
ESEA Flexibility

Request

(b)(6)



May 21, 2012

**New York State Education Department
89 Washington Avenue
Albany, NY 12234**



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COVER SHEET FOR ESEA FLEXIBILITY REQUEST

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New York State Education Department

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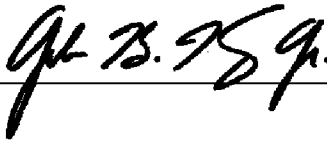
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Chief State School officer (Printed Name):
John B. King, Jr.

Telephone:
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Signature of the Chief State School Officer:

Date:
2/28/2012

X  _____

The State, through its authorized representative, agrees to meet all principles of the ESEA Flexibility.

WAIVERS REQUESTED

By submitting this flexibility request, the SEA requests flexibility through waivers of the ten ESEA requirements listed below and their associated regulatory, administrative, and reporting requirements by checking each of the boxes below. The provisions below represent the general areas of flexibility requested; a chart appended to the document titled ESEA Flexibility Frequently Asked Questions enumerates each specific provision of which the SEA requests a waiver, which the SEA incorporates into its request by reference.

- 1. The requirements in ESEA section 1111(b)(2)(E)-(H) that prescribe how an SEA must establish annual measurable objectives (AMOs) for determining adequate yearly progress (AYP) to ensure that all students meet or exceed the State's proficient level of academic achievement on the State's assessments in reading/language arts and mathematics no later than the end of the 2013–2014 school year. The SEA requests this waiver to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals that are used to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.
- 2. The requirements in ESEA section 1116(b) for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I school that fails, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. The SEA requests this waiver so that an LEA and its Title I schools need not comply with these requirements.
- 3. The requirements in ESEA section 1116(c) for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, fails to make AYP, and for an LEA so identified and its SEA to take certain improvement actions. The SEA requests this waiver so that it need not comply with these requirements with respect to its LEAs.
- 4. The requirements in ESEA sections 6213(b) and 6224(e) that limit participation in, and use of funds under the Small, Rural School Achievement (SRSA) and Rural and Low-Income School (RLIS) programs based on whether an LEA has made AYP and is complying with the requirements in ESEA section 1116. The SEA requests this waiver so that an LEA that receives SRSA or RLIS funds may use those funds for any authorized purpose regardless of whether the LEA makes AYP.
- 5. The requirement in ESEA section 1114(a)(1) that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. The SEA requests this waiver so that an LEA may implement interventions consistent with the turnaround principles or interventions that are based on the needs of the students in the school and designed to enhance the entire educational program in a school in any of its Priority and Focus Schools that meet the definitions of "Priority Schools" and "Focus Schools," respectively, set forth in the document titled ESEA Flexibility, as appropriate, even if those schools do not have a poverty percentage of 40 percent or more.
- 6. The requirement in ESEA section 1003(a) for an SEA to distribute funds reserved under that section only to LEAs with schools identified for improvement, corrective action, or restructuring. The SEA requests this waiver so that it may allocate section 1003(a) funds to its LEAs in order to serve any of the State's priority and Focus Schools that meet the definitions

of “Priority Schools” and “Focus Schools,” respectively, set forth in the document titled ESEA Flexibility.

- 7. The provision in ESEA section 1117(c)(2)(A) that authorizes an SEA to reserve Title I, Part A funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) has exceeded AYP for two or more consecutive years. The SEA requests this waiver so that it may use funds reserved under ESEA section 1117(c)(2)(A) for any of the State’s reward schools that meet the definition of “reward schools” set forth in the document titled ESEA Flexibility.
- 8. The requirements in ESEA section 2141(a), (b), and (c) for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers. The SEA requests this waiver to allow the SEA and its LEAs to focus on developing and implementing more meaningful evaluation and support systems.
- 9. The limitations in ESEA section 6123 that limit the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. The SEA requests this waiver so that it and its LEAs may transfer up to 100 percent of the funds it receives under the authorized programs among those programs and into Title I, Part A.
- 10. The requirements in ESEA section 1003(g)(4) and the definition of a Tier I school in Section I.A.3 of the School Improvement Grants (SIG) final requirements. The SEA requests this waiver so that it may award SIG funds to an LEA to implement one of the four SIG models in any of the State’s Priority Schools that meet the definition of “Priority Schools” set forth in the document titled ESEA Flexibility.

