



September 8, 2017

Ira Schwartz  
Assistant Commissioner  
Office of Accountability  
55 Hanson Place, Room 400  
Brooklyn, NY 11217

Dear Mr. Schwartz,

On behalf of the National Disability Rights Network (NDRN) I write to comment on the New York State Education Department's proposed waiver request regarding students with disabilities in the state's proposed plan to implement the Every Student Succeeds Act (ESSA). I urge you to remove this proposed waiver request from New York's ESSA plan as its inclusion violates federal law.

NDRN is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the 57 P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States. A critical area of focus for the P&A agencies is education. Indeed, in 2016 the P&As worked on nearly 14,000 individual cases and hundreds of systemic cases related to enforcing the educational rights of students with disabilities.

New York's proposed state plan for implementation of ESSA plan signals that New York will seek a waiver to allow schools to avoid accountability for helping students with disabilities achieve grade-level standards by "administer[ing] below-grade level assessments to students with disabilities in the event that assessments are consistent with those students' level of instruction and to use these measurements towards accountability." This provision would guarantee lower expectations for students with disabilities and therefore must be rejected.

Implementing and assessing all students, including students with disabilities, on challenging state academic standards is a core principle of ESSA. The law clearly states that all students are to be instructed and assessed on grade level academic standards. ESSA provides two options for states to do so – the general assessment and the alternate assessment aligned with the challenging state academic standards. Both of these assessments are aligned with grade level standards. The state is allowed to assess up to 1% of students “with the most significant cognitive disabilities” using alternate assessments. All other students must be assessed using the general assessment. Anything else – including this proposal to administer below-grade level assessments – is inconsistent with the letter and spirit of federal law and will deny students with disabilities an equal educational opportunity.

In 2015, New York requested a similar waiver from the US Department of Education. Disability advocacy organizations, including NDRN, unanimously opposed that request as it would have unacceptably lowered academic expectations for students with disabilities, impacting their achievement overall. We remind you that the U.S. Department of Education (USED) denied that request on June 5, 2015. The situation is no different now. Students with disabilities still deserve the right to achieve academically, and with supports and specialized instruction, they can achieve at high levels. As such, New York should follow the law as written and abandon its current request to test these students on lower standards than they deserve. Indeed, this request has already been rejected by USED.

Sincerely,



Curt Decker  
Executive Director