



**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234**  
Office of Elementary, Middle, Secondary and Continuing Education

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Ira Schwartz, Assistant Commissioner - Accountability  
Office of School Improvement and Community Services (NYC)  
55 Hanson Place, Room 400  
Brooklyn, New York 11217  
Tel. (718) 722-2796 / Fax: (718) 722-4559

June 18, 2010

Dr. Thelma Meléndez de Santa Ana  
Assistant Secretary  
Elementary and Secondary Education  
United States Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Dr. Meléndez de Santa Ana:

I am writing on behalf of New York State (NYS) to request a one-year waiver of the Title I, Part A requirement for a local educational agency (LEA) to provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the school year (34 C.F.R. § 200.37(b)(4)(iv)) and to the requirement that LEAs provide notice of public school choice before the start of the year (20 USC § 6316(b)(1)(E)(i)). This waiver would apply only with respect to students in schools that are identified for improvement and newly required to offer public school choice for the 2010-2011 school year or that could possibly have exited improvement, corrective action, or restructuring for the 2010-2011 school year but did not and would permit the LEA to wait until AYP determinations are available after the start of the school year, before providing parents of eligible students notice of their public school choice options.

New York seeks a waiver of these provisions because the New York State Education Department (NYSED) has revised the 2009–2010 New York State Testing Program (NYSTP) Grades 3–8 English Language Arts (ELA) and Mathematics assessments in accordance with federal recommendations to cover more content and to be less predictable, as well as to become better indicators of proficiency and a more useful tool in preparing college and career-ready students. This revision has resulted in NYSED changing the administration dates of the Grades 3-8 Testing Program from January (ELA) and March (math) to May to better measure student growth from year-to-year and necessitates a series of studies, including the revision of cut scores, to ensure that valid and reliable information is returned to school districts, parents, and students.

To facilitate the process, NYSED has asked members of its Technical Advisory Group, Daniel Koretz and Howard Everson, to conduct a set of validity studies to also inform the cut score revision process. These studies include: 1) an analysis of student performance from the Grade 8 exams to corresponding Regents end-of-course commencement-level exams; 2) an analysis of student performance in Grades 4 and 8 compared to performance on National Assessment of Educational Progress (NAEP); and 3) an analysis of student performance on the commencement-level exams and the college remediation rates in the City University of New York. These validity studies will assist the Commissioner of Education and Board of Regents in determining how current cut scores impact student achievement and establishing new cut scores.

To accomplish these tasks, assessment results that would have been available in late June 2010 will not be available until the week of July 26, 2010 at the earliest. Therefore, NYSED is seeking an extension to November 4, 2010 (see timeline below) for the public release of 2010–2011 accountability status determinations for elementary/middle schools to accommodate this delay.

<b>Deliverable</b>	<b>Activity</b>	<b>Dates</b>
Review HS AYP Data	High School (HS) preliminary AYP determinations released to districts and schools	1-Jul-10 8-Jul-10 15-Jul-10 22-Jul-10 29-Jul-10 5-Aug-10
HS Data Verification	HS data verification process completed	30-Jul-10
3-8 ELA/Math Score Release	Grades 3-8 ELA/Math Score Release	5-Aug-10
HS Preliminary Accountability Status Notification	HS statuses (based on July 30 data) to be used to provide parental notifications released to districts and schools	24-Aug-10
Review 3-8 ELA/Math AYP Data	Grades 3-8 preliminary AYP determinations released to districts and schools	19-Aug-10 16-Sep-10 23-Sep-10 30-Sep-10 7-Oct-10
Final Data Verification (All Data)	Grades 3-8 and HS data verification process completed	1-Oct-10
Public Notification of Accountability Status List	Grades 3-8 and HS Accountability Status Lists made public	4-Nov-10

Please note that while we plan to make Grade 3-8 and HS accountability lists public simultaneously, LEAs will receive high school accountability data in sufficient time to notify parents of public school choice options at least 14 days prior to the start of the school year. For grade 3-8 results, LEAs will have the data necessary to begin making decisions about public school choice by August 19<sup>th</sup>. In order to allow schools sufficient resources to prepare for the opening of the school year during the end of August and the beginning of September, elementary- and middle-level schools will not be expected to finalize the verification of these data until October 1, 2010.

NYS would not be able to ensure that all LEAs within the State are able to comply with the notice requirements because SED will not be able to provide LEAs with final grade 3-8 ELA and math accountability determinations until after the start of the school year.

For these reasons, a waiver of the notice requirements is necessary to give NYS and its LEAs sufficient time to carry out the assessment timeline as planned and thereby ensure statistically valid and reliable AYP determinations. NYS must be able to ensure valid and reliable AYP determinations so that schools and LEAs can properly implement school improvement activities to increase the quality of instruction for students and ultimately improve the academic achievement of students.

