



June 8, 2016

BY ELECTRONIC MAIL

Mr. Ira Schwartz
Assistant Commissioner
Office of Accountability
Title I, School and Community Services
Room 365 EBA
New York State Education Department
Albany, New York 12234

RE: Waiver of Sections 1113(a)(4)(B) and 1113(c)(1) of Title I, Part A of the ESEA to implement Grandfathering in FY16-FY19

Dear Ira:

Following discussions with SED concerning the application of Section 1113(b)(1)(c) of Title I, Part A of the ESEA (referred to herein as the “Grandfathering Provision”) in a large city school district like ours, I write on behalf of the New York City Department of Education (“NYCDOE”) to request a waiver of Sections 1113(a)(4)(B) and 1113(c)(1) of Title I, Part A of the ESEA in NYCDOE’s application of the Grandfathering Provision for FY16 through FY19.

The Grandfathering Provision provides that for one fiscal year, an LEA may designate and serve a school that is not currently eligible for Title I funds, but was Title I-eligible the prior year. The purpose of this provision is to assist a previously eligible school in the transition from a loss of funding that necessarily impacts the services and programs the school is able to provide. Without the protection of the Grandfathering Provision, schools previously receiving Title I funds, including priority and focus schools, would be forced to immediately discontinue essential academic intervention services and eliminate teaching positions that were funded with Title I moneys, without any opportunity to transition to other funding sources.

In accordance with the discretion given to LEAs in Section 1113(b)(1), the NYCDOE utilizes a higher poverty threshold than 35% in determining which schools are eligible for Title I funding. The NYCDOE determines schools that are eligible by applying county-specific poverty thresholds. This ensures that schools with the neediest populations receive sufficient funding to improve their educational environments. Given the number of NYC schools that meet the 35% low-income threshold, and the limited availability of Title I funding, the DOE utilizes these higher poverty thresholds and designates as eligible for Title I funding schools in Bronx, New York, Queens, and Kings Counties in which at least 60% of the students are from low-income families, and in Richmond County, schools in which at least 45.04% of students are from low-income families. Using the borough average instead of these county-specific thresholds would

harm many schools by reducing the number of schools eligible for Title I funding, as many Title I schools have poverty rates above 60% (45.04% in Richmond County) but below the borough average.

In order to apply the Grandfathering Provision to provide support to Title I schools that fall below the county-specific poverty threshold in a particular year, and are therefore rendered ineligible for Title I funding, the DOE needs a waiver of the rank ordering provisions established in ESEA Section 1113(a)(4)(B) and Section 1113(c)(1). ESEA section 1113(a)(4)(B) provides: “If funds remain after serving all eligible school attendance areas under paragraph (3), a local educational agency shall serve such eligible school attendance areas in rank order either within each grade-span grouping or within the local educational agency as a whole.” ESEA section 1113(c)(1) provides: “A local educational agency shall allocate funds received under this part to eligible school attendance areas or eligible schools, identified under subsections (a) and (b) in rank order, on the basis of the total number of children from low-income families in each area or school.”

Waiver of these rank ordering provisions would allow the DOE to grandfather for one year schools that fall below the county poverty threshold in a particular year after having been served the prior year. This would greatly assist schools with high poverty rates by avoiding a precipitous funding decline. It would also comport with the flexibilities provided by USDOE, which advises that “States and LEAs do not need to comply with these rank ordering requirements if they impede a priority or focus school from being able to continue to implement appropriate interventions” during the transition to the ESSA. The NYCDOE has priority or focus schools that are entitled to the protections of grandfathering in FY16 and FY17. Just as priority and focus schools need stable funding to ensure continuation of needed intervention services to students, so too do schools with high poverty rates. A sudden funding cut would impede provision of needed interventions, without the opportunity to transition to other funding sources. Moreover, the schools that would be grandfathered have high poverty rates and, technically, are still eligible to receive Title I funding, as their poverty rates are above 35%.

The current ESEA provisions do not provide the needed flexibility to implement the grandfathering provision in New York City. For example, the Skip Provision provided in Section 1113(b)(1)(D), which allows an LEA to skip eligible schools under certain conditions, does not protect the schools that fall below the county poverty rate in a particular year. In order to maintain funding for a school that was above the 60% threshold in one year (45.05% in Richmond County) and then drops below that threshold in a subsequent year, the DOE would probably need to “skip” other eligible schools that fall below the 60% threshold. If the “grandfathered school” were served, all of the schools below 60% but above that school would need to be skipped. This would trigger the requirements of the Skip Provision and would create a new financial obligation for the DOE that would not exist if the Grandfathering Provision took precedence. For example, in the 2015-2016 school year, the fiscal impact of the Skip Provision requirements would have totaled nearly \$6 million for the DOE.

