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**TESTIMONY BEFORE THE UNITED STATES SENATE
COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS**

“NO CHILD LEFT BEHIND: EARLY LESSONS FROM STATE FLEXIBILITY WAIVERS”

FEBRUARY 7, 2013

Good morning Senator Harkin, Senator Alexander and members of the Committee. My name is John King, and I am the Commissioner of Education for New York. Thank you for the opportunity to testify on New York’s experience during application for, and implementation of, our Elementary and Secondary Education Act (ESEA) Waiver.

State Context for Reform

I would like to give you some brief context for how it was that New York arrived at an ESEA Waiver that maintains rigorous expectations for student performance and aligns our accountability system with a comprehensive reform agenda designed to achieve college and career readiness for all students.

Over the past ten years, the New York State Education Department (SED) has implemented a state accountability system that closely tracks the federal Title I accountability system codified in the current No Child Left Behind (NCLB) reauthorization of ESEA. New York used Adequate Yearly Progress (AYP) determinations as the basis for accountability identification and intervention and moved schools and districts along the NCLB improvement, corrective action, and restructuring continuum. We strengthened the system further through integrating into it our state Schools Under Registration Review program, which predated NCLB and allows the Commissioner to directly prescribe interventions in chronically low performing schools, including recommending to the Board of Regents revocation of a school’s registration and school closure.

New York strongly supports many policy constructs in the original NCLB accountability system, particularly the concept of annual assessments of students in English language arts and mathematics, a focus on, and attention to, graduation rates, the disaggregation of subgroup performance and measures intended to address the gap in student performance among different groups of students, and a commitment to public reporting of, and accountability for, results.

However, more than ten years into identifying schools for improvement and intervening in them, we know that the NCLB accountability system does not work well enough to engender the kind of profound improvements we seek in our struggling schools. In recent years, significant challenges with the system have emerged in New York and across the nation.

New York availed itself of the flexibility opportunities that were provided by the United States Education Department (USED) over the years. We were the first state to adopt a Performance Index

and use cohort measures to track high school performance, and we were one of nine states to be approved to implement a Differentiated Accountability Pilot. However, New York was finding it increasingly difficult to keep its ESEA accountability system well aligned with the bold agenda for educational reform that the Board of Regents¹ established in 2009.

When the waiver initiative was announced, New York was eager to take advantage of the opportunity. The waiver's principles regarding implementation of College and Career Ready standards and assessments and its strategies to promote great teachers and leaders were well aligned with initiatives we already had under way. In addition, the ability to re-conceptualize our accountability system to better support our reform agenda was welcomed across the spectrum of educational stakeholders in New York.

The Regents Reform Agenda

In 2009, the Board of Regents embarked on a Reform Agenda to ensure all our students graduate high school ready to succeed in college and careers. The key components of the Regents Reform Agenda are:

- Implementing College & Career Ready standards and developing curriculum and assessments aligned to these standards to prepare students for success in college and the workplace;
- Building instructional data systems that measure student success and provide information to teachers and principals so they can improve their practice in real time;
- Recruiting, developing, retaining and rewarding effective teachers and principals; and
- Turning around the lowest-achieving schools.

In 2010, New York was awarded nearly \$700 million in the Race to the Top (RTTT) competition. The state's educational community came together in an unprecedented partnership to support the Board of Regents comprehensive application, which was firmly aligned with the four key components of the Regents Reform Agenda.

We recognized that teachers and school leaders need a system of comprehensive support to increase student achievement, particularly in the lowest-achieving schools. Our application leveraged the state's share of RTTT to implement several key initiatives to build the capacity of educators statewide to directly support new standards, assessments, curricula and professional development resources, improved teacher and principal preparation, evaluation, and support, data driven instruction, and mechanisms to turn around our lowest-achieving schools.

