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November 12, 2013

Deborah S. Delisle, Assistant Secretary
Office of Elementary and Secondary Education
400 Maryland Ave., SW
Washington, DC 20202

Dear Assistant Secretary Delisle:

I am writing on behalf of the New York State Education Department (“the Department” or SED) to request a waiver from section 9401 of the Elementary and Secondary Education Act (ESEA), sections 1111(b)(1)(B) and 1111(b)(3)(C)(i), which require that the state use the same assessments for all students in grades 3-8 to measure the achievement of all students in mathematics. This waiver would only apply to Grade 7 or Grade 8 students who are enrolled in Algebra I, a Regents high school course aligned to the Common Core Learning Standards (CCLS) Core Curriculum. New York State (NYS) seeks a waiver of this provision in order to remove the “double testing” burden for Grade 7 and Grade 8 students who are taking Algebra I (Common Core)¹. Grade 8 students currently enrolled in Algebra I (Common Core) must take the NYS Grade 8 Common Core Mathematics Test for institutional accountability purposes and the Regents Examination in Algebra I (Common Core) to receive credit towards a high school diploma. Grade 7 students currently enrolled in Algebra I (Common Core) must take the NYS Grade 7 Common Core Mathematics Test for institutional accountability purposes and the Regents Examination in Algebra I (Common Core) to receive credit towards a high school diploma. In the 2012-13 school year, over 55,000 public school students statewide took the Regents Examination in Integrated Algebra in Grade 8 and almost 1,000 public school students took the Regents Examination in Geometry in Grade 8. Those students were also required to take the NYS Grade 8 Common Core Mathematics Test. In the same year, almost 1,000 public school students statewide took the Regents Examination in Integrated Algebra in Grade 7. Those students were also required to take the NYS Grade 7 Common Core Mathematics Test. If the waiver is approved, these students will be relieved of the burden of simultaneously preparing for a Regents Examination and the NYS Grade 8 Common Core Mathematics Test or the NYS Grade 7 Common Core Mathematics Test.

As the United States Department of Education (USDE) has implemented its ESEA waiver initiative, USDE has sought to address the “double testing” issue that has arisen in some states as they simultaneously administer their current assessments while field testing their Common Core-aligned assessments. USDE has signaled to states a willingness to address the

¹ There are a small number of Grade 7 and Grade 8 students in NYS who take a Regents Examination in another mathematics course (i.e., The Regents Examination in Geometry). This waiver would apply to them in the same manner as described in this request.

double testing issue that arises when students in middle school seek to earn high school credits. As an example, for the 2012-13 school year, Tennessee received a waiver from USDE to address a situation analogous to New York's Grade 7 and 8 mathematics issue. The Department has already received approval to use the results from Regents examinations in science in lieu of the Grade 8 Science Assessment to make participation and Adequate Yearly Progress determinations regarding the use of science as the "third academic indicator" for middle schools.

An approved waiver would not reduce the number of students tested in mathematics for Grade 7 or 8, nor would the waiver impact accountability determinations for schools or districts. All Grade 7 or 8 students who are not enrolled in Algebra I (Common Core)² would still be required to take the NYS Grade 7 Common Core Mathematics Test or the NYS Grade 8 Common Core Mathematics Test, as applicable. Additionally, Local Educational Agencies (LEAs) in New York State are required under Commissioner's Regulations (Part 100.4(d)) to ensure that students in grade 8 have the opportunity to accelerate in mathematics and take Algebra I (Common Core) if they choose (see Attachment A).

Attachment B provides historical data regarding the number of students, by subgroup, who took the NYS Grade 8 Common Core Mathematics Test or the NYS Grade 7 Common Core Mathematics Test and the percentage of those students who ultimately took and passed the Regents Examination in Integrated Algebra (note that with alignment of instruction to the CCLS, the names of the assessments have also changed; the CCLS-aligned assessment is called Regents Examination in Algebra I (Common Core) and will be administered in June 2014 for the first time). This information is provided as evidence that the Department has reviewed current data to ensure that the waiver request will not negatively impact the participation rate for subgroups for the NYS Grade 8 Common Core Mathematics Test, the NYS Grade 7 Common Core Mathematics Test, or the Regents Examination in Algebra I (Common Core), and that in fact, more Grade 7 and 8 students have taken the Regents Examination in Integrated Algebra every year.

