



Advocates for Children of New York

Protecting every child's right to learn

June 14, 2017

Ira Schwartz, Assistant Commissioner
Office of Accountability
New York State Education Department
55 Hanson Place, Room 400
Brooklyn, New York 11217

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Re: Public Comment on New York State Draft ESSA Plan

Dear Mr. Schwartz:

We are writing to share our comments on New York State's draft Every Student Succeeds Act (ESSA) plan. For over 45 years, Advocates for Children of New York has worked to ensure access to a quality education for all New York City students. Our comments below are based on our experiences working on behalf of students who are most likely to experience failure or discrimination in school because of poverty, disability, race, ethnicity, immigrant or English language learner (ELL)/multilingual learner (MLL) status, homelessness, sexual orientation, gender identity, or involvement in the child welfare or juvenile justice systems.

Assessments

Innovative Assessment Demonstration Authority

We support the New York State Education Department's (NYSED's) plan to apply for the Innovative Assessment Demonstration Authority. We urge you to include the development and support of high school performance-based assessments as part of the application. For some time now, Advocates for Children of New York and the Coalition for Multiple Pathways to a Diploma have been calling upon New York State to develop and support performance-based assessments as alternatives to Regents exams. Performance-based assessments provide students who struggle on high-stakes standardized tests, but who have otherwise mastered New York State



standards, the opportunity to demonstrate their knowledge and skills by completing a series of tasks/projects in contexts that are familiar and relevant to their high school experiences. In past conversations with policymakers, the dual use of the Regents exams -- meeting federal testing obligations and state exit exam requirements -- has been cited as one of the obstacles to pursuing the development of high school performance-based assessments. The Innovative Assessment Demonstration Authority program solves this issue by providing New York State with an opportunity to develop and support performance-based alternatives to the Regents exams that can be used to satisfy both federal testing obligations and New York State's own exit exam requirements.

In developing an application for submission to the United States Department of Education, we encourage NYSED's proposal for performance-based assessments to adhere to the following guiding principles:

- Align with college and career readiness standards and provide students with the opportunity to demonstrate their proficiency in relation to these standards;
- Offer clear rubrics and criteria for assessing student performance;
- Take into account the needs of students with disabilities and ELLs/MLLs;
- Provide students and families with the opportunity to take ownership over their own learning by choosing the assessments that they will complete;
- Provide students with multiple opportunities to complete their assessments. If proficiency is initially not demonstrated, students should be provided feedback and given additional opportunities to demonstrate proficiency(ies); and
- Use data on student performance on the assessments to help improve instruction.

Students with Disabilities Assessment Waiver

NYSED has indicated that it plans to request a waiver that would allow schools to administer below-grade-level assessments to students with disabilities consistent with students' level of instruction and to use these measurements towards accountability. As parent advocates, we understand the frustration with high-stakes standardized tests. However, we oppose below-grade-level testing 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 work towards grade-level proficiency. By allowing for below-grade testing, NYSED 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.

ELL/MLL Assessments

We continue to support NYSED's request for funding from the New York State legislature and Governor to translate New York State tests into additional languages and develop native language arts assessments so that ELLs/MLLs may fully participate in the annual assessment process.

95 Percent Participation Rate

We support NYSED's proposal to require schools and districts that have a consistent pattern of testing fewer than 95 percent of students in one or more subgroups to create a plan addressing institutional exclusion from testing. In order for schools and districts to be held accountable for the performance of historically lower-performing subgroups, it is essential that these students are not intentionally excluded from testing. To the extent that improvement plans will be required to increase participation of subgroups, these plans should be developed after the first year in which the participation requirement is not met, instead of waiting for persistent and substantial failure to meet the requirement. Parents of students in the subgroup or subgroups for whom the requirement was not met should be included in the plan development process.

Accountability System

School Quality/Student Success Indicator

We support the inclusion of chronic absenteeism as a school quality/student success indicator. Research has shown that schools with positive school climates have less



absenteeism.¹ Conversely, research has shown that students who feel unsafe at school are more likely to be absent from school.² Chronic absenteeism is also associated with a host of negative academic outcomes, including greater likelihood of having lower literacy skills, being held over a grade, being suspended, and dropping out of high school and even college.³

However, in implementing the use of the chronic absenteeism as an accountability indicator, we urge the State not to include students with extended medical absences so that students with disabilities who have health conditions are not stigmatized by negatively impacting this indicator.

