



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

December 18, 2017

The Honorable MaryEllen Elia  
Commissioner of Education  
New York State Education Department  
89 Washington Avenue, Room 111  
Albany, NY 12234

Dear Commissioner Elia:

Thank you for submitting New York's consolidated State plan to implement requirements of covered programs under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), and of the amended McKinney-Vento Homeless Assistance Act (McKinney-Vento Act).

I am writing to provide initial feedback based on the U.S. Department of Education's (the Department's) review of your consolidated State plan. As you know, the Department also conducted, as required by the statute, a peer review of the portions of your State plan related to ESEA Title I, Part A, ESEA Title III, Part A, and the McKinney-Vento Act using the Department's *State Plan Peer Review Criteria* released on March 28, 2017. Peer reviewers examined these sections of the consolidated State plan in their totality, while respecting State and local judgments. The goal of the peer review was to support State- and local-led innovation by providing objective feedback on the technical, educational, and overall quality of the State plan and to advise the Department on the ultimate approval of the plan. I am enclosing a copy of the peer review notes for your consideration.

Based on the Department's review of all programs submitted under New York's consolidated State plan, including those programs subject to peer review, the Department is requesting clarifying or additional information to ensure the State's plan has met all statutory and regulatory requirements, as detailed in the enclosed table. Each State has flexibility in how it meets the statutory and regulatory requirements. Please note that the Department's feedback may differ from the peer review notes. I encourage you to read the full peer notes for additional suggestions and recommendations for improving your consolidated State plan.

ESEA section 8451 requires the Department to issue a written determination within 120 days of a State's submission of its consolidated State plan. Given this statutory requirement, I ask that you revise New York's consolidated State plan and resubmit it through OMB Max by January 3, 2018. We encourage you to continue to engage in consultation with stakeholders, including representatives from the Governor's office, as you develop and implement your State plan. If you would like to take more time to resubmit your consolidated State plan, please contact your Office of State Support Program Officer in writing and indicate your new submission date.

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

Please recognize that if we accommodate your request for additional time, a determination on the ESEA consolidated State plan may be rendered after the 120-day period.

Department staff will contact you to support New York in addressing the items enclosed with this letter. If you have any immediate questions or need additional information, I encourage you to contact your Program Officer for the specific Department program.

Please note that the Department only reviewed information provided in New York's consolidated State plan that was responsive to the Revised Template for the Consolidated State Plan that was issued on March 13, 2017. Each State is responsible for administering all programs included in its consolidated State plan consistent with all applicable statutory and regulatory requirements. Additionally, the Department can only review and approve complete information. If New York indicated that any aspect of its plan may change or is still under development, New York may include updated or additional information in its resubmission. New York may also propose an amendment to its approved plan when additional data or information are available consistent with ESEA section 1111(a)(6)(B). The Department cannot approve incomplete details within the State plan until the State provides sufficient information.

Thank you for the important work that you and your staff are doing to support the transition to the ESSA. The Department looks forward to working with you to ensure that all children have the opportunity to reach their full potential.

Sincerely,

/s/

Jason Botel  
Principal Deputy Assistant Secretary,  
Delegated the authority to perform the  
functions and duties of the position of  
Assistant Secretary, Office of  
Elementary and Secondary Education

Enclosures

cc: Governor  
State Title I Director  
State Title II Director  
State Title III Director  
State Title IV Director  
State Title V Director  
State 21st Century Community Learning Center Director  
State Director for McKinney-Vento Homeless Assistance Act: Education for Homeless  
Children and Youths Program