Waiving the rank order requirements set forth in section 1113(a)(4)(B) and section 1113(c)(1) will serve important educational policies. It will increase the quality of instruction for NYC students and improve their academic achievement in many ways. NYC’s Title I Targeted

Assistance Schools utilize their Title I funds to: provide academic intervention services and related social-emotional supports to students in grades K-12 who have been identified as not yet meeting, or are at risk for not meeting, New York State's Common Core Learning Standards; provide targeted professional development to improve the delivery of standards-based instruction for identified students; and facilitate activities to increase the involvement of parents of identified students. NYC's Title I Schoolwide Program Schools utilize their Title I funds to: provide academic intervention services and related social-emotional supports to students who have been identified as not yet meeting, or are at risk for not meeting, New York State's Common Core Learning Standards; provide academic enrichment programs for students via expanded learning time activities conducted before school, after school, on Saturdays, and/or during the summer; hire additional teachers to reduce class size; provide job-embedded professional development to improve the delivery of standards-based instruction for all students; and, for activities to increase parent involvement and engagement.

All New York City Schools are required to develop Comprehensive Educational Plans (CEPs) that include specific and measurable annual goals directly aligned and developed around each school's identified priority needs as related to New York State's Annual Measurable Objectives for English Language Arts and mathematics and New York City Department of Education's Framework for Great Schools. School goals and action plans must address each of the following critical elements of student and school success:

1. **Rigorous Instruction:** Instruction is customized, inclusive, motivating, and aligned to the Common Core. High standards are set in every classroom. Students are actively engaged in ambitious intellectual activity and developing critical thinking skills.
2. **Supportive Environment:** The school establishes a classroom and school culture where students feel safe, supported, and challenged by their teachers and peers.
3. **Collaborative Teachers:** Teachers are committed to the success and improvement of their classrooms and schools. They have the opportunity to participate in professional development within a culture of respect and continuous improvement.
4. **Effective School Leadership:** Principals lead by example and nurture the professional growth of teachers and staff, developing and delivering the instructional and social-emotional support that drives student achievement.
5. **Strong Family-Community Ties:** School leadership brings resources from the community into the school building by welcoming, encouraging, and developing partnerships with families, businesses, and community-based organizations.

Title I funds are used to support and augment the related activities articulated in school action plans for each goal.

Attached is a spreadsheet demonstrating for the 2015-2016 school year each New York City school's enrollment, poverty count, and Title I allocation with and without the waiver, with the schools affected by the waiver highlighted. (See attachment A.)

Without this waiver, it is unlikely that any schools in the NYC school district, where a significant number of schools have poverty rates higher than 35%, would receive the intended benefits of

the Grandfathering Provision. The NYCDOE therefore requests a waiver of these rank order provisions for the years FY16 through FY19. The DOE has provided notice and information to the public regarding this request for a waiver on the DOE website at the following link: <http://schools.nyc.gov/Offices/DBOR/default.htm>.

This waiver will protect and benefit students in greatest need of educational services and supports, including students attending priority and focus schools. Thank you for your consideration of this request.

Sincerely,

Sharon Rencher
Senior Advisor to the Chancellor
State/Federal Education Policy and
School Improvement Programs

