



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY

12234

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August 5, 2016

Dr. John B. King, Jr.
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-6100

RE: Request for a Waiver of Statutory and Regulatory Requirements of the Elementary and Secondary Education Act (ESEA) on behalf of New York City Department of Education (NYCDOE)

Dear Secretary King:

Section 8401 of the Elementary and Secondary Education Act (ESEA), as recently amended by the Every Student Succeeds Act (ESSA) (hereafter referred to as ESEA/ESSA), provides authority to the Secretary of the United States Department of Education (USDE) to waive certain statutory and regulatory requirements at the request of a State Educational Agency. By way of this letter, the New York State Education Department (NYSED or "the Department") is formally requesting a waiver of two statutory and regulatory requirements of Title I, Part A of ESEA/ESSA on behalf of the New York City Department of Education (NYCDOE).

As required in Section 8401 of ESSA, the NYCDOE has submitted a formal request to NYSED containing the information described in subsection (b)(1) to the Department for our consideration. Based upon ongoing consultation with NYCDOE officials and a review of the waiver request and related documentation, we believe that the New York City Department of Education's waiver request is appropriate. The Department is requesting that NYCDOE be granted a waiver of the identified sections for a period of four years, beginning with the 2015-2016 school year. Below is a detailed plan that addresses each requirement in Section 8401(b)(1) of ESEA/ESSA:

A. *Identify the Federal programs affected by the requested waiver.*

Title I, Part A of ESEA/ESSA.

B. *Describe which Federal statutory or regulatory requirements are to be waived.*

On behalf of the New York City Department of Education, the New York State Education Department requests waivers for the following statutory or regulatory requirements:

1. ESEA/ESSA Section 1113(a)(4)(B) – "If funds remain after serving all eligible school attendance areas under paragraph (3), a local educational agency shall serve such eligible

school attendance areas in rank order either within each grade-span grouping or within the local educational agency as a whole.”

2. ESEA/ESSA Section 1113(c)(1) – “IN GENERAL- A local educational agency shall allocate funds received under this part to eligible school attendance areas or eligible schools, identified under subsections (a) and (b), in rank order, on the basis of the total number of children from low-income families in each area or school.”

Rationale for Waiver Request:

Each year, NYCDOE applies county-specific poverty thresholds when determining which schools will be allocated Title I funding to ensure that schools with the neediest student populations in each county receive sufficient Title I funding to improve their educational environments. Specifically, NYCDOE allocates Title I funding to school attendance areas in Bronx, New York, Queens, and Kings Counties in which at least 60% of the students are eligible for free lunch and, in Richmond County, schools in which at least 45.04% of students are eligible for free lunch. This methodology provides a large number of schools with consistent access to Title I resources that support the academic needs of students as evidenced by the 1,366 Title I schools that have been identified and served in 2015-2016. For more than 90% of these schools, the combination of high poverty rates and the availability of Title I funding provides access to the flexibilities afforded to Title I Schoolwide Programs, including the consolidation of Federal, State, and Local funding to upgrade the entire educational program in the school to improve the academic performance of all students, particularly the lowest-achieving students.

The requested waiver is necessary because current Title I statutory and regulatory requirements do not sufficiently allow NYCDOE to protect schools that are allocated funds in one year and subsequently fall below established funding-eligibility thresholds in the following school year. Further, applying other discretionary flexibilities available under ESEA only compounds the issue by creating unintended financial and programmatic obligations for NYCDOE. Specifically:

- Section 1113(b)(1)(C) – commonly referred to as the “Grandfathering Provision” – allows LEAs to designate and serve a school attendance area or school that is not eligible under Title I, Part A, but that was eligible and that was served in the preceding fiscal year, but only for one additional fiscal year. However, in New York City, this statutory protection cannot be automatically applied to schools that are below the 60% threshold because Section 1113(a)(2)(B) and Section 1113(b)(1)(A) of ESEA/ESSA provide NYCDOE with only two options for determining if a school is eligible to receive Title I funds: (1) the actual poverty rate for each county or (2) 35% of the children from low-income families. Since the actual poverty rates in Bronx, New York, Queens, and Kings Counties are all above 60%, NYCDOE must apply the 35% eligibility threshold by default. As a result, a school that was above the 60% cutoff in one year and subsequently falls below the threshold in the following school year cannot be grandfathered for one additional year because the school is still technically Title I eligible. For example, a NYCDOE school in Bronx County with a poverty percentage of 62% in 14-15 would be eligible to receive Title I funds. If that school’s poverty rate falls to 58% in 15-16, it is still eligible according to ESEA/ESSA and therefore cannot receive funds as a grandfathered school. However, if the poverty rate dropped all the way down to 34%, the