**Items That Require Additional Information or Revision in New York’s Consolidated State Plan**

<b>Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies (LEAs)</b>	
A.4.i.d: If Applicable, Exception for Recently Arrived English Learners	The New York State Department of Education (NYSED) indicates that it will apply the first exception for recently arrived English learners under ESEA section 1111(b)(3)(A)(i) but that it will not meet the statutory requirement to include the student’s results on the second administration of the reading/language arts assessment in the accountability system.
A.4.iii.a.1: Academic Achievement Long-term Goals	NYSED indicates in its State plan that it will set new long-term goals for academic achievement each year so that the long-term goals are always established for five years in the future. While the long-term goals established in the plan meet the ESEA requirements, note that the ESEA requires any amendment to the NYSED State plan be submitted to the Secretary for review and approval if it makes significant changes to its State plan, such as changes to long-term goals and measurements of interim progress.
A.4.iii.b.1: Long-term Goals for Four-year Adjusted Cohort Graduation Rate	NYSED indicates in its State plan that it will set a new long-term goal for graduation rate each year so that the long-term goal is always established five years in the future. While the long-term goals established in the plan meet the ESEA requirements, note that the ESEA requires a State to submit an amendment to the Secretary for review and approval if it makes significant changes to its State plan, such as changes to its long-term goals or measurements of interim progress.
A.4.iii.c.1: English Language Proficiency Long-term Goals	NYSED indicates in its State plan that it will set a new long-term goal for increases in the percentage of students making progress in achieving English language proficiency each year so that the long-term goal is always established five years in the future. While the long-term goals established in the plan meet the ESEA requirements, note that the ESEA requires any amendment to the NYSED State plan be submitted to the Secretary for review and approval if it makes significant changes to its State plan, such as changes to its long-term goals or measurements of interim progress.
A.4.iv.a: Academic Achievement Indicator	<ul style="list-style-type: none"> <li>NYSED proposes including student performance on science and social studies assessments in the Academic Achievement indicator. For the Academic Achievement indicator required under ESEA section 1111(c)(4)(B)(i)(I), a State may include only proficiency on the annual assessments required under ESEA subsection (b)(2)(B)(v)(I) (i.e., reading/language arts and mathematics); NYSED may include performance on science, social studies, or assessments other than those required under ESEA subsection (b)(2)(B)(v)(I) in the indicator for public elementary and secondary schools that are not high schools required under ESEA section 1111(c)(4)(B)(ii) (i.e., the Other Academic indicator) or in the School Quality or Student</li> </ul>

	<p>Success indicator for any schools, including high schools.</p> <ul style="list-style-type: none"> <li>• NYSED indicates in its State plan that it will use an n-size of 30 for measuring performance in its accountability system and an n-size of 40 for determining participation rate. Because NYSED does not describe how this n-size for participation rate would be used in the State’s system of annual meaningful differentiation, including how it would impact calculation of the Academic Achievement indicator, it is unclear whether the State meets statutory requirements. ESEA section 1111(c)(4)(E)(ii) requires that a State calculate the Academic Achievement indicator by including in the denominator the greater of 95 percent of all students (or 95 percent of students in each subgroup, as the case may be) or the number of students participating in the assessments. In addition, the ESEA does not provide flexibility for a participation n-size when calculating the Academic Achievement indicator; that is, the indicator must be calculated consistent with the statute in all cases where the group of students meets the State’s n size for including this indicator.</li> <li>• NYSED provides in its State plan two different methodologies for calculating the Academic Achievement indicator – Performance Index-1 (PI-1) and Performance Index-2 (PI-2) – and indicates that both are used for the purposes of school identification. Since only PI-1 appears to be consistent with the requirements in ESEA section 1111(c)(4)(E)(ii) for calculating the Academic Achievement indicator, only this calculation may be used for the purposes of calculating the Academic Achievement indicator for each school in the State and, as such, only this calculation may be used for purposes of school identification.</li> <li>• The ESEA requires that the Academic Achievement indicator be based on grade-level proficiency on the State’s reading/language arts and mathematics assessments. NYSED proposes including the results of 8<sup>th</sup>-graders who take the high school mathematics end-of-course assessment (as is permitted in ESEA section 1111(b)(2)(C)) in the middle school’s accountability determination in place of the 8<sup>th</sup>-grade assessment. However, the State proposes counting as proficient students that score at a lower achievement level. As a result, it is not clear whether the State met the requirements for this indicator. In addition, the Department is unable to approve the description in this indicator to calculate the indicator using the results of 7<sup>th</sup>-graders who take advanced courses and assessments in place of the 7<sup>th</sup> grade mathematics assessment; that would require a waiver of ESEA section 1111(b)(2)(B)(i)(I): any waiver must be submitted per the process specified in ESEA section 8401.</li> </ul>
A.4.iv.b: Other Academic	In its State plan, NYSED uses two measures in the Other Academic indicator: mean growth

