of what lies beneath the surface, at the deeper policy level. For example, discussions of New York's "achievement gap" can be misinterpreted if we fail to account for the lack of student opportunities to learn***. ***As New York's education policymakers, it is our***

[1] https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf
[2] https://www.regents.nysed.gov/common/regents/files/421brd1.pdf

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responsibility to go deeper than the numbers might initially reveal. (emphasis added)

The following month, at its May 2021 meeting, the Board of Regents discussed a new "Policy on Diversity, Equity and Inclusion."[3] The policy notes that:

> A growing body of research finds that all students benefit when their schools implement strong Diversity, Equity and Inclusion (DEI) policies and practices – including academic, cognitive, civic, social-emotional, and economic benefits. Strong DEI policies, in partnership with parents and families, empower students from all backgrounds to visualize successful futures for themselves and provide them with a sense of belonging and self-worth. These benefits can lead to improved student achievement, which in turn can lead to better outcomes in other areas of their lives, including work and civic engagement. This is true regardless of a school's geographic location or the demographic composition of its students and faculty.

With that understanding, the Board of Regents adopted the policy statement on DEI. That policy made it a priority to encourage and support efforts at the State and local level to create within every school an ecosystem of success built on a foundation of diversity, equity, inclusion, access, opportunity, innovation, confidence, trust, respect, caring, and relationship-building. All students must be welcomed in our schools and feel that they belong and are supported.

The Board of Regents and the Department believe that sustained academic success can happen for all students when thoughtful accountability is partnered with robust support and equity-minded decision making. As USDE noted in a February 22, 2021 letter[4] to Chief State School Officers, "State assessment and accountability systems play an important role in advancing educational equity." NYSED agrees and believes in the collective value of administering a statewide assessment program; using transparent and reliable accountability measures to identify schools in need of improvement; deploying high-quality, rigorous, and responsive supports; and transparent public reporting. Throughout the pandemic, NYSED has upheld the principles of DEI and cultural responsiveness by providing amplified supports to schools, continually expanding the number and type of supports provided to identified Comprehensive Support and Improvement (CSI) Schools, Targeted Support and Improvement (TSI) Schools, and Target Districts. Further, the Department anticipates a return to typical administrations of state assessments and reporting of student performance data in the 2021-22 school year.

The Department believes, however, that the timeline and manner for restarting accountability determinations must be addressed differently from other components of the broader accountability and school improvement system. NYSED has maintained that accountability "turn off" and "turn on" must be considered like two different types of light switches. While the Department has been able to turn off accountability systems focused

[3] https://www.regents.nysed.gov/common/regents/files/521bra7.pdf
[4] dcl-assessments-and-acct-022221.pdf (ed.gov)

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on school identification like a traditional light switch, restarting the system can only be done appropriately using a dimmer switch model to gradually return to pre-pandemic accountability practices.

When considering restart efforts, many educational experts believe, as does NYSED, that equity must be a top priority in restarting accountability systems in the 2021-22 school year. For example, Nathan Dadey, Senior Associate at the Center for Assessment, suggests that:

> If states are able to complete achievement testing, they must consider that this disparate impact may be reflected in subgroup performance. One equity-minded response would be to seek a waiver for school identification and in place of those identifications and associated supports, provide supports aimed at helping students who are most likely to be negatively impacted by school closure to catch up and keep up.[5]

Considerations for Re-Starting Accountability Determinations in New York State

Within the context of the new DEI policy and available flexibilities provided by USDE, NYSED is compelled to analyze whether reliable and accurate accountability determinations that support student academic success, including growth and achievement, can be made in the current year and whether such determinations are appropriate.

Even while underscoring the value of state assessments and accountability in promoting equity efforts, USDE recognized in its February 22, 2021 memo[6] that, "Schools and school districts may face circumstances in which they are not able to safely administer statewide summative assessments this spring using their standard practices." In addition to not compelling students learning remotely to be brought to school solely for the purpose of taking a state assessment, USDE identified several flexibilities in the administration of statewide assessments, several of which NYSED implemented. These included administering a shortened version of required statewide assessments and extending the testing window to the greatest extent practicable. In the same communication, USDE noted that, "the intent of these flexibilities . . . is to focus on assessments to provide information to parents, educators, and the public about student performance and to help target resources and supports." USDE subsequently affirmed the appropriate uses of the results from the 2020-21 school year through its approval of New York State's 2020-21 school year accountability waivers[7]. Specifically, the June 9, 2021 letter from the Deputy Assistant Secretary for Policy and Programs Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary in the Office of

[5] https://www.nciea.org/blog/covid-19-response/considering-equity-within-accountability-systems-response-interruptions

[6] dcl-assessments-and-acct-022221.pdf (ed.gov)https://www2.ed.gov/policy/elsec/guid/stateletters/dcl-assessments-and-acct-022221.pdf

[7] http://www.nysed.gov/memo/accountability/united-states-department-education-usde-waiver-every-student-succeeds-act-essa