**FY 2016 Title I School Allocation Detail
Allocation With and Without the Waiver
Draft: May 25, 20016**

Boro	Dist	BSH	Location	School Name	Status	Free Lunch Poverty %	County Poverty % Cutoff	Title I Status	Title I Status w/o Waiver	G?	Title I Program Type	Audited Register	Poverty Count	Students in Temporary Housing (STH)	Title I Eligibles	With Waiver				Without Waiver				Variance					
																Title I Weight w/Waiver	Weighted Title I Count	Title I Entitlement w/Waiver	Total Minimum Parent Involvement Commitment (1%) w/Waiver	Title I Weight w/o Waiver	Weighted Title I Count w/o Waiver	Title I Entitlement w/O Waiver	Total Minimum Parent Involvement Commitment (1%) w/o Waiver	Title I Weight Variance	Weighted Title I Count Variance	Title I Entitlement Variance	FTE Loss Plus Fringe	Total Minimum Parent Involvement Commitment (1%) Variance	Total Variance
M	06	M278	06M278	Paula Hedbavny School	Open	56.9	60.00%	1	0	G	SWP	538	306	27	27	0.9483	290	214,253	2,143	1.0000	27	19,948	0.0517	(263)	(194,305)	(1.65)	(2,143)	(196,448)	
M	01	M184	01M184	P.S. 184M SHUANG WEN	Open	59.9	60.00%	1	0	G	SWP	629	377	13	13	0.9983	376	277,790	2,778	1.0000	13	9,604	0.0017	(363)	(268,186)	(2.28)	(2,778)	(270,964)	
X	07	X557	07X557	Mott Haven Community High School	Open	56.7	60.00%	1	0	G	SWP	238	135	16	16	0.9450	128	124,828	1,248	1.0000	16	15,604	0.0550	(112)	(109,224)	(0.93)	(1,248)	(110,472)	
X	11	X567	11X567	Linden Tree Elementary School	Open	58.2	60.00%	1	0	G	SWP	194	113	22	22	0.9700	149	145,307	1,453	1.0000	22	21,455	0.0300	(127)	(123,852)	(1.05)	(1,453)	(125,305)	
X	11	X180	11X180	M.S. 180 Dr. Daniel Hale Williams	Open	58.8	60.00%	1	0	G	SWP	876	515	24	24	0.9800	505	492,485	4,925	1.0000	24	23,405	0.0200	(481)	(469,080)	(3.99)	(4,925)	(474,005)	
K	18	K366	18K366	THE SCIENCE AND MEDICINE MIDDLE SCHOOL	Open	59.3	60.00%	1	0	G	SWP	509	302	20	20	0.9883	298	302,058	3,021	1.0000	20	20,272	0.0117	(278)	(281,786)	(2.40)	(3,021)	(284,807)	
K	18	K576	18K576	VICTORY COLLEGIATE HIGH SCHOOL	Open	59.2	60.00%	1	0	G	SWP	316	187	27	27	0.9867	185	187,519	1,875	1.0000	27	27,368	0.0133	(158)	(160,151)	(1.36)	(1,875)	(162,026)	
K	17	K770	17K770	P.S. 770 New American Academy	Open	59.1	60.00%	1	0	G	SWP	259	153	8	8	0.9850	151	153,056	1,531	1.0000	8	8,109	0.0150	(143)	(144,947)	(1.23)	(1,531)	(146,478)	
K	15	K038	15K038	P.S. 038 THE PACIFIC	Open	58.4	60.00%	1	0	G	SWP	430	251	40	40	0.9733	244	247,322	2,473	1.0000	40	40,545	0.0267	(204)	(206,777)	(1.76)	(2,473)	(209,250)	
K	17	K122	17K122	Pathways in Technology Early College High School (P-Tech)	Open	57.1	60.00%	1	0	G	SWP	436	249	19	19	0.9517	237	240,227	2,402	1.0000	19	19,259	0.0483	(218)	(220,968)	(1.88)	(2,402)	(223,370)	
K	23	K643	23K643	BROOKLYN DEMOCRACY ACADEMY	Open	55.7	60.00%	1	0	G	SWP	194	108	16	16	0.9283	100	101,362	1,014	1.0000	16	16,218	0.0717	(84)	(85,144)	(0.72)	(1,014)	(86,158)	
Q	24	Q119	24Q119	I.S. 119 THE GLENDALE	Open	55.1	60.00%	1	0	G	SWP	1,090	601	44	44	0.9183	572	368,753	3,688	1.0000	44	28,365	0.0817	(528)	(340,388)	(2.90)	(3,688)	(344,076)	
Q	29	Q289	29Q289	QUEENS UNITED MIDDLE SCHOOL	Open	56.1	60.00%	1	0	G	SWP	148	83	7	7	0.9350	114	73,493	735	1.0000	7	4,513	0.0650	(107)	(68,980)	(0.59)	(735)	(69,715)	
Q	24	Q091	24Q091	P.S. 091 RICHARD ARKWRIGHT	Open	56.8	60.00%	1	0	G	SWP	762	433	24	24	0.9467	410	264,316	2,643	1.0000	24	15,472	0.0533	(386)	(248,844)	(2.12)	(2,643)	(251,487)	
Q	27	Q351	27Q351	Rockaway Collegiate High School	Open	57.2	60.00%	1	0	G	SWP	376	215	18	18	0.9533	205	132,158	1,322	1.0000	18	11,604	0.0467	(187)	(120,554)	(1.03)	(1,322)	(121,876)	
Q	29	Q109	29Q109	JEAN NUZZI INTERMEDIATE SCHOOL	Open	57.3	60.00%	1	0	G	SWP	968	555	31	31	0.9550	530	341,677	3,417	1.0000	31	19,985	0.0450	(499)	(321,692)	(2.74)	(3,417)	(325,109)	
Q	25	Q242	25Q242	P.S. 242 Leonard P. Stavisky Early Childhood School	Open	57.7	60.00%	1	0	G	SWP	383	221	2	2	0.9617	213	137,316	1,373	1.0000	2	1,289	0.0383	(211)	(136,027)	(1.16)	(1,373)	(137,400)	
Q	30	Q291	30Q291	HUNTERS POINT COMMUNITY MIDDLE SCHOOL	Open	57.7	60.00%	1	0	G	SWP	227	131	5	5	0.9617	200	128,935	1,289	1.0000	5	3,223	0.0383	(195)	(125,712)	(1.07)	(1,289)	(127,001)	
Q	27	Q324	27Q324	ROCKAWAY PARK HIGH SCHOOL FOR ENVIRONMENTAL S	Open	57.9	60.00%	1	0	G	SWP	354	205	14	14	0.9650	198	127,645	1,276	1.0000	14	9,025	0.0350	(184)	(118,620)	(1.01)	(1,276)	(119,896)	
Q	29	Q355	29Q355	Collaborative Arts Middle School	Open	58.5	60.00%	1	0	G	SWP	443	259	45	45	0.9750	253	163,102	1,631	1.0000	45	29,010	0.0250	(208)	(134,092)	(1.14)	(1,631)	(135,723)	
Q	25	Q165	25Q165	P.S. 165 EDITH K. BERGTRAUM	Open	58.6	60.00%	1	0	G	SWP	691	405	38	38	0.9767	396	255,291	2,553	1.0000	38	24,497	0.0233	(358)	(230,794)	(1.97)	(2,553)	(233,347)	
Q	26	Q435	26Q435	MARTIN VAN BUREN HIGH SCHOOL	Open	58.9	60.00%	1	0	G	SWP	1,678	988	55	55	0.9817	970	625,334	6,253	1.0000	55	35,457	0.0183	(915)	(589,877)	(5.02)	(6,253)	(596,130)	
Q	28	Q284	28Q284	YORK EARLY COLLEGE ACADEMY	Open	59.1	60.00%	1	0	G	SWP	611	361	10	10	0.9850	356	229,504	2,295	1.0000	10	6,447	0.0150	(346)	(223,057)	(1.90)	(2,295)	(225,352)	
R	31	R026	31R026	P.S. 026 THE CARTERET SCHOOL	Open	48.0	48.05%	1	0	G	SWP	196	94	4	4	0.9990	94	76,604	766	1.0000	4	3,260	0.0010	(90)	(73,344)	(0.62)	(766)	(74,110)	
Total												12,546	7,247	529	529	23.17	7,174	5,410,335	54,104	24.00	529	413,934	0	0.83104	(6,645)	(4,996,401)	(42.54)	(54,104)	(5,050,505)

