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To: BOCES Superintendents
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Charter School Leaders

From: Jason Harmon, Assistant Commissioner

Subject: United States Department of Education (USDE) Waiver of Every Student Succeeds Act (ESSA) Accountability and Title I School Improvement Funds for the 2021-22 School Year

Date: January 31, 2022

On December 22, 2021, the New York State Education Department (NYSED or “the Department”) submitted a waiver request to the United States Department of Education (USDE) on behalf of all Local Education Agencies (LEAs) in New York State seeking flexibility regarding federal accountability requirements using data from the 2021-22 school year and the usage of Title I School Improvement Funds.¹

The submitted waiver request sought to address the ongoing impact of the pandemic on school communities and the issue of 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. The Department argued that with New York State’s commitment to diversity, equity, and inclusion (DEI),² the timeline and manner for restarting accountability determinations must be done in the most equitable way possible. The waiver request proposed to eliminate requirements to identify schools for Comprehensive and Targeted Support and Improvement in fall 2022 based on 2021-22 school year results, and to use Title I School Improvement funds to support Good Standing Schools that were identified as at risk of becoming identified as a Targeted Support and Improvement School before the pandemic.

This memo is to inform you that USDE has denied NYSED’s request for a waiver from accountability and school identification requirements in Sections 1111(c)(4) and 1111(d)(2)(C)-(D) of the Elementary and Secondary Education Act of 1965 (ESEA). USDE is still considering the waiver request from school improvement requirements in Section 1003(b)(1)(a) of the ESEA to use Title I School Improvement funds and has indicated that they will provide a separate response regarding that issue.

¹ The Department’s ESSA Accountability and Assessment Waivers webpage contains the [federal waiver requests and corresponding documents](#).

² The meeting summary for the April 2021 Meeting of the Board of Regents contains the [presentation of the New York State Board of Regents Framework on Diversity, Equity, and Inclusion in New York’s Schools](#).

NYSED has already engaged with USDE to receive technical assistance regarding potential solutions to the concerns raised in the waiver request in order to restart the accountability system in a way that will meet the statutory requirements of the ESEA.

While disappointed by USDE's decision, the Department will continue to explore all possible options to find the most appropriate and equitable path forward possible to restart the accountability system in a manner that is most supportive to schools and districts under law. Additional information regarding accountability determinations under New York State's approved Every Students Succeeds Act (ESSA) plan will be forthcoming as soon as it is available.

The Department remains committed to supporting your efforts to provide the best education and support to all students across New York State. Questions concerning the information contained in this memo should be directed to: accountinfo@nysed.gov.

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