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Elementary and Secondary Education granting NYSED's previous accountability waiver encouraged State Education Agencies, Local Educational Agencies (LEAs), and schools to, "consider steps to further reduce the stakes of assessments from 2020-21."[8]

Under ESSA, New York State's system for annually meaningfully differentiating a subgroup's performance is based on the following measures: Academic Achievement; Student Growth; Graduation Rate; Academic Progress; English Language Proficiency (ELP); Chronic Absenteeism; and College, Career, and Civic Readiness (CCCR). The use of current year data in combination with immediate prior year data is integral to the way in which subgroup performance is determined on each of the measures listed above. Firstly, all the measures use prior year data as necessary to ensure as many subgroups as possible are included in the ESSA accountability system. Secondly, the Student Growth and ELP measures require immediate prior data to measure student growth attributable to a student's school. Additionally, to ensure stability of data, the Student Growth measure is computed using a subgroup's Student Growth Percentile (SGP) from the current year and the immediate two prior years. Finally, the Academic Progress, Graduation Rate, Chronic Absenteeism, and CCCR measures compare subgroup performance to pre-set Measures of Interim Progress (MIP) targets and include a mechanism by which current year performance is compared to prior year performance to determine whether a subgroup should be credited with meeting Safe Harbor or Accelerated Growth targets.

New York State's accountability system for differentiating school performance using state assessment data is essentially a "three legged-stool" comprised of achievement, progress, and growth results. If New York State cannot ***meaningfully*** differentiate school performance by using 2021-22 school year data in combination with 2020-21 school year data or 2018-19 school year data, the remaining option is to attempt to determine school performance with a limited, "one-legged" approach using just 2021-22 school year data. With that in mind, NYSED has conducted substantial modeling to consider the following accountability re-start options:

1. Make accountability determinations using 2021-22 school year data with 2020-21 school year as the prior year.
2. Make accountability determinations using 2021-22 school year data with 2018-19 school year as the prior year.
3. Make accountability determinations using only 2021-22 school year data.
4. Delay making accountability determinations until 2022-23 school year data is available and instead focus on providing more rigorous supports to more schools and districts during the 2021-22 school year.

After consulting extensively with experts in assessment and accountability and with stakeholders throughout New York State,[9] NYSED strongly believes that making accountability determinations using 2021-22 school year data alone, or in combination with data from the 2018-19 school year or 2020-21 school year, would dramatically

[8] https://oese.ed.gov/files/2021/06/NY-Accountability-waiver-Response.pdf
[9] http://www.nysed.gov/accountability/accountability-waiver-public-survey

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undermine confidence in the accountability system and hinder New York State's DEI goals to improve academic outcomes and to promote equitable learning environments. The accountability system would be considered biased against schools that educate student populations with the most challenges, regardless of how much progress and growth is achieved. Additionally, to build and maintain public confidence in the accountability system, NYSED believes it is essential that it be fully transparent and readily understood by stakeholders and the public. The complexity associated with using and explaining these options is antithetical to that policy goal. Therefore, due to the specific concerns detailed below, the Department is seeking a waiver from the requirements to identify CSI Schools, TSI Schools, ATSI Schools, and Target Districts based on 2021-22 school year results.

In addition to delaying accountability determinations until the 2022-23 school year, NYSED is seeking flexibility from the limitations in Section 1003(b)(1)(a) that permit Title I School Improvement Funds only to be used for grants to local educational agencies to serve schools implementing Comprehensive Support and Improvement activities or Targeted Support and Improvement activities. NYSED is seeking the ability to use School Improvement funds to support schools in Good Standing that were previously identified as being at risk of becoming identified as a Targeted Support and Improvement School prior to the pandemic, but for which that identification may have been delayed due to pandemic-related interruptions to the accountability system.

Concerns Regarding Making Accountability Determinations Using 2021-22 School Year Data With 2020-21 School Year as the Prior Year

The COVID-19 pandemic disrupted every aspect of learning in New York during the 2019-20 and 2020-21 school years, including the administration of required state assessments of student achievement. For states like New York that use multiple years of prior data to calculate indicators (e.g., student growth), numerous experts have urged extreme caution when combining prior and current year data. Chris Domaleski, Associate Director at the Center for Assessment, suggests that it is preemptive to restart accountability systems based on data from pandemic-affected school years:

> Even states that desire to move aggressively will likely need significant time after the 2020-21 academic year to analyze data and confer with policymakers and technical advisors to inform their decisions. The point is, asking states to quickly return their systems to the status quo is not a reasonable goal.[10]

Scott Marion, Executive Director at the Center for Assessment, also expresses that experts are concerned that the data from the 2020-21 school year will be neither complete nor comparable: "Every one of them is nervous about the validity of the results…You can pretend it's comparable, but it's not going to be comparable."[11] Sean Reardon, Professor of Poverty and Inequality in Education and Professor (by courtesy) of Sociology at Stanford University and developer of the Stanford Education Data Archive (SEDA), which

