

**ESEA Flexibility Waiver Amendment Requests
Submitted to the United States Department of Education
8/07/14**

**1: Amendments Regarding Testing Requirements for
Students with Disabilities**

Flexibility Element(s) Affected by the Amendment

1.C Develop and administer annual, statewide, aligned, high-quality assessments that measure student growth.

Brief Description of the Element as Originally Approved

See pages 36 – 37. Originally, the State did not propose a waiver for the assessment of students with disabilities. The proposed amendment is referenced on page 94-95 of the redlined waiver proposal.

Brief Description of the Requested Amendment

For the grades 3-8 State assessments currently in use, and until such time as NYSED transitions to adaptive testing, NYSED is requesting approval to more appropriately assess, for instructional, growth and State accountability purposes, the performance of a small subgroup of students whose cognitive and intellectual disabilities preclude their meaningful participation in chronological grade level instruction. These are students who have significant intellectual delays and substantial difficulties in cognitive areas such as memory, language comprehension, reasoning and problem-solving, but who do not meet the State's definition of a student with a severe disability (most significant cognitive disability) appropriate for the State's alternate assessment. These students are likely to be able to meet the State's learning standards over time and make progress in the same curriculum and assessments, but are not likely to reach grade-level achievement in the time frame covered by their individualized education programs (IEP). When students with disabilities are required to participate in an assessment at their chronological age that is significantly misaligned with content learned at their instructional level, the assessment does not provide meaningful accountability, instructional or growth information for purposes of teacher and leader evaluations.

Through this waiver, NYSED requests permission to:

1. Allow school districts to administer the general State assessments to identified students with disabilities (see eligibility criteria below), but at their appropriate instructional grade levels, provided that (1) the State assessment administered to the student is not more than two grade levels below the student's chronological grade level; and (2) the student is assessed at a higher grade level for each subsequent year; and
2. Allow the proficient and advanced scores of those students assessed in accordance with their instructional grade levels to be counted at Level 2 for accountability purposes, provided that the number of those scores at the local

educational agency (LEA) and at the State levels, separately, does not exceed .7 percent of all students in the grades assessed in English language arts (ELA) and 1.5 percent of all students in the grades assessed in mathematics.

Eligibility Criteria: Eligibility determinations would be made on an individual basis by the Committees on Special Education (CSEs), which include the parents of students with disabilities. Consideration of eligibility would be limited to students who meet each of the following six criteria:

1. For initial eligibility, students who performed at Level 1 on their most recent State chronological grade State assessment with a raw score, determined by the State, that indicates that at the 90 percent confidence level, the students' correct responses on the assessment questions were based on chance responses **or** students who in the prior year were administered the New York State Alternate Assessment (NYSAA);
2. Students whose individual evaluation information identifies that the student has significant intellectual delays and substantial difficulties in cognitive areas such as memory, language comprehension, reasoning and problem-solving, where the CSE finds that these disability factors are the determinant reasons that the student is not able to reach grade level proficiency in his/her chronological grade level;
3. Students for whom the CSE has determined that, even with extensive modifications to curriculum, instruction and assignments, the student would fail to achieve chronological age-level proficiency;
4. Students whose classroom performance and other achievement data over at least a two-year period of time using multiple valid measures reflecting formal assessment of student progress during instruction (such as benchmark assessments, progress monitoring assessments, and/or standardized norm-referenced tests of achievement) substantiates the student's instructional level of performance and demonstrates that the student's lag in achievement is not due to a lack of appropriate instruction in reading or mathematics; and
5. Students who do not meet the definition of a student with a severe disability who is eligible for the NYSA.
6. Exclusionary factors: The CSE may not recommend a student for an instructional level assessment based on any of the following factors: the student's intelligence quotient (IQ); disability category; language differences; lack of appropriate instruction in reading and/or math; excessive or extended absences from instruction; cultural or environmental factors; factors related to sensory, motor or emotional disabilities; lack of access to appropriate instructional materials, including assistive technology devices or services; and/or the student's placement where his/her IEP is being implemented.

