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August 2020

Betsy Devos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-6100

RE: Request for a Waiver of Statutory and Regulatory Requirements of the Elementary and Secondary Education Act (ESEA) on behalf of all LEAs in New York State

Dear Secretary Devos:

Section 8401 of the Elementary and Secondary Education Act (ESEA), as recently amended by the Every Student Succeeds Act (ESSA) (hereafter referred to as ESSA), provides authority to the Secretary of the United States Department of Education (USDE) to waive certain statutory and regulatory requirements at the request of a State Educational Agency. By way of this letter, the New York State Education Department (NYSED or "the Department") is formally requesting a waiver of three statutory and regulatory requirements of Title IV, Part A of ESSA on behalf all Local Education Agencies (LEAs) in New York State.

As required in Section 8401 of ESSA, NYSED is submitting a formal request, containing the information described in subsection (b)(1) to the USDE for its consideration. This waiver request is being submitted based upon ongoing consultation with LEAs across the state and a review of the impact of the previously granted Title IV waiver granted to states for the 2019-2020 school year. The Department is requesting that LEAs in New York State be granted a waiver of the identified sections for a period of two years, beginning with the 2020-2021 school year. Below is a detailed plan that addresses each requirement in Section 8401(b)(1) of ESEA/ESSA.

A. Identify the Federal programs affected by the requested waiver.

Title IV, Part A - Student Support and Academic Enrichment, as authorized by the ESSA.

B. Describe which Federal statutory or regulatory requirements are to be waived.

On behalf of all LEAs, the New York State Education Department requests waivers for the following statutory or regulatory requirements:

1. Section 4106(d)(2) - LEAs with Title IV, Part A allocations of \$30,000 or more are required to conduct a formal needs assessment in order to be eligible to receive the LEA's allocation or make changes to planned use of funds.

2. Sections 4106(e)(2)(C), (D), and (E) - LEAs with Title IV, Part A allocations of \$30,000 or more are required to meet the content area spending requirements of using at least 20 percent of funds received for Well Rounded Educational Opportunities, at least 20 percent for Safe and Healthy Students, and a portion of funds for the Effective Use of Technology.
3. Section 4109(b) - LEAs that received Title IV, Part A funds are required to limit the expenditure of funds for technology infrastructure to no more than 15% of the portion of funds obligated for the Effective Use of Technology.

Rationale for Waiver Request:

Pursuant to Executive Order 202.4 from New York State Governor Cuomo, school districts, charter schools, and nonpublic schools were directed to close no later than Wednesday, March 18, 2020, as a result of the outbreak of the Novel Coronavirus (COVID-19) occurring in New York State. On April 6, 2020, the United States Department of Education (USDE) offered states the ability to apply for waivers related to the expenditure of School Year (SY) 2018-19 and 2019-20 funds. NYSED pursued several waivers in order to ensure that LEAs could be afforded the maximum flexibilities that were available. These waivers included, but were not limited to, providing increased flexibility in the use of Title IV, Part A funds to support continuity of services. The USDE approved these waivers for the 2019-2020 SY.

Moving into the 2020-2021 school year, LEAs will need to continue to have the maximum amount of flexibility in their use of Title IV funds, in order to address the academic, social-emotional, and physical health and safety needs of students. These needs will vary greatly across districts and schools, based upon the impact of COVID-19 on the delivery of educational services during the 2019-2020 SY and based upon the impact of COVID-19 on the opening plans for schools for the 2020-2021 SY. To date, NYSED has received more than 300 amendment requests for Title IV funds.

C. Describe how the waiving of such requirements will advance student academic achievement.

In waiving the aforementioned Title IV, Part A requirements, LEAs will have the maximum flexibility to use Title IV funds in a manner that meets the immediate needs of their students. In June, the NYSED hosted regional virtual meetings of stakeholders across the state, in order to develop recommendations for school reopening plans. Two areas of focus that were identified by stakeholders as crucial to supporting student academic achievement in the coming school year were 1) the need for additional access to technology, and 2) the need to ensure that students social and emotional needs are being addressed. The allowable uses of Title IV funds are uniquely suited to addressing these needs.