<p>Indicator for Elementary and Secondary Schools that are Not High Schools</p>	<p>percentiles (MGP) and a Progress Measure that evaluates how a subgroup performs in relation to the State’s long-term goal for the subgroup, the State’s measurement of interim progress (MIP) in that year, and the school-specific MIP in that year. The ESEA requires a State to establish and describe an indicator for public elementary and secondary schools that are not high schools (i.e., the Other Academic indicator) that includes, at the State’s discretion, a measure of student growth or another valid and reliable statewide academic indicator that allows for meaningful differentiation in school performance. While NYSED provides general information on what will comprise the indicator, NYSED does not provide sufficient information regarding how the Progress Measure is calculated (such as a description of what is meant by “met lower MIP,” “met higher MIP,” and “school-specific measure of interim progress”), how the State plans to average data over three years for the MGP, and how it will assign school-level performance levels for MGP and the Progress Measure. Therefore, NYSED has not fully described the indicator.</p>
<p>A.4.iv.c: Graduation Rate Indicator</p>	<p>The ESEA requires a State to establish and describe its Graduation Rate indicator. While NYSED provides general information on what will comprise the indicator, it does not provide sufficient information regarding how the indicator is calculated, including what is meant by “met lower MIP” and “met higher MIP” and how the school’s performance level is determined. Therefore, NYSED has not fully described the indicator.</p>
<p>A.4.iv.d: Progress in Achieving English Language Proficiency Indicator</p>	<p>The ESEA requires that each State establish and describe a Progress in Achieving English Language Proficiency indicator that is measured at the school level. NYSED describes how it will measure progress in achieving English language proficiency at the student level. However, NYSED does not describe how the indicator will be calculated to translate into a performance level for each public school in the State’s system of annual meaningful differentiation; therefore, NYSED has not fully described the indicator.</p>
<p>A.4.iv.e: School Quality or Student Success Indicator(s)</p>	<ul style="list-style-type: none"> <li>• NYSED describes two School Quality or Student Success indicators – chronic absenteeism and a College, Career, and Civic Readiness Index (CCCRI) and indicates that each indicator will be calculated based on long-term goals and measurements of interim progress. The ESEA requires that a State describe a School Quality or Student Success indicator that, among other things, will allow for meaningful differentiation in school performance. Because NYSED does not include the long-term goals or measurements of interim progress it will use to measure performance on the indicator, does not describe what is meant by “met lower MIP” and “met higher MIP” in the chart that determines the performance level, and does not describe how school-level performance levels are determined, it is unclear whether NYSED meets the statutory requirements.</li> </ul>

	<ul style="list-style-type: none"> <li>• NYSED indicates that it will remove students who participate in the New York State Alternate Assessment from the computation of the CCCRI. The ESEA requires that each indicator annually measure results for all students and separately for each subgroup of students; as a result, NYSED has not met this requirement for the CCCRI indicator.</li> </ul>
<p>A.4.v.c: If Applicable, Different Methodology for Annual Meaningful Differentiation</p>	<p>NYSED indicates in its State plan that it will use a different methodology for annual meaningful differentiation for schools with “any configuration of Grades K through 12 that do not participate in the regular State assessment program.” The ESEA requires a State to include all public schools in its system of annual meaningful differentiation and to describe that system in its State plan. Further, the ESEA requires that a State use the same assessments to measure the achievement of all public elementary and secondary school students in grades three through eight and high school. As a result, it does not appear that NYSED meets the statutory requirements.</p>
<p>A.4.vi.b: Comprehensive Support and Improvement Schools—Low Graduation Rates</p>	<p>The ESEA requires that a State identify for comprehensive support and improvement any public high schools failing to graduate one-third or more of their students. Although NYSED indicates that schools with graduation rates below 67% for the four-, five-, and six-year cohort graduation rates will be “preliminarily identified” for comprehensive support and improvement, it is unclear whether such schools will actually be identified for comprehensive support and improvement in accordance with the statute.</p>
<p>A.4.vi.f: Targeted Support and Improvement Schools—Additional Targeted Support</p>	<ul style="list-style-type: none"> <li>• NYSED proposes to identify schools for additional targeted support and improvement based on all indicators in the 2020-2021 school year. This does not meet the requirement, consistent with the Department’s April 2017 Dear Colleague letter that provided additional flexibility, for a State to identify schools for additional targeted support and improvement based on all indicators by the beginning of the 2018-2019 school year.</li> <li>• The ESEA requires that a State describe its methodology for identifying schools in which any subgroup of students, on its own, would lead to identification under ESEA section 1111(c)(4)(D)(i)(I) using the State’s methodology under ESEA section 1111(c)(4)(D) (i.e., the State’s methodology for identifying for comprehensive support and improvement the lowest-performing five percent of Title I schools). Although NYSED identifies additional targeted support schools, the methodology NYSED describes may not identify each school in which any subgroup of students, on its own, is performing as poorly as the lowest-performing five percent of schools receiving Title I, Part A funds because it would not result in the identification of a school for additional targeted support if a subgroup performs poorly for fewer than three years.</li> </ul>

