



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 Amendment 1 to New York State's ESEA Flexibility Waiver for 2014-2015

Dear Commissioner King:

Advocates for Children of New York opposes proposed Amendment 1 to New York State's ESEA flexibility waiver, which seeks permission from the United States Department of Education to test students with disabilities below the grade level associated with their age.

As parent advocates, we understand the frustration with high-stakes standardized tests and share many of the concerns raised by families through the State. However, after much thought and discussion, we are opposing Amendment 1 because it will allow districts to maintain lower standards for students with disabilities and lower expectations for students with disabilities who are otherwise capable of making academic progress. To the extent that students with disabilities in New York State are failing to perform at a proficient level on state assessments, the appropriate response should be changes to their instructional programs and the level of intensity of their instruction so that they can reach grade level. By allowing for below-grade testing, the State is permitting districts to set lower standards for students with disabilities, which we fear will result in students being denied access to age-appropriate instruction. Over time, the denial of access to age-appropriate instruction will lead students with disabilities to fall further and further behind their peers and will decrease their chances of graduating with a high school diploma.

While we appreciate the State's efforts to outline participation criteria and procedural safeguards, the State's guidance is insufficient to effectively prevent the inappropriate use of the amendment. As we too often see in the alternate assessment context, students with disabilities are inappropriately placed on an alternate assessment "track" and are denied opportunities to access a general education. In the absence of adequate monitoring and oversight of the use of

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alternate assessments by the State, we do not believe the participation criteria or safeguards outlined in the State's proposal will be effective in preventing abuse of below-grade-level testing.

Furthermore, allowing schools to count the proficient and advanced scores of students tested below-grade level flies in the face of the intention of school accountability. It essentially permits schools to maintain lower standards and have lower expectations for students with disabilities. Although students with disabilities are not the only student population who struggle to reach grade level within a school year, the State is not proposing below-grade testing for other student populations. In targeting students with disabilities only, the State is inappropriately condoning lower standards for students with disabilities. In addition, the State's proposed limit on the number of proficient and advanced scores that may be used for accountability purposes is not sufficient for ensuring that students are not inappropriately tested below grade level since the proposal does not limit the number of students with disabilities who could be given a below-grade-level assessment.

We also note that the State has failed to provide parents and others with sufficient time to comment on this proposal. The public comment is only eleven days, including a national holiday. This is not enough time to reach out to parents and urge them to provide feedback on an issue of great importance to them.

We urge the State to withdraw Amendment 1 from its 2014-2015 ESEA flexibility waiver application.

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,

Abja Midha
Project Director

cc: Members of the Board of Regents