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To: BOCES Superintendents
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From: Jason Harmon, Assistant Commissioner

Subject: United States Department of Education (USDE) Waiver of Every Student Succeeds Act (ESSA) Accountability and Report Card Provisions for the 2020-21 School Year

Date: June 22, 2021

On February 12, 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 from federal accountability requirements in the 2020-21 school year.¹

Specifically, the waiver request addressed the unique circumstances caused by the ongoing pandemic. The Department argued that even in cases where data could be collected for the individual accountability indicators, in order to make determinations at the elementary/middle and high school levels, there is much concern that such determinations for the 2020-21 school year will be distorted by the disparities across the State in learning modality and device/internet connectivity access. These disparities undermine the Department’s ability to make accurate judgements about individual indicators and overall school and district performance, effectively negating the ability to meaningfully differentiate among schools and/or offer appropriate supports.

This memo is to inform you that USDE granted NYSED a waiver of the following requirements of the Elementary and Secondary Education Act (ESEA), as recently amended by the Every Student Succeeds Act (ESSA):

- Accountability and school identification requirements in Sections 1111(c)(4) and 1111(d)(2)(C)-(D): the requirements that a State measure progress toward Long-Term Goals and Measures of Interim Progress (MIP); meaningfully differentiate, on an annual basis, all public schools, including adjusting the Academic Achievement indicator based on a participation rate below 95 percent; and identify schools for Comprehensive, Targeted, and additional Targeted Support and Improvement based on data from the 2020-21 school year.

¹ The Department’s accountability waiver request and corresponding documents can be found [here](#).

- Report card provisions related to accountability in Section 1111(h) based on data from the 2020-21 school year. These include:
 - Section 1111(h)(1)(C)(i)(I)-(IV) and (VI): Accountability system description, other than the list of Comprehensive, Targeted, and additional Targeted Support and Improvement Schools.
 - Section 1111(h)(1)(C)(iii)(I): Other Academic indicator results for schools that are not high schools.
 - Section 1111(h)(1)(C)(v): School Quality or Student Success indicator results.
 - Section 1111(h)(1)(C)(vi): Progress toward meeting Long-Term Goals and MIPs.
 - Section 1111(h)(2)(C) with respect, at the LEA and school levels, to all waiver requirements in section 1111(h)(1)(C).

To secure the waiver of these ESSA requirements, the United States Department of Education required New York State to assure that:

- The State will make publicly available chronic absenteeism data, either as defined in the State’s School Quality or Student Success indicator, if applicable, or *EDFacts*, disaggregated to the extent such data are available by the subgroups in ESEA Section 1111(c)(2)², on State and local report cards (or in another publicly available location).
- The State will make publicly available data on student and/or teacher access to technology devices and high-speed internet, disaggregated by the subgroups in ESEA Section 1111(c)(2), to the extent such data are collected at the State or LEA level.
- Any school that is identified for Comprehensive, Targeted, or additional Targeted Support and Improvement in the 2019-20 school year (i.e., any school that was in that status as of the 2019-20 school year), except for Comprehensive Support and Improvement Schools identified based on low graduation rates that meet the State’s exit criteria, will maintain that identification status in the 2021-22 school year, implement its support and improvement plan, and receive appropriate supports and interventions.³
- The State will identify Comprehensive, Targeted, and additional Targeted Support and Improvement Schools using data from the 2021-22 school year in the fall of 2022 to ensure school identification resumes as quickly as possible.⁴

² In this subsection, the term “subgroup of students” means—(A) economically disadvantaged students; (B) students from each of the major racial and ethnic groups; (C) children with disabilities; and (D) English language learners.

³ As noted in the [February 12, 2021 press release](#) announcing the submission of the Department’s accountability waiver, NYSED engaged in extensive conversations with USDE regarding the possibility of removing certain schools that are currently identified for improvement from improvement status based on modified exit criteria. The conditions for removal from current identification status set forth by USDE would have required NYSED to use 2020-21 school year data to make accountability determinations. Consequently, NYSED did not further pursue permission to remove schools from improvement status.

⁴ The Department is considering seeking public comment on the advisability of New York submitting to USDE a waiver request to use 2021-22 school year results to reestablish robust and stable baselines for measuring school and district performance on accountability indicators rather than use data from that school year to identify schools for improvement.

