



Advocates for Children of New York

Protecting every child's right to learn

January 30, 2012

Assistant Commissioner Ira Schwartz
Office of Accountability
New York State Education Department
89 Washington Ave., 365 EBA
Albany, NY 12234
eseathnktank@mail.nysed.gov

Re: Public Comment on New York State's Draft ESEA Flexibility Request

Board of Directors

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Dear Assistant Commissioner Schwartz,

We thank the New York State Department of Education (SED) for offering the public an opportunity to provide comment on its draft request for flexibility under the Elementary and Secondary Education Act/No Child Left Behind (ESEA/NCLB), and we write to submit the comments and recommendations of Advocates for Children of New York (AFC).

In general, we are encouraged to see New York move away, however slightly, from a largely punitive school and district accountability system and toward providing increased support to districts and schools to improve the quality of teaching and learning. We support a number of goals expressed in this application, particularly:

- The development of SED's own capacity to support school and district improvement that better integrates and builds upon its existing resources and streamlines multiple systems for districts;
- The integration of multiple processes for identifying areas for improvement, and the creation of a single diagnostic tool; and
- The intention to have districts develop streamlined and comprehensive plans for improvement which we hope will lead to more thoughtful and less fragmented whole-district and whole-school planning to address the needs of their students, including student subpopulations.

Finally, we are pleased to see the requirements to better integrate parent and community input in school improvement efforts and to increase available funding for these activities. We hope sufficient support and expertise will be provided so that districts and schools can develop meaningful parent and community partnerships. We outline our concerns and specific recommendations below.

Accountability Measures for High Schools and Districts: Cohort Graduation Rates

We support the use of four- and five-year cohort graduation rates in high school



accountability measures, but we recommend that SED include six-year graduation rates as well. Schools and districts should have every incentive to work with students to earn a diploma for as long as possible, particularly if students could earn a Regents diploma or more advanced diploma if given additional time. Providing incentives for schools to keep students in school longer would also further the goal of better preparing students for college and careers, and provide an opportunity for more in-depth college and post-secondary preparation in high school. Further, using six-year graduation rates would provide even stronger incentives for schools to work with overage students, students who experienced interruptions or frequent disruptions in their education, late-entry English Language Learners (ELLs) and students with disabilities who may need more years to graduate. The use of six-year graduation rates would also be consistent with the new principal evaluation system that allows for the use of four-, five-, and six-year graduation rates as a measurement of high school principal performance.

With regard to what weighting to give students who graduate with a local diploma, AFC strongly supports the awarding of partial credit – and partial credit only – for schools whose students graduate with local diplomas. Although schools should have incentives to push students to fulfill the requirements for Regents diplomas, we believe that partial credit would give schools incentives to retain students who would otherwise drop out.

AFC also recognizes and supports SED’s special consideration in this request for transfer schools and other schools that might serve high-need, underserved and/or overage student populations.

The Need for Stronger Protections Against Student Exclusion

One of the most unfortunate consequences of ESEA/NCLB was the creation of additional incentives for schools to illegally exclude, discharge or transfer students to improve their statistics. Despite efforts to combat this practice over the years, the incentives remain and the practice persists in different forms, including in the manipulation of school choice processes and admissions requirements to screen out high-needs or underperforming students. AFC has been working to combat this practice in New York City, where we believe it to be particularly prevalent, for many years.¹ If SED intends to align its accountability

¹ AFC has documented these practices in New York City and advocated for reform to combat them over the last nine years. See, e.g., Advocates for Children of New York, Inc. & Public Advocate Betsy Gotbaum, *Pushing Out At-Risk Students: An Analysis of High School Discharge Figures* (2002); Elisa Hyman, *School Push-Outs: An Urban Case Study* (2003); The New York Immigration Coalition & Advocates for Children of New York, Inc., *So Many Schools, So Few Options: How Mayor Bloomberg’s Small High School Reforms Deny Full Access to English Language Learners* (2006); Advocates for Children of New York & Asian American Legal Defense and Education Fund, *Empty Promises: A Case*



system with its aspirational college- and career-readiness standards, the need for safeguards against these practices is even greater.

In SED's request for flexibility, the strategy of creating focus districts provides a mechanism for districts to address this problem, should they choose to do so. The draft request notes that one of SED's rationales for creating focus districts is to enable districts to create school- and district-wide strategies for turning around low-performing schools that address resource and support inequities among district schools, and in that process, "[d]istricts must consider all policies that impact school choice, enrollment, and student transfers." SED should explicitly require focus districts to address whether and how school choice, enrollment, transfer and discharge policies contribute to student exclusion, and how they will revise those policies to prevent exclusion.

