



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234
Office of P-12

Ira Schwartz, Assistant Commissioner
Office of Accountability
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To: District Superintendents
Superintendents of Public and Nonpublic Schools
Principals of Public, Nonpublic, and Charter Schools
Other Interested Parties

From: Ira Schwartz *Ira Schwartz*

Date: October 31, 2013

Subject: Request for Public Comment

At their October 2013 meeting, the Board of Regents directed NYSED to submit a proposal to the United States Education Department (USDE) to waive a requirement of the Elementary and Secondary Education Act (ESEA) [Sections 1111(b)(1)(B) and 1111(b)(3)(C)(vii)] that requires states to measure the achievement of standards in grade eight mathematics using the same assessments for all students. The waiver that the Department is preparing to submit to USDE will serve to relieve students, teachers, and schools from having to prepare eighth grade students who are receiving instruction in Algebra I for multiple end of year assessments.

Currently, eighth grade students who are receiving instruction in Algebra I and who take the Regents Examination in Algebra I (Common Core) to earn high school credit are also required to take the NYS Grade 8 Common Core Mathematics Test. If the Department's waiver is approved by USDE, these students would be allowed, at the school's discretion, to take only the Regents Examination in Algebra I (Common Core)¹, eliminating the need for 'double-testing' in eighth grade. If the waiver is approved, NYSED is requesting that it take effect for the 2013-14 school year.

Additional information about New York's approved ESEA Flexibility Waiver can be found at: <http://www.p12.nysed.gov/accountability/ESEAMemos.html>. The Board of Regents item that directed the Department to submit a waiver request can be found at: <http://www.regents.nysed.gov/meetings/2013Meetings/October2013/1013monthmat.html>.

We have been informed by the USDE that prior to submitting a waiver request, NYSED must provide all interested LEAs in the State with notice and a reasonable opportunity to comment on the request (20 USC §7861(b)(3)(A)(i)). The SEA must submit all comments it receives from those LEAs to the Secretary along with its waiver request (20 USC §7861(b)(3)(A)(ii)). The Secretary will consider these comments when determining whether to grant the waiver request.

In response to USDE's request, we are sharing the above information with you and asking that you submit any comments you may have regarding the waiver request. A copy of the draft October 31,

¹ There are a very small number of Grade 8 students in NYS who take the Regent Examination in Geometry. This waiver would apply to them in the same manner as Grade 8 students who take the Regents Examination in Algebra I (Common Core) as described in the request to USDE.

2013 waiver request to Deborah Delisle, Assistant Secretary for Elementary and Secondary Education is enclosed for your reference.

Comments may be submitted via email, fax, or mail (post marked) no later than November 8, 2013 to:

Roberto Reyes, State Director
Title I School and Community Services
Room 365 EBA
New York State Education Department
Washington Avenue
Albany, NY 12234
Fax: (518) 486-1762
T1WAIVERS@MAIL.NYSED.GOV

We thank you for your support and look forward to hearing from you.

Enclosure



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October 31, 2013

Deborah S. Delisle, Assistant Secretary
Office of Elementary and Secondary Education
400 Maryland Ave., SW
Washington, DC 20202

Dear Assistant Secretary Delisle:

I am writing on behalf of the New York State Education Department (“the Department” or SED) to request a waiver from section 9401 of the Elementary and Secondary Education Act (ESEA), sections 1111(b)(1)(B) and 1111(b)(3)(C)(i), which require that the state use the same assessments for all students in grades 3-8 to measure the achievement of all students in mathematics. This waiver would only apply to Grade 8 students who are enrolled in Algebra I, a Regents high school course aligned to the Common Core Learning Standards (CCLS) Core Curriculum. New York State seeks a waiver of this provision in order to remove the “double testing” burden for Grade 8 students who are taking Algebra I (Common Core). Grade 8 students currently enrolled in Algebra I (Common Core) must take the NYS Grade 8 Common Core Mathematics Test for institutional accountability purposes and the Regents Examination in Algebra I (Common Core) to receive credits towards a high school diploma. In the 2012-13 school year, over 57,000 public school students statewide took the Regents Examination in Integrated Algebra in Grade 8. Those students were also required to take the NYS Grade 8 Common Core Mathematics Test. If the waiver is approved, these students will be relieved of the burden of simultaneously preparing for the Regents Examination in Algebra I (Common Core) and the NYS Grade 8 Common Core Mathematics Test.