Citywide	Manhattan	Bronx	Brooklyn	Queens	Staten Island
\$864.92	\$738.80	\$975.22	1,013.62	\$644.67	\$814.94

Boro	Dist	BSH	Location	School Name	Status	Free Lunch Poverty %	County Poverty % Cutoff	Title I Status	Title I Status w/o Waiver	G?	Title I Program Type	Audited Register	Poverty Count	
K	20	K264	20K264	P.S. 264 BAY	Open	58.2	60.00%	0	0			428	249	252,391
K	13	K282	13K282	P.S. 282 PAR	Open	58.1	60.00%	0	0			852	495	501,742
K	22	K555	22K555	BROOKLYN C	Open	57.6	60.00%	0	0			602	347	351,726
M	02	M630	02M630	ART AND DE	Open	57.3	60.00%	0	0			1,460	837	618,376
M	02	M560	02M560	HIGH SCHO	Open	57.7	60.00%	0	0			591	341	251,931
M	03	M291	03M291	West End Se	New School	59.0	60.00%	0	0			0	64	47,283
M	02	M933	02M933	City Knoll M	Open	59.5	60.00%	0	0			79	47	34,724
Q	30	Q301	30Q301	ACADEMY fd	Open	55.3	60.00%	0	0			515	285	183,731
Q	27	Q650	27Q650	High School	Open	55.4	60.00%	0	0			956	530	341,675
Q	28	Q139	28Q139	P.S. 139 REC	Open	55.6	60.00%	0	0			847	471	303,640
Q	29	Q327	29Q327	EAGLE ACAD	Open	56.2	60.00%	0	0			427	240	154,721
Q	30	Q575	30Q575	ACADEMY Q	Open	56.5	60.00%	0	0			872	493	317,822
Q	25	Q107	25Q107	P.S. 107 TH	Open	57.3	60.00%	0	0			894	512	330,071
Q	24	Q229	24Q229	P.S. 229 EM	Open	57.6	60.00%	0	0			1,373	791	509,934
Q	28	Q680	28Q680	Queens Gat	Open	57.6	60.00%	0	0			779	449	289,457
Q	25	Q200	25Q200	PS/MS 200	Open	57.7	60.00%	0	0			437	252	162,457
Q	24	Q153	24Q153	P.S. 153 MA	Open	58.1	60.00%	0	0			1,384	804	518,315
Q	28	Q099	28Q099	P.S. 099 KEV	Open	58.6	60.00%	0	0			850	498	321,046
X	08	X392	08X392	Bronx Delta	Open	57.1	60.00%	0	0			49	28	27,306

5,518,347
5,050,505