

**Elementary and Secondary
Education Act Waivers**
(ESEA also known as No Child Left Behind)



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Background

In September 2011, the Obama administration announced that states could apply for an Elementary and Secondary Education Act (also known as No Child Left Behind or NCLB) waiver. The flexibility offered to states, comes as Congress remains overdue in reauthorizing the ESEA. In May 2012, the New York State Education Department (NYSED) received approval from the U.S. Department of Education for its ESEA flexibility waiver for the 2012-2013, 2013-2014, and 2014-2105 school years.

Information on flexibility under the ESEA waiver can be found at <http://www.p12.nysed.gov/accountability/ESEAFlexibilityWaiver.html>.

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New York State’s ESEA Waiver

The approved waiver allows New York State to design their own differentiated accountability system that does not revolve around the original goal of 100 percent proficiency for all students in math and reading by the end of the 2013-14 school year. In exchange for having significant parts of the original law waived, New York State had to commit to intervening in 15 percent of the lowest-performing schools, focus on closing achievement gaps, and implement teacher and principal evaluation systems that are based in part on student performance.

Accountability Status

In 2011-12, a record number of schools were labeled “in need of improvement” for failure to make Adequate Yearly Progress (AYP) based on state assessment scores. At the end of the 2011-2012 school year, the state’s waiver does away with the NCLB accountability designations: Schools In Need of Improvement (SINI), Corrective Action (CA) and Restructuring (RS) corresponding to the number of years a school fails to make Adequate Yearly Progress (AYP). Under the waiver, schools will now be identified as “Priority” and “Focus” schools in place of the prior school accountability designations. Districts will be identified as “Focus Districts,” replacing identification of Districts in Need of Improvement, Restructuring and Corrective Action. SED will identify Priority Schools and Focus Districts only once during the waiver period. Lists can be found at: <http://www.p12.nysed.gov/accountability/ESEADesignations.html>.

Designation of schools for which districts must develop Local Assistance Plans or designation of schools as Focus within Focus Districts will be determined annually by SED. Determinations as to whether to remove Priority and Focus schools and Focus Districts from this status will also occur annually.

Priority Schools, Focus Schools and Focus Districts, and Good Standing Schools

- Priority Schools are among the lowest five percent in the state, based on combined ELA and math performance that are not showing progress or that have had graduation rates below 60 percent for the last several years. Priority Schools must develop and finalize a Comprehensive Education Plan (CEP) by the 2014-15 school year which implements:
 - One of the four Federal School Improvement Grant (SIG) intervention models (turnaround, transformation, restart and closure) as part of a whole school reform model with partner organizations; or
 - All of the ESEA waiver turnaround principles as part of a whole school reform model, with partner organizations.

A Priority School may be further identified as a school under registration review (SURR).¹ Schools in a Special Act School District will not be identified as Priority Schools, unless the school meets the requirement for being a Priority School and has been identified as a poor learning environment under registration review. Transfer schools for students who have at least one year of high school and very few credits or a school in which at least 50 percent of the student population are English language learners attending a U.S. school for less than three years will be excluded on a case by case basis. Small schools and schools with high performance are excluded.

- A Focus District is a district with low student performance and lack of progress in ELA and math combined or graduation rates for one or more accountability groups (racial/ethnic groups, low-income students, English language learners, and students with disabilities). Districts with one or more Priority Schools will automatically be designated as Focus Districts. Focus Districts must develop a District Comprehensive Improvement Plan (DCIP).
 - Focus Schools, found within Focus Districts, are those schools identified for high numbers or percentages of non-proficient students in a subgroup for which the district was identified. In addition, in order to exit Focus school status, the school must exceed the standards used to identify Focus Schools initially, and must also increase their scores on a performance index. Focus Schools must complete a Comprehensive Education Plan (CEP).
- Local Assistance Plan School is a school that is not a Priority or Focus School that:
 - Fails to make AYP for one or more subgroups on an accountability measure for three consecutive years; or

¹ A school under registration review means the Commissioner can recommend that the Regents revoke the registration of the school. Upon approval of revocation of registration by the Board of Regents, the Commissioner will develop a plan to ensure that the educational welfare of the pupils of the school is protected.