Adequate access to a computing device and high-speed broadband is essential for educational equity. Schools and districts must determine the level of access all students and teachers have in their places of residence; to the extent practicable, address the need to provide devices and internet access to students and teachers who currently do not have sufficient access; and provide multiple ways for students to participate in learning and demonstrate their mastery of the learning standards in remote and hybrid instructional models. Schools and districts should provide instruction on using technology and IT support for students, teachers and families and provide professional development for teachers and leaders on designing effective online/remote learning experiences.

As school and district personnel adapt to environments that result in substantially less time spent interacting in-person, ensuring intentional and meaningful inclusion of social emotional learning (SEL) across all aspects of operating strategies is critical to support the well-being and success of students, staff, and families. Along with physical health and well-being, schools and districts must also prioritize social emotional well-being – not at the expense of academics, but in order to create the mental, social, and emotional space for academic learning to occur.

D. Describe the methods the State educational agency, local educational agency, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan.

NYSED will continue to require LEAs to outline how they will use Title IV, Part A funds as part of the Department’s Consolidated Application for ESSA Funds. Within that application, LEAs must identify how they consulted with stakeholders on the use of Title IV funds, provide a rationale for the use of funds, and identify which allowable activities under the three areas (Well Rounded Educational Opportunities, Safe and Healthy Students, and Effective Use of Technology) the LEA will fund.

As part of the Department’s established monitoring procedure, LEAs will be selected for monitoring of their Consolidated Application in the Spring. During that monitoring, LEAs will provide evidence of program implementation and evaluation. Additionally, LEAs will be asked to provide evidence of consultation with required constituents/stakeholders and collaboration with non-public schools on the use of Title IV funds, as well as the fiscal controls the district has in place as it relates to purchases with Title IV funds.

E. Include only information directly related to the waiver request.

As required by Section 8401(b)(3)(A), the New York State Education Department will: (1) provide the public and any interested local educational agency in the State with notice and a reasonable opportunity to comment and provide input on the request, to the extent that the request impacts the local educational agency; (2) submit the comments and input to the Secretary, with a description of how the State addressed the comments and input; and (3) provide notice and a reasonable time to comment to the public and local educational agencies in the manner in which the applying agency customarily provides similar notice and opportunity to comment to the public. Specifically:

- NYSED will provide notice and information to the public regarding this request for a waiver on their website at: <http://www.p12.nysed.gov/accountability/waivers/home.html>. In accordance with normal procedures of the Department, the public will be provided with a minimum of five (5) business days to provide comments.
- NYSED will distribute notification of the waiver request and solicited comments via email to all district superintendents, school superintendents, charter school officials, and nonpublic school representatives. In accordance with normal procedures of the Department, LEA representatives will be provided with a minimum of five (5) business days to provide comments.

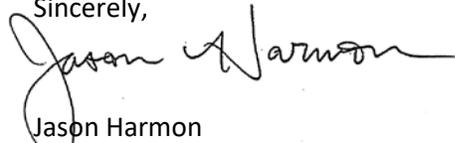
The list of public postings by NYSED and all public comments received by NYSED will be enclosed for review and consideration.

F. Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describe how the State educational agency, local educational agency, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi).

Schools will continue to provide assistance to the same populations served previously by Title IV, Part A funds. As described above, the requested waiver will allow LEAs to provide Title IV, Part A services to all students by ensuring that funds can be used for immediate needs created by COVID-19, including the needs of students with disabilities, English Language Learners, and economically disadvantaged students.

Should you have any questions or need additional information, please feel free to contact me directly at (518) 473-0295.

Sincerely,

A handwritten signature in black ink that reads "Jason Harmon". The signature is written in a cursive style with a large, looping initial "J".

Jason Harmon

Assistant Commissioner