Therefore, as directed by the New York State Board of Regents, the Department is seeking a waiver under Section 9401 of ESEA to do the following:

- For students who take the Regents Examination in mathematics in Grade 7 or Grade 8, use their results on this examination when making participation and accountability determinations. Seventh and eighth grade students who take a Regents Examination in mathematics would be counted as participants when the Department determines whether a school or district has met the 95 percent participation requirement in mathematics. Students who pass a Regents Examination in mathematics with a score that meets the requirements to earn a Regents diploma would be considered to have demonstrated accelerated performance in Grade 7 or Grade 8 mathematics and would be incorporated into the Performance Index as equivalent to earning scores in Level 3 on the NYS Grade 7 Common Core Mathematics Test or the NYS Grade 8 Common Core Mathematics Test for the purposes of calculating a school's Performance Index, which earns a school or district "full credit" for a student's performance. Grade 7 or Grade 8 students who fail a Regents examination in mathematics will be considered as equivalent to earning scores in Level 1, the same as students who earn a school or district "no credit" for their performance. Should a district elect to have students take both the NYS Grade 7

² Ibid.

Common Core Mathematics Test or the NYS Grade 8 Common Core Mathematics Test **and** a Regents Examination in mathematics, the NYS Grade 7 Common Core Mathematics Test or the NYS Grade 8 Common Core Mathematics Test would be used for accountability purposes. For the 2013-14 school year only, if a student who takes both the Regents Examination in Algebra I (Common Core) and the Regents Examination in Integrated Algebra in Grade 7 or Grade 8 has a score that is equivalent to earning scores in Level 3 on one of these Regents Examinations and Level 1 on the other exam, the higher score that equates to a Level 3 score would be used for accountability purposes for the student. These same rules would apply to students in Grade 7 or 8 who take the Regents Examination in Geometry.

- Consistent with SED’s understanding of USDE requirements for a waiver to use a high school examination to replace a middle level examination for accountability and participation rate purposes, a student who passes the Regents Examination in Algebra I (Common Core) in Grade 7 or Grade 8 would be required to take in high school a Regents Examination in mathematics **or** an approved alternative to a Regents Examination in mathematics (e.g., IB, AP) in order to meet the high school participation and accountability requirements. At present, students who pass the Regents Examination in Algebra I (Common Core) in Grade 7 or Grade 8 would “bank” this result, and the high school in which they enroll gets “credit” for this performance. Under this revision, high school participation and accountability determinations would be based upon a student’s performance after they first enter grade 9. Therefore, students who passed the Regents Examination in Algebra I (Common Core) in Grade 7 or Grade 8 would need to take the Regents Examination in Geometry (Common Core) or Algebra II (Common Core) or an approved alternative to a Regents examination in mathematics once they enter high school, and receive a score that meets the requirements to earn a Regents diploma in order to be counted as equivalent to earning scores in Level 3 for purposes of calculating the school’s Performance Index and earn the school or district “full credit.” These same rules would apply to students who in grade 7 or 8 passed the Regents Examination in Geometry (Common Core).

Prior to submitting this waiver request, the Department provided all Local Educational Agencies (LEAs) in the State with notice and a reasonable opportunity to comment on this request. The Department provided such notice by consulting with our Committee of Practitioners, providing notification to District Superintendents, School Superintendents, Charter School Administrators, and Title I Coordinators. An e-copy of the notification is available at: <http://www.p12.nysed.gov/accountability/APA/Memos/ESEAWaiverGrade8MathPubCommentMemo.pdf>. Copies of all comments and letters that the Department received from LEAs in response to this notice are included as Attachment D, and a summary of the responses is included as Attachment C. The Department has also provided notice and information regarding this waiver request to the public in the manner in which the Department 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).