After a year of training and preparation, New York's schools began to implement the most ambitious education reforms in our history. While there have certainly been challenges, we have made significant progress towards meeting our goals, and we are confident that the Regents Reform

¹ New York's State Education Department is governed by an independent Board of Regents comprised of 17 members elected by the legislature, with 13 members elected from each of the state's Judicial Districts, and 4 members elected at-large.

Agenda, which underlies the implementation of RTTT, will build the capacity of school districts to ensure that students graduate our schools ready for college and careers.

College & Career Ready Standards

New York is one of 45 states plus the District of Columbia and Department of Defense schools to adopt the Common Core. As you know, these standards are the first to be *backmapped* grade-by-grade from the skills a student needs at high school graduation to be ready for college and career all the way back to kindergarten. The Regents have further mapped these standards back to pre-kindergarten.

Although in New York curriculum and professional development have traditionally been a local school district responsibility, SED is providing our schools with the tools and training resources they need to implement the Common Core, and we are – for the first time – developing P-12 English language arts and mathematics curricula as free and optional resources for educators.

In addition to these resources, we have created EngageNY.org, a website we developed that provides access to the unprecedented range of professional development materials we provide on each critical component of the Regents Reform Agenda, including many materials dedicated to classroom implementation of the Common Core. To date, we have had more than 11 million page views on EngageNY.org, and the site has become a model for the nation.

We have also leveraged RTTT to deploy Network Teams – teams of local experts in curriculum, assessment, and data analysis – to build capacity to sustain the reforms. Network Teams work in close partnership with districts and schools to build the capacity of educators around our school-based initiatives.

Beginning in Spring 2012, SED launched the Bilingual Common Core Initiative to develop new English as a Second Language and Native Language Arts Standards aligned to the Common Core. As a result of this process, we are developing New Language Arts Progressions and Home Language Arts Progressions for every Common Core Standard in every grade.

We are also changing how teachers and principals are certified to ensure that new educators have the skills required by the Common Core and today's diverse classrooms. For example, we have adopted a new performance-based certification exam modeled on National Board Certification and we are designing new and more rigorous Content Specialty Tests aligned to the Common Core to assess new teachers' mastery of knowledge in the content areas they will be teaching.

Teacher and Leaders

In the context of our successful 2010 RTTT application, New York enacted a statutory framework for teacher and principal evaluations, which we called Annual Professional Performance Reviews (APPR). The law required school districts and local collective bargaining units to establish local evaluation plans in accordance with guidelines established in law. In 2012, a new, more rigorous teacher and principal evaluation system was enacted that built on the structure of the 2010 evaluation

law. Teachers and leaders evaluated under the evaluation system receive composite scores on a 100 point scale, which includes 20 percent for student growth on state assessments; 20 percent for student performance on locally selected measures; and 60 percent for other sources of evidence, such as observations, rubrics, and parent/student surveys.

Two key features of our evaluation system are:

- The evaluation system is based on multiple measures of how educators support student learning, including student performance outcomes as well as observations of teaching practice by trained evaluators; and
- It is designed to provide educators regular, meaningful feedback to support continuous improvement.

Districts and collective bargaining units must negotiate evaluation plans, and plans compliant with the evaluation law and regulations are approved by the Department after a thorough review. In addition, a provision in last year's state budget made increases in state aid to school districts – which amount to approximately four percent – subject to SED approval of a negotiated APPR plan.² By January 17, 2013 – the deadline for plan approval - 685 out of 691 districts, more than 99 percent of the state's school districts, had complied and now are beginning implementation of an evaluation system. Unfortunately, the state's largest school district, New York City, was one of six districts that did not meet the deadline. The Governor and legislative leadership have committed to empower SED to resolve the differences between labor and management to establish a default evaluation system for New York City if a negotiated agreement cannot be reached.

While challenging to implement in this fiscal environment, we believe there are opportunities for districts to better align use of Title IIA funds to support teacher and principal effectiveness in the context of the evaluation system and for implementation of the Common Core.