NYS has set the following annual measurable objectives (AMOs) in reading and mathematics for the 2009–2010 and 2010–2011 school years:

Annual Measurable Objectives for 2010-2011  
Status Based on 2009–2010 School Year Results

<b>Subject</b>	<b>AMO</b>
ELA 3-8	155
Math 3-8	135
HS ELA	177
HS Math	173

Annual Measurable Objectives for 2011–2012  
Status Based on 2010–2011 School Year Results

<b>Subject</b>	<b>AMO</b>
ELA 3-8	167
Math 3-8	152
HS ELA	183
HS Math	180

NYS will determine adequate yearly progress (AYP) based on assessments administered in the 2009–2010 and 2010–2011 school years in accordance with the requirements of 20 USC §6311(b)(2) and its approved Differentiated Accountability plan. As stated above, NYS believes that providing NYS with the time necessary to carry out its assessment timeline as planned will allow the State to ensure that school improvement decisions for the 2010–2011 school year are based on valid and reliable AYP determinations.

Prior to submitting this waiver request, NYS provided all LEAs in the State with notice and a reasonable opportunity to comment on this request. NYS provided such notice by consulting with its Committee of Practitioner’s, providing notification to District Superintendents, School Superintendents, Charter School Administrators, and Title I Coordinators. An electronic copy of the notification is available at the following website: <http://www.emsc.nysed.gov/nyc/APA/Memos/NCLBWaiverPubSchChoicePubCommentMemo.pdf>. Copies of all comments that NYS received from LEAs in response to this notice are attached hereto. NYS has also provided notice and information regarding this waiver request to the public in the manner in which NYS customarily provides such notice and information to the public by posting information regarding the waiver request on its Web site. (See attached copy of public notice).

NYS hereby assures that, if it is granted the requested waiver, it and its LEAs will meet the following conditions:

- LEAs within the State will provide notice of public school choice less than 14 days before the school year only with respect to students in schools that are in improvement that are newly required to offer public school choice for the 2010–2011 school year (based on results of assessments administered in the 2009–2010 school year) or that could possibly have exited improvement, corrective action, or restructuring for the 2010–2011 school year (based on results of assessments administered in the 2009–2010 school year) but did not;
- All LEAs within the State will comply with the 14-day notice requirement with respect to students in those schools that are already identified for improvement, corrective action, or restructuring, cannot exit that status for the 2010–2011 school year, and must offer public school choice;
- The State will encourage such LEAs to provide notice of public school choice as early as possible and, ideally, at least 30 days before the start of the school year;
- LEAs that offer public school choice earlier to students in some schools than to students in other schools will reserve a portion of the available transportation slots for students in the schools who receive the later notice, in accordance with the Department’s Public School Choice Non-Regulatory Guidance; and
- The State will take all steps necessary to ensure that its assessment schedule and test vendor contract for the 2010–2011 school year (and beyond) will permit LEAs within the State to provide notice of public school choice sufficiently in advance of, but no later than 14 days before, the start of the 2011–2012 school year (and all subsequent school years).

NYS will ensure compliance with these conditions by providing appropriate guidance regarding these conditions to its LEAs. To assist LEAs whose school improvement status requires that they provide parental notification of options for public school choice prior to the start of the 2010–2011 school year, in June 2010 NYSED will provide LEAs with a notification of the potential 2010–2011 AYP status determinations for their schools based on prior year’s performance. In most cases, LEAs can use this information to determine whether a school will or will not need to provide public school choice in the 2010–2011 school year before final 2009–2010 AYP determinations become available.

In addition, as noted, NYSED will provide accountability status determinations to high schools not affected by the revised New York State Testing Program (NYSTP) Grades 3-8 ELA and mathematics assessments. These determinations will be based on data reported by high schools as of July 30, 2010, and will be used to comply with parental notification requirements regarding public school choice in the 2010–2011 school year.

NYS further assures that, if it is granted the requested waiver, it will submit to the U.S. Department of Education, by September 30, 2011, a report that provides the total number of LEAs within the State that had schools that entered or exited improvement status in the 2010–2011 school year, and the total number of LEAs within the State that took advantage of the waiver and provided some parents notice of public school choice less than 14 days before the start of the 2010–2011 school year.

Please feel free to contact Mr. Roberto Reyes, Title I Director, by phone at (518) 486-5616 or email at [rreyes@mail.nysed.gov](mailto:rreyes@mail.nysed.gov). if you have any questions regarding this request. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Ira Schwartz". The signature is written in black ink and is positioned to the right of the typed name.

Ira Schwartz

Enclosure

cc: David Steiner  
John King  
Roberto Reyes  
Sandra Norfleet