



Advocates for Children of New York

Protecting every child's right to learn

August 17, 2018

Dr. Lisa Long
New York State Education Department
Office of Accountability
55 Hanson Place, 4th Floor
Brooklyn, NY 11217
Via e-mail: ESSAREGCOMMENT@nysed.gov

Board of Directors

Eric F. Grossman, *President*
Jamie A. Levitt, *Vice President*
Harriet Chan King, *Secretary*
Paul D. Becker, *Treasurer*
Matt Berke
Jessica A. Davis
Lucy Fato
Robin L. French
Brian Friedman
Kimberley D. Harris
Caroline J. Heller
Maura K. Monaghan
Jon H. Oram
Jonathan D. Polkes
Steven F. Reich
Veronica M. Wissel
Raul F. Yanes

Executive Director
Kim Sweet

Deputy Director
Matthew Lenaghan

Re: Implementation of New York's Approved ESSA Plan to Comply with the Provisions of the Every Student Succeeds Act

Advocates for Children of New York (AFC) appreciates the opportunity to comment on the proposed amendments to the regulations regarding New York's Every Student Succeeds Act (ESSA) accountability system. For more than 45 years, AFC has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. Every year, we help thousands of New York City parents navigate the education system. This work includes assisting students facing school suspensions, students with disabilities, and students in temporary housing. As a result, we are well-positioned to comment on these proposed changes. In light of the feedback and comments we have provided on New York's proposed ESSA accountability system previously, we are limiting our comments to two provisions of the proposed amendments that we hope the State Education Department will strengthen.

Out-of-School Suspension Rate Definition (§ 100.21(b)(2)(xi))

We have several concerns about the proposed definition of "out-of-school suspension rate" and recommend that the State Education Department use an alternative calculation that better captures the amount of instructional time students are missing due to suspensions.

First, the proposed regulation provides a definition of suspension rate that does not account for the length of suspensions. Thus, two schools that suspend the same number of students for different lengths of time would be counted the same. For



example, under the proposed definition, a school that suspends 10 students for 1 day would not be distinguished from a school that suspends 10 students for 180 days (a full school year). Given the harm of lengthy suspensions to students and the research showing that Black students are more likely to receive longer suspensions for similar infractions, the State’s calculation of suspension rates should account for the length of suspension.

Second, the proposed definition of suspension rate does not account for students who get suspended multiple times in the school year. Thus, two schools that suspend the same number of students a different number of times would be counted the same. For example, under the proposed definition, a school that suspends 5 students 3 times each totaling 15 times in the school year would not be distinguished from a school that suspends 5 students one time each totaling 5 times; the proposed suspension rate calculation would consider each school to have given 5 suspensions. We have worked on cases in which schools have suspended the same student, typically with a disability, many times over the course of the school year instead of determining how to better support the student at school. Ensuring that the suspension rate definition accounts for multiple suspensions of the same student would provide schools with an incentive to address the underlying causes of the behavior that gave rise to the first suspension rather than merely resorting to multiple suspensions. Given that the State’s proposed regulatory language indicates that the State is seeking to identify schools that have “excessive rates of student suspensions,” the calculation of suspension rates should account for schools that are suspending students multiple times.

Third, the proposed definition of suspension rate excludes “in-school suspensions” even though neither state law nor regulations provide for such a distinction. Although current regulations require school districts to report student “out-of-school suspensions” for each school,¹ there is no definition of “out-of-school suspensions” in the current or proposed regulations. Therefore, school districts are left to determine which suspensions constitute “in-school” versus “out-of-school” suspensions, resulting in inconsistent data reports to the State. Moreover, New York State law requires districts to provide *alternative instruction elsewhere* during suspensions of any length. Regardless of whether a student remains in the same school in an administrator’s office or in another classroom, for example, while on suspension or is sent to another school or site while on suspension, the student is still missing valuable instruction time from their regular program and classroom. Therefore, we

¹ The current regulations provide: “(3) Each school district shall submit the following data at a time and in a format prescribed by the commissioner: ... (viii) student out-of-school suspensions for each school.” N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(bb).



recommend that the regulation exclude any reference to “in-school” and “out-of-school” in the suspension rate definition, title, and related subsections of the regulation.