Determining instructional grade level: If approved, the State would provide guidance to the CSE on how to identify a student's instructional grade level, separately for ELA and math. Such criteria and guidance would include, but not necessarily be limited to:

- a. Annual determinations of instructional grade level;
- b. Separate determinations for ELA and math; and
- c. Determinations based on objective data, in consideration of the results of both standardized and informal inventories of student achievement and data over at least a two-year period of time.

As such, for example, a student could be determined as eligible to participate in an instructional level assessment for math, but not for ELA; and the student could be assessed at two grade levels below his/her chronological grade in one year, but only one year below in the subsequent year.

Maintaining high and appropriate expectations: By requiring that the student participate in the regular State assessment (and not a modified or alternate assessment) and by setting limits on how far below the student's chronological age the student may be assessed and that the student be assessed at the next higher grade level in each subsequent year, the State is maintaining high and appropriate expectations for students to progress and be able to demonstrate their progress in the general education curriculum while also providing the opportunity to generate instructionally meaningful results for these students.

Accountability: Based on actual student performance on the 2012-13 CCLS aligned State assessments, the State has calculated the percentage of students with disabilities who achieved a score that reflects that the student's responses were at the chance level (i.e., that the student's correct responses were based on guessing). For ELA, this calculated to be 8,053 out of 186,529 students with disabilities, or .68 percent of all students tested. For math, this calculated to be 17,441 out of 186,636 students with disabilities tested, or 1.47 percent of all students tested. Therefore, .7 and 1.5 percent would be established as the limits for the percentage of students whose proficient and advanced scores could be counted for partial credit for accountability purposes.

Procedural safeguards for students with disabilities: The State will require that, prior to each annual review meeting, parents are notified if the purpose of the meeting is to consider the student for an instructional level assessment and that prior written notice of the CSE's recommendation that the student participate in the instructional level test provide parents with reasons for the recommendation and inform them of their right to disagree with the CSE's recommendation and pursue due process.

Public Reporting: The Department will annually publicly report statewide and LEA information on the number and percent of students with disabilities who participate in the instructional level assessment, disaggregated by grade level, subject and race/ethnicity.

Notes:

- This waiver is proposed as a transitional process to be in effect until such time as adaptive testing in NYS is available to students in grades 3-8.
- Until an 'augmented' third grade assessment is developed, the waiver would apply to students in grades 4-8 only. Students who are chronologically grade 3 would participate in the grade 3 State assessment.
- The request for instructional level testing does not apply at the high school level.

Rationale

Until the State can develop and implement adaptive assessments, NYSED requests to more appropriately assess, for instructional and State accountability purposes, the performance of students with significant cognitive disabilities who cannot, because of the severity of their disabilities, participate in chronological grade level instruction. These students, while they do not meet the State's definition of a student with a significant cognitive disability appropriate for the State's alternate assessment, will likely be able to meet the State's learning standards over time. However, these students need to be provided with instruction with special education supports and services at a pace and level commensurate with their needs and abilities and their individual rates of learning. When students with disabilities are required to participate in an assessment at their chronological age significantly misaligned with content learned at their instructional level, the assessment may not provide as much instructionally actionable information on student performance or foster the most prudent instructional decisions. For these students, State assessments also do not provide meaningful measures of growth for purposes of teacher and leader evaluations.

NYSED holds all schools and students to high expectations and believes this waiver will lead to more appropriate assessment of a subgroup of students with disabilities, while ensuring that students with disabilities participate in the general curriculum and the same State assessments, but closer to their instructional levels, in order to obtain instructionally relevant information from the assessments.

The waiver will support continued focus on ensuring students with disabilities graduate college- and career-ready by ensuring more meaningful State assessment results; support efforts to improve all schools in the State; and support closing of achievement gaps between student subgroups by better identifying the subgroups of students with disabilities and their performance levels.