Optional Flexibilities:

If an SEA chooses to request waivers of any of the following requirements, it should check the corresponding box(es) below:

- 11. The requirements in ESEA sections 4201(b)(1)(A) and 4204(b)(2)(A) that restrict the activities provided by a community learning center under the Twenty-First Century Community Learning Centers (21st CCLC) program to activities provided only during non-school hours or periods when school is not in session (i.e., before and after school or during summer recess). The SEA requests this waiver so that 21st CCLC funds may be used to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session.
- 12. The requirements in ESEA sections 1116(a)(1)(A)-(B) and 1116(c)(1)(A) that require LEAs and SEAs to make determinations of adequate yearly progress (AYP) for schools and LEAs, respectively. The SEA requests this waiver because continuing to determine whether an LEA and its schools make AYP is inconsistent with the SEA’s State-developed differentiated recognition, accountability, and support system included in its ESEA flexibility request. The SEA and its LEAs must report on their report cards performance against the AMOs for all subgroups identified in ESEA section 1111(b)(2)(C)(v), and use performance against the AMOs to support continuous improvement in Title I schools that are not reward schools, Priority Schools, or Focus Schools.

13. The requirements in ESEA section 1113(a)(3)-(4) and (c)(1) that require an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. The SEA requests this waiver in order to permit its LEAs to serve a Title I-eligible high school with a graduation rate below 60 percent that the SEA has identified as a Priority School even if that school does not rank sufficiently high to be served.

ASSURANCES

By submitting this application, the SEA assures that:

- 1. It requests waivers of the above-referenced requirements based on its agreement to meet Principles 1 through 4 of the flexibility, as described throughout the remainder of this request.
- 2. It will adopt English language proficiency (ELP) standards that correspond to the State's college- and career-ready standards, consistent with the requirement in ESEA section 3113(b)(2), and that reflect the academic language skills necessary to access and meet the new college- and career-ready standards, no later than the 2013–2014 school year. (Principle 1)
- 3. It will develop and administer no later than the 2014–2015 school year alternate assessments based on grade-level academic achievement standards or alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities that are consistent with 34 C.F.R. § 200.6(a)(2) and are aligned with the State's college- and career-ready standards. (Principle 1)
- 4. It will develop and administer ELP assessments aligned with the State's ELP standards, consistent with the requirements in ESEA sections 1111(b)(7), 3113(b)(2), and 3122(a)(3)(A)(ii). (Principle 1)
- 5. It will report annually to the public on college-going and college credit-accumulation rates for all students and subgroups of students in each LEA and each public high school in the State. (Principle 1)
- 6. If the SEA includes student achievement on assessments in addition to reading/language arts and mathematics in its differentiated recognition, accountability, and support system and uses achievement on those assessments to identify priority and focus schools, it has technical documentation, which can be made available to the Department upon request, demonstrating that the assessments are administered statewide; include all students, including by providing appropriate accommodations for English Learners and students with disabilities, as well as alternate assessments based on grade-level academic achievement standards or alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities, consistent with 34 C.F.R. § 200.6(a)(2); and are valid and reliable for use in the SEA's differentiated recognition, accountability, and support system. (Principle 2)
- 7. It will report to the public its lists of reward schools, priority schools, and focus schools at the time the SEA is approved to implement the flexibility, and annually thereafter, it will publicly recognize its reward schools as well as make public its lists of priority and focus schools if it chooses to update those lists. (Principle 2)
- 8. Prior to submitting this request, it provided student growth data on their current students and the students they taught in the previous year to, at a minimum, all teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects in a manner that is timely and informs instructional programs, or it will do so no later than the deadline required under the State Fiscal Stabilization Fund. (Principle 3)
- 9. It will evaluate and, based on that evaluation, revise its own administrative requirements to reduce duplication and unnecessary burden on LEAs and schools. (Principle 4)
- 10. It has consulted with its Committee of Practitioners regarding the information set forth in its request.

- 11. Prior to submitting this request, it provided all LEAs with notice and a reasonable opportunity to comment on the request and has attached a copy of that notice (Attachment 1) as well as copies of any comments it received from LEAs (Attachment 2).
- 12. Prior to submitting this request, it provided notice and information regarding the request to the public in the manner in which the State customarily provides such notice and information to the public (e.g., by publishing a notice in the newspaper; by posting information on its website) and has attached a copy of, or link to, that notice (Attachment 3).
- 13. It will provide to the Department, in a timely manner, all required reports, data, and evidence regarding its progress in implementing the plans contained throughout this request.
- 14. It will report annually on its State report card, and will ensure that its LEAs annually report on their local report cards, for the “all students” group and for each subgroup described in ESEA section 1111(b)(2)(C)(v)(II): information on student achievement at each proficiency level; data comparing actual achievement levels to the State’s annual measurable objectives; the percentage of students not tested; performance on the other academic indicator for elementary and middle schools; and graduation rates for high schools. It will also annually report, and will ensure that its LEAs annually report, all other information and data required by ESEA section 1111(h)(1)(C) and 1111(h)(2)(B), respectively.