Upon issuance of the waiver by the USDE, the Department will prepare for consideration by the Board of Regents such amendments to Commissioner’s Regulations as may be necessary to implement the waiver. SED will ensure that LEAs comply with the new NYS Grade 8 Common Core Mathematics requirements and the NYS Grade 7 Common Core Mathematics requirements by providing appropriate guidance to LEAs regarding implementation of the new requirements,

and by annually gathering subgroup level data on the number of students taking either the NYS Grade 8 Common Core Mathematics Test, the NYS Grade 7 Common Core Mathematics Test, or the Regents Examination in Algebra I (Common Core) and Geometry (Common Core).

If NYS is granted the requested waiver, it will submit to the USDE in fall 2014 a copy of the amended Commissioner's Regulations and updated data on the number, percentage, and academic performance, by subgroup, of students who took the NYS Grade 8 Common Core Mathematics Test, the NYS Grade 7 Common Core Mathematics Test, and the Regents Examinations in mathematics.

Please feel free to contact me by phone at (718) 722-2796 or via email at ischwart@mail.nysed.gov if you have any questions regarding this waiver request. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Ira Schwartz".

Ira Schwartz

cc: John B. King, Jr.
Ken Slentz
Ken Wagner

Attachment A: Commissioner's Regulation Part 100.4(d)

“Grade eight acceleration for diploma credit.

1. Public school students in grade eight shall have the opportunity to take high school courses in mathematics and in at least one of the following areas: English, social studies, languages other than English, art, music, career and technical education subjects or science courses.
2. Credit may be awarded for an accelerated course only when at least one of the following conditions has been met:
 - i. accelerated students attend classes in a high school with high school students and pass the course on the same basis as the high school students. Credit is awarded by the high school; or
 - ii. the student passes the course and the associated State proficiency examination or Regents examination, when available. The credit must be accepted as a transfer credit by all registered New York State high schools; or
 - iii. in cases where no appropriate state assessment is available, the student passes a course in the middle, junior high or intermediate school that has been approved for high school credit by the public school district superintendent(s), or his or her designee(s), of the district(s) where the middle, junior high or intermediate school and the high school are located.
3. Such opportunity shall be provided subject to the following conditions:
 - i. The superintendent, or his or her designee, shall determine whether a student has demonstrated readiness in each subject in which he or she asks to begin high school courses in the eighth grade leading to a diploma.
 - ii. A student shall be awarded high school credit for such courses only if such student passes a Regents examination, a second language proficiency examination when available, or a career and technical education proficiency examination, or, if no such examinations are available, a locally developed examination that establishes student performance at a high school level as determined by the principal.”

Attachment B: Historical Assessment Data

2012-13	Grade 8			Grade 7		
Group	Number Students	% Who Took Algebra	% Who Took Algebra & Passed (L3/4)	Number Students	% Who Took Algebra	% Who Took Algebra & Passed (L3/4)
All Students	191426	29.58%	92.94%	202356	0.45%	97.80%
American Indian or Alaska Native	1004	19.12%	91.67%	1033	0.00%	0.00%
Asian or Pacific Islander	16173	49.47%	98.36%	17663	1.35%	99.58%
Black or African American	35422	20.43%	78.09%	37074	0.33%	90.98%
Hispanic or Latino	43408	20.94%	83.30%	45893	0.12%	98.21%
Multiracial	1668	25.48%	94.12%	1810	0.83%	93.33%
White	93751	33.80%	97.72%	98883	0.48%	98.74%
Students with Disabilities	30608	5.59%	63.55%	32128	0.01%	50.00%
Limited English Proficient	12468	7.30%	58.24%	11897	0.01%	0.00%
Economically Disadvantaged	99612	21.21%	84.92%	106049	0.15%	91.72%

