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February XX, 2022

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

RE: Request for Extension on a Waiver of Statutory Requirements of the Elementary and Secondary Education Act (ESEA)

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 ESEA/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 an extension of the waiver of two statutory requirements of Title I, Part A of ESEA/ESSA, initially approved by USDE on January 18, 2018. The Department is requesting an extension of a waiver of the identified sections for a period of four years, beginning with 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 of ESEA/ESSA.

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

As directed by the New York State Board of Regents, the Department is seeking an extension of the approved waivers for the following statutory requirements:

1. ESEA/ESSA Section 1111(b)(1)(B)(ii): "Except as provided in subparagraph (E), the standards required by subparagraph (A) shall—with respect to academic achievement standards, include the same knowledge, skills, and levels of achievement expected of all public school students in the State."

2. ESEA/ESSA Section 1111(b)(2)(B)(i)(I): "The assessments under subparagraph (A) shall—(i) except as provided in subparagraph (D), be—(I) the same academic assessments used to measure the achievement of all public elementary school and secondary school students in the State."

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The purpose of the waiver extensions will be to allow the Department to continue the following:

- For students enrolled in Grade 7 who take a high school level Regents Examination in mathematics in lieu of the Grade 7 Mathematics test:
    - Use their results on this examination when making participation and accountability determinations at the middle level;
        - Provide full credit on the state's annual accountability system for student results at a performance level of 2 on a Regents Examination in mathematics when determining Performance Indices at the middle level for mathematics;
        - Provide additional credit on the state's annual accountability system for student results at a performance level of 3 or 4 on a Regents Examination in mathematics when determining Performance Indices at the middle level for mathematics;
        - Count their participation in the Regents Examination in mathematics when determining whether a school or district has met the 95 percent participation requirement in mathematics at the middle level;
    - Require these students to take a more advanced Regents Examination in mathematics at the secondary level to fulfill the participation and performance criteria for secondary-level accountability.
- For students enrolled in Grade 7 who take both a high school level Regents Examination in mathematics and the Grade 7 Mathematics test:
    - Use their results on the Grade 7 Mathematics test when determining the Performance Index in middle-level mathematics in the state's annual accountability system.
- For students enrolled in Grade 8 who take a high school level Regents Examination in science in lieu of the Grade 8 Intermediate-Level Science test:
    - Use their results on this examination when making participation and accountability determinations at the middle level:
        - Provide full credit on the state's annual accountability system for student results at a performance level of 2 on a Regents Examination in science when determining Performance Indices at the middle level for science;
        - Provide additional credit on the state's annual accountability system for student results at a performance level of 3 or 4 on a Regents Examination in science when determining Performance Indices at the middle level for science;
        - Count their participation in the Regents Examination when determining whether a school or district has met the 95 percent participation requirement in science at the middle level;
    - Require these students to take a more advanced Regents Examination in science at the secondary level to fulfill the participation and performance criteria for secondary-level accountability.
- For students enrolled in Grade 8 who take both a high school level Regents Examination in science and the Grade 8 Intermediate-Level Science test:
    - Use their results on the Grade 8 Intermediate-Level Science test when determining the Performance Index in middle-level science in the state's annual accountability system.

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Rationale for Waiver Extension Request

Prior to the receipt of New York State's (NYS) previously held ESEA flexibility waiver, Grade 7 students enrolled in advanced mathematics courses had to take the NYS Grade 7 Mathematics Test for institutional accountability purposes as well as a Regents Examination affiliated with their high school level mathematics course to receive credit towards a high school diploma. Similarly, Grade 8 students enrolled in a high school science course had to take the NYS Grade 8 Intermediate-Level Science Test for institutional accountability purposes and the Regents Examination affiliated with their high school level course to receive credit towards a high school diploma. This rule placed an undue burden upon the students enrolled in these advanced courses as it not only imposed the difficulty of double testing upon these students, but it also required these students to prepare for an exam that did not align to the mathematics or science course they were taking in that school year. Likewise, the rule burdened the schools in which these students were enrolled by requiring them to provide additional instruction outside of these students' enrolled courses to help them prepare for the additional assessments. As was the case with the initial waiver granted by USDE in January 2018, this waiver extension request is necessary to reduce this burden upon NYS' high achieving students and schools.

