

DISABILITY RIGHTS NEW YORK

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January 24, 2014

VIA Electronic and First-Class Mail

Dr. Lisa Long
Supervisor
Office of Accountability
55 Hanson Place
Room 445
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RE: Public Comment on Proposed Amendment One to the ESEA Flexibility Waiver

Disability Rights New York (Disability Advocates, Inc.), the designated Protection and Advocacy agency for New York State, provides legal assistance to thousands of students with disabilities in special education matters. DRNY also organizes and supports the New York Special Education Task Force, which is comprised of over 200 parents, advocates, school district staff, attorneys and other individuals who have a specific interest in special education matters and work collaboratively to ensure that children with disabilities are educated in the least restrictive setting. As a result, DRNY has a unique ability to assess the primary issues and obstacles faced by New York State students with disabilities.

DRNY opposes the State's proposal to alter the testing procedures for students with "significant cognitive disabilities" by creating out-of-level testing for four reasons: (1) if the State was providing students with disabilities with reasonable testing accommodations, the proposal would be unneeded; (2) NYSED's rationale does not support the need; (3) the proposal is too vague to meaningfully inform the public; and (4) the public comment process and timeframe is inadequate.

NYSED Has Failed to Mandate and Implement Available Accessibility Accommodations for Testing of Students with Disabilities

If New York mandated reasonable testing accommodations for students with disabilities, the proposal would be unneeded. This proposal is directly contrary to the fundamental principles of the Common Core and the Individuals with Disabilities Education Act: promoting a culture of high expectations for all students. All students must have access to grade-level academic learning standards. Most of these students will be able to achieve these standards

when the following three conditions are met: (1) Classroom instruction is provided by a qualified teacher; (2) Individualized Education Program and 504 Plans are appropriately designed and implemented; and (3) Appropriate accommodations and accessibility features are determined and provided to allow the student to access grade-level content.¹ DRNY strongly believes that the lack of attention to appropriate accommodations on State assessments has significantly interfered with access to testing for students with disabilities.

NYSED is a governing state member in the Partnership for Assessment of Readiness for College and Careers (PARCC).² PARCC has developed and released a comprehensive manual – the *PARCC Accessibility Features and Accommodations Manual* - that provides extensive guidance to states and schools regarding permissible use of accommodations in the administration of existing Common Core assessments to students with disabilities.³ NYSED has elected not to use this guide and instead developed its own Manual.⁴ NYSED's Manual limits the use of important testing accommodations that are clearly permissible in the PARCC Manual. For example, NYSED does not permit the accommodation of reading the test aloud on **any** section of the ELA assessment, even those sections of the assessment that are not measuring the ability to read/decode words and sentences. Thus, in New York, a student who is unable to decode words but has the ability to comprehend passages if read aloud will fail every part of the ELA assessment despite having the skills to be successful in other sections. In contrast, the PARCC Manual specifically permits the accommodation of reading the test aloud for students with “a disability that severely limits or prevents him/her from accessing printed text, even after varied and repeated attempts to teach the student to do so (e.g., student is unable to decode printed text or read fluently).”⁵ This accommodation is permitted on the ELA assessment for students who meet this criteria – the very group that NYSED's proposal seems to implicate.⁶

¹ *PARCC Accessibility Features and Accommodations Manual*, p. 43, <http://www.parcconline.org/sites/parcc/files/PARCC%20Accessibility%20Features%20and%20Accommodations%20Manual%20November%202013.pdf>.

² The PARCC was founded and funded by USDOE and others to provide states with assessments, including adaptive assessments for students with disabilities, to measure student progress on the Common Core standards.

³ “By applying principles of universal design, leveraging technology, embedding accessibility features, and allowing a broad range of accommodations, PARCC intends to provide opportunities for the widest possible number of students to demonstrate knowledge and skills while maintaining high expectations for all students to achieve the Common Core State Standards (CCSS).”

PARCC Accessibility Features and Accommodations Manual, <http://www.parcconline.org/sites/parcc/files/PARCC%20Accessibility%20Features%20and%20Accommodations%20Manual%20November%202013.pdf>.

⁴ The *Grades 3–8 Common Core English Language Arts and Mathematics Tests School Administrator's Manual* is available at: (<http://www.p12.nysed.gov/assessment/sam/ei-samcc13rev.pdf>).

⁵ *PARCC Accessibility Features and Accommodations Manual*, p. 27 – 28; <http://www.parcconline.org/sites/parcc/files/PARCC%20Accessibility%20Features%20and%20Accommodations%20Manual%20November%202013.pdf>.

⁶ *Id.*

NYSED's failure to allow *all* testing accommodations set forth in a student's IEP or 504 Plan significantly undermines that student's ability to demonstrate what he or she knows leading to unnecessary test anxiety and poor performance. This practice is plainly discriminatory. Rather than complying with both IDEA and Section 504 of the Rehabilitation Act and embracing readily available, USDE-endorsed protocols for the use of accommodations in the administration of Common Core Assessments, NYSED wrongly asserts that off-grade testing is the only answer to address the testing needs of students with significant cognitive disabilities. This is simply not so.