As the United States Department of Education has implemented its ESEA waiver initiative, it has sought to address the “double testing” issue that has arisen in some states as they simultaneously administer their current assessments while field testing their Common Core-aligned assessments. USDE has signaled to states a willingness to address the double testing issue that arises when students in middle school seek to earn high school credits. As an example, for the 2012-13 school year, Tennessee received a waiver from USDE to address a situation analogous to New York’s Grade 8 mathematics issue. The Department has already received approval to use the results from Regents examinations in science in lieu of the Grade 8 Science Assessment to make participation and Adequate Yearly Progress determinations regarding the use of science as the “third academic indicator” for middle schools.

An approved waiver would not reduce the number of eligible students tested in mathematics for Grade 8, nor would the waiver impact accountability determinations for schools

or districts. All Grade 8 students who are not enrolled in Algebra I (Common Core)² would still be required to take the NYS Grade 8 Common Core Mathematics Test. Additionally, Local Educational Agencies (LEAs) in New York State are required under Commissioner's Regulations (Part 100.4(d)) to ensure that students in grade 8 have the opportunity to accelerate in mathematics and take Algebra I (Common Core) if they choose (see Attachment A).

Attachment B provides historical data regarding the number of students, by subgroup, who took the Grade 8 Mathematics Assessment and the percentage of those students who ultimately took and passed the Regents Examination in Integrated Algebra (note that with alignment of instruction to the CCLS, the names of the assessments have also changed; the CCLS-aligned assessment is called Regents Examination in Algebra I (Common Core) and will be administered in June 2014 for the first time). This information is provided as evidence that the Department has reviewed current data to ensure that the waiver request will not negatively impact the participation rate for subgroups for the NYS Grade 8 Common Core Mathematics Test or the Regents Examination in Algebra I (Common Core), and that in fact, more Grade 8 students have taken the Regents Examination in Integrated Algebra every year.

Therefore, as directed by the New York State Board of Regents, the Department is seeking a waiver under Section 9401 of ESEA to do the following:

- For students who take the Regents Examination in Algebra I (Common Core) in Grade 8, use their results on this examination when making participation and accountability determinations. Eighth grade students who take the Regents Examination in Algebra I (Common Core) would be counted as participants when the Department determines whether a school or district has met the 95 percent participation requirement in mathematics. Students who pass a Regents Examination in algebra with a score that meets the requirements to earn a Regents diploma would be considered to have demonstrated accelerated performance in Grade 8 mathematics and would be incorporated into the Performance Index as equivalent to earning scores in Level 3 on the NYS Grade 8 Common Core Mathematics Test for the purposes of calculating a school's Performance Index, which earns a school or district "full credit" for a student's performance. Grade 8 students who fail the Regents Examination in Algebra I (Common Core) will be considered as equivalent to earning scores in Level 1, the same as students who earn a school or district "no credit" for their performance. Should a district elect to have students take both the NYS Grade 8 Common Core Mathematics Test and the Regents Examination in Algebra I (Common Core), the NYS Grade 8 Common Core Mathematics Test would be used for accountability purposes. For the 2013-14 school year only, if a student who takes both the Regents Examination in Algebra I (Common Core) and the Regents Examination in Integrated Algebra in grade 8 has a score that is equivalent to earning scores in Level 3 on one of these Regents Examinations and Level 1 on the other exam, the higher score that equates to a Level 3 score would be used for accountability purposes for the student.

² There are a very small number of Grade 8 students in NYS who take the Regent Examination in Geometry. This waiver would apply to them in the same manner as described in this request.

- Consistent with SED's understanding of USDE requirements for a waiver to use a high school examination to replace a Grade 8 examination for accountability and participation rate purposes, a student who passes the Regents Examination in Algebra I (Common Core) in Grade 8 would be required to take in high school a second Regents Examination in mathematics or an approved alternative to a Regents Examination in mathematics in order to meet the high school participation and accountability requirements. At present, students who pass the Regents Examination in Algebra I (Common Core) in grade 8 would "bank" this result, and the high school in which they enroll gets "credit" for this performance. Under this revision, high school participation and accountability determinations would be based upon a student's performance after they first enter grade nine. Therefore, students who passed the Regents Examination in Algebra I (Common Core) in grade 8 would need to take the Regents Examination in Geometry (Common Core) or Algebra II (Common Core) or an approved alternative to a Regents examination in mathematics and receive a score that meets the requirements to earn a Regents diploma in order to be counted as equivalent to earning scores in Level 3 for purposes of calculating the school's Performance Index and earn a school or district "full credit."