school could be grandfathered under current ESEA/ESSA flexibilities, even though it would have significantly lower need.

It should be noted that using the county average dramatically reduces the number of NYCDOE schools able to receive Title I funds and would cause a precipitous drop in funding to those schools that have poverty rates above 60%, but below the county average. For the 2015-2016 school year, NYSED estimates that the number of schools receiving Title I, Part A funds would drop by nearly 300 schools if the county poverty rate was used to determine eligibility. Conversely, using the 35% threshold would dramatically increase the number of eligible schools. For the 2015-2016 school year, NYSED estimates that the number of schools receiving Title I, Part A funds would increase by approximately 150 schools. This increase in the number of Title I schools would substantially reduce the average per pupil amounts Bronx, New York, Queens, and Kings Counties – effectively drawing resources away from the highest poverty/highest need schools across the city.

- Section 1113(b)(1)(D) – commonly known as the “Skip Provision” – allows an LEA to “skip” eligible schools under certain conditions. However, in New York City the skip flexibilities compound the unintended consequences outlined above under the grandfathering flexibility. In order to maintain funding for a school that is above the 60% threshold in one year and then drops below that threshold in the subsequent year, NYCDOE must frequently “skip” other eligible schools that are below the 60% threshold. Since the grandfathering flexibilities cannot be applied to the school below 60%, all of the schools below 60% but above that school are technically eligible to be served if the district wishes to maintain funding for one additional year. This, in turn, triggers the requirements of the skip flexibility outlined in Section 1113(b)(1)(D) that creates a new financial obligation that would not exist if the current grandfathering criteria were not in place. NYSED estimates that correctly applying the skip requirements would generate nearly \$9,000,000 in new obligations for NYCDOE in 2014-2015 and an additional \$6,000,000 in 2015-2016.

The requested waiver of statutory or regulatory requirements related to serving schools in rank order of poverty will allow NYCDOE to more effectively protect impacted schools by serving them in a manner consistent with existing flexibilities outlined in Section 1113(b)(1)(C) and Section 1113(b)(1)(D) without incurring additional financial obligations.

C. Describe how the waiving of such requirements will advance student academic achievement.

Waiving the rank ordering provisions of ESEA/ESSA Section 1113(a)(4)(B) and Section 1113(c)(1) will allow NYCDOE to better support academic achievement for students in impacted schools by providing the following programmatic flexibilities and financial resources:

- *Title I Schoolwide Programs* – Each impacted school will maintain its ability to function as Title I Schoolwide program. Schools that fall just below the funding threshold in the one year regularly become eligible for services in future years. In those cases, it would be much less disruptive to students in the impacted schools for Title I services to be maintained instead of having to dismantle those services only to have to re-initiate them

the following year. Maintaining Title I Schoolwide status for one additional year will allow impacted schools to continue providing critical supports such as academic intervention services and related social-emotional supports to students who have been identified as not yet meeting, or are at risk for not meeting, New York State's Common Core Learning Standards; expanded learning time activities conducted before school, after school, on Saturdays, and/or during the summer; and job-embedded professional development that improves instruction for all students. In addition, Title I Schoolwide status will allow impacted schools to continue consolidating Federal, State, and local funds in order to upgrade the entire educational program for all students, particularly the lowest-achieving students.