The requested waiver extension of statutory requirements related to middle school students enrolled in high school mathematics and/or science courses will allow NYSED to measure more accurately these students' achievement levels in these subjects and to measure proficiency and growth more accurately for these schools in the state's annual accountability system.

The Department appreciates that ESEA/ESSA addresses this double testing issue for students enrolled in Grade 8 who take advanced mathematics courses and acknowledges USDE's interest in not creating regulations that expand this flexibility beyond what is specified in law. NYSED also acknowledges that in the Analysis of Comments and Changes section of the preamble to the Title I-Improving the Academic Achievement of the Disadvantaged-Academic Assessments Final Regulations, USDE indicates that, "[a] State may request a waiver to extend this flexibility [in § 200.5(b) for middle school mathematics be expanded beyond eighth graders taking advanced mathematics courses] to other grades or subjects if the State meets the requirements in section 8401 of the ESEA" (CFR, Vol. 81, No. 236, p88903).

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

Waiving the same levels of achievement and same assessments provisions of ESEA/ESSA Section 1111(b)(1)(B)(ii) and 1111(b)(2)(B)(i)(I) will allow NYSED to better support academic achievement for impacted students by providing the following:

Elimination of Double Testing Burden for High Achieving Students:

This waiver extension will result in a continuation of the following Regulations of the Commissioner of Education:

- Section 100.21(b)(1)(xvi)(c)(1) which states, "for students enrolled in grade 7 or 8 and who take a Regents examination in mathematics but do not take the grade 7 or 8 New York State testing program assessment in mathematics, participation and accountability determinations for the school in which the student is enrolled in grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics" and

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- Section 100.21b)(1)(xvi)(d)(1) which states, "for students enrolled in grade 8 who take a Regents examination in science but do not take the grade 8 intermediate science test, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the Regents examination in science."

Additional subsections of these regulations include provisions that allow for students enrolled in these classes to take both the grade-level assessments and the Regents Examination associated with their enrolled courses. These subsections provide schools the ability to determine through coursework whether a student's achievement is sufficiently high to be accurately measured by one advanced test, and as a result to reduce the testing burden for those students who will most benefit from the ability to focus exclusively on advanced studies.

In rare cases, it may be possible for schools to make such a determination for exceptionally advanced students enrolled in Grade 6 or Grade 7 who take a high school mathematics or science course affiliated with a Regents Examination. In these cases, a district may petition the Commissioner to extend the allowance of this waiver to those students on an individual basis.

Encouraging Offering of Advanced Coursework to Middle School Students:

New York State initially received allowance to waive the requirements being requested here as part of NYSED's ESEA Flexibility Waiver beginning in the 2014-15 school year. The flexibilities sought were subsequently extended via USDE's granted waiver request in January 2018 for the 2017-18 school year. Before the approval of those waivers, many districts and schools within the state were reluctant to devote resources to providing high school coursework to middle school students. These districts and schools knew that the only results for which the middle school would be accountable were the grade-level assessments and preparing students to take both the grade level assessment and the Regents Examination was likely to result in their students attaining lower scores on the grade level assessment than would be the case if the students were being prepared only for the middle level examination. Consequently, some districts were limiting participation in advanced coursework to those students who would be able to perform at high levels on both assessments, rather than including students who were likely to be successful on the Regents Examination if their teacher could focus the instruction on the learning standards associated with the high school course. After gaining the ability to apply results from Regents Examinations towards middle-level accountability through the ESEA Flexibility Waiver, all districts and schools across the state were encouraged to develop new and additional pathways to include more middle school students in advanced math and science courses.