Although we support the inclusion of chronic absenteeism, we are disappointed that school discipline data (i.e. in- and out-of-school suspensions, expulsions, and referrals to law enforcement) and student and parent surveys are not being included in the accountability system. We believe that the combination of all three indicators is necessary for there to be a truly robust measure of school climate. We support NYSED's plan to continue piloting school climate surveys across districts and urge you to revisit school discipline data and school climate surveys as potential indicators for inclusion in the accountability system once the infrastructure is in place to accurately collect discipline data from districts and roll out school climate surveys across New York State.

Finally, we support the creation of an advisory group to examine different school quality/student success indicators for potential future use. We urge NYSED to ensure that the advisory group includes diverse stakeholders, such as parents, students and groups that represent students with disabilities, ELLs/MLLs, overage youth, students in temporary housing, students involved in the child welfare system, and court-involved youth.

¹ Thapa, A., Cohen, J., Higgins-D'Alessandro, A., Guffey, S. "School Climate Research Summary: August 2012," *National School Climate Center* (2012), <https://www.schoolclimate.org/climate/documents/policy/sc-brief-v3.pdf>.

² Sparks, S. "Absenteeism Connects School Climate and Student Achievement," *Inside School Research - Education Week* (October 26, 2016), http://blogs.edweek.org/edweek/inside-school-research/2016/10/absenteeism_school_climate_student_achievement.html (citing Lacoë, J. "Too Scared to Learn? The Academic Consequences of Feeling Unsafe in the Classroom," *Urban Education* (2016)).

³ "Preventing Missed Opportunity: Taking Collective Action to Confront Chronic Absence," *Attendance Works and Everyone Graduates Center* (2016), http://www.attendanceworks.org/wordpress/wp-content/uploads/2016/08/PreventingMissedOpportunityFull_FINAL9.8.16_2.pdf.



Timeline for ELLs/MLLs to Achieve English Language Proficiency

We are disappointed that NYSED is proposing to use a three-to-five-year timeline for ELLs/MLLs to achieve English proficiency. Research has shown that it can take ELL/MLLs four to seven years to achieve academic English proficiency.⁴ Given that certain ELL/MLL populations, such as students with informal/interrupted education (SIFE), older ELLs/MLLs, and students with disabilities, may require more time to become English proficient, we recommend that the timeline be extended to account for the additional time that these student subpopulations might require. With a three-to-five-year timeline, we are concerned that schools will be less willing to serve these subpopulations and that students will be pushed out or discouraged from enrolling, as has been our experience in New York City. Instead, we recommend extending the timeline to six years for student subpopulations that are known to require more time, such as SIFE, older ELLs/MLLs, and students with disabilities.

N-Size

Under ESSA, New York State must identify the minimum number of students (n-size) that states will use for accountability and reporting purposes. We are concerned that NYSED intends to use an n-size of 30 for accountability purposes. We strongly urge you to lower the n-size to 10. A relatively low maximum n-size is necessary to ensure meaningful subgroup accountability, particularly at the school level. For example, according to an Institute of Education Sciences study from 2013, only 55.7 percent of schools in New York State were held accountable for students with disabilities using an n-size of 30.⁵ An n-size of 10 allows for the protection of student privacy and fulfills the need for statistic reliability while ensuring that schools with smaller subgroup populations are still held accountable for subgroups' performance.⁶

⁴ Hakuta, K., Goto Butler, Y., and Wu, D. "How Long Does It Take English Learners to Attain Proficiency," *The University of California Linguistic Minority Research Institute* (January 2000).

⁵ "The Inclusion of Students with Disabilities in School Accountability Systems: An Update," *Institute of Education Sciences* (October 2013), <https://ies.ed.gov/ncee/pubs/20134017/pdf/20134017.pdf>.

⁶ "Ensuring Equity in ESSA: The Role of N-Size in Subgroup Accountability," *Alliance for Excellent Education* (June 2016), <http://all4ed.org/wp-content/uploads/2016/06/NSize.pdf>.