ESSA Accountability Implications

Based on the waiver granted by USDE, NYSED will present proposed amendments to Commissioner's Regulations related to accountability and schools in Receivership to the Board of Regents at its September 2021 meeting. Proposed amendments will be consistent with the following actions:

- NYSED will waive all requirements pertaining to participation rate in state assessments administered during the 2020-21 school year.
- NYSED will not make 2021-22 school year accountability status or level determinations based on 2020-21 school year data for any of the indicators used in New York's accountability system: composite performance; academic progress; student growth; English Language Proficiency; chronic absenteeism; graduation rate; and college, career, and civic readiness.
- NYSED will freeze the accountability status of all schools and districts. All districts and schools will have the same accountability status in the 2021-22 school year that the districts and schools had in the 2020-21 school year. Therefore:
 - Any district that was identified as a Target District in the 2020-21 school year will maintain that identification status in the 2021-22 school year.
 - Any school that was identified as a Comprehensive Support and Improvement (CSI) School or Targeted Support and Improvement (TSI) School in the 2020-21 school year will maintain that identification status in the 2021-22 school year.
 - There will be no progress determinations made based on 2020-21 school year data for identified Target Districts, CSI Schools, and TSI Schools.
 - No schools will be identified as Recognition Schools in the 2021-22 school year.
 - The next list of CSI schools will be created using 2022-23 school year results, consistent with New York State's three-year identification cycle detailed in the State ESSA Plan.
- NYSED will continue to provide supports in the 2021-22 school year to Target Districts, CSI Schools, and TSI Schools and provide interventions consistent with the school's support and improvement plan.

- NYSED will extend established MIPs and Long-Term Goals by one additional year. Specifically, NYSED will carry forward the 2019-20 school year MIPs that were initially extended for use in the 2020-21 school year to the 2021-22 school year. This action will be in lieu of requiring schools and districts to meet the previously set 2021-22 school year MIPs.
- NYSED will waive requirements in Commissioner’s Regulations related to the development and submission (if required) of Participation Rate Improvement Plans to be implemented in the 2021-22 school year.
- NYSED will waive requirements in Commissioner’s Regulations that any Good Standing school with any accountability measure of Level 1 for any subgroup to complete a Level 1 Addendum for the 2021-22 school year.

In addition to the actions listed above, NYSED is continuing to evaluate additional modifications to the accountability system that may be needed in future years to address ongoing complications caused by the COVID-19 pandemic. More information about possible adjustments to individual accountability indicators and identification procedures will be shared as soon as possible.

Receivership Schools

Consistent with the proposed actions listed above, the Department will not use the 2020-21 school year results to make Demonstrable Improvement (DI) determinations for schools in Receivership, place any schools in Independent Receivership, or remove the designation of any school as Struggling. Specifically:

- All schools identified as Struggling for the 2020-21 school year shall remain so identified for the 2021-22 school year.
- All schools that are operated under a school district Superintendent Receiver in the 2020-21 school year shall continue to operate under a school district Superintendent Receiver for the 2021-22 school year.

In addition, since the Department will not use the 2020-21 school year results to make the annual DI determinations for schools in Receivership in the fall of 2021, the Department is waiving the requirement for districts to submit the 2020-21 school year results for their DI indicators to the Office of Accountability (OA). Please note that this waiver **does not apply** to any data that districts must submit to the Student Information Repository System (SIRS) in accordance with annual reporting requirements as directed by the Office of Information and Reporting Services (IRS).

Additional information about supports and resources that the Department will make available for Receivership Schools will be sent under separate cover.

District and School Report Cards

As a result of the waiver, NYSED will not report the following data on the 2020-21 school year School and District Report Cards:

- A description of the State's accountability system
- Information related to the performance on other academic indicator for public elementary schools and secondary schools that are not high schools
- Information related to the performance on School Quality or Student Success indicators
- Information related to progress toward meeting Long-Term Goals and Measurements of Interim Progress
- Information showing how students in an LEA and each school, respectively, performed on the academic assessments compared to students in the State and LEA (with respect to all waived requirements).

The USDE waiver requires that all other reporting elements be included on the 2020-21 school year School and District Report Cards.

Available Resources

The Department remains committed to supporting your efforts to provide the best education and support to the students of New York State. Should you have any questions regarding any of the above information, please contact us by using the e-mail addresses below based on the area of your inquiry.

For questions related to:

- Accountability Identification and Status, please e-mail ACCOUNTINFO@nysed.gov.
- Supports and Required Actions for Identified Schools and Districts, please e-mail FIELDSUPPORT@nysed.gov.
- School and District Report Cards, please e-mail DATASUPPORT@nysed.gov.

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