If the SEA selects Option A in section 3.A of its request, indicating that it has not yet developed and adopted all the guidelines for teacher and principal evaluation and support systems, it must also assure that:

- 15. It will submit to the Department for peer review and approval a copy of the guidelines that it will adopt by the end of the 2011–2012 school year. (Principle 3)

CONSULTATION

An SEA must meaningfully engage and solicit input from diverse stakeholders and communities in the development of its request. To demonstrate that an SEA has done so, the SEA must provide an assurance that it has consulted with the State's Committee of Practitioners regarding the information set forth in the request and provide the following:

1. A description of how the SEA meaningfully engaged and solicited input on its request from teachers and their representatives.

New York State has benefited from the involvement of a large number of diverse stakeholders during the preparation and development of this waiver request. In particular, teachers and their representatives were asked for input at each stage of the process and will remain involved throughout the implementation phase. New York engaged teachers and their representatives during each stage of the development of the waiver as follows:

- The New York State United Teachers (NYSUT), which represents people who work in, or are retired from, schools, colleges, and healthcare facilities throughout New York are participants on the NYSED School and District Accountability Think Tank¹ (“Think Tank”), the Title I Committee of Practitioners, the Bilingual Committee of Practitioners, and the Teacher and Leadership Effectiveness Task Force, each of which contributed to the development of the waiver. NYSED also held a special meeting with NYSUT leadership in January 2012 to solicit input on the draft waiver application.
- The United Federation of Teachers (UFT) which represents teacher members in New York City, the school district that educates over 30 percent of New York's public school students, and more than 60 percent of New York's students served by Title I, also participated on the Think Tank the Bilingual Committee of Practitioners, and the Teacher and Leadership Effectiveness Task Force. NYSED held a special meeting with UFT leadership in January 2012 to solicit input on the draft waiver application.
- Teachers, principals, superintendents of schools, the unions representing teachers and administrators, NYSED staff, and a variety of other stakeholders participated on the Regents Task Force on Teacher and Principal Effectiveness. The Task Force was established to assist in the development of the regulations for the new teacher- and principal-evaluation system. The group made recommendations that were largely incorporated into the regulations that the Board of Regents adopted and which became the basis of New York's response to Principle 3.
- Teachers were active participants in many of the groups that were consulted in development of the waiver, such as the:
 - Title I Committee of Practitioners, which has five teacher members from districts throughout the State, in addition to teacher representatives from both NYSUT and NEA, and
 - Bilingual Committee of Practitioners, which has teacher representatives from both the New York State Association for Bilingual Educators (NYSABE) and the National Association of Bilingual Education (NABE) as well as more than 35 members who are former teachers who are either retired or now serving in other capacities.

¹ A full description of the School and District Accountability Think Tank can be found on page 14 of the Consultation.

- Teachers were invited to participate in a webinar entitled “New York State Education Department ESEA Flexibility Webinar: An Overview” in January 2012. During the webinar, participants raised questions and requested clarification around issues pertinent to them.
 - During the final stages of development, NYSED posted the draft waiver request on its website and solicited feedback from stakeholders all over the state. Eight of the comments received were from people who identified themselves as teachers.
 - Through NYSED’s Network Team Institute, a select group of teachers throughout the state have been extensively involved in the implementation of the reforms associated with the Race to the Top and the Regents Reform Agenda. In particular, hundreds of teachers are receiving support from the Network Teams to build capacity around the Common Core State Standards, which constitutes much of the work referenced in Principle 1 of the application.
 - Lastly, in an effort to engage and solicit teacher input in an ongoing manner, the Department is conducting bimonthly webinars and information sessions about ESEA flexibility beginning in May 2012.
2. A description of how the SEA meaningfully engaged and solicited input on its request from other diverse communities, such as students, parents, community-based organizations, civil rights organizations, organizations representing students with disabilities and English Learners, business organizations, and Indian tribes.