[10] https://www.nciea.org/blog/essa/outlook-essa-school-accountability-after-covid-19
[11] https://www.chalkbeat.org/2021/2/24/22299804/schools-testing-covid-results-accuracy

measures educational opportunity, average test score performance, academic achievement gaps, and other information for public schools throughout the country, states that testing in 2021 is very limited:

> If you had a random sample of kids [in the testing pool], then that would be fine…but testing in 2021 wasn't random. Kids and families chose whether they took the test. Unless you have a lot of information to support a claim of comparability, I think the default assumption for 2021 is that they're not comparable [to 2019 test scores]. I wouldn't draw too many conclusions based on them and I'd use a lot of caveats.[12]

Concerns about comparability are spotlighted in recently released rates of participation on the grades 3-8 assessments in math and ELA. As a result of NYSED implementing flexibilities provided by USDE regarding the administration of assessments during the pandemic,[13] a significant number of students that received hybrid instruction or entirely remote instruction did not participate in Spring 2021 assessments for grades 3-8. Assessment results for the 2020-21 school year indicate approximately 40% of students statewide participated in elementary and middle level state assessments in ELA and mathematics, which is significantly less than half of the participation rate for the 2018-19 school year. Participation rates varied significantly among subgroups. Students of color, students with disabilities (SWD), English language learners (ELL), and economically disadvantaged students were much less likely to participate in state assessments compared to the "All Students" subgroup. Attachment A shows the 2020-21 school year participation rates by subgroup for grade 3-8 ELA and math, by grade level and by Need Resource Category (NRC).[14]

These low participation rates significantly undermine the use of 2020-21 school year results as prior year data because the ESSA accountability system requires that all students in the tested grades be assessed annually and when calculating the Academic Achievement indicator, the denominator be based on the number of students assessed in ELA and mathematics or 95% of the student population, whichever is greater.[15] Experts like Marianne Perie, President of Measurement in Practice and former Director of The Achievement and Assessment Institute's Center for Educational Testing and Evaluation advises that, "participation rates below 50 percent would make it tough to draw any meaningful conclusions from test results."[16]

Of specific concern, there were fewer students participating in 2020-21 school year assessments in higher grades compared to lower grades. NYSED has also identified significantly lower participation in some of our larger urban and suburban areas, and higher rates of participation in rural areas. Because New York has a system that

[12] https://www.edweek.org/teaching-learning/state-test-results-are-in-are-they-useless/2021/10
[13] https://www2.ed.gov/policy/elsec/guid/stateletters/dcl-assessments-and-acct-022221.pdf
[14] The New Resource Category is a measure of a district's ability to meet the needs of its students with local resources. The Need/Resource Capacity (N/RC) categories are determined using the definitions found here: http://www.p12.nysed.gov/irs/accountability/2011-12/NeedResourceCapacityIndex.pdf.
[15] https://oese.ed.gov/files/2020/03/COVID-19-OESE-FINAL-3.12.20.pdf
[16] https://www.edweek.org/teaching-learning/state-test-results-are-in-are-they-useless/2021/10

establishes the same standards for elementary and middle schools, the low participation rates in middle schools will skew accountability determinations toward those schools whose enrollment primarily consists of students in the upper grades. Significant differences in participation rates by subgroup present compounding concerns as to whether an annual meaningful differentiation can be made using 2021-22 school year data. Accountability determinations based on incomplete and non-representative data would undermine confidence in the accountability system, have significantly negative effects on schools and would not uphold the following standards identified by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education's publication titled, *Standards for Educational and Psychological Testing:*[17]

- Standard 3.6: Where credible evidence indicates that test scores may differ in meaning for relevant subgroups in the intended examinee population, test developers and/or users are responsible for examining the evidence for validity of score interpretations for intended uses for individuals from those subgroups. What constitutes a significant difference in subgroup scores and what actions are taken in response to such differences may be defined by applicable laws.
- Standard 13.5: Those responsible for the development and use of tests for evaluation or accountability purposes should take steps to promote accurate interpretations and appropriate uses for all groups for which results will be applied.
- Standard 13.7: When tests are selected for use in evaluation or accountability settings, the ways in which the test results are intended to be used, and the consequences they are expected to promote, should be clearly described, along with cautions against inappropriate uses.
- Standard 13.8: Those who mandate the use of tests in policy, evaluation, and accountability contexts and those who use tests in such contexts should monitor their impact and should identify and minimize negative consequences.

NYSED's system for making differentiated identifications of schools and districts is intended to yield equitable, effective, and fair determinations that offer schools with accurate insights into both areas of growth and need for improvement. The extent of missing data and the unevenness of the available data makes it highly unlikely, if not impossible to make equitable, effective, and fair accountability determinations in the 20-21 school year. This reality underscores that the right course is to provide New York State schools with resources and tools to continue their recovery efforts, not proceed with formal accountability determinations.