New York's ESEA Waiver

When SED sought approval from the Regents to submit an ESEA flexibility Waiver application, we did so not seeking to decrease the levels of accountability for districts and schools, but rather to ensure that interventions and supports would be anchored to the more rigorous standard of college and career readiness.

As described previously, the Reform Agenda adopted by the Regents had already begun to address many of the principles that the Secretary and United States Education Department established for approval of a waiver. For example, we had adopted and had an implementation plan for College & Career Ready standards, and the state's new teacher and principal evaluation system included student growth as a significant factor.

As SED began to prepare the Waiver, the Regents adopted 10 key Guiding Principles to inform development of the application:

² The 2013-14 proposed state budget includes a provision that would continue to tie increases in state school aid to approval of a teacher and principal evaluation plan.

- ***Accountability Based on College and Career Standards:*** Ensure that all school districts are making acceptable progress towards having all students achieve college and career ready standards;
- ***Measures Aligned to the Common Core:*** Base accountability on a broad set of measures aligned to the Common Core standards, including proficiency and growth in English language arts, mathematics, and graduation rates;
- ***Use of Both Student Achievement and Growth:*** Use determinations of both student growth and proficiency to measure teacher, principal, school, and district performance;
- ***Fair, Accurate and Meaningful Data:*** Report data in a way that is clear and meaningful to educators, parents, and the public;
- ***Identification of High and Low-Performing Schools:*** Identify, in addition to focus and priority schools, other schools in need of improvement as well as schools that are highest performing and high progress;
- ***Effective Interventions and Supports:*** Enable substantial positive change, including dramatic changes in teaching and learning and school culture in the lowest performing schools;
- ***Timely, accessible and actionable reporting:*** Students, families, educators, principals, policymakers, and the public should be provided information that can be used to identify and replicate best practices, recognize and correct deficiencies, and continuously improve performance;
- ***Addressing Unique Circumstances:*** Set standards of accountability that recognize on a case-by-case basis, consistent with provisions of ESEA, the special circumstances of students, schools, and districts;
- ***Alignment of Accountability Across Levels:*** Align aspects of the accountability system across all levels—from student, to school staff and principal, to district accountability, including the superintendent and school board; and
- ***Single Unified System:*** Support a single unified system designed to ensure that all students can achieve college and career ready standards.

I want to focus now on some key components of the Waiver application.

Alignment in the Accountability System

At the end of the last school year, New York sunset the prior accountability continuum of schools and districts in improvement, corrective action, and restructuring based on failure to make Adequate Yearly Progress. We welcomed the ability to take this action because too many schools were identified for intervention under the NCLB system. We believe that half of all schools in the state would have been captured in accountability status based on 2011-12 results, and by the end of next year, nearly all schools in State would have been identified. Identification of such a large number of schools would have made SED's efforts to support school improvement too diffuse to be meaningful.

Pursuant to the waiver, we adopted USED's school performance categories and identified five percent of the schools in the state as Priority schools and ten percent as Focus schools. Priority schools are the lowest performing in the state based on combined English language arts and mathematics performance that are either not showing improvement or have had graduation rates below 60 percent in previous years. SED will require these schools to implement whole school reform and re-design approaches that fully incorporate federal school turnaround requirements. Although the ESEA waiver requires that the percent of schools identified as Priority and Focus be based on the total number of Title I schools in the State, we chose to identify a larger number of schools by basing our computation on the total number of Title I and Non-Title I schools in the state.

One unique element of New York's waiver is our identification of "Focus Districts," which are those districts in the state that either have the lowest achieving students or the lowest graduation rates for a particular student group. Districts with one or more Priority schools are automatically designated Focus districts. Within these districts, Focus schools are those that are lowest performing or have the lowest graduation rates for subgroups for which the district was identified. By grouping and targeting these districts, we can direct supports to the districts and foster systemic change.