New York State’s ESEA waiver application provided multiple opportunities for key public stakeholders to participate in this process. The organizations with which the New York State Education Department (NYSED) consulted represent widely diverse communities including students, parents, community-based organizations, civil rights organizations, organizations representing English Language Learners and students with disabilities, and business organizations. The specific organizations include:

- Advocates for Children
- Alliance for Quality Education
- Asian American Legal Defense and Education Fund
- Boards of Cooperative Educational Services (BOCES)
- Commissioner’s Advisory Panel (CAP) for Special Education Services
- Conference of Big Five School Districts
- Council of School Supervisors & Administrators (CSA)
- Greece Central School District
- New York Charter Schools Association
- New York City Charter School Center
- New York City Department of Education
- New Rochelle Board of Education - Office of Special Education Start
- New York Schools Data Analysis Technical Assistance Group (DATAG)
- New York State Bilingual and ESL Committee of Practitioners (Bilingual COP)
- New York State Council of School Superintendents (NYSCOSS)
- New York State Parent Teacher Association

- New York State School Boards Association (NYSSBA)
- New York State United Teachers (NYSUT)
- School Administrators Association of New York State (SAANYS)
- Special Act Schools
- Staff/Curriculum Development Network
- State University of New York (SUNY)
- The Business Council of New York State, Inc.
- Title I Committee of Practitioners (Title I COP)
- United Federation of Teachers (UFT)
- Webster Central School District

As a result of the iterative and developmental process undertaken, the following key changes were made to the application:

- **Guiding Principles:** The ESEA waiver application was based on a set of guiding principles adopted by the Board of Regents at their November 2011 meeting. These guiding principles were developed in consultation with NYSED’s School and District Accountability Think Tank (described in the next section), which reviewed and commented upon several iterations of the principles. Many of the recommendations of Think Tank members were incorporated into the final guiding principles adopted by the Regents, which then shaped the development of the application.
- **Definition of College- and Career- Readiness:** Based on a number of comments, specifically from several teachers, additional clarification regarding career readiness standards was provided in the application. Consistent with the position of The Association for Career and Technical Education (ACTE), (which states that “career-ready core academics and college-ready core academics are essentially the same, thus creating overlap in the preparation students need to be ready for postsecondary education and careers”) and Achieve’s American Diploma Project Network, (which states “**In the last decade, research conducted by Achieve as well as others shows a convergence in the expectations of employers and colleges in terms of the knowledge and skills high school grads need to be successful after high school**”) the request clarifies that the academic standards that apply to college readiness are equally appropriate for measuring the academic skill level a student should have to pursue a career upon graduation. In addition, in order to be identified as a reward school, schools must now demonstrate that either their percentage of students graduating with a Regents diploma with advanced designation or their percentage of students graduating with a Regents diploma with CTE endorsement exceeds the State average.
- **Methodologies for Identification of Reward, Focus and Priority Schools and Focus Districts:** Based on modeling of data and public comment, revisions to these methodologies were made. For example, as a result of public comment NYSED incorporated the performance of subgroups of students into its progress standards for identification of Priority Schools and expanded the use of the five year cohort graduation rate as a factor in the identification of Focus districts.
- **Special Act School Districts and Transfer High Schools:** Based on a number of comments, NYSED has clarified the conditions under which Schools in Special Act School

Districts and Transfer High Schools will be identified as Priority Schools. These changes are intended to ensure that these schools are held accountable for results in a way that recognizes the special populations they serve and the unique missions of these schools.

- **Expanded Learning Time and 21st Century Community Learning Center Grants:** Based on comments from a number of organizations, the request has been amended to provide greater clarity on how the optional flexibility that allows these funds to support expanded learning time during the school day will be incorporated into the next 21st Century Community Learning Center grant competition. The request also provides additional information on the requirement that Priority Schools must offer expanded learning time to students.
- **District Comprehensive Improvement Plans and Local Assistance Plans:** Based on comments, the request has been revised to clarify that a district that has both Priority and/or Focus Schools and schools that require a Local Assistance Plan will use its District Comprehensive Improvement Plan to meet the Local Assistance Plan requirement, and will develop one plan – not two plans.
- **Equitable Participation Requirements for Nonpublic Schools:** Based on comments received from organizations representing nonpublic schools, the request has been amended to explicitly state that consistent with USDE's ESEA Flexibility guidelines, no statutory or regulatory requirements related to the equitable participation of private school students and teachers in Title I programs may be waived. Accordingly, nothing in NYSED's ESEA waiver request will affect any applicable obligations governing the equitable participation of students enrolled in private elementary and/or secondary schools in the State's Title I program.

In addition to the above, the request in response to comments now provides a more extensive overview of the state's current accountability system; more details on such elements of the plan as Integrated Intervention Teams and the Diagnostic Tool for School and District Effectiveness; and more information on strategies to address the needs of students with disabilities and English language learners.