2011-12	Grade 8			Grade 7		
Group	Number Students	% Who Took Algebra	% Who Took Algebra & Passed (L3/4)	Number Students	% Who Took Algebra	% Who Took Algebra & Passed (L3/4)
All Students	193864	27.17%	94.29%	201767	0.38%	96.70%
American Indian or Alaska Native	1013	18.85%	90.58%	1013	0.00%	0.00%
Asian or Pacific Islander	16004	45.75%	97.83%	16282	1.15%	100.00%
Black or African American	36343	18.60%	81.47%	37797	0.30%	82.30%
Hispanic or Latino	43259	18.11%	86.91%	44877	0.12%	92.45%
Multiracial	1230	25.12%	97.09%	1532	0.39%	100.00%
White	96015	31.52%	98.20%	100266	0.40%	99.75%
Students with Disabilities	30558	4.43%	70.92%	31110	0.04%	69.23%
Limited English Proficient	12355	4.57%	60.71%	12541	0.02%	66.67%
Economically Disadvantaged	101089	18.72%	87.72%	105509	0.14%	85.91%



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Attachment C: Summary of Comments Received During Public Comment Period

ESEA Waiver Request – Fall 2013

The New York State Education Department (SED or “The Department”) is submitting a proposal to the United States Education Department (USDE) to waive a requirement of the Elementary and Secondary Education Act (ESEA) [Sections 1111(b)(1)(B) and 1111(b)(3)(C)(vii)] that requires states to measure the achievement of standards in mathematics using the same assessments for all students in the grade level.

The waiver the Department is submitting to USDE will serve to relieve students, teachers, and schools from having to prepare seventh and eighth grade students who are receiving instruction in high school mathematics for multiple end-of-year assessments.

In response to USDE’s requirement to provide all interested LEAs in the State with notice and a reasonable opportunity to comment on the request (20 USC §7861(b)(3)(A)(i)), the Department is submitting this summary, which represents public comments received **as of November 7, 2013** regarding the waiver request.

Solicitation of Public Comment

On October 31, 2013 a memo from Assistant Commissioner Ira Schwartz to New York State (NYS) District Superintendents, Superintendents of Public and Nonpublic Schools, Principals of Public, Nonpublic, and Charter Schools and Other Interested Parties was released via email and posted on the NYS Education Department’s website: <http://www.p12.nysed.gov/accountability/waivers/documents/ESEAWaiverGrade8MathPubCommentMemo.pdf>.

This memo requested public comment in order to solicit additional input, potential barriers, and general comments. Enclosed in the memo was a copy of the waiver request letter sent from Assistant Commissioner, Ira Schwartz to USDE Assistant Secretary in the Office of Elementary and Secondary Education, Deborah S. Delisle.

Public comments were received through 207 separate email transmissions and four letters representing every region in the state. Some of these comments were on behalf of groups of educators within an entire school or district, while others were the personal comments of one. The public comments have been collated and summarized for consideration and deliberation by USDE in determining whether to grant the waiver request.

SED received 211 total comments and 100% of these comments were categorized as supportive of the submission of a waiver of the double testing requirement of 8th grade students. There were

a few comments that were supportive of the waiver, but also raised concerns regarding how the waiver would affect the accountability determinations of schools and districts and how it would affect teacher and principal evaluation.

Noteworthy Sample of Public Comments by School Superintendents, Principals, Teachers and/or Parents

I. Comments in support of the waiver requesting to eliminate double testing

- **All of the public comments received were in support of the waiver to eliminate double testing.**
- *“The Rochester City School District strongly supports a waiver from this requirement to provide relief primarily to students, and also to teachers, and schools. Waiver from this requirement would not diminish rigor of the course or the assessment. Contrarily, the NYS Algebra or Geometry Regents provides added rigor to the eight grade curriculum, and supports students who are academically ready to meet college and career ready standards earlier than their peers.”*
- *“The current procedure of double testing is a very difficult one for the students and is viewed by many of them as a punishment.”*
- *“We have been a little reticent about accelerating our 8th graders because this means having to teach them two (very distinct) separate curricula. Since the 8th grade exam is supposed to be an indicator of the student’s readiness to complete graduation requirements and the Algebra Regents is the graduation requirement, the 8th grade exam is superfluous.”*
- *“I really could not prepare the students to their maximum potential for either one; time to do both is a major constraint. With the elimination of the eighth grade test requirement, we can now teach more advanced topics to the algebra students and expand the topics required for the common core in preparation for geometry and algebra II.”*
- *“I am in full support of the alleviation of the requirement for NYS 8th grade students in an advanced Algebra courses from having to take two math assessments during that grade level. This is an excellent move to show the teachers and students in these courses that you acknowledge and respect the work that they do. This is also a great change for NYSED and USDE to show that logical decision making is a part of the design for our testing requirements.”*
- *“I strongly feel that it is detrimental to require 7th and/or 8th grade students who will be taking the NYS Regents Exam in Algebra I to also have to take the NYS Common Core Assessment in Math, as well.”*