- Have large gaps in achievement on an accountability measure for one or more subgroups and have not made sufficient progress in reducing or closing the gap.
- Is located in a non-Focus District but is among the lowest in the state for the performance of one or more subgroups for which the school is not showing progress.

The school must conduct a diagnostic review using a tool prescribed by the commissioner, to inform the development of the Local Assistance Plan (LAP). The LAP must specify the process school leadership, staff, parents and students participate in the development of the plan, in accordance with Section 100.11 of the Regulations (shared decision making). Identification of any additional resources and professional development that will be provided to support implementation as well as a timeline for implementation are required components of the LAP. Local Assistance Plans must be posted on the district's website.

- Good Standing Schools are schools that are not identified as Priority, Focus or in need of a Local Action Plan (LAP). Districts that are not identified as Focus Districts are now designated as in Good Standing.

Reward Schools

Reward schools are high performing school or those making the most progress and can be used as models. Reward schools are identified annually and recognized by the SED as models for other schools. Reward schools are eligible to compete for a Commissioner's Schools Dissemination Grant of up to \$100,000.

Recognition Schools meet most but not all of the criteria of the Reward School.

Changes to Accountability

Under the waiver, Adequate Yearly Progress (AYP) will be determined in a similar manner as currently required under NCLB, but will no longer be determined for schools and districts, only for subgroups. Elementary/Middle School Performance Index (PI) Calculation will no longer be based on achievement Levels 1-4, rather the Performance Index will be revised to include both achievement and growth to proficiency.

Examples:

- District A is accountable for Black, Hispanic and Economically Disadvantaged (ED) subgroups. The combined 2009-10 and 2010-11 ELA and Math Student Growth Percentile (SGP) for Black students is 42, Hispanic students is 47, and ED students is 48. The state average SGP is 43, 47 and 47 respectively. The ED group's SGP is above the state average therefore the group's PI will be removed from identification. District A can now be identified only for the Black and Hispanic groups.*
- All schools with an elementary student-weighted composite performance index are given a percentile rank for school years 2009-10 and 2010-11. School B's composite performance index for 2009-10 is 177, which places them in the 88th percentile. In 2010-11, the school's PI is 178, which places them in the 86th percentile for that year.*

Full credit will be given to high schools for meeting measures of high school performance in ELA and math based on College-and Career-Ready graduation standards (i.e., a score of 75 or higher on the ELA Regents and a score of 80 or higher on a math Regents) and partial credit for meeting Regents diploma requirements. The SED is also studying an alternate methodology for computing Safe Harbor.

Diagnostic Tool

SED created the Diagnostic Tool for School and District Effectiveness (DTSDE), a diagnostic tool for Priority and Focus Schools and Focus Districts. The Commissioner will appoint annually an Integrated Intervention Team to conduct an on-site diagnostic district review and school reviews of selected Priority and/or Focus schools to inform the development of the District Comprehensive Improvement Plan and school Comprehensive Education Plan. Priority and Focus schools not selected for on-site diagnostic review will be required to conduct a District led review using the Diagnostic Tool for School and District Effectiveness (DTSDE) protocol, to inform the development of the district Comprehensive Improvement Plan and the school Comprehensive Education Plan. The tool replaces prior requirements for School Quality Review, Curriculum Audit and Joint Intervention visits.

Supplemental Education Services (SES)

- Beginning in the 2012-2013 school year, school districts and public charter schools are no longer required to offer SES or set aside money to pay for SES in identified Title I schools.
- Districts and public charter schools may opt to continue to provide SES to students in Title I schools that have been identified as Priority or Focus Schools.
- Districts may choose the SES providers and offer parents the opportunity to select from a minimum of two providers who serve students in the grades enrolled in the district's Priority and Focus Schools requiring service.
- If a district continues to offer SES, it must provide SES to the lowest performing highest need students. SES per pupil amount calculation methods, SES provider eligibility, access to school facilities by SES providers and when services are to be provided remain the same for those districts opting to continue SES.

Public School Choice

- Districts are still required to offer public school choice for all students attending non-charter Title I Priority or Focus Schools.
- Lack of capacity cannot be used to deny student access to the public school choice option, however, single school districts that are identified as Focus do not require public school choice to be offered
Parent notification requirements, eligible students, transfer options, and timelines do not change.
- There is no set-aside amount requirement for transportation costs to Charter Schools.