Low participation rates have also generated concerns affecting the high school accountability cohort system under New York's ESSA plan.[18] As a result of NYSED implementing flexibilities regarding the administration of state assessments during the pandemic,[19] a sizable number of students who were learning in a hybrid or entirely remote setting also did not participate in assessments at the high school level. Students who

[17] https://www.testingstandards.net/uploads/7/6/6/4/76643089/9780935302356.pdf
[18] http://www.nysed.gov/common/nysed/files/programs/accountability/2020-21-haw-092721-updated.pdf
[19] dcl-assessments-and-acct-022221.pdf (ed.gov)

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otherwise would have taken Regents Examinations were exempted from multiple administrations of the exams during the 2019-20 and 2020-21 school years.[20] All students in the 2018 Cohort were exempted from the ELA Regents Examination, which is typically taken during grade 11 if they intended to take the exam in the 2019-20 or the 2020-21 school years. Consequently, the exempted students do not have a Regents score that can be included in the state's performance index calculation, thus affecting the computation of Composite Performance and Academic Progress. Moreover, uneven cohort participation in Regents Examinations skew the cohort's performance based on participation and exemptions. Attachment B shows the percentage of students in the 2017 Cohort who have scores for the Regents Examinations from the 2020-21 school year used for Composite Performance. Since New York State uses a ranking method to identify the bottom 10% of schools for performance, schools with greater proportions of missing data are more likely to be included in the bottom 10% without an equitable methodology for incorporating exemptions into a modified calculation of Composite Performance. Additionally, due to the exemptions, students also missed the opportunity to improve upon a lower Regents score by retaking the exam.

The Department is also concerned that accountability measurements involving 2020-21 school year Chronic Absenteeism will result in misidentifying or not holding accountable a significant percentage of subgroups. When developing its ESSA State Plan, New York State used 2016-17 school year data as the baseline to set long-term goals and MIPs for each school by subgroup. Data from the 2020-21 school year indicate that schools with high Black and Hispanic populations had lower attendance. Due to the anticipated increase in Chronic Absenteeism, NYSED expects that most schools will not meet their 2021-22 school year MIPs, which will make schools fall behind their required targets.

Concerns Regarding Making Accountability Determinations Using 2021-22 School Year Data With 2018-19 School Year as the Prior Year

Without the ability to confidently use 2020-21 school year results, the Department would need to amend its approved ESSA State Plan to use pre-pandemic data from the 2018-19 school year and earlier as prior year data. Such an approach would significantly compromise the Department's ability to provide schools and districts with current, meaningful growth determinations. For example. as previously stated, New York State's elementary and middle school growth measure is based on SGPs computed for the current school year as well as the prior two school years. For the 2021-22 school year, growth calculations would include SGPs computed based upon equally weighted growth data from 2016-17 to 2017-18, 2017-18 to 2018-19, and 2020-21 to 2021-22 school years. Therefore, NYSED would only be able to implement a limited version of its accountability system that would be based primarily on 2021-22 school year academic achievement, since no state tests in grades 3-8 were administered in the 2019-20 school year, and 2020-21 school year data are not a reliable baseline for measuring student

[20] http://www.p12.nysed.gov/assessment/hsgen/2021/memo-june-august-2021-assessments.pdf#:~:text=Students%20enrolled%20in%20NYSED%20approved%20CTE%20programs%20culminating,for%20the%20purposes%20of%20earning%20an%20industry%20certification.

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growth. In addition, 2018-19 school year data will, in many instances, no longer be reflective of the performance of students in recent years and would be inappropriate to combine with 2021-22 school year data to meet current year n-size requirements. Similarly, it would be inappropriate to use 2018-19 school year data to measure annual progress of schools or make determinations whether schools should be credited with achieving safe harbor targets or making accelerated growth. Such an approach would overly rely on pre-pandemic assessment data and is not likely to accurately reflect the current learning needs of students.

Concerns Regarding Making Accountability Determinations Using Only 2021-22 School Year Data

Using 2021-22 school year results alone will result in a significantly lower proportion of subgroups that can be included in school and district-level accountability determinations due to small N-size rules being adjusted to set-aside the 2-year combination rule. Based upon modeling using 2018-19 school year data, NYSED expects fewer than 56% of the SWD subgroup to be included at the elementary/middle level using single year data compared to 96% when 2 years of data are used. For the Black and Hispanic subgroups, fewer than 61% will be included in determinations at the elementary/middle level compared to 72% when 2 years of data are used. Historically, over 20% of Black and Hispanic subgroups were included at schools identified for TSI status. By using single year data, many of these subgroups will not have a large enough N-size to be included in new accountability determinations, nor will previously identified subgroups be able to show progress. Attachment C reflects the low percentage of subgroups accountable using single-year data. Attachment D shows the participation rate by subgroup from the 2018-19 school year compared to the 2020-21 school year for elementary and middle school level students.