Prior to submitting this waiver request, NYS provided all LEAs in the State with notice and a reasonable opportunity to comment on this request. NYS provided such notice by consulting with our Committee of Practitioners, providing notification to District Superintendents, School Superintendents, Charter School Administrators, and Title I Coordinators. An e-copy of the notification is available at: <http://www.p12.nysed.gov/accountability/APA/Memos/ESEAWaiverGrade8MathPubCommentMemo.pdf>. Copies of all comments that NYS received from LEAs in response to this notice are attached hereto. NYS has also provided notice and information regarding this waiver request to the public in the manner in which NYS customarily provides such notice and information to the public by posting information regarding the waiver request on its Web site. (See attached copy of public notice).

Upon issuance of the waiver by the USDE, the Department will prepare for consideration by the Board of Regents such amendments to Commissioner's Regulations as may be necessary to implement the waiver. NYSED will ensure that LEAs comply with the new NYS Grade 8 Common Core Mathematics Test requirements by providing appropriate guidance to LEAs regarding implementation of the new requirements, and by annually gathering subgroup level data on the number of students taking either the NYS Grade 8 Common Core Mathematics Test or the Regents Examination in Algebra I (Common Core).

If NYS is granted the requested waiver, it will submit to the USDE in fall 2014 a copy of the amended Commissioner's Regulations and updated data on the number, percentage, and academic performance, by subgroup, of students who took the NYS Grade 8 Common Core Mathematics Test and the Regents Examination in Algebra I (Common Core).

Please feel free to contact me by phone at (718) 722-2796 or via email at ischwart@mail.nysed.gov if you have any questions regarding this waiver request. Thank you for your consideration.

Sincerely,

Ira Schwartz

cc: John B. King, Jr.
Ken Slentz
Ken Wagner

DRAFT

Attachment A: Commissioner's Regulation Part 100.4(d)

"Grade eight acceleration for diploma credit.

1. Public school students in grade eight 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), of 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."



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Integrated Algebra I for Grade 8 Students by NCLB Groups

*Includes former students with disabilities

**Includes former limited English proficient students

2012-13

| Group | Number Grade 8 Students | 0-54 | 55- 64 | 65-84 | 85- 100 | Total Gr 8 Taking Algebra | Number 65-100 | % Gr 8 Who Took Algebra | % Gr 8 Who Took Algebra & Passed (65- 100) |
|----------------------------------|-------------------------------|------|-----------|-------|------------|---------------------------------|------------------|-------------------------------|--|
| All Students | 200678 | 1570 | 2425 | 24086 | 29006 | 57087 | 53092 | 28.45% | 93.00% |
| American Indian or Alaska Native | 1034 | 10 | 6 | 109 | 65 | 190 | 174 | 18.38% | 91.58% |
| Asian or Pacific Islander | 16633 | 44 | 86 | 2426 | 5468 | 8024 | 7894 | 48.24% | 98.38% |
| Black or African American | 37132 | 630 | 958 | 4511 | 1161 | 7260 | 5672 | 19.55% | 78.13% |
| Hispanic or Latino | 45206 | 632 | 894 | 5445 | 2164 | 9135 | 7609 | 20.21% | 83.30% |
| Multiracial | 1679 | 11 | 13 | 160 | 238 | 422 | 398 | 25.13% | 94.31% |
| White | 98994 | 243 | 468 | 11435 | 19910 | 32056 | 31345 | 32.38% | 97.78% |
| Students with Disabilities* | 31664 | 339 | 312 | 1022 | 337 | 2010 | 1359 | 6.35% | 67.61% |
| Limited English Proficient** | 16095 | 265 | 256 | 739 | 310 | 1570 | 1049 | 9.75% | 66.82% |
| Economically Disadvantaged | 105926 | 1308 | 1909 | 11912 | 6300 | 21429 | 18212 | 20.23% | 84.99% |