<b>Title I, Part C: Education of Migratory Children</b>	
<p>B.1: Supporting Needs of Migratory Children</p>	<ul style="list-style-type: none"> <li>• NYSED describes how, in planning and implementing the Migrant Education Program (MEP), it will address the unique educational needs of migratory children, including preschool migratory children and migratory children who have dropped out of school, through:                             <ul style="list-style-type: none"> <li>○ The full range of services that are available for migratory children from appropriate local, State, and Federal educational programs;</li> <li>○ Joint planning among local, State, and Federal educational programs serving migratory children, including language instruction educational programs under Title III, Part A; and</li> <li>○ The integration of services available under Title I, Part C with services provided by those other programs.</li> </ul> <p>However, the ESEA requires that a State also describe how it will evaluate the MEP in the areas described above, to ensure the unique educational needs of migratory children are addressed.</p> </li> <li>• NYSED describes how, in planning, implementing, and evaluating the MEP, it will address the unique educational needs of migratory children, including migratory children who have dropped out of school, through measurable program objectives and outcomes. However, the ESEA requires that a State also describe how it will address the unique educational needs of preschool migratory children through measurable program objectives and outcomes.</li> </ul>
<b>Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk</b>	
<p>C.2: Program Objectives and Outcomes</p>	<p>In its State plan, NYSED includes process-based objectives (largely focused on a Statewide Transition Plan) and outcome-based objectives that focus on the level of instruction and educational services provided, pre-testing assessment of neglected and delinquent youth served in juvenile facilities, and the Consolidated State Performance Report data collection from those facilities. NYSED does not, however, provide enough detail to clearly demonstrate how the targets and performance indicators that the plan identifies will be used to assess the effectiveness of the Title I, Part D program in improving the career and technical skills of the children in the program. The ESEA requires that each SEA establish program objectives and outcomes that will be used to assess the effectiveness of the Title I, Part D program in improving the academic, career, and technical skills of children in the program.</p>

<b>Title II, Part A: Supporting Effective Instruction</b>	
D.4: Improving the Skills of Educators	In its State plan, NYSED describes its efforts to improve the skills of educators, but does not specifically address how it will improve the skills of educators to identify and provide instruction to gifted and talented students or students with low literacy levels. The ESEA requires a State to describe how it will improve the skills of teachers, principals, or other school leaders in order to enable them to identify students with specific learning needs and provide instruction based on the needs of such students, specifically for students who are gifted and talented and students with low literacy levels.
<b>Education for Homeless Children and Youths Program, McKinney-Vento Homeless Assistance Act, Title VII, Subtitle B</b>	
I.7: Assistance from Counselors	While NYSED describes that it will develop guidance on expectations related to this requirement, and will provide technical assistance and other resources to school counselors, it does not describe how youths described in section 725(2) will receive assistance from counselors to advise such youths, and prepare and improve the readiness of such youths for college. The McKinney-Vento Act requires a State to describe how homeless youths will receive assistance from counselors to advise such youths and prepare and improve the readiness of such youths for college.
<b>General Education Provisions Act (GEPA)</b>	
GEPA 427	Section 427 of the General Education Provisions Act requires a State to provide a description of the steps it will take to ensure equitable access to, and participation in, the programs included in its State plan for students, teachers, and program beneficiaries with special need, and this is not addressed in NYSED’s plan.