The 2021-22 school year student performance data will mostly reflect the performance of a school's larger subgroups without the 2-year combination rule. Many schools with at-risk subgroups such as SWD, ELL, Black, and Hispanic subgroups will not have a Composite Level for those subgroups and, therefore, will not be accountable. Additionally, other accountability metrics like Safe Harbor and Accelerated Growth cannot be calculated, which would affect Academic Progress, Chronic Absenteeism Rate, Graduation Rate, and CCCR. Resuming the accountability system with these significant calculation limitations would prevent meaningful differentiation, especially given the challenges of accurately measuring performance for the most vulnerable subgroups of students. Such an approach to restarting the identification component of the ESSA accountability system will result in a shift backwards toward identification patterns under No Child Left Behind which concentrated identifications of schools in need of improvement in larger urban districts with higher percentages of economically disadvantaged students and students of color. This "one-legged" approach to accountability, in which the entire focus is on academic achievement while progress and growth are ignored, will result in the identification of schools that are, in fact, improving. Consequently, community support for the strategies that schools are using to achieve more equitable student outcomes may be undermined.

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Based on modeling, NYSED strongly believes that using 2021-22 school year data to make accountability determinations will bias the process towards identification of schools with high concentrations of traditionally underserved communities rather than on those schools where students are showing the lowest growth in achievement. Such identifications would undermine years of effort by the Department to develop, implement, and communicate an ESSA accountability system that is not about punishing or shaming schools and districts, but is instead a system designed for supporting schools that do least well at promoting student growth in learning.

Benefits of Delaying Accountability Determinations until 2022-23 School Year

Obtaining a waiver of the requirements detailed in Sections 1111(c)(4) and 1111(d)(2)(C)-(D) in the 2021-22 school year is the most appropriate course of action for New York State's re-start of its accountability system – both from a technical perspective and from an advancement of equity perspective. Preliminary feedback received from a wide variety of stakeholders, including parents, students, superintendents, principals, teachers, school support staff, other district personnel, and members of the community, document that such an approach would be welcomed by stakeholders. Throughout New York State, educators and students are still facing significant challenges and struggles in seeking a return to normalcy. Those stressors are manifest in reports of widespread student behavioral issues, increased need for mental health and academic interventions and difficulties in recruiting and retaining school personnel. It is critical that the Department mitigate rather than exacerbate stress on fragile communities that need time to recover and heal from the pandemic. The risk of marginalizing both stakeholders and subgroups of students by making premature determinations is a significant concern. By removing the additional stressor of having academic performance and growth inaccurately identified through premature and invalid accountability determinations, the Department will be better positioned to partner with and support schools and districts that most need assistance.

Benefits of Focusing on Providing More Rigorous Supports to More Schools and Districts During 2021-22 School Year

Educational experts agree that local and state leaders need to intensify supports in the 2021-22 school year as schools are in a critical time of recuperation. The Center for School and Student Progress asserts in their research findings on COVID-19's impact on learning outcomes in ELA and math for the 2020-21 school year that affected communities need to be prioritized:

> As daily life increasingly returns to 'normal,' we must confront what this means in the context of education…next year [2021-22] cannot be a 'normal' year. We cannot return to the classroom and do things the same as they have always been done and expect to see a different outcome. Instead, we must use this critical moment in education to radically rethink how programs, policies, and opportunities

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are designed and fiercely commit to prioritizing the communities most impacted by the pandemic and distributing resources accordingly.[21]

Restarting the accountability system prematurely based on 2021-22 school year results will hinder, if not preclude that much-needed rethinking. During numerous conversations with stakeholders across New York State, district leaders, school leaders and classroom teachers have noted feeling compelled to divert their attention away from engaging in critical social-emotional learning (SEL) work to focus on ELA and math assessment preparation more narrowly, which may, in the longer term, reduce student achievement and growth. At the local level, waiving the requirements in ESSA Sections 1111(c)(4) and 1111(d)(2)(C)-(D) for the 2021-22 school year will allow all school communities with needed flexibilities to identify student needs using more reliable measures of growth and progress during pandemic-impacted years and to intensify the socio-emotional development supports, services, and opportunities that students need to achieve academic growth and, while still maintaining high expectations for achievement.

At the state level, this needed intensification of supports in the 2021-22 school year – particularly in those schools already identified under previous accountability determinations – is consistent with the model NYSED has already deployed throughout the 2019-20, 2020-21, and 2021-22 school years. While the identification component of the accountability system was turned off in the 2019-20 school year and again in the 2020-21 school year, the support component of our system has continued to grow in both years based on interest from the field and interest from the Department to move in a more service and support -oriented direction.

NYSED has required the completion of improvement plans and maintained ongoing support for 215 previously identified districts and 487 previously identified schools. In addition to reviewing multiple sources of recent data, such as annual survey results, assessment data, and attendance data, the schools have also been required to look closely at student interviews and the "Equity Self-Reflection for Identified Schools"[22] to examine how they are creating an equitable learning environment in which all students experience dignity, a sense of belonging, and inclusion. Providing LEAs with the time to focus on these efforts to reach their goals, with support from NYSED staff, is the most logical and equitable way to support student success.