The Department believes that continuation of this waiver will support New York's efforts to achieve one of the goals of ESSA, which is to provide middle school students with opportunities to participate in advanced high school coursework. In Spring 2019 (pre-pandemic year), 1,103 NYS students enrolled in Grade 7 took a Regents Examination in mathematics in lieu of the Grade 7 Mathematics Test (see Table 1 of Attachment A). Similarly, in Spring 2019, 62,206 NYS students enrolled in Grade 8 took a Regents Examination in science in lieu of the Grade 8 Science Test (see Table 2 of Attachment A). Without a continuation of this waiver, many students will lose the opportunity to participate in advanced coursework during middle school. Additionally, this waiver reflects the following Regulations of the Commissioner of Education:

- Section 100.4(e)(2) which states, "except as otherwise provided in subdivisions (f) and (g) of this section, and except for students who have been admitted to a higher grade without

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completing the grade at which the assessment is administered, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy…. mathematics assessments shall be administered in grades 7 and 8, provided that, beginning with the 2020-21 school year, students who attend grade 7 or 8 may take a Regents examination in mathematics in lieu of or in addition to the grade 7 or 8 mathematics assessment, in accordance with clause (b)(1)(xvi)(*c*) of section 100.21 of this Part." and

- Section 100.4(e)(4) which states, "except as otherwise provided in subdivisions (f) and (g) of this section, and except for students who have been admitted to a higher grade without completing the grade at which the assessment is administered, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy….the science intermediate assessment shall be administered in grade 8; provided that students who attend grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment, in accordance with this section and section 100.21(b)(1) of this Part."

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

Should the waiver extension be granted, the Department will use the same guidelines and procedures to determine participation and gauge performance for Grade 7 students in advanced mathematics coursework and Grade 8 students in advanced science coursework. These procedures are described in the New York State Regulations of the Commissioner of Education Section 100.4.(d)(3)(i), which state that each district's "superintendent, or his or her designee, shall determine whether a student has demonstrated readiness in each subject in which he or she asks to begin high school courses." The regulation continues in Section 100.4(e)(2) to state that, "students who attend Grade 7 or 8 may take a Regents examination in mathematics in lieu of or in addition to the Grade 7 or 8 mathematics assessment" and in Section 100.4(e)(4) to state that, "students who attend grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment." Attachment B provides the full text of these sections of the Regulations of the Commissioner.

Like the determination of whether advanced coursework is appropriate for each potential student, the determination of which assessment is appropriate for those Grade 7 and Grade 8 students enrolled in an advanced course is, and will continue to be, made by local educational agencies with the intent of identifying the most appropriate assessments aligned with the students' coursework. The affected students will be required to take a more advanced Regents Examination at the secondary level as stipulated in the Regulations of the Commissioner of Education Section 100.21(b)(1)(xvi)(c) which states that, "Participation and accountability determinations for the high school in which such student [who applies a Regents Examination to middle level participation and accountability] later enrolls shall be based upon such student's performance on mathematics assessments taken after the student first enters grade 9." Attachment C provides the full text of this section of the Regulations of the Commissioner.

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To monitor and regularly evaluate the effectiveness of the implementation of the plan, NYSED annually collects data for:

- Grade 7 students who take a Regents Examination in mathematics to meet a high school diploma requirement and is also used for school accountability purposes;
- Grade 7 students who take the Grade 7 Mathematics Test, that is used for school accountability purposes, and also a Regents Examination in mathematics to meet a high school diploma requirement;
- Grade 8 students who take a Regents Examination in science to meet a high school diploma requirement and is also used for school accountability purposes;
- Grade 8 students who take the Grade 8 Intermediate-Level Science Test, that is used for school accountability purposes, and also take a Regents Examination in science to meet a high school diploma requirement.

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

Section 8401(b)(3)(A) requires NYSED 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. NYSED has fulfilled this requirement by:

- 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 formal written 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 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.

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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).