Consultation Process

The New York State Board of Regents (Board of Regents or Regents) is responsible for the general supervision of all educational activities within the State, presiding over The University of the State of New York and NYSED. As the administrative arm of the Board of Regents and part of the University of the State of New York, NYSED helps to make up one of the most complete, interconnected systems of educational services in the United States. As a matter of best practice, the NYSED and the Board of Regents regularly communicate and collaborate with stakeholders in a variety of ways including advisory committees, forums, web postings, listservs, webinars, public meetings, and as needed, individual meetings with key stakeholders regarding specific policy issues.

The Regents Reform Agenda, which has guided NYSED's work for the last several years, addresses the same principles that a state must submit in its flexibility application. For instance, the Board of Regents has adopted the Common Core Standards, put in place a strategy to align state assessments with these standards and established measures of proficiency on the grades 3-8 English language arts and mathematics assessments that are benchmarked to college- and career-ready success. The Board

of Regents has also put in place a new teacher and principal evaluation system that includes student growth as a significant factor. This new evaluation system, required by Education Law §3012-c, provides districts with a powerful tool to support effective teaching and leadership. Throughout the adoption of these various policies and initiatives, NYSED consulted with stakeholders through Regents Forums, public meetings, web postings, and convening of Task Forces. The feedback and comments received were considered and frequently incorporated into Regents' policy and regulatory actions, resulting in a Reform Agenda that brings a sustained systemic focus on improving student achievement in New York State.

In 2010, an advisory committee, known as the Regents Task Force on Teacher and Principal Effectiveness, was established to offer assistance, ideas and expertise in development of the regulations for the new teacher- and principal-evaluation system. The committee had 60 members and was composed of *teachers*, principals, superintendents of schools, school boards, school districts and Board of Cooperative Educational Services (BOCES) officials, the unions representing teachers and administrators, representatives from educator preparation programs, as well as research advisers, NYSED staff, and other interested parties. After six (6) months of collaborating, the group released recommendations in April 2011 that were largely incorporated into the regulations that the Board of Regents adopted in May 2011.

In anticipation that Secretary Duncan would offer ESEA flexibility, NYSED, in August 2011 invited representatives of key stakeholder organizations, as well as experts in accountability systems, to participate in a "School and District Accountability Think Tank" ("the Think Tank"). The Think Tank included representatives from 23 external organizations, in addition to technical experts and NYSED staff. The expertise of the Think Tank members provided NYSED with an opportunity to review and rethink the key elements of New York State's current Differentiated Accountability system. The role of the Think Tank was to advise NYSED on how to build upon best practices that exist within the current accountability system in a way that better supports the efforts of schools and districts to ensure that all students graduate high school, college- and career-ready.

Think Tank members (see Attachment 11 for a listing of member organizations) committed to meeting once per month for day-long, face-to-face meetings where NYSED staff and external members acted as thought partners to envision New York State's Next Generation Accountability System. Meetings were conducted each month between August 2011 and January 2012. In addition to the monthly meetings, the Think Tank held interim teleconference meetings for the purpose of following up or delving deeper. The Think Tank was divided into three (3) subgroups: 1) Accountability Measures, 2) School Classification and Support, as well as 3) Linking Schools and Stakeholders to allow more focused group conversations and feedback from the experts in their respective areas of interest. Extensive documentation of the deliberations of the Think Tank was maintained and members were encouraged to submit written recommendations to NYSED staff either on behalf of their organizations or as individuals with expertise in accountability systems.

Special Education Consultation

In October 2011, NYSED staff met with the Commissioner's Advisory Panel (CAP) for Special Education Services to discuss New York State's application for ESEA Flexibility and presented information, pertaining to the waiver process to the group. The meeting included CAP members representing individuals with disabilities, parents of children with disabilities, *teachers*, State/local education officials, administrators of programs for children with disabilities, State agencies that are

involved in the delivery of related services, a provider of transition services and business/vocational representative, institutions of higher education, private and charter schools, corrections agencies (juvenile and adult), State official representing homeless children, State child welfare agency officials responsible for foster care, and ad hoc members. An additional meeting with this group was held in January 2012 to review NYSED's waiver application and seek comment on the specific proposals.

In October 2011, the Statewide Coordinator for Special Education met with special education directors of central New York State's small city school districts in Syracuse and reviewed the ESEA waiver process. The directors recommended use of a growth model and raised concerns around school choice and students with disabilities.