In addition to the universal level of support offered to identified schools, NYSED believes it is important for schools and districts to have agency when taking ownership of their improvement, and as a result, the Department has been offering optional additional support to our CSI Schools. For example, for the past three years, nearly two-thirds of our Receivership CSI Schools have participated in the optional support offered by NYSED through the Targeted Support program that combines additional funding with additional technical assistance and individualized principal coaching. Through this model, more

[21] https://www.nwea.org/content/uploads/2021/07/Learning-during-COVID-19-Reading-and-math-achievement-in-the-2020-2021-school-year.research-brief-1.pdf

[22] http://www.nysed.gov/accountability/needs-assessment

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than two dozen schools have received a combined total of more than 1200 hours of specialized coaching since January 2020.

NYSED supports to non-Receivership CSI Schools have also continued to intensify during the pandemic through our CSI Enhanced program. Over the past three years, these schools have been offered the opportunity to participate in one of the additional supports provided by NYSED to advance improvement in their school. When these supplemental options were first introduced in 2019, NYSED offered three Enhanced Options to non-Receivership schools, and 43% of the schools participated. The Department added two new additional support options in the 2020-21 school year and will be offering three additional options for the 2021-22 school year, so that there are now eight options from which schools may choose. As of the time of this waiver request, 164 CSI Schools (approximately 85% of the non-Receivership CSI Schools statewide) have opted into one of these additional models of support during the 2021-22 school year. Further, NYSED has recently launched two new communities of practice. The first community will facilitate conversations among Assistant Superintendents, Directors of Curriculum and Instruction and others from all 215 Target Districts statewide about pandemic responsive improvement strategies to address student needs. The second community will facilitate peer-to-peer conversations among school-based staff from all 487 CSI and TSI Schools focused on Addressing Chronic Absenteeism.

Under the DEI Framework, waiving the limitations of Section 1003(b)(1)(a) directing Title I School Improvement funds only to identified CSI and TSI Schools is consistent with the intensification of supports model we have employed. This will enable creation of an additional cohort of nearly 350 schools at risk of identification for improvement pre-pandemic to access resources can be utilized to meet differentiated needs. It is important to note that providing funds to non-identified schools can be accomplished without any diminution of services to currently identified schools because these funds had previously been earmarked to be used to support newly identified schools in the 2019-20 and 2020-21 school years. Many of these schools would have received these funds had accountability determinations been able to be made in the past two years.

For these “pre-identified” schools, NYSED will provide fiscal resources and programmatic supports not currently available because the schools are not formally identified under the ESSA accountability system. Expanding the cohort of schools supported with dedicated Title I School Improvement funds and activities, including optional use of improvement plan templates and processes, while maintaining ongoing support for previously identified districts and schools directly addresses past and emerging equity gaps and student needs. In addition to supporting the review of multiple sources of recent data, such as annual survey results, assessment data, and attendance data, the additional schools to be served will have access to tools and resources that support the incorporation of student voice via student interview protocols and the “Equity Self-Reflection for Identified Schools”[23] to examine how they are creating an equitable learning environment in which all students experience dignity, a sense of belonging, and

[23] http://www.nysed.gov/accountability/needs-assessment

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inclusion. Providing LEAs with the time to focus on these proactive and preventive efforts to reach their goals is the most effective and equitable way to advance student success in the immediate post pandemic era.

D. Describe the methods the State educational agency, local educational agency, school, or Indian tribe will use the monitor and regularly evaluate the effectiveness of the implementation of the plan.

NYSED will maintain its focus on providing high-quality support to 487 CSI Schools, TSI Schools, and ATSI Schools, and 215 Target Districts. NYSED will expand most of the supports that existed prior to the COVID-19 pandemic in the following ways:

- Supply optional supports to schools to ensure that they are supported throughout the school year to minimize the likelihood of reidentification, such as consulting, on-site technical assistance, and virtual support.
- Require previously identified districts and schools to develop annual improvement plans and receive both fiscal assistance and technical assistance on implementing their improvement strategies.
- Continue the Department's Office of Innovation and School Reform established progress reporting and management process for 38 Receivership/CSI Schools for the 2021-22 school year. This process consists of regularly submitted progress reports, performance review calls, and site visit monitoring (with virtual visits taking place until in-person site visits are once again possible).
- Require Receivership Schools to engage in ongoing monitoring of established Demonstrable Improvement indicators.
- Require all 228 CSI Schools to submit their improvement plans to NYSED for approval. Prior to this, the Department's Office of Accountability staff will work closely with principals of CSI Schools to support their development of the improvement plan. After the plan is approved, the Department partners with the CSI Schools throughout the school year to provide technical assistance on the implementation of the improvement plan.[24]
- Increase enhanced support models from five to eight and continue to make them available to 190 identified non-Receivership CSI Schools. Some examples of the enhanced support models are, "Advancing Equity," "Developing Restorative Practitioners," "Extending Digital Learning," "Supporting New CSI Principals," and "Enhancing Principal Leadership."[25]
- Provide support to new TSI School principals via a cohort coaching model while overseeing district support for ATSI and TSI Schools.
- Use a consolidated application process to monitor for fiscal responsibility and follow-up on improvement goals for schools and districts receiving Title I funds.