Process for Consulting with Stakeholders and Summary of Comments on the Students with Disabilities Assessment Waiver Request

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding to the requirements of the Renewal application. During the first week of November, an external "Think Tank" was convened, and members were asked to be thought partners with the Department as it drafted its response to the renewal requirements. A large

portion of the members of the ESEA Renewal Think Tank also participated in the original ESEA Waiver Think Tank that guided the creation of New York State's approved ESEA Waiver application. To date, The ESEA Waiver Renewal Think Tank has met six times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited feedback on the waiver through meetings with a wide variety of organizations, including the Commissioner's Advisory Panel for Special Education (of which the majority of members are parents of students with disabilities and individuals with disabilities), representatives of each of the State's 13 Special Education Parent Centers and federal Parent and Training Information Centers (PTIs), Title I Committee of Practitioners, the English Language Learners Leadership Group, the DTSDE Training Group, and the District Superintendents. SED staff have spoken with the following national groups: National Association of Learning Disabilities; Education Trust; National Association of State Directors of Special Education; Learning Disabilities Association; Council for Advancement and Support of Education; Council on Exceptional Children; lawyers working on the Children's Online Privacy Protection Act; ACCSES (which represents 1,200 disability service providers across the country); Easter Seals; National Disability Rights Network; and the National Council on Learning Disabilities.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were being accepted were posted on the State Education Department's website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank by the Office of Accountability.

Throughout this process, Department staff evolved the proposed waiver to address stakeholder concerns and recommendations. This waiver request has been revised based on comments and recommendations from parents, advocacy organizations, school personnel and others. A detailed summary of the comments received is attached (Attachment I).

2: Amendment Regarding Testing Exemption for English language learners and Creation of a Native Language Arts Assessment

Flexibility Element(s) Affected by the Amendment

1.C. Develop and administer annual, statewide, aligned, high-quality assessments that measure student growth.

Brief Description of the Element as Originally Approved

See pages 36 – 37. Originally, the State did not propose a waiver for the assessment of English language learners. This proposed amendment is referenced on page 95 of the redlined waiver.

Brief Description of the Requested Amendment

NYSED is applying for a waiver to better capture and measure growth in language arts for ELLs. NYSED is not seeking a waiver from math testing requirement for ELLs. The State currently relies exclusively on the English language arts assessments to make language arts accountability determinations for ELLs. The State is proposing a new approach that will exempt a subgroup of ELL students from taking the English language arts assessment, either because they are newly arrived or because they can demonstrate language arts knowledge and skills on a Native Language Arts assessment.

NYSED is applying for a waiver to:

1. Exempt newly arrived ELLs from participating in the ELA assessments for two years.
2. Create Spanish Language Arts assessments and allow districts to offer this assessment as a local option when it would best measure the progress of Spanish-speaking ELLs.

NYSED has historically allowed newly arrived ELLs to be exempt from ELA testing for their first year of instruction. In light of the new Common Core Learning Standards, NYSED seeks to extend this exemption to two years in order to afford ELLs the time needed to acquire a sufficient level of English such that they can demonstrate their knowledge and skills on the Common Core ELA assessments. This exemption will allow New York State to better measure the progress of ELLs by utilizing the New York State English as a Second Language Achievement Test (NYSESLAT) as a way of measuring ELL progress in the first two years of their instruction in the United States. By extending the exemption for one additional year, districts would be given sufficient time to work intensively with ELLs to develop their English language skills without being held accountable for results on an ELA assessment that will not sufficiently capture those instructional gains in developing the English language needed to meaningfully participate in the Common Core.

In addition to extending the exemption from the ELA assessments for newly arrived students, New York State has a sizable ELL population and a strong tradition of innovative native language arts educational initiatives. Yet, the State's accountability

system has historically relied on ELL students taking assessments only in English, e.g., the NYSESLAT (a test of English proficiency) and (in most cases) the State's ELA Grade 3-8 and English Regents (high school) exams, to determine their progress in language arts.

Although NYSED does not foresee a change to the State's accountability system during the 2014-15 school year pertaining to use of native language arts assessments, NYSED has been extensively investigating with other states the possibility of developing a new Common Core native language arts assessment program that will initially be in Spanish beginning in the 2015-16 school year, and may extend to other language groups thereafter.

If NYSED and partner states are able to secure funding to develop a new Common Core native language arts assessment program¹, NYSED will seek to incorporate the new assessment into the State's accountability plans beginning in the 2015-16 school year at the earliest. The State would offer this assessment as a local option to districts to allow Spanish-speaking ELLs who have attended school in the United States for less than three consecutive years to be tested in Spanish in lieu of the ELA assessment, and on a case by case basis, for an additional two years in Spanish if such an assessment would better allow the student to demonstrate their knowledge of language arts.