NYSED will continue to collect and monitor student data to ensure that this waiver request will not negatively impact the participation rate for subgroups for the NYS Grade 7 Mathematics Test, the Regents Examinations in mathematics, the NYS Grade 8 Intermediate-Level Science Test, or the Regents Examinations in science, and to ensure that effective decisions are being made to apply the allowance to those students who will benefit from it the most. As of 2015, accountability reports in the New York school report cards report combined proficiency data for students who took the grade-level assessments and students who took the advanced assessment in lieu of the grade level assessment. Under this waiver, New York will continue to report these data.

Please feel free to contact me at XXXX@nysed.gov if you have any questions regarding this waiver extension request. Thank you for your consideration.

Sincerely,

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Attachment A: Assessment Data for Advanced Mathematics and Science

Table 1: 2018-19 School Year Assessment Data - Grade 7 Advanced Mathematics

Group Name	Total Number of Students Tested	Total Number Who Took a Regents Exam in Math in Lieu of a Grade 7 Math Test	% Who Took a Regents Exam in Math in Lieu of a Grade 7 Math Test	Number Who Took a Regents Exam in Math in Lieu of a Grade 7 Math Test and Passed (Level 2/3/4)	% Who Took a Regents Exam in Math in Lieu of a Grade 7 Math Test and Passed (Level 2/3/4)
All Students	157725	1103	0.7%	1013	91.8%
American Indian/ Alaska Native	1171	12	1.0%	12	100.0%
Black	29529	249	0.8%	174	69.9%
Hispanic	45528	108	0.2%	100	92.6%
Asian/Pacific Islander	18474	346	1.9%	343	99.1%
White	59509	358	0.6%	354	98.9%
Multiracial	3514	30	0.9%	30	100.0%
Students with Disabilities	27079	28	0.1%	18	64.3%
English Language Learner	12883	7	0.1%	5	71.4%
Economically Disadvantaged	94611	348	0.4%	276	79.3%

Table 2: 2018-19 School Year Assessment Data - Grade 8 Advanced Science

Group Name	Total Number of Students Tested	Total Number Who Took a Regents Exam in Science in Lieu of the Grade 8 Science Test	% Who Took a Regents Exam in Science in Lieu of the Grade 8 Science Test	Number Who Took a Regents Exam in Science in Lieu of a Grade 8 Science Test and Passed (Level 2/3/4)	% Who Took a Regents Exam in Science in Lieu of a Grade 8 Science Test and Passed (Level 2/3/4)
All Students	170634	62206	36.5%	54989	88.4%
American Indian/ Alaska Native	1261	376	29.8%	288	76.6%
Black	28716	7424	25.9%	5019	67.6%
Hispanic	45635	13196	28.9%	9912	75.1%
Asian/Pacific Islander	19886	9568	48.1%	9052	94.6%
White	71818	30405	42.3%	29557	97.2%
Multiracial	3318	1237	37.3%	1161	93.9%
Students with Disabilities	26089	3581	13.7%	1989	55.5%
English Language Learner	11419	1295	11.3%	340	26.3%
Economically Disadvantaged	94865	25181	26.5%	19534	77.6%

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Attachment B: Commissioner's Regulation Part 100.4(d-e)

(d) Grade 8 acceleration for diploma credit.

(1) Public school students in grade 8 shall have the opportunity to take high school courses in mathematics and in at least one of the following areas: English, social studies, languages other than English, art, music, career and technical education subjects or science courses.

(2) Credit may be awarded for an accelerated course only when at least one of the following conditions has been met:

(i) accelerated students attend classes in a high school with high school students and pass the course on the same basis as the high school students. Credit is awarded by the high school; or

(ii) the student passes the course and the associated State proficiency examination or Regents examination, when available. The credit must be accepted as a transfer credit by all registered New York State high schools; or

(iii) in cases where no appropriate State assessment is available, the student passes a course in the middle, junior high or intermediate school that has been approved for high school credit by the public school district superintendent(s), or his or her designee(s), or the district(s) where the middle, junior high or intermediate school and the high school are located.

(3) Such opportunity shall be provided subject to the following conditions:

(i) The superintendent, or his or her designee, shall determine whether a student has demonstrated readiness in each subject in which he or she asks to begin high school courses in the eighth grade leading to a diploma.