[24] http://www.nysed.gov/common/nysed/files/programs/essa/nys-essa-plan.pdf
[25] http://www.nysed.gov/accountability/school-support

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- Provide technical assistance to improve results for identified subgroups of students with disabilities and distribute Section 611 and 619 grants under Individuals with Disabilities Education Act (IDEA)-American Rescue Plan (ARP).[26]

In addition to a focus on high-quality support, NYSED will also continue and expand its collection and communication of available student data. NYSED has a robust data collection and reporting system that will be leveraged to provide parents, school and district leaders, and the public with available data on how students are achieving and progressing. This data system is not limited to test result data and includes detailed information about student enrollment, attendance, access to technology resources, course completion, graduation results as well as school climate.[27] Additionally, NYSED will continue to require LEAs to report student achievement as well as other important school-level data. Collection of these data elements will directly support NYSED's ongoing efforts to better understand the pandemic's impact on school communities and identify appropriate actions to meet the academic, social-emotional, and physical health and safety needs of students.

E. Include only information directly related to the waiver request.

Section 8401(b)(3)(A) requires the New York State Education Department to: (1) provide the public and any interested local educational agency in the State with notice and a reasonable opportunity to comment and provide input on the request, to the extent that the request impacts the local educational agency; (2) submit the comments and input to the Secretary, with a description of how the State addressed the comments and input; and (3) provide notice and a reasonable time to comment to the public and local educational agencies in the manner in which the applying agency customarily provides similar notice and opportunity to comment to the public. The New York State Education Department has fulfilled this requirement by:

- Providing notice and information to the public to inform the Department's consideration of submitting a waiver request to USDE related to making school and district accountability determinations based on results from the 2021-22 school year on its website at: http://www.nysed.gov/accountability/accountability-waiver-public-survey. In accordance with normal procedures of the Department, the public was provided with ten (10) business days to provide responses to the survey.
- Providing notice and information to the public regarding this request for a waiver on its website at: http://www.nysed.gov/essa/assessment-and-accountability-waivers. In accordance with normal procedures of the Department, the public was provided with ten (10) business days to provide comments.
- Distributing notification of the waiver request and solicitation of comments via email to all district superintendents, school superintendents, charter school officials, and nonpublic school representatives. In accordance with normal procedures of the

[26] http://www.p12.nysed.gov/specialed/finance/2021-23-idea-arp-grant/application-instruction-memo.html
[27] http://www.nysed.gov/memo/information-reporting-services/digital-equity-survey-data-collection-and-reporting-sirs

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Department, LEA representatives were provided with ten (10) business days to provide comments.

- Distributing notification of the waiver request and solicitation of comments via email to the State's Title I Committee of Practitioners. In accordance with normal procedures of the Department, members of the Committee of Practitioners were provided with ten (10) business days to provide comments.

The initial survey issued on November 4, 2021 seeking stakeholder input on a potential waiver request to USDE generated 3,888 responses from stakeholders. The survey results were overwhelmingly supportive of the Department submitting a waiver request. More than 90.5% of respondents indicated that NYSED should not use 2021-22 results to make accountability determinations. Among the survey responses received:

- 54.9% of respondents indicated that NYSED should neither report the performance of schools on ESSA accountability indicators using results from the 2021-22 school year nor use the results to make accountability determinations.
- 35.6% of respondents indicated that NYSED should report the performance of schools on ESSA accountability indicators using results from the 2021-22 school year for informational and planning purposes, but not use the results to make accountability determinations.
- Only 8% of respondents indicated that NYSED should report the performance of schools on ESSA accountability indicators using results from the 2021-22 school year and use the results to make accountability determinations.

Attachment E shows evidence of public postings and email communication by NYSED and Attachment F shows data regarding the interest survey and public comments received.

F. Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describe how the State educational agency, local educational agency, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi).

As described above, the requested waiver will allow all school communities with the time and focus needed to identify student needs, including the needs of students with disabilities, English Language Learners, and economically disadvantaged students, using more reliable measures of growth and progress during pandemic-impacted years and to intensify the supports, services, and opportunities that students need to achieve academic growth and socio-emotional development, while still maintaining high expectations for achievement. LEAs will receive continual supports with efforts to increase accessibility to academic and mental health services to students with high needs. The Department will continue to engage with LEAs and community stakeholders to track progress in areas of attendance and initiatives related to student engagement.

LEAs will have access to information and resources, such as the school report card and professional development tools, on the NYSED website.

Should you have any questions or need additional information, please feel free to contact me directly at commissioner@nysed.gov. We look forward to your prompt and favorable response to New York's waiver requests.