In November 2011, NYSED staff also discussed New York State's application for ESEA Flexibility with special education directors representing four of the Big 5 city school districts (Yonkers, Syracuse, Buffalo and Rochester) at a meeting in Syracuse, New York. This group of special education directors made a recommendation pertaining to the use of a growth model in the measures. NYSED meets regularly with representatives of the Big 5 city school districts not only because they represent a significant percentage of the State's population, but they also represent some of the largest high-needs communities in the State.

Title I Consultation

In October 2011, the Title I Committee of Practitioners (Title I COP) met to discuss ESEA Waiver Flexibility, and considered a "Next Generation Accountability System" memo from P-12 Deputy Commissioner Ken Slentz to the Board of Regents, which speaks directly to developing the Waiver Request. The Committee met again on January 12, 2012 and January 31, 2012 to review and provide comment on the draft ESEA waiver application. The more than sixty (60) Title I COP members include NYSED staff, school superintendents, district administrators and five (5) teachers, advocacy groups, parents, state and local collective bargaining units for teachers, and representatives from the nonpublic school sector.

Bilingual Education Consultation

In December 2011, the New York State Bilingual and English as a Second Language Committee of Practitioners (Bilingual COP) held its final meeting of the year in Brooklyn, New York. The Bilingual COP was created in 2006 as a response to the Bilingual Community requesting a platform to interact and advise the Commissioner and the Board of Regents on issues related to the educational, social, and cultural needs of English Language Learners (ELLs). Bilingual COP members, over seventy (70), consist of advocacy groups, parents, institutions of higher education, media, school superintendents, district administrators and *teachers*. During the December 2011 Bilingual COP meeting, NYSED staff presented the proposed recommendations for the ESEA Flexibility Waiver that were slated to be presented to the Board of Regents at its December meeting. On January 25, 2012, a statewide conference call was held with the Bilingual COP to review the draft ESEA waiver application.

Meetings of the Education Commissioner

The New York State Education Commissioner conducts regular meetings with the following organizations: New York State United Teachers (NYSUT), New York State Council of School Superintendents (NYSCOSS), School Administrators Association of New York State (SAANYS), Conference of Big 5 School Districts and the New York State School Boards Association

(NYSSBA). Agendas reflect that during the months of October 2011 through February 2012, the Commissioner has regularly updated these stakeholders and constituents on New York State's ESEA Waiver Flexibility Request. In meetings conducted in January and February 2012, each organization was provided the opportunity to review and comment upon the draft waiver application.

Public Meetings of the Board of Regents

NYSED staff began discussing New York State's Next Generation Accountability System with the Board of Regents at its October 2011 meeting and presented reports to the Board of Regents at their November 2011, December 2011, and January and February 2012 meetings. The meetings are held in Albany, New York, and are open to the public. In addition, agendas and materials for all meetings are posted to the NYSED website at: <http://www.regents.nysed.gov/meetings/archived-2011.html>. Materials available for public review include the Guiding Principles for design of a system for accountability for student success, timelines, an extensive question and answer document outlining the key elements of the waiver application, a summary of the draft application, and a review of the entire application prior to its issuance for public comment.

Statewide Webinar

In January 2012, the Assistant Commissioner for Accountability, Ira Schwartz, conducted a statewide webinar to discuss New York State's Next Generation Accountability System and the ESEA Waiver Flexibility Request. The webinar was available to schools and districts throughout the state. Teachers, in addition to school superintendents and district administrators participated and raised questions pertinent to their issues.

Public Comment Period

Prior to submitting this waiver request, New York State provided all local educational agencies with notice (see Attachment 1) and a reasonable opportunity to comment on this request. New York State provided notification to District Superintendents, School Superintendents, Charter School Administrators, and Title I Coordinators. An e-copy of the notification is found in Attachment 3. The notification was also posted for comment on January 20, 2012.

From January 20, 2012 to January 30, 2012, the New York State Education Department solicited public comment on a draft of the waiver request for regulatory flexibility from provisions of the Elementary and Secondary Education Act (ESEA). Over 450 public comments were received via e-mail and regular mail. Many comments began with endorsements for the Regents' Reform Agenda and commended the Department's work overall. In addition, many comments that contained specific, and oftentimes numerous, recommended changes began with compliments for the overall waiver request plans. Some of the positive comments consist of:

- Compliments on a comprehensive and clear flexibility application.
- Support for the establishment of revised Annual Measurable Objectives.
- Support for setting College- and Career- Ready Standards using a growth model in addition to student achievement.