SED used an RTTT grant program to further support the schools identified through the Waiver as needing support and interventions. The Systemic Supports for District and School Turnaround grant provided opportunities for SIG districts or districts with Priority Schools to partner with support organizations to build district-level support structures, build district capacity to implement turnaround plans, and streamline existing turnaround efforts.

New York continues to make performance of English language learners and students with disabilities a cornerstone of its accountability system. We have made several revisions to how we incorporate the performance of these groups into our accountability system, including, for example, aligning our ESEA and Individuals with Disabilities Education Act (IDEA) accountability systems so that districts that are Focus Districts for the students with disabilities subgroup are also identified as Districts in Need of Assistance or Intervention under IDEA.

Student Growth

In addition to streamlining the state's accountability system and eliminating the previous identification categories, the Waiver application provided us the opportunity to expand our definition of AYP and AMO to add student growth measures, rather than only absolute performance, and enabled us to recognize schools in which students are making good progress toward meeting standards of college and career readiness.

Prior to the waiver, schools and districts were held to the standard of having all students proficient on state assessments in English language arts and mathematics by 2014. The Waiver allowed us to set new realistic timelines and ambitious trajectories for schools and districts to demonstrate they are increasing the percentage of students who are on track to college and career readiness while closing achievement gaps among student groups.

At the elementary and middle school level New York has replaced the 2013-14 "proficiency for all" standard in English language arts and mathematics. By school year 2016-17, our goal is to reduce by 50 percent the percentage of students in each subgroup who are not proficient – as measured against a college and career standard – or not on track to becoming proficient within three years or by grade eight, whichever is earliest. While each subgroup has a different starting point based on its 2010-11 baseline performance, the lower the starting point of a group, the greater the percentage of students who must be moved from not meeting a college and career ready standard to meeting or being on track to meet this more rigorous standard.

New York has developed growth metrics for elementary and middle level English language arts and mathematics for students with disabilities and English language learners that allow the state to determine how well districts and schools are performing with these populations compared to statewide averages. We also continue to make AYP determinations for these groups of students – so if a school fails to make AYP for three consecutive years for the same disaggregated group on the same accountability measure the district must develop a Local Assistance Plan for the school to improve the group's performance. Our Waiver also raises the bar at the high school level for the performance students with disabilities must achieve in order for districts to be credited under the accountability system.

Before the Waiver, New York identified schools and districts without regard to whether students were showing sufficient growth. We are now able to distinguish schools in which student rates of proficiency are low but student annual growth rates are high. This allows the state to better and more intensely target the schools that need interventions the most. In addition, by using the more rigorous college and career readiness standards, we are holding our schools and districts to higher expectations and we are focusing on those schools and districts that are not graduating students who are prepared to succeed in the 21st century global economy.

School and Principal Accountability

The Waiver gave us the opportunity to incorporate growth into our judgment about school performance at the elementary and middle school level. By doing so, we can achieve greater alignment between accountability decisions we make about schools and our use of growth as part of our principal evaluation system.

Absent this change, our institutional accountability would have been a status model (i.e., whether students are achieving proficiency) while the state component of the principal evaluation system would have been based entirely on a growth metric, creating greater possibilities for divergence in our judgments about principals and the schools they lead.

Flexibility

The Waiver provides districts with the flexibility to redirect resources to implement whole school reform models in the state's Priority schools and increased flexibility to implement effective extended learning time programs in collaboration with community partners.

In addition, SED eliminated previous rules for set-asides and replaced them with new set-asides. The new rules require districts to set-aside between 5 and 15 percent of their federal allocations for Titles I, IIA and III (if identified for the performance of English language learners) to provide state approved programs and services, and an additional one percent to support parent involvement and engagement activities in Priority and Focus schools. While districts may choose to offer Supplemental Education Services (SES), the waiver allows districts to redirect these funds to implement a broad array of programs in Priority and Focus schools, with a particular emphasis on Extended Learning Time opportunities in Priority schools.