II. Comments regarding concern over how the waiver will effect APPR

- **A small number of school administrators and teachers expressed concern over how this change will impact teacher evaluations.**
- *“I would not be surprised to hear, with student scores on the 8th grade NYS math assessment determining teacher's state 20% scores, there are algebra teachers teaching more of the 8th grade curriculum than the Integrated Algebra curriculum to ensure better APPR ratings.”*
- *“Can you explain how this would impact upon the APPR growth scores for high school teachers who have a SLO in 8th grade math? Currently, those teachers growth scores are determined by the state based on growth from the NYS CC Math 7 to the NYS CC Math 8 assessment. Will those teachers then have the option to submit SLO's to show growth using historical data as a baseline and determining the student growth result by using “the higher of the two Regents grades” – or does the state plan to award growth scores from NYS CC Math 7 to the CC Algebra Regents?”*
- *Will a growth score now be calculated from the Math 7 to Algebra 1 exam? This has significant implications for APPR plans that have already been initiated for this school year. Should middle school Algebra 1 teachers now write an SLO based on the Algebra 1 Regents Exam?*

III. Comments requesting consideration of including 7th graders in the waiver

- **A small number of school administrators and teachers asked us to consider including 7th graders in the same manner.**
- *“We have a small number of 7th graders (35 or so) that take Algebra as double accelerated students. Would they also be exempt from having to take the 7th grade NYS assessments? (These are the same students who would then be exempt in 8th grade because they would be taking Geometry.)”*
- *“As there are grade 8 students who take the Geometry Regents exam, there will certainly be a group of 7th graders who take the Algebra Regents exam. Would the waiver cover these students as well to excuse them from the grade 7 assessment?”*

Note: As a result of these comments, the Department has modified the waiver request upon which it sought public comment to include 7th Graders who take the Algebra Regents and 8th Graders who take the Geometry Regents.

IV. Comments regarding student Proficiency Levels

- **A few school administrators questioned the decision to only grant a proficiency level of 3, to even the highest scoring Algebra students and asked us to reconsider the proficiency levels granted based on test score or some other method.**

- *“On page 4 of the memo it states that the waiver seeks to provide a level 3 to students who pass the Algebra 1 Regents and a level 1 to those who fail (see below).”*

[“Students who pass a Regents Examination in algebra with a score that meets the requirements to earn a Regents diploma would be considered to have demonstrated accelerated performance in Grade 8 mathematics and would be incorporated into the Performance Index as equivalent to earning scores in Level 3 on the NYS Grade 8 Common Core Mathematics Test for the purposes of calculating a school’s Performance Index, which earns a school or district “full credit” for a student’s performance. Grade 8 students who fail the Regents Examination in Algebra I (Common Core) will be considered as equivalent to earning scores in Level 1, the same as students who earn a school or district “no credit” for their performance.”]

“After discussions with colleagues, we believe that it is in the best interest of the student and school district to provide an opportunity for a student to score a level 2 and a level 4 on the NYS grade 8 CC Mathematics test. For instance, can the waiver permit students who score an 85 or greater to receive a level 4 on the NYS Grade 8 CC Mathematics test? If a student scores between 65- 84 on the Algebra 1 Regents he/she would receive a level 3, a score of 55-64 on the Regents he/she would receive a level 2 and below 55 a level 1 on the NYS Grade 8 CC Mathematics test?”