2011-12

| Group | Number Grade 8 Students | 0-54 | 55- 64 | 65-84 | 85- 100 | Total Gr 8 Taking Algebra | Number 65-100 | % Gr 8 Who Took Algebra | % Gr 8 Who Took Algebra & Passed (65- 100) |
|--------------|-------------------------------|------|-----------|-------|------------|---------------------------------|------------------|-------------------------------|--|
| All Students | 201820 | 1044 | 1962 | 21999 | 27584 | 52589 | 49583 | 26.06% | 94.28% |

| | | | | | | | | | |
|----------------------------------|--------|-----|------|-------|-------|-------|-------|--------|--------|
| American Indian or Alaska Native | 1043 | 5 | 13 | 102 | 69 | 189 | 171 | 18.12% | 90.48% |
| Asian or Pacific Islander | 16468 | 54 | 104 | 2243 | 4915 | 7316 | 7158 | 44.43% | 97.84% |
| Black or African American | 37792 | 443 | 809 | 4331 | 1172 | 6755 | 5503 | 17.87% | 81.47% |
| Hispanic or Latino | 44504 | 369 | 656 | 4867 | 1938 | 7830 | 6805 | 17.59% | 86.91% |
| Multiracial | 1152 | 4 | 5 | 122 | 173 | 304 | 295 | 26.39% | 97.04% |
| White | 100861 | 169 | 375 | 10334 | 19317 | 30195 | 29651 | 29.94% | 98.20% |
| Students with Disabilities* | 32161 | 201 | 225 | 963 | 319 | 1708 | 1282 | 5.31% | 75.06% |
| Limited English Proficient** | 15740 | 156 | 170 | 599 | 249 | 1174 | 848 | 7.46% | 72.23% |
| Economically Disadvantaged | 105071 | 832 | 1503 | 10943 | 5794 | 19072 | 16737 | 18.15% | 87.76% |

2010-11

| Group | Number Grade 8 Students | 0-54 | 55- 64 | 65-84 | 85- 100 | Total Gr 8 Taking Algebra | Number 65-100 | % Gr 8 Who Took Algebra | % Gr 8 Who Took Algebra & Passed (65- 100) |
|----------------------------------|-------------------------------|------|-----------|-------|------------|---------------------------------|------------------|-------------------------------|--|
| All Students | 204244 | 812 | 1454 | 20500 | 27590 | 50356 | 48090 | 24.65% | 95.50% |
| American Indian or Alaska Native | N/A | 5 | 6 | 76 | 48 | 135 | 124 | N/A | 91.85% |
| Asian or Pacific Islander | N/A | 26 | 71 | 2009 | 4895 | 7001 | 6904 | N/A | 98.61% |
| Black or African American | N/A | 317 | 595 | 4003 | 1187 | 6102 | 5190 | N/A | 85.05% |
| Hispanic or Latino | N/A | 326 | 470 | 4151 | 1779 | 6726 | 5930 | N/A | 88.17% |
| Multiracial | N/A | 2 | 4 | 75 | 152 | 233 | 227 | N/A | 97.42% |
| White | N/A | 136 | 308 | 10186 | 19529 | 30159 | 29715 | N/A | 98.53% |
| Students with Disabilities* | N/A | 162 | 181 | 839 | 348 | 1530 | 1187 | N/A | 77.58% |
| Limited English Proficient** | N/A | 139 | 145 | 527 | 266 | 1077 | 793 | N/A | 73.63% |
| Economically Disadvantaged | N/A | 640 | 1092 | 9802 | 5963 | 17497 | 15765 | N/A | 90.10% |

NOTE: 8th grade enrollment by NCLB groups are not in Level 2 of SIRS so are not available.

NOTE: 2010 data are not in Level 2 of SIRS so are not available.

2012-13 by N/RC Group

| N/RC Group | 0-54 | 55- | 65- | 85- | Total |
|------------|------|-----|-----|-----|-------|
|------------|------|-----|-----|-----|-------|

| | | 64 | 84 | 100 | |
|----------------------|-----|------|------|-------|-------|
| NYC | 721 | 1279 | 9276 | 6424 | 17700 |
| Large City Districts | 518 | 498 | 1279 | 180 | 2475 |
| Urban-Suburban | 53 | 85 | 1416 | 890 | 2444 |
| Rural | 5 | 21 | 1003 | 833 | 1862 |
| Average | 130 | 264 | 5968 | 10256 | 16618 |
| Low | 87 | 144 | 3917 | 10089 | 14237 |
| Charter | 56 | 134 | 1227 | 334 | 1751 |