Alignment to Other Key Reform Efforts

The approved Waiver is closely aligned with the Regents Reform Agenda and our RTTT grant. Because of this close alignment, the provisions of the Waiver provided another critical tool to help New York achieve its goal of graduating students college and career ready.

As I have described, two key areas of alignment are implementation of the college and career readiness standards and teacher and principal evaluations. SED was able to further leverage these initiatives through the Waiver. For example, we removed the requirement that all students must be proficient in English language arts and mathematics by 2013-14, and we recalibrated high school metrics so that proficiency could be defined as achieving not merely the standards for high school graduation, but rather the standards for college and career readiness.

In addition, SED leveraged the Waiver's teacher and principal evaluation requirements to complement work already underway. Along with the requirement enacted in the state budget that tied state school aid increases to approved negotiated evaluation plans, we have similar requirements on RTTT and other funding opportunities.

Another key leverage point was the creation of a new, common, and robust schools and district review process connected to a single tool, the Diagnostic Tool for School and District Effectiveness, which compares a school and district's practices to the optimal conditions of learning. We appoint Integrated Intervention Teams each year to conduct on-site diagnostic district and school reviews of selected Priority and Focus schools.

The flexibility Waiver application gave New York the opportunity to clarify and reinforce accountability expectations for the State's public charter schools. We used the Waiver to make clear that public charter schools operate under strict performance charter contracts with their authorizers, and that they will be publically identified for performance like all other traditional district schools in the state. Under the NCLB accountability system, many state education agencies and authorizers across the country have allowed public charter schools to evade accountability for low performance by moving low performing charters through a progressive identification system, allowing for "school improvement plans," and executing multiple, often conflicting, compliance-based monitoring and oversight events. New York utilized the Waiver to codify that state authorizers hold their schools accountable against rigorous outcomes-based academic and operational performance standards and that failing public charter schools in the state cannot hide in the state accountability system. The

National Association of Charter School Authorizers cited New York State as a national leader in public charter school accountability and as a national resource for other states as they draft their ESEA waiver applications.

The integration of our reform efforts with the waiver has provided us yet another tool to improve teaching and learning opportunities. This was possible because the Waiver application was developed across agency offices to better ensure that our Waiver was internally aligned with all other key priorities. Senior cabinet officers from my offices of Accountability, School Innovation, Curriculum, Instruction and Assessment, and Higher Education all worked to ensure that we produced a coherent, forward leaning, comprehensive accountability plan that allows New York to concentrate investments in our neediest schools and communities while also celebrating successes in places where things are excelling or making meaningful progress.

Next Steps

While New York was able to leverage the Waiver to support and accelerate ongoing reform efforts and our RTTT work, the Waiver is not a substitute for full reauthorization of ESEA. There are larger issues that have not been addressed, particularly with regard to how funds are allocated and spent. However, the answer is not to sunset the Waiver; the Waiver should be used as the starting point for full reauthorization.

I also urge you to consider how to integrate early learning into reauthorization. The evidence is overwhelming: it is much more effective to give a student a high-quality early education start than it is to close achievement gaps later on through costly remediation. The returns on the investment are also significant: a 2004 study found that every dollar invested in pre-kindergarten programs produces \$7 in taxpayer savings through reduction of remediation, special education, welfare and criminal justice services.³ Early learning needs to be a key component of our strategy to help close achievement gaps and turnaround low-performing schools.

Closing

Thank you for the opportunity to testify. Before I take your questions, I want to emphasize again that the greatest impact of the Waiver we received in May 2012 was to allow SED to accelerate our reform efforts by closely aligning the Waiver to our existing Regents Reform Agenda and RTTT efforts.

We have made a new set of promises to our students through the Waiver, and we will work hard to live up to those promises so that they can graduate high school ready to succeed in college and careers.

Thank you and I am happy to take your questions.

³ Belfield, Clive R. (2004) *Early Education: How Important Are the Cost Savings to the School System Research Briefing*. New York, NY: Teachers College, Columbia University