- Support for not identifying schools if they are above median state growth percentile in ELA and mathematics grades 4-8.
- Support for giving full credit to any student who is or is on track to proficiency using growth measure.
- Support for the Reward school proposal and granting increased flexibility to Reward schools.
- Support for the creation of a single diagnostic tool for school and district accountability.
- Support for the proposal for districts to develop a singular improvement plan.
- Support for the recommendation to no longer mandate the 20 percent set aside for SES as SES is currently executed.
- Support for many of the funding revisions including the transfer of various funding streams into Title I Part A, removing the 40 percent poverty school-wide program threshold, and the waiver of 21st Century Community Learning Centers funds.
- Support for eliminating mandatory set-asides and allowing transfer of funds.

NYSED received comments from individuals, organizations (e.g., LEA, community organizations, and foundations), as well as from regions (i.e., Big 5, Long Island, NYC, Upstate, Westchester, etc.). Comments ranged across and touched on many areas of the ESEA Flexibility Request. Below is a general summary of comments by the topics with the greatest number of responses. These summaries are intended to provide an overview rather than a review of the comments in their entirety. Topics with the greatest number of responses, however, include:

- Supplemental Educational Services
- Annual Professional Performance Review (APPR)
- The Role of Testing
- 21st Century Community Learning Centers

Supplemental Education Services (SES) Comments:

Numerous comments were received from parents, students, service providers and advocacy organizations recommending the Department not change the current mandated set-aside of Title I funds for SES. There were also recommendations that SES tutoring services be continued; that the current number of students receiving SES, students who are predominately both low-income and persons of color, be maintained; that students at Priority Schools should receive SES, as long as the school is not meeting specific academic targets; and that the SES set-aside be reduced or modified, but not eliminated completely.

The comments also included the following feedback on SES: districts that are already underperforming are unlikely to better serve students than if those students participated in SES programs; having service providers reapply to the state will result in a service disruption for students in the upcoming school year; there will be a disproportionate impact of the proposed SES measures on low-income students in underperforming schools, with several saying that the proposed measure will exacerbate gaps between low-income and other students.

Lastly, it should also be noted that in meetings attended by representatives of school districts, almost all of these representatives expressed strong support for this provision of the waiver.

DEPARTMENT RESPONSE:

The waiver does not seek to eliminate the provision of SES services to students. Rather, the Department is proposing to change the set-aside requirements. New York will not require districts to offer SES or set aside a portion of their Title I allocation to pay for SES.

Alternatively, districts can choose to offer SES and pay for the services using Title I funds. In order to support districts that choose to continue to provide SES, New York will require all SES providers to reapply for state approval. New York will evaluate whether the SES providers' programs are aligned with the Common Core standards. Districts that wish to offer SES will be allowed to determine the providers that parents in their district may select. The waiver will not eliminate the district's responsibility to provide interventions for students who need support services to increase student achievement. In addition, the Commissioner shall establish, as approved by the Board of Regents, a minimum amount of Expanded Learning Time that must be incorporated into the redesign of the school day, week and/or year for Priority Schools. Districts will be able to use funds from their Title I and Title II set-asides to implement these requirements. NYSED will assist districts by providing technical assistance to support development and implementation of this redesign, including assisting schools to redesign and expand their schedules in partnership with providers that have a demonstrated record of promoting student achievement.

Annual Professional Performance Review (APPR) Comments (Teacher and Principal Evaluations):

A large number of the comments received concerned APPR. The comments included the following feedback: the waiver would generate additional testing and children are already over-tested; the emphasis on testing and accountability is harming education; test-based accountability for teachers, schools, teacher education programs should be opposed; the proposal will perpetuate the flawed APPR system. It was recommended that New York seek a one-year extension of APPR phase-in and requested that stakeholders be engaged in this conversation

DEPARTMENT RESPONSE:

The waiver request does not establish any new policy or requirements in terms of teacher and principal evaluation. The waiver simply documents the actions that have been taken by the Governor and state legislature in enacting New York's new Teacher and Principal evaluation system (3102-c of Education Law), the Board of Regents in adopting conforming regulations (Section 100.2 of Commissioner's Regulations), and the Department in implementing the provisions of regulations. The actions outlined in the State's proposal are consistent with the requirements of the waiver and must be met in order to receive the flexibility requested. In February 2012 Governor Cuomo and New York State Education Commissioner John King, and New York State United Teachers President Richard C. Iannuzzi announced an agreement that gives significant guidance to local school districts for the implementation of a teacher evaluation system that is based on multiple measures of performance including student achievement and rigorous classroom observations. The agreement also, for the first time, gives the SED Commissioner the authority to approve or disapprove local evaluation plans that are deemed

insufficient and specifies that teachers who are rate ineffective on student achievement results must be given an overall rating of ineffective.