(ii) A student shall be awarded high school credit for such courses only if such student passes a Regents examination, a second language proficiency examination when available, or a career and technical education proficiency examination, or, if no such examinations are available, a locally developed examination that establishes student performance at a high school level as determined by the principal.

(4) Courses taken pursuant to this subdivision may be substituted for the appropriate requirements set forth in subdivision (c) of this section.

(e) Required assessments in grades 7 and 8.

Except as otherwise provided in subdivisions (f) and (g) of this section, and except for students who have been admitted to a higher grade without completing the grade at which the assessment is administered, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy.

(1) Beginning with school year 1998-99, the English language arts intermediate assessment shall be administered in grade 8. Beginning with the 2005-2006 school year, English language arts assessments shall be administered in grades 7 and 8.

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(2) Beginning with the 1998-99 school year, the mathematics intermediate assessment shall be administered in grade 8. Beginning with the 2005-2006 school year, mathematics assessments shall be administered in grades 7 and 8, provided that, beginning with the 2020-21 school year, students who attend grade 7 or 8 may take a Regents examination in mathematics in lieu of or in addition to the grade 7 or 8 mathematics assessment, in accordance with clause (b)(1)(xvi)(*c*) of section 100.21 of this Part.

(3) The program evaluation test in social studies in grade 8, beginning in May 1989. Beginning with the school year 2000-2001 through the 2009-2010 school year, the social studies intermediate assessment shall replace the program evaluation test and shall be administered in grade 8.

(4) Beginning with the school year 2000-2001, the science intermediate assessment shall be administered in grade 8; provided that students who attend grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment, in accordance with this section and section 100.18(b)(14) of this Part, and provided further that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8 pursuant to subdivision (d) of this section.

(5) Such other assessments as the commissioner determines appropriate.

(6) Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the English language arts assessments and the mathematics assessments administered in grades 7 and 8. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

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Attachment C: Commissioner's Regulation Part 100.21b)(1)(xvi)(c-d)

(xvi) ***Performance levels*** **shall mean for accountability determinations regarding comprehensive support and improvement schools, targeted support and improvement schools, and target districts made commencing with the 2017-2018 school year assessment results, as follows:**

(c) advanced middle school mathematics students:

(1) for students enrolled in grade 7 or 8 and who take a Regents examination in mathematics but do not take the grade 7 or 8 New York State testing program assessment in mathematics, participation and accountability determinations for the school in which the student is enrolled in grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on mathematics assessments taken after the student first enters grade 9;

(2) for students enrolled in grade 7 or 8 who take both the grade 7 or 8 New York State testing program assessment in mathematics and a Regents examination in mathematics, participation and accountability determinations for the school in which the student is enrolled in grade 7 or 8 shall be based upon such student's performance on the New York State testing program assessment in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's highest performance level/score earned on the Regents examination taken in grade 7 or 8 or Regents examinations taken after the student first enters grade 9;

(d) advanced middle school science students:

(1) for students enrolled in grade 8 who take a Regents examination in science but do not take the grade 8 intermediate science test, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the Regents examination in science. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on science assessments after the student first enters grade 9;

(2) for students enrolled in grade 8 who take both the grade 8 science intermediate-level science test and a Regents examination in science, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the grade 8 intermediate-level science test. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's highest performance level/score earned on the Regents examination taken in grade 7 or 8 or Regents examinations taken after the student first enters grade 9;

(3) for students who took the grade 8 intermediate-level science test when they were enrolled in grade 7 and who take a Regents examination in science when enrolled in grade 8, accountability determinations for the school in which such student is enrolled in grade 8 shall be based upon such student's performance on the Regents examination in science;

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(4) for students who have taken the grade 8 science intermediate assessment when enrolled in grade 7 and who do not take a Regents examination in science when enrolled in grade 8, accountability determinations for the school in which the student is enrolled in grade 8 shall be based upon the student's performance on the grade 8 intermediate-level test taken in grade 7.

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