Rationale:

ELLs, by virtue of the definition that identifies these students as developing in their understanding and use of English, have a limited ability to demonstrate what they know and can do on the English language arts assessments, even with accommodations. Unlike accommodations provided to ELLs on other content area assessments, such as math, translations of the ELA assessments are not provided to ELLs. Any progress in language development, therefore, is not captured by the ELA assessments, which require a high level of English language development in order to demonstrate knowledge and skills on the assessments. However, if given the opportunity to demonstrate their knowledge and skills of language arts in their native language, these students will make significant progress in language development, which will prepare them to be successful on the ELA exams.

The NYSESLAT exam is an appropriate exam for newly arrived ELLs to demonstrate progress because it is rigorous, aligned to the Common Core, and highly correlated with ELA performance.

In 2012-13, the NYSESLAT exam was updated to be more closely aligned to the CCLS, and in the 2014-15 school year, the NYSESLAT will be fully aligned to the Common Core. As such, the NYSESLAT will be the most appropriate tool to assess the language development of ELLs such that they can be successful on a Common Core ELA

¹ In order to develop a Native Language Arts assessment in Spanish, the State Education Department will need to receive additional State funding from the legislature. The Board of Regents has requested funding to support this initiative in its 2014-15 State School Aid Proposal, which can be found at <http://www.regents.nysed.gov/meetings/2013Meetings/December2013/1213saa11.pdf>

assessment. The performance of ELLs on the NYSESLAT will be a true indication of their progress towards developing the English language needed to demonstrate their knowledge and skills on the ELA assessment.

Historically, student performance on the NYSESLAT exam has been highly correlated to performance on the ELA assessments. That is, the NYSESLAT has served as a gate keeper such that once ELLs test out of the NYSESLAT they tend to outperform their non-ELL peer group on every measure, including ELA assessments. Thus, the NYSESLAT is a rigorous measure that can be used for two years until students have developed sufficient English language skills to demonstrate their knowledge and skills on the ELA assessments.

Exempting newly arrived ELLs from ELA assessments for two years will not lower expectations for Common Core ELA instruction for ELLs. NYSED holds all schools and students to high expectations and in doing so the State has launched a Bilingual Common Core Initiative. In spring 2012, NYSED launched the Bilingual Common Core Initiative to develop new English as a Second Language and Native Language Arts Standards aligned to the Common Core. As a result of this process, NYSED is developing New Language Arts Progressions (NLAP) and Home Language Arts Progressions (HLAP) for every NYS Common Core Learning Standard in every grade. Beginning in 2014-15, all ELA and ESL/Bilingual teachers will be expected to provide Common Core instruction to ELLs aligned to the Progressions.

At the core of Bilingual Common Core Initiative is the idea that in addition to being a series of grammatical structures, language is also a social practice (Street, 1985; Pennycook, 2010). Therefore, language learning in an academic context is not solely about mastery over grammatical structures or isolated vocabulary, but also about the development of competency in the language specific to each academic discipline. In order for this development of competency to occur, students must participate in a language socialization process that includes both explicit and implicit guidance by mentors who are more proficient in the language of the academic discipline (Duffy, 2010) as well as an engagement with the ways of thinking in each academic discipline through exposure to content-specific texts (Snow, Griffin, and Burns, 2007). What this means is that in a history class students are treated as historians and in science class students are treated as scientists and are provided with both explicit and implicit guidance on the language structures and practices associated with the discourse of the content-area being taught (Walqui & Heritage, 2012).

Given the high demands of the Common Core, the appropriateness of the NYSESLAT to measure progress for newly arrived ELLs and the high expectations and rigor expected by the State for all ELLs, allowing for an additional year exemption will further the State's instructional goals and accurately measure student growth in language arts for newly arrived ELLs.

In addition to requesting a two year exemption for newly arrived ELLs, for a subgroup of ELLs who are Spanish-speakers and who can demonstrate their language arts

knowledge and skills in Spanish, NYSED is proposing that beginning in 2015-16, districts be allowed to offer this assessment as a local option when it would best measure the progress of Spanish-speaking ELLs.