Testing Comments (Assessments and Other Academic Measures):

Numerous comments pertaining to testing were received that expressed opposition to the waiver request. The comments included the following feedback: the waiver would generate additional testing and children are already over-tested; the emphasis on testing and accountability is harming education; the Department should not create additional ELA tests in grades 9 and 10; and should not have test-based accountability systems for teachers, schools, or teacher education programs.

Comments were submitted regarding the methodology for calculating adequate yearly progress (AYP) against the Performance Index, when used in the determination of what students in transfer schools have achieved while enrolled.

There were some comments regarding the extension of the length of the Graduation Rate Cohort beyond the four-year cohort for all schools. There was also mention of the inclusion of students who graduate within a “legal time period” as an accountability measure.

DEPARTMENT RESPONSE:

The Department does not intend to impose new tests as a result of the waiver but will use the existing state assessment program to measure school and district performance. The Department believes that the aspirational goal of a score of 75 or above on the English Regents exam and a score of 80 or above on a math Regents exam is a suitable proxy for college and career readiness. The Department acknowledges as new assessments are administered and/or as additional information is captured by our data system, other measures of college and career readiness may become available for consideration by the Regents.

The request has been amended to clarify that the academic standards that apply to college readiness are equally appropriate for measuring the academic skill level a student should have to pursue a career upon graduation. The application has also been amended to revise the way in which transfer high schools as well as special act schools will be held accountable for performance and the use of the five year cohort has been expanded in making accountability determinations.

21st Century Community Learning Centers (CCLC) Comments:

A number of comments were submitted from service providers and advocacy organizations regarding the implications of seeking a waiver that includes the 21st Century Community Learning Centers. A majority of comments spoke to the fear that schools districts would use funds, not for quality after school programming, but to fill gaps in a very limited and strained budget (i.e., replace lost positions). Many after-school providers, students, and families saw the waiver as a threat to 21st CCLC programs. Accordingly, those providing comments noted the strong track record of learning centers providing “high-quality, school-linked expanded learning opportunities.” Additionally, there was angst regarding the future of the respective programs if the proposed waiver moved forward as planned.

Comments were made that suggest the waiver emphasize the importance of the addition of significantly more time to the traditional school day to facilitate well rounded curricula and more

individual relationships with adult role models, including the integration of specialists during the school day. Several comments noted the research cited by New York City Commissioner Jeanne B. Mullgrav of the Department of Youth and Community Development, which argued that extended learning time during the school year and in the summer “can reinforce what students learn in school not only through explicit academic support, but also by giving them opportunities to use these basic skills in all their activities.”

Specifically, some comments noted:

- Applying for the optional waiver would permit expanded learning time and additional activities during the school day and non-school hours.
- The Request for Proposal process should take into consideration the range of models for expanded learning time (including before school, after school, summer learning programs, and/or expanded learning time programs), as long as the model includes research-based expanded learning opportunities that improve students’ academic, social, and emotional outcomes.
- The option for extending the school day in all schools, not just Priority Schools.
- Additional learning opportunities should be responsive to parents’ needs and desires, and thereby the Department should further clarify what is meant by “state approved services and programs.”

DEPARTMENT RESPONSE:

The Department understands the concerns expressed in the comments. The waiver request has been amended to provide greater clarity on how the Department proposes to incorporate into the next 21st CCLC grant competition the optional flexibility that allows these funds to support expanded learning time during the school day. The request also provides additional information on the requirements that Priority Schools offer expanded learning time to students.

Of the comments received, five were from LEA’s and are included in Attachment 2.

EVALUATION

The Department encourages an SEA that receives approval to implement the flexibility to collaborate with the department to evaluate at least one program, practice, or strategy the SEA or its LEAs implement under principle 1, 2, or 3. Upon receipt of approval of the flexibility, an interested SEA will need to nominate for evaluation a program, practice, or strategy the SEA or its LEAs will implement under principles 1, 2, or 3. The Department will work with the SEA to determine the feasibility and design of the evaluation and, if it is determined to be feasible and appropriate, will fund and conduct the evaluation in partnership with the SEA, ensuring that the implementation of the chosen program, practice, or strategy is consistent with the evaluation design.

Check here if you are interested in collaborating with the Department in this evaluation, if your request for the flexibility is approved.

