



Advocates for Children of New York

Protecting every child's right to learn

January 27, 2014

Commissioner John B. King, Jr.
New York State Education Department
89 Washington Avenue
Albany, NY 12344

Re: Comments on Proposed Amendments 5 and 6 to New York State's ESEA Flexibility Waiver for 2014-2015

Dear Commissioner King:

Advocates for Children of New York submits these comments regarding proposed Amendments 5 and 6 to New York State's ESEA flexibility waiver, which address testing for English Language Learners (ELLs) and a performance index for newly arrived ELLs, respectively. In general, we are supportive of proposed Amendments 5 and 6. However, we do have some concerns about their implementation and a few recommendations for strengthening the State's accountability system for measuring ELL growth and progress. We share our concerns and recommendations below. We also attach a joint report with the Asian American Legal Defense and Education Fund, "Effective Accountability Mechanisms for New York State's English Language Learners," which guides our comments below.

Amendment 5

We support the use of the revised Common Core-aligned New York State English as a Second Language Achievement Test (NYSESLAT) as a language arts accountability instrument for ELLs within two years of arrival. The NYSESLAT is a more accurate instrument than the English Language Arts (ELA) assessment for first- and second-year ELLs since it better reflects the instruction ELLs should receive in English as a Second Language (ESL) classrooms.

However, since the NYSESLAT was not designed to be an accountability instrument, the State should ensure that the revised NYSESLAT is scaled appropriately for accountability purposes. Recalibrating the NYSESLAT scoring system at the high school level is particularly needed, as it is currently very difficult for high school students to pass the NYSESLAT (e.g., exit from ELL status). For example, many students pass the ELA Regents and graduate high school without ever passing the

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NYSESLAT, and even some native English speakers may not be able to pass it under the current high school score cutoffs.

In addition, in order for the proposed changes to be meaningful, the State must ensure that the ESL curriculum taught to ELLs is fully aligned with both the Common Core and the revised NYSESLAT.

With respect to the State's plans to develop Native Language Arts (NLA) assessments in Spanish, we believe that NLA assessments will be more accurate measures of growth than ELA assessments for Spanish-speaking ELLs who are enrolled in bilingual education programs. In order for the NLA assessments to be meaningful, the State will need to ensure that all Spanish bilingual programs are content-aligned with the NLA assessments. We also urge the State to seek funding for NLA assessments for other languages so that all ELLs enrolled in bilingual programs have access to NLA assessments.

We are concerned that the proposed amendment will still result in some beginner and intermediate ELLs taking ELA assessments, even though they do not receive any ELA instruction. The ESL curriculum is not aligned to either general ELA standards or the ELA Regents examination. This is particularly problematic for long-term ELLs who remain at the beginner or intermediate levels for more than two years.

Finally, for all assessments used for ELL accountability purposes (including ELA, NLA and content assessments in other subjects), it is critical that these tests are content validated for ELLs to ensure assessments are appropriate based on research on language acquisition, bilingualism, and cultural competency.

Amendment 6

We support the development of an adjusted performance index for newly arrived ELLs and certain eligible longer-term ELLs who qualify. We believe it will be beneficial to have flexibility to take into account NYSESLAT proficiency level and demographic factors, such as years in ELL programs and Students with Interrupted Formal Education (SIFE) status. However, it will be necessary to ensure that the adjusted index is sufficiently rigorous so that students do not fall through the cracks and the State maintains high standards for ELLs.



We also encourage the State to provide stakeholders with the opportunity to provide further input concerning the qualifying requirements for longer-term ELLs and the mechanics of the adjusted index.

If you have any questions about our comments or would like to discuss them further, please contact Abja Midha at (212) 822-9502 or amidha@advocatesforchildren.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Midha', followed by a long horizontal line extending to the right.

Abja Midha
Project Director

cc: Members of the Board of Regents