Sincerely,

Betty A. Rosa
Commissioner

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ATTACHMENT A. Participation Rates by Subgroup for Grade Levels 3-8

Table 1: 2020-21 School Year Grades 3-8 Participation Rate by Subgroup and Subject

Subgroup	Enrolled	% ELA Tested	% Math Tested
All Students	1,195,169	42%	40%
SWD	251,796	29%	28%
Native American	8,354	33%	31%
Asian	117,565	43%	40%
Black	196,603	27%	25%
Hispanic	341,880	30%	29%
White	491,552	56%	53%
ELL	109,126	33%	34%
Economically Disadvantaged	683,643	35%	34%

Table 2: 2020-21 School Year Participation Rate by Grade

Subject	% ELA Tested	% Math Tested
Grade 3	48%	49%
Grade 4	48%	48%
Grade 5	45%	45%
Grade 6	41%	41%
Grade 7	38%	37%
Grade 8	33%	21%
Grades 3-8	40%	31%

Table 3: 2020-21 School Year Grades 3-8 Participation Rates by Need Resource Categories (NRC)

NRC Category	% ELA Tested	% Math Tested
Large Cities	38%	38%
Urban-Suburban	48%	47%
Average Needs	57%	54%
Low Needs	58%	53%
Rural	74%	72%
Charter	26%	25%

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ATTACHMENT B. Students in the 2017 Cohort with Four Regents Examinations from the 2020-21 School Year

2017 Cohort - 4 Year Outcome					
Subgroup	Cohort Count	ELA Regents Tested	Math Regents Tested	Science Regents Tested	Soc. Studies Regents Tested
All	208,217	48%	83%	80%	77%
SWD	37,194	29%	54%	52%	50%
Nat. Amer.	1,506	49%	77%	73%	69%
Asian	20,391	64%	91%	86%	86%
Black	34,899	50%	73%	66%	64%
Hispanic	53,726	48%	73%	68%	66%
White	93,421	43%	90%	90%	87%
Multiracial	4,274	46%	82%	81%	76%
ELL	13,793	11%	43%	26%	32%
ED	108,306	48%	77%	72%	69%

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ATTACHMENT C. Percentage of Subgroups Accountable Based on Single Year Data (2018-19 School Year)

	Elementary-Middle Level Measures					High School Level Measures					
Subgroup	Composite	Growth	ELP	Academic Progress	Chronic Absenteeism	Composite	Graduation Rate	ELP	Academic Progress	Chronic Absenteeism	CCCR
All Students	98.7	0	0	96.6	92.9	92.1	86.7	0	89.6	92.1	92.1
SWD	55.8	0	0	55.2	11.4	23.3	18.1	0	23.2	23.3	23.1
Native American	15.1	0	0	15.1	2.4	7.1	1.8	0	7.1	7.1	7.1
Asian	40.8	0	0	40.5	16.9	25.1	20.5	0	25.1	25.1	25.1
Black	59.1	0	0	57.7	28.5	42.8	35.3	0	40.5	42.8	42.6
Hispanic	62.2	0	0	60.8	33.6	50.7	43.6	0	49.7	50.7	50.6
White	80.9	0	0	80.2	61.7	70.3	67.7	0	70.1	70.3	70.3
ELL	44.2	0	0	43.1	18.5	23.4	15.4	0	21.2	23.4	23.4
Economically Disadvantaged	87.5	0	0	85.5	61.8	75.3	66.5	0	72.9	75.3	75.3
Multiracial	9.5	0	0	9.4	0.4	2.8	0	0	2.3	2.8	2.8

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ATTACHMENT D. Participation (Part.) Rate by Subgroup in the 2018-19 School Year and 2020-21 School Year for Elementary and Middle School Level Students

Subgroups	2018-19 Weighted Average Achievement Index	2020-21 Part. Rate	Estimated Weighted Average Achievement Index based on 10% decline in Part. Rate (Base: 2018-19)	Estimated decline in Weighted Average Achievement Index points based on 10% decline in Part. Rate	Estimated Weighted Average Achievement Index based on 2020-21 Part. Rate (Base: 2018-19)
All Students	123.1	40.9	102.8	20.3	58.0
SWD	64.3	28.5	52.8	11.5	23.7
Native American	119.2	32.0	100.5	18.7	40.8
Asian	186.1	41.8	158.3	27.8	77.2
Black	108.3	26.0	91.5	16.8	29.5
Hispanic	108.1	29.7	90.9	17.2	35.1
White	124.6	54.1	102.4	22.2	86.6
ELL	97	33.3	81.9	15.1	34.0
Economically Disadvantaged	110.8	34.3	93.3	17.5	41.2
Multiracial	115.6	NA	95.2	20.4	N/A

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ATTACHMENT E. Evidence of Public Postings and Email Communications by NYSED

(TBD)

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ATTACHMENT F. Interest Survey Data and Public Comments Received

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