We recommend modifying the definition of suspension rate to measure the total number of instructional days lost due to suspensions that exclude students from their regular program and classroom regardless of whether the student remains in the same school or is sent to another one. "Instructional Days Lost" should include any time a student is suspended from school and does not receive regularly programmed instruction in their regular classroom. We also recommend counting any suspension that causes a student to miss more than 50 percent of their regularly programmed instruction in their regular classroom in a day as a full-day suspension for purposes of calculating Lost Instruction Time to reflect the significant amount of classroom instruction missed that day. To account for schools of different sizes, the measure should be expressed as a "per 100 students" metric, using BEDS Day Enrollment numbers. Such an indicator would be responsive to the various suspension scenarios at different schools. It would also be linked to a metric - instructional time - closely related to student outcomes. Furthermore, the measure would better capture longer and more frequent suspensions (which Black students and students with disabilities receive disproportionately), neither of which is captured sufficiently by the current definition. This measure would more accurately capture high rates of student suspensions in schools across the State.

We urge the Regents to amend subsection (xi) to read as follows:

The suspension rate shall mean the total number of Instructional Days Lost due to suspensions during the school year per 100 students. An “Instructional Day Lost” shall be defined as any day in which a student suspended from school misses 50 percent or more of the day’s regularly programmed instruction in their regular classroom, regardless of the type of suspension or the physical location of the suspension. Each suspension (and its corresponding Instructional Days Lost) shall be calculated separately towards this rate, regardless of whether the student has been suspended previously during the school year or whether other students are suspended on the same day. This suspension rate shall be calculated as the total number of Instructional Days Lost during the school year, divided by the number of students enrolled on BEDS day of that school year, multiplied by 100, commencing with data collected for the 2017-2018 school year, which shall in the future be incorporated into the accountability system within a timeframe prescribed by the Commissioner.



Chronic Absenteeism Rate Definition (§ 100.21(f))

We have two recommendations to help strengthen the calculation of chronic absenteeism.

First, we are concerned that the proposed calculation of chronic absenteeism for elementary schools does not account for the attendance of kindergarten students. While kindergarten is not compulsory statewide, schools should be striving to ensure that students who enroll in kindergarten attend school on a regular basis, particularly given the importance of early childhood education. Students who are chronically absent from kindergarten miss out on learning key skills as evidenced by the robust kindergarten standards laid out in the New York State Next Generation Learning Standards. An elementary school's strategies for addressing chronic absenteeism should target students of all grades, and the State should ensure that it does not unintentionally create an incentive for a school to focus only on students who are in first grade and above. We strongly recommend that the Regents amend §100.21(f)(1) to state that, at the elementary/middle school level, chronic absenteeism is calculated for grades *Kindergarten-8* and ungraded age equivalent students.

Second, we are concerned that the State is proposing to calculate chronic absenteeism only at the school level. Such calculations may mask the chronic absenteeism of highly mobile students, such as students in temporary housing, who may transfer schools multiple times over the course of a school year. For example, a student who is absent for nine days from one school within the district and then nine days from another school within the same district in the same school year would not be counted among students who are chronically absent in a school-based calculation. We recommend that the Regents amend § 100.21(f) to add a district-level calculation of chronic absenteeism and ensure that the district measure of interim progress accounts for the district-level calculation of chronic absenteeism.

Thank you for considering our comments. If you have any questions, please feel free to contact Dawn Yuster, School Justice Project Director, at 212-822-9542 or dyuster@advocatesforchildren.org or Randi Levine, Policy Director, at 212-822-9532 or rlevine@advocatesforchildren.org.