The "focus district" strategy may not work well in New York City, however, since high school choice, high school enrollment, and transfers are done centrally, and SED intends to treat New York City as 32 separate community school districts for the purpose of identifying focus districts. While we see a number of reasons to use community school districts to provide school support, including the utilization of existing parent and community leadership mechanisms at the local district levels, we strongly advise that a mechanism be created for New York City to examine the effects of its citywide and inter-district school choice, enrollment and transfer policies and practices if any of its districts are designated focus districts or any of its schools are designated priority schools.

Notably, the application also does not contain any safeguards against student exclusion at priority schools or other schools potentially at-risk of classification, such as schools requiring Local Assistance Plans. In AFC's experience, students at these schools are often subject to exclusionary practices as well, particularly as schools are put under increased pressure to improve student performance within a set number of years. Thus, protections against student exclusion should be created at these schools, too.

The Need for More Specificity About Supports and Interventions

Our support for some of the broad goals articulated in this application is tempered by the insufficient detail on the new system's capacity or process for building capacity to support schools and districts, particularly in serving students with disabilities, ELLs, and other at-risk students.



AFC generally supports the use of Response to Intervention (RTI), Positive Behavior Interventions and Supports (PBIS), and Universal Design for Learning (UDL),² but we note that these are merely frameworks for the delivery of targeted interventions and accessible instruction. Thus, the availability and accessibility of research-based and effective interventions for individual students is critical. We recommend that SED specify how it will identify and make broadly available research-based and effective interventions, particularly for the varied needs of students with disabilities and ELLs, in this application. We also recommend that it specify how it will build the capacity of existing technical assistance networks, which we know are hampered by budgetary and other constraints.

We also have concerns about the capacity of New York City's 32 community school districts to deliver supports and interventions to their schools if any are designated as focus districts. As you know, New York's system of school support is not geographically based, with some functions centralized, and others, such as parent and community involvement, decentralized. Strengthening New York City's districts' capacity to support school improvement would require major re-allocations of resources.

We understand that many of the details of the proposed system are still being worked out and that discussions are ongoing regarding the contents of the diagnostic tool, district plans and allowable expenditures, but we recommend that these discussions result in more specificity about:

- How to meet the diversity of needs within subgroups, particularly students with disabilities and ELLs;
- How to ensure the availability and accessibility of interventions that will improve instruction for students with disabilities and ELLs, including those tailored to the needs of subgroups within these student populations;
- How to promote the role of quality early childhood programming in district and school improvement, particularly in focus districts;
- How to ensure the availability of research-based reading, writing and math interventions, such as multi-sensory approaches;
- How to use technology, including assistive technology, effectively while adhering to principles of universal design; and

² We also note that although this application supports UDL in supports and interventions, it does not address present limitations in the accessibility of state assessments for students with disabilities who need testing accommodations and modifications. AFC recommends that the State also provide tests in UDL format.



- How to promote best practices and support in creating strong family and community partnerships³.

Priority Schools

In priority schools, AFC believes that resources must be devoted not only to changing the school as an institution or organization, but to meeting the needs of individual students in those schools while efforts are made to turn the school around. Priority schools are likely to face dramatic change causing disruption and upheaval that negatively impacts instruction and programming for their current students even though performance gains might be years away. We strongly recommend individualized and targeted instruction provided by specialists and integrated into the school day. This direct instruction could include small-group or individual reading, writing or math instruction, or providing instruction during an extended school day, which we believe is contemplated in this draft application, but should be made more explicit. If SED makes Supplemental Education Services optional without requiring and funding individualized and targeted direct instruction, thousands of students at priority schools will lose valuable instructional time and potentially be left behind even if the larger changes at the school ultimately succeed.

Reward Schools

With regard to granting reward schools increased flexibility and autonomy, we would caution that certain legal mandates and requirements regarding at-risk or high-needs populations must be retained. Students such as those with disabilities or ELLs are most at-risk of being excluded or given inappropriate instruction even in high-performing schools. Schools should not be permitted to eliminate support for, or close their doors to, high-needs students as a reward for good performance.

Conclusion

Thank you for inviting AFC to participate in conversations regarding New York's system of school and district accountability and support as a member SED's School and District Accountability Think Tank. As a member of the Think Tank, we made recommendations regarding accountability measures for ELLs in a memo submitted by the Asian American Legal Defense and Education Fund (AALDEF) and AFC earlier and referenced in public comments submitted by AALDEF. AFC stands by those recommendations and supports the

³ See e.g., Advocates for Children of New York, Inc., *Our Children, Our Schools: A Blueprint for Creating Partnerships Between Immigrant Families and the New York City Public Schools* (March 2009) available at http://advocatesforchildren.org/Our_Children_Our_Schools.pdf.



comments made by AALDEF regarding the incorporation of those recommendations in SED's request for flexibility.

We look forward to continuing to work with you on the creation of a stronger and more integrated system of support for schools and districts geared toward improving instruction for all of New York's students.

Sincerely,

Gisela Alvarez, Esq.
Senior Project Director

