



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable MaryEllen Elia
Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, NY 12234

OCT 19 2015

Dear Commissioner Elia:

I am writing to follow up on a discussion that members of my staff had with your staff regarding participation on your State assessments during the 2014–2015 school year. Based on the information New York recently released, the U.S. Department of Education (ED) is concerned that New York’s participation rate did not meet requirements of the Elementary and Secondary Education Act of 1965, as amended (ESEA). I am asking for information about how New York is addressing this problem.

Please let me emphasize the importance of a high-quality, annual Statewide assessment system that includes all students so that local leaders and educators have the information they need to help every student succeed and ensure equity by holding all students to the same high expectations. Such an assessment system provides information on *all* students so that educators, with the support of parents, can keep students on track for success in school and life, provide extra support to the students who are behind, and close achievement gaps among subgroups of historically underserved students.

Section 1111(b)(3) of the ESEA requires each State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality academic assessments that includes, at a minimum, assessments in mathematics and reading/language arts administered in each of grades 3 through 8 and not less than once during grades 10 through 12; and in science not less than once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. Furthermore, ESEA sections 1111(b)(3)(C)(i) and (ix)(I) require State assessments to “be the same academic assessments used to measure the achievement of *all* children” and “provide for the participation in such assessments of *all* students” (emphasis added). These requirements do not allow students to be excluded from Statewide assessments. Rather, they set out the rule that *all* students in the tested grades must be assessed. To the extent the statute permits flexibility, an LEA or school may be designated as making adequate yearly progress if it assesses at least 95 percent of its students. (ESEA section 1111(b)(2)(I)(ii)).

If an SEA fails to comply with the assessment requirements in the ESEA, ED has a range of enforcement actions at its disposal. These include sending a written request to the SEA that it come into compliance, increasing monitoring, placing a condition on the SEA’s Title I, Part A grant award or its ESEA flexibility request, placing the SEA on high-risk status, issuing a cease and desist order, entering into a compliance agreement with the SEA to secure compliance, withholding all or a portion of the

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SEA's Title I, Part A administrative funds, and suspending, and then withholding, all or a portion of the State's Title I, Part A programmatic funds.

An SEA has similar enforcement actions available to it with respect to noncompliance by an LEA, including withholding an LEA's Title I, Part A funds. *See, e.g.*, section 440 of the General Education Provisions Act. In addition, the SEA or LEA could find itself out of compliance with a wide range of additional Federal programs that rely on Statewide assessment results, putting additional funds at risk. These additional programs include those targeting students most at risk including, but not limited to: the School Improvement Grants (SIG) program; ESEA Title III; Part B of the Individuals with Disabilities Education Act (IDEA); programs for rural schools under ESEA Title VI; migrant education under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

In applying for funds under Title I, Part A of the ESEA, New York assured that it would administer the Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9304(a)(1)). Similarly, each LEA that receives Title I, Part A funds assured that it would administer its Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9306(a)(1)).

New York has publicly released participation rate data indicating that, for the 2014–2015 school year, State-level participation rates on its assessments have fallen below 95 percent and, several LEA's throughout the State had significant issues with respect to participation rates. I am writing to request information about the actions the SEA is taking to meet its assessment obligations under the ESEA.

In its response, the SEA should demonstrate that it has taken or will take appropriate actions to enforce the requirements of the ESEA and describe how such actions will specifically address the problem that occurred in 2014–2015 and ensure that all students participate in Statewide assessments during the 2015–2016 school year and each year thereafter. Depending on the extent of the non-participation and other relevant factors, examples of such actions could include some combination of:

- Lowering an LEA's or school's rating in the State's accountability system or amending the system to flag an LEA or school with a low participation rate.
- Counting non-participants as non-proficient in accountability determinations.
- If the State has received ESEA flexibility, identifying a school that misses participation rate targets over multiple years as a priority or focus school.
- Requiring an LEA or school to develop an improvement plan, or take corrective actions to ensure that all students participate in the Statewide assessments in the future, and providing the SEA's plan to review and monitor such plans.
- Requiring an LEA or school to implement additional interventions aligned with the reason for inadequate student participation, even if the State's accountability system does not officially designate schools for such interventions.
- Designating an LEA or school as "high risk," or a comparable status under the State's laws and regulations, with clear explanations for the implications of such a designation.
- Withholding or directing use of State aid and/or funding flexibility.

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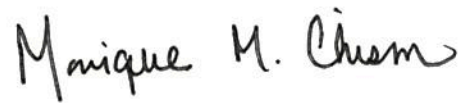
New York must submit its response to Hans Neseth at: NewYork@ed.gov no later than 30 days after the receipt of this letter. Please note that there may be additional follow up depending on the quality of the plan and its implementation during the 2015–2016 school year.

I look forward to working with you to ensure that all students participate in Statewide assessments during the 2015–2016 school year and each year thereafter.

If you need additional information or clarification, please do not hesitate to contact Hans Neseth of my staff at: OSS.NewYork@ed.gov.

Thank you for your continued commitment to enhancing education for all of New York's students.

Sincerely,

A handwritten signature in black ink that reads "Monique M. Chism". The signature is written in a cursive style with a large, stylized 'M' and 'C'.

Monique M. Chism, Ph.D.
Director
Office of State Support

CC: Ira Schwartz