Extended-Year Adjusted Cohort Graduation Rate

We support NYSED's plan to include 4, 5, and 6 year graduation rates for purposes of identifying schools in need of improvement. In our experience, only counting 4 year graduation rates penalizes schools that serve student subpopulations that may require more than 4 years to graduate from high school, such as ELLs/MLLs, over-age/under-credited youth, and students with disabilities. By taking into account 4, 5 and 6 year graduation rates, New York State will remove a disincentive for schools to serve these populations.

At the same time, we recognize that even with the inclusion of 5 and 6 year graduation rates, transfer schools in New York City will be penalized for serving students who are several years behind. These schools play a critical role in engaging and educating students who typically have no other options. We urge NYSED to approach this issue as it has in the past, utilizing a customized accountability system that accounts for transfer schools serving the neediest students in New York City.

Comprehensive & Targeted Support and Improvement Plans

Parent and Student Involvement

Although NYSED's draft plan recognizes the important role that parents play in the improvement process, we believe stronger measures should be included in order to ensure meaningful parent and student engagement in the development and implementation of improvement plans. We urge NYSED to reject district plans that do not provide for meaningful parent participation in their development.

With respect to the needs assessment that must take place, the plan is silent on the role of parents and students. Parents and students have an important role to play in any needs assessment, and districts and schools should be required to incorporate their feedback. In particular, districts and schools should ensure that parents of and students from identified low-performing subgroups are involved in the process.

We support NYSED's plan to involve parents in some of the budgetary decisions of identified schools. We also support the use of parent and student surveys. In order for all parents and students to have the opportunity to meaningfully participate in the school improvement process, we recommend that the State include provisions for districts and schools to provide translation and interpretation services for parents and students in connection with improvement plan-related activities.



Student with Disabilities

Although more than twenty pages of the draft plan are devoted to New York State's expectations for schools in need of improvement, barely any mention is made of the steps that will be expected of schools to address the needs of students with disabilities. To the extent that the performance of students with disabilities is a reason why schools are identified for improvement, the plan should pay greater attention to this student population.

School Climate as a Part of Support and Improvement Strategy

Although the federal government is no longer requiring states to include school climate in needs assessments, we recommend that New York State still require identified schools to analyze indicators such as discipline data and to include strategies to promote positive school climate in their improvement plans. These improvement plans should strive to reduce exclusionary discipline practices (e.g., teacher's removals, suspensions, expulsions, arrests, summonses, and unnecessary EMS referrals) and disproportionality in discipline across race, gender, and disability. Schools and districts should also be encouraged to include requests for funding to implement restorative practices and school-wide positive behavioral interventions and supports (SPBIS) in improvement plan requests.

Supporting all Students

Family Engagement

We appreciate NYSED's commitment to promoting family engagement and providing capacity-building resources and professional development for district and school staff who interact directly with families. In particular, we support NYSED's plans to develop guidelines for engaging families of all student subgroups, including families of immigrant students, ELLs/MLLs, and homeless students.

Social-Emotional Wellness and Discipline

We support NYSED's plan to provide training for school counseling and pupil personnel services staff in Adverse Childhood Experiences (ACEs) and restorative practices, and to develop guidance for schools on best practices for student discipline to reduce disproportionate suspension and exclusion policies.



Neglected and/or Delinquent Students

We support NYSED's plan to convene an advisory group to develop a transition plan that facilitates neglected and/or delinquent students receiving access to New York State curriculum instead of high school-equivalency focused programming. We encourage SED to include stakeholders in this advisory group, including families and organizations serving this population of students.

McKinney-Vento Homeless Assistance Act

We support NYSED's plans for serving homeless children and youth pursuant to the McKinney-Vento Homeless Assistance Act, Title VII, Subpart B.

We thank you for taking our comments into consideration. If you have any questions about our recommendations or would like to discuss them further, please contact Kim Sweet at (212) 822-9514 or ksweet@advocatesforchildren.org or Abja Midha at (212) 822-9502 or amidha@advocatesforchildren.org.

Sincerely,

A handwritten signature in black ink that reads "Kim Sweet".

Kim Sweet
Executive Director

A handwritten signature in black ink that reads "Abja Midha".

Abja Midha
Project Director

cc: Commissioner MaryEllen Elia
Senior Deputy Commissioner Jhone Ebert
Deputy Commissioner Angelica Infante-Green
Members of the Board of Regents