With the implementation of the Common Core, the development of new NYS Native Language Arts standards (the Home Language Arts Progressions) discussed in the State's original waiver, and the proposed development of a Spanish Language Arts assessment, the State will have developed the resources needed to support strong Common Core instruction and assessment in the home language. For schools offering Bilingual Education programs or strong home language supports aligned to the Common Core in Spanish, it is most appropriate to measure language arts proficiency for such students through a Spanish Language Arts assessment. In doing so, the State would allow such students to demonstrate mastery of grade-level-appropriate language arts standards in their home language while they are acquiring English.

Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding to the requirements of the Renewal application. During the first week of November, an external "Think Tank" was convened, and members were asked to be thought partners with the Department as it drafted its response to the renewal requirements. A large portion of the members of the ESEA Renewal Think Tank also participated in the original ESEA Waiver Think Tank that guided the creation of New York State's approved ESEA Waiver application. To date, The ESEA Waiver Renewal Think Tank has met six times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited feedback on the waiver through meetings with a wide variety of organizations, including the Title I Committee of Practitioners, the English Language Learners Leadership Group, the DTSDE Training Group, and the District Superintendents.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were being accepted were posted on the State Education Department's website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, the Office of Accountability emailed notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.

3: Including the Performance on the NYSESLAT in the Grade 3-8 Performance Index for English language learners Who Have Received Less than Three Years of Service

Flexibility Element(s) Affected by the Amendment

2.A. Differentiated recognition, accountability, and support system.

Brief Description of the Element as Originally Approved

See pages 64 – 65. Originally, the State did not propose differentiated accountability metrics for measuring progress of ELLs. This proposed amendment is referenced on pages 94-95 in the redlined waiver.

Brief Description of the Requested Amendment

In order to accurately capture ELLs student growth in language arts, a combination of assessments must be used in to make appropriate determinations of progress and growth towards proficiency. New York State is implementing an aggressive agenda for ELLs that holds districts and schools accountable and sets high expectations for ELL student instruction.

ELLs in New York State take both the ELA examination and the State's English language proficiency test (NYSESLAT) until they reach proficiency on the NYSESLAT. Beginning in 2014-15, New York State plans to give credit in the Grade 3-8 ELA Performance Index to students who would have received partial or no credit using the ELA test results (i.e., students who scored at Performance Level 1 or 2) and who have shown progress in learning English on the NYSESLAT examination (per requirements of Title III AMAO 1). Specifically, ELLs who have received less than three full years of LEP services and make progress from one year to the next on AMAO 1 by achieving a higher Performance Level on the NYSESLAT would be given full credit in the Performance Index (i.e., would be credited with 200 points) and students who make progress on AMAO 1 by increasing their score by a set number of scale score points from one year to the next but do not achieve a higher Performance Level would be given partial credit in the Performance Index (i.e., would be credited with 100 points). In 2012-13, for the subset of ELLs with less than three full years of LEP services, only 4% of ELLs performed at Level 3 or 4 on the ELA exam (and received full credit in the Performance Index calculation), 22% performed at Level 2 and received partial credit, and 74% received no credit. Using the new methodology, of the 74% of ELLs who under the current Performance Index calculation using ELA scores only received no credit, the fraction of those ELLs who receive full credit in the Performance Index due to their progress on NYSESLAT increases to 46%, while the fraction who receive partial credit increases to 16%, and the fraction who receive no credit drops to 38%. Of the 22% of ELLs who under the current Performance Index calculation using ELA scores only received partial credit, 52% would receive full credit in the Performance Index due to their progress on NYSESLAT.

If data on the identification of students who have interrupted formal education is determined to be sufficiently reliable, the Department will request that these students who have had less than three full years of LEP services receive “full credit” in the Grade 3-8 Performance Index if the students make either the specified scale score gain or increase one level on the NYSESLAT. Since students with interrupted formal education enter the school system with significant gaps, a gain in scale score is a significant growth and schools and districts should be awarded full credit for such progress.

Upon approval of this amendment, New York will revise its Annual Measurable Objectives for Grade 3-8 ELA to reflect the increase in the Performance Indices of the “all students” and each applicable accountability group that will result in the incorporation of these results into the Performance Index.