NYSED's Rationale for Request Does Not Support the Proposal

NYSED justifies off-grade testing because there is allegedly a lack of adaptive assessment tools. This is not so. USDE-endorsed adaptive assessments will be available to New York and all other states for the 2014-2015 school year.⁷ Since adaptive assessments will be available for implementation in the same school year that this proposal would go into effect, the lack of such assessments is no justification for the proposed amendment.

Further, if NYSED refuses to use USDE-endorsed assessments that assess students at grade level and instead administer off-grade level assessments only to students with disabilities, NYSED will have discriminated against these students in violation of Section 504 of the Rehabilitation Act of 1973.

NYSED also claims its proposal is a more appropriate way to assess students for instructional and state accountability purposes. This is not so. New York State already has a process for assessing students with significant cognitive disabilities – the New York Alternate Assessment. This research-based assessment based on *grade level* New York Alternate Learning Standards is already available to evaluate students with significant cognitive disabilities.

NYSED has failed to provide **any** evidence, research-based or otherwise, showing that off-grade level testing provides an accurate measure of performance for students with significant cognitive disabilities. If a 6th grader cannot decode text, offering the same student a 4th grade test is not going to change that fact or improve the Student's score; both tests require the student to decode text.

NYSED's Proposed Amendment is Too Vague to Meaningfully Inform the Board of Regents and the Public

NYSED asserts that off-grade assessments will only apply to "students with significant cognitive disabilities" but does not define that class of students. Rather, NYSED asserts it will issue unspecified "criteria and guidance" for making this determination. Therefore, there are no

⁷ According to The Partnership for Assessment of Readiness for College and Careers (PARCC), assessments will be ready for states to administer during the 2014-15 school year. The PARCC was founded and funded by USDOE and others to provide states with assessments, including adaptive assessments for students with disabilities, to measure student progress on the Common Core standards.

limits on how many students will be tested out of grade level. The lack of information interferes with the public's ability to comment on the actual scope and impact of this proposal.

While NYSED would limit the number of grade levels below the student's chronological age at which the student can be assessed and provides an example of two years, it does not firmly commit to a specified grade level adjustment. For a proposal with such far-reaching implications and impact, absolute specificity as to the scope of this initiative is essential.

NYSED and the Board of Regents have not Provided Sufficient Information and Opportunity for Public Consideration and Comment

New York State Education Department (NYSED) and the Board of Regents have not provided adequate time for public consideration and comment. DRNY disputes NYSED's claim that it had undertaken an extensive process for engaging stake-holders around the state.

NYSED's reliance on parent and advocate concerns and support for the proposed amendment is misleading.⁸ NYSED claims that all 13 Parent Centers support the amendment, yet only 2 of those Centers have expressed written support for the initiative despite requests to do so by NYSED. This selective polling of stakeholders is not objective and therefore cannot be claimed to represent the views of all parents, teachers and advocates.

Furthermore, the comment period available to *all* stakeholders for this proposal was set from January 16th – January 27th (6 business days). This is grossly inadequate.

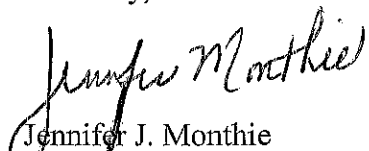
Finally, there is no evidence that NYSED has considered or proposed other grade-level assessment options to address the concerns of parents and teachers. As detailed herein, students are not being provided all the accommodations and instructional supports required by law and endorsed by PARCC and the Common Core State Standards Initiative.⁹ Nor is there any indication NYSED has disclosed the pending availability of adaptive assessments. In DRNY's experience, when parents and teachers are informed of these options, their concerns about grade-level testing quickly resolve. NYSED's failure to pursue or even acknowledge these alternatives deprives the Board of Regents and the public of the opportunity for legitimate analysis and discussion.

For these reasons, we urge the Board of Regents to reject NYSED's proposal to amend the ESEA Waiver Renewal for USDE.

⁹ "Some students with the most significant cognitive disabilities will require substantial supports and accommodations to have meaningful access to certain standards in both instruction and assessment, based on their communication and academic needs. These supports and accommodations should ensure that students receive access to multiple means of learning and opportunities to demonstrate knowledge, but retain the rigor and high expectations of the Common Core State Standards," CCSSI, *Application to Students with Disabilities*, <http://www.corestandards.org/assets/application-to-students-with-disabilities.pdf>.

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Sincerely,



Jennifer J. Monthie
Director

Protection and Advocacy for People with Intellectual and Developmental Disabilities

cc: Members of the New York Board of Regents