- *Title I Parent Involvement* – Each impacted school will maintain its ability to utilize Title I funds to effectively address local needs, build parents' capacity for using effective practices to improve their own children's academic achievement, and engage parents in shared accountability for high student achievement. As noted in the April 2004 *Parent Involvement: Title I, Part A Non-Regulatory Guidance* "parents are an important influence in helping their children achieve high academic standards. When schools collaborate with parents to help their children learn and when parents participate in school activities and decision-making about their children's education, children achieve at higher levels."
- *Title I School Improvement Section 1003(a) Grant Funds* - Each impacted school identified as a Priority or Focus School (or as a Comprehensive Support and Improvement or Targeted Support and Improvement school starting in 2017-2018) will maintain its ability access supplemental funding focused on improving student academic outcomes. In New York State, Priority and Focus Schools receive a minimum of \$75,000 and \$50,000, respectively, in Section 1003(a) funding each year. These funds support schools as they work to improve student learning outcomes via collaborative improvement planning with stakeholders, implementation of research-based interventions and supports, and regular monitoring and evaluation of program impact on student learning.

D. Describe the methods the State educational agency, local educational agency, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan.

All New York City Schools are required to develop Comprehensive Educational Plans (CEPs) that include specific and measurable annual goals directly aligned and developed around each school's identified priority needs. School plans are directly aligned to New York State's Annual Measurable Objectives for English Language Arts and mathematics and NYCDOE's Framework for Great Schools. School goals and action plans must annually address six critical elements, including: Rigorous Instruction; Supportive Environment; Collaborative Teachers; Effective School Leadership; and Strong Family-Community Ties. NYSED will continue to engage with NYCDOE staff in regular programmatic monitoring of plans developed by impacted schools. Monitoring will specifically include a review of proposed activities and instructional strategies, the research base that indicates these activities will lead to improved student achievement, and the degree to which activities address identified student needs. Each school plan includes mid-year benchmarks that will allow NYSED and NYCDOE to monitor progress

toward identified improvements in student achievement during the school year, as well as a review of school data at the end of the year.

E. Include only information directly related to the waiver request.

NYCDOE has provided a spreadsheet documenting the impacted schools for the 2015-2016 school year. The spreadsheet includes each school's enrollment, poverty count, and Title I allocation with and without the requested waiver, with the schools affected by the requested waiver highlighted. In addition, as required by Section 8401(b)(3)(A), the New York City Department of Education and the New York State Education Department have: (1) provided the public and any interested local educational agency in the State with notice and a reasonable opportunity to comment and provide input on the request, to the extent that the request impacts the local educational agency; (2) submitted the comments and input to the Secretary, with a description of how the State addressed the comments and input; and (3) provided notice and a reasonable time to comment to the public and local educational agencies in the manner in which the applying agency customarily provides similar notice and opportunity to comment to the public. Specifically:

- NYCDOE has provided notice and information to the public regarding this request for a waiver on their website at: <http://schools.nyc.gov/Offices/DBOR/default.htm>.
- NYSED has provided notice and information to the public regarding this request for a waiver on their website at: <http://www.p12.nysed.gov/accountability/waivers/home.html>. In accordance with normal procedures of the Department, the public was provided with a minimum of five (5) business days to provide comments.
- NYSED distributed notification of the waiver request and solicited comments via email to all district superintendents, school superintendents, charter school officials, and nonpublic school representatives. In accordance with normal procedures of the Department, LEA representatives were provided with a minimum of five (5) business days to provide comments.

All public comments received by NYCDOE and NYSED are included for review and consideration.

F. Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describe how the State educational agency, local educational agency, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi).

The requested waiver of statutory or regulatory requirements applies only to ESEA/ESSA Section 1113(a)(4)(B) and ESEA/ESSA Section 1113(c)(1). As described above, the requested waiver will allow NYCDOE to provide Title I services to more students by continuing supports to all students in impacted schools, including students with disabilities and English Language Learners, for one additional year in a manner consistent with all other schools that receive Title I funds. Impacted schools will be served in a manner consistent with existing flexibilities outlined in Section 1113(b)(1)(C) and Section 1113(b)(1)(D).

Should you have any questions or need additional information, please feel free to contact me directly at (718) 722-2635.

Sincerely,

Ira Schwartz
Assistant Commissioner

cc: Sharon Rencher
Mary Ellen Elia
Jhone Ebert
Angelica Infante
Maxine Meadows-Shuford
Sisteria Spann
Jason Harmon

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