As the State fully aligns the NYSESLAT exam to the Common Core Learning Standards and begins to develop additional assessment tools that can best capture growth towards proficiency for ELLs in language arts, the accountability system should be changed accordingly. A new accountability approach will allow students to demonstrate growth towards proficiency through appropriate measures and will hold schools and districts accountable to more appropriate measures of progress for ELLs as the test is specifically designed for this population.

For ELLs in their first three years of receiving services, the Performance Index would be modified only for language arts accountability purposes; the expectations and measures for math would not change. For newly arrived students with annual NYSESLAT scores in consecutive years, the Performance Index would be based solely on their NYSESLAT performance.

Beginning in 2015-16, New York will work to develop a Performance Index for ELL students taking the new Spanish Language Arts assessment. For these students, growth towards proficiency in language arts will be measured based on rigorous expectations on the Spanish Language Arts assessment and performance on the NYSESLAT exam based on students’ levels of language proficiency. New York will also work to develop a revised Performance Index for ELLs under which growth towards proficiency in language arts will be calculated based on rigorous expectations on the ELA assessment that are differentiated based on their level of proficiency on the NYSESLAT exam and demographic factors such as the number of years a student has received ESL/Bilingual services and whether a student has had interrupted formal education.

NYSED will work with a team of ELL experts and statewide stakeholders to use performance data to determine appropriate outcomes for ELLs on the ELA assessments, based on students’ level of language proficiency and demographic factors that can be accurately identified through existing data collection systems. The Performance Index would then be adjusted such that schools and districts would be held accountable for making progress with ELLs based on new benchmarks on the ELA

assessments according to students' English Language proficiency level. As such, schools that are making significant progress with ELLs on the NYSESLAT and are demonstrating appropriate growth on the ELA assessment would not be penalized in the state's accountability system if their students are not yet proficient on the ELA assessment based on their level of English proficiency.

For ELLs who would be eligible to take the Spanish Language Arts assessment, beginning in 2015-16, the Performance Index would also be adjusted only for language arts accountability purposes; the expectations and measures for math would not change. A Performance Index will be developed that creates rigorous expectations for growth and performance on the Spanish Language Arts exam and the NYSESLAT exam. Thus, districts and schools would be held accountable for both progress in language arts in Spanish and English language development aligned to the Common Core Learning Standards.

Rationale:

ELLs, by virtue of the definition that identifies these students as developing English, have a limited ability to demonstrate what they know and can do on the English Language Arts assessments, even with accommodations. Unlike accommodations provided to ELLs on other content area assessments, such as math, translations of the ELA assessments are not provided to ELLs. The NYSESLAT has served as a gate keeper such that once ELLs test out of the NYSESLAT they tend to outperform their non-ELL peer group on every measure, including ELA assessments. These students, however, can make significant progress in language development as determined on the NYSESLAT that will prepare them to be successful on the ELA exams. This progress in language development, however, is not captured by the ELA assessments, which require students have a high level of English language development in order to demonstrate knowledge and skills on the assessments. In addition, many ELLs can demonstrate language arts knowledge and skills in their home language. As such, an accountability system that determines growth towards proficiency for ELLs in language arts based only on the ELA assessments is not appropriate.

Creating an accountability system that is differentiated to appropriately set high expectations for ELLs who are at different levels of language development will create rigorous expectations for schools and districts and allow schools and districts making progress to be recognized for such growth.

Creating this differentiated accountability system will ensure that schools and districts making progress are not penalized in the accountability system because they have high numbers of ELLs not yet proficient on the ELA assessments. Without this provision, some schools and districts are being identified as Focus and Priority Schools in part because they have a high number of ELLs in their schools.

The NYSESLAT exam is an appropriate exam for newly arrived ELLs to demonstrate progress because it is rigorous, aligned to the Common Core and highly correlated with ELA performance. The NYSESLAT has served as a gate keeper such that once ELLs

achieve proficiency on the NYSESLAT, these students tend to outperform their non-ELL peer group on every measure, including ELA assessments. Thus using the NYSESLAT exam in the language arts accountability system is an appropriate measure that should be incorporated into the Performance Index.

Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

Stakeholders from across the State, representing teachers, administrators, parents, and community based organizations have assisted the Department in responding to the requirements of the Renewal application. During the first week of November, an external “Think Tank” was convened, and members were asked to be thought partners with the Department as it drafted its response to the renewal requirements. A large portion of the members of the ESEA Renewal Think Tank also participated in the original ESEA Waiver Think Tank that guided the creation of New York State’s approved ESEA Waiver application. To date, The ESEA Waiver Renewal Think Tank has met six times since convening in November, with various related work groups meeting at least twice additionally during that time period.

In addition to the Think Tank, the Commissioner, Deputy Commissioner and Department staff have solicited feedback on the waiver through meetings with a wide variety of organizations, including the Title I Committee of Practitioners, the English Language Learners Leadership Group, the DTSDE Training Group, and the District Superintendents.

In addition to consulting with stakeholder groups during meetings and presentations, the proposed amendment was also posted to the Department website for public comment. Public comment on the proposed ESEA waiver amendments was accepted between January 16, 2014 and January 27, 2014. Notices that public comments were being accepted were posted on the State Education Department’s website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, the Office of Accountability emailed notification regarding the opportunity to comment was emailed to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.

Please note that for proposals that will be more fully developed for 2015-16, NYSED will develop a similar consultation process with stakeholders.

4. Amendment Regarding Providing Schools and Districts with “Full Credit” on the Performance Index for each Student who passes ELA and Math exams and a Board of Regents approved Career and Technical Education Assessment

Flexibility Element(s) Affected by the Amendment

2.B - Set Ambitious But Achievable Annual Measureable Objectives (p. 92 -97 of New York’s ESEA Waiver Renewal Request)

2.C.i – Describe the SEA’s methodology for identifying highest performing and high progress schools as reward schools. (p.98 – 101 of New York’s ESEA Waiver Renewal Request)

Brief Description of the Element as Originally Approved

Pursuant to Commissioner’s Regulations 100.18 and New York’s approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver schools and districts earn “full credit” in the English language arts and mathematics Performance Index when a student achieves a score indicating college- and career-readiness (i.e., Level 3), which is defined currently as a score of 75 or higher on the Regents Comprehensive Examination in English Language Arts or a score of 80 or higher on a Regents examination in mathematics.

Also in accordance with New York’s ESEA Flexibility waiver, in order for a high school to qualify as a Reward School the school must exceed either the State average for students graduating with Regents diplomas with advanced designation or CTE endorsements.

Brief Description of the Requested Amendment

The New York State Education Department proposes to revise the computation of New York’s High School Performance Index so that a student who passes the Regents examinations in English language arts, mathematics, science and two social studies examinations, and a Regent’s Technical Assessment Advisory Panel-recommended technical assessment (see attached list) will receive a college and career ready designation and earn a school and district “full credit” on the High School Performance Index in English language arts and mathematics, even if such student did not achieve 75/80 (i.e., Level 3) or higher on the associated Regents examinations.

Rationale

At the October 2012 P-12 Education Committee meeting a study was commissioned with Stephen Hamilton at Cornell and William Symonds at Harvard to identify 10-25 assessments that are of sufficient quality and rigor to serve in place of a NYS Regents examination for student enrolled in rigorous CTE programs. Mr. Hamilton and Mr. Symonds served as members of the Technical Assessment Review Panel, a group charged with developing a methodology for determining comparability of a select group of CTE technical assessments with Regents examinations.

The panel used four criteria for determining comparability of technical assessments:

1. The assessment provides credible evidence that the student is college and career ready. Following are some sources of credibility:

(a) The assessment is recognized by employers in an industry sector. Ideally, a passing score provides a credential that will qualify the student for at least entry-level employment in the industry. Priority will be given to nationally-recognized credentials.

(b) If the assessment is normally completed at the postsecondary level, a cut score has been established for high school students that signifies the student is ready to take credit-bearing courses at the postsecondary level.

(c) The assessment is widely recognized by postsecondary institutions within New York, for admissions and/or credit.

2. The assessment includes academic as well as technical learning. The following factors are considered:

(a) The examination covers a broad range of learning. Narrow technical examinations are not by themselves sufficient. Breadth may be achieved by “bundling” multiple examinations.

(b) The examination measures some of the knowledge and skills that comprise the Common Core State Standards, such as reading of technical materials or application of mathematical principles.

(c) The rigor of the assessment is comparable to that of Regents examinations.

3. The assessment is for an occupation in a career cluster that is recognized by the State Education Department and is of clear economic value to the state of New York. The following factors are considered:

(a) The occupation is in high demand, meaning that a significant number of people are already employed in the occupation and/or that employment is increasing.

(b) The occupation generally pays experienced workers “a living wage.” At the very least, entry-level workers are paid above the minimum wage.

(c) The number of students eligible to take this assessment is large enough to warrant the Regents’ recognition.

4. The assessment meets the following technical requirements:

(a) The examination is aligned with existing knowledge and practice and updated regularly (every four years in most cases).

(b) The examination has acceptable psychometric properties. It is properly validated and free from ethnic or gender bias. A technical manual meeting testing industry standards is available for public inspection. (c) The examination questions are secure and administration oversight comparable to a Regents examination.

(d) The organization responsible for the examination is considered credible by the State Education Department; e.g., makes standards publicly available, trains proctors, is affiliated with trade groups, provides data for instructional improvement, responds quickly to technical concerns and user questions.

The list of identified CTE assessments that met the outlined requirements is attached.

These findings were delivered to the Chancellor's Blue Ribbon Commission at a July 2, 2013 convening of the Commission. Members of the Commission strongly agreed with the Panel's conclusion that recognizing high-quality CTE examinations would raise the bar for high school graduation. These examinations often require a higher level of academic proficiency than passing a Regents exam with a score of 65 percent. The research report presented by the Panel goes on to say, "CTE examinations that tangibly demonstrate college readiness – in the sense that postsecondary institutions grant course credit, advanced standing or admission to students who pass the examination – should be recognized as holding students to a higher standard than Regents examinations using 65% as a passing score." Recognizing CTE exams would also encourage students to earn certificates that demonstrate to industry employers that they are "career ready." Unfortunately, the current Regents examinations do not provide a comprehensive measure of career readiness. Giving schools and districts accountability credit for such performance would eliminate any disincentives within the accountability system for schools and districts to encourage students (especially students from underserved populations) to participate in such programs.

Students who demonstrate college and career readiness by passing rigorous CTE examinations in one of the 13 Blue Ribbon Panel-approved CTE content areas for a variety of reasons may not have passed the Regents examinations in English language arts and a Regents examination in mathematics at a level that earns their school and district "full credit" for these students' performance on the High School Performance Index used for institutional accountability. In these cases, schools and districts are not receiving appropriate acknowledgement for the efforts that have been made to successfully prepare students for college and careers as demonstrated by students passing rigorous CTE examinations and completing the associated CTE coursework.

The effect of this change is expected to be modest. For the 2009 4-year accountability cohort there were 3,570 students who passed a CTE examination and whose highest Regents examination score in either English language arts and/or mathematics was at Level 2. This represents 1.6% of the members of the accountability cohort. However, at present, the Department's information system does not indicate whether a student passed any of the 13 Blue Ribbon Panel approved assessments or another CTE examination. Therefore, the actual number of students whose score would have been adjusted is something less than 1.6%. If this amendment is approved, SED will begin to collect information on the specific CTE examination that a student has passed. Therefore, we estimate the change in the high school Performance Indices in ELA and math will likely increase by no more than one index point if this change is implemented.

Process for Consulting with Stakeholders, Summary of Comments, and Changes made as a Result

The proposed amendment was posted to the Department website for public comment. Public comment on the amendment was accepted between June 25, 2014 and July 3, 2014. Notices that public comments were being accepted were posted on the State Education Department's website as well as on the websites of the Office of P-12 Education and the Office of Accountability. In addition, the Office of Accountability

emailed notification regarding the opportunity to comment to New York State District Superintendents, superintendents of school districts, charter and nonpublic school principals, district Title I directors, and to members of the ESEA Think Tank. Other Department offices also shared the notification with list serves that they maintain.