District/School Accountability Status		
District/ School	Identification Criteria	Required Action
Focus District	<ul style="list-style-type: none"> • Bottom 5% of districts identified for their combined elementary, middle and high school 2010-2011 ELA and math performance index and graduation rate for each ESEA accountability subgroup. • A district with a Priority School 	<ul style="list-style-type: none"> • Focus districts must notify the general public of the accountability status of the district and its schools. • District Comprehensive Improvement Plan (DCIP), developed and updated in consultation with parents and school staff as required by Section 100.11 of the Regulations.
Focus School	Schools in a Focus District with either greatest number or greatest percentage of non-proficient student results and non-graduate students for the group(s) identified.	<ul style="list-style-type: none"> • Comprehensive Education Plan (CEP), developed and updated in consultation with parents and school staff as required by Section 100.11 of the Regulations
Priority School	<ul style="list-style-type: none"> • Schools awarded a SIG grant in 2011-2102; • Graduation rates below 60% for the 2004, 2005, and 2006 four year graduation cohorts; or • The lowest performing in ELA and math combined and failed to show progress. 	<p>Comprehensive Education Plan (CEP) finalized by the 2014-15 school year which implements:</p> <ul style="list-style-type: none"> • Turnaround, restart, transformation or closure model funded by a 1003(g) SIG, or • Three year plan for redesign of a school by implementation of the turnaround principles.
Preliminary Registration Review (SURR)	<p>Consistent lack of improvement in Academic Performance</p> <ul style="list-style-type: none"> • 2012-2013 School Year – Commissioner may place any school under preliminary registration review that has conditions that threaten the safety and/or educational welfare of students based on several factors affecting student learning. • Beginning with 2013-2014 School Year Results – Local Assistance Plan School that are lowest performing in ELA and Math and failed to show progress or graduation rates below 60% for previous three year. • Beginning with 2014-2015 School Year Results – Focus or Priority Schools for at least three consecutive years that have made little or no progress towards implementation of their comprehensive improvement plans or have failed to demonstrate progress. 	<ul style="list-style-type: none"> • Notification by the Commissioner to the district and district notification to parents and the public. • An Integrated Intervention Team appointed by the Commissioner to make recommendations on the district continuing to implement its current improvement plan, as modified; implement a new Comprehensive Improvement Plan, which may be based on a whole school reform model; or be phased out or closed. • Commissioner can approve or modify any of the recommendations of the Integrated Intervention Team. • The Commissioner must establish a plan to ensure the educational welfare of the students and develop a plan for closure should the Board of Regents revoke the registration of the school.
Local Assistance Plan School	<p>Not a Priority or Focus School that:</p> <ul style="list-style-type: none"> • Has large gaps in student achievement among subgroups; or • Has failed to make AYP for same subgroup on same measures for three consecutive years. • Located in a non-Focus District but is among the lowest performing for one or more subgroups not showing progress. 	<p>Local Assistance Plan (LAP)</p> <ul style="list-style-type: none"> • District Plan that identifies the schools in need of local assistance; • Developed in consultation with parents and school staff, in accordance with Section 100.11 of Regulations; and • Describes how the district will support school improvement in each of those schools.
Good Standing School/District	Not Priority, Focus or Local Assistance Plan School	Data used annually for identification
Reward School	<ul style="list-style-type: none"> • Top ten percent of schools in the state in combined ELA and mathematics Performance Index or among the top percent in terms of improvement in the combined Performance Index; • Have made AYP on all measures for which they are accountable; • Have student growth percentiles for the bottom quartile of students that equal or exceed fifty percent; and • Not have large gaps in student achievement among subgroups of students. 	Eligible to compete for a Commissioner's Schools Dissemination Grant of up to \$100,000.

Advice to Local Leaders

- For the 2012-2013 school year, Good Standing Schools and Districts no longer need to meet the improvement plan and set-aside requirements of their prior designation. Local leaders should work with school administrators to ensure resources and assistance is targeted towards subgroups previously identified.
- Local leaders should urge school district administrators to collaborate with all stakeholders as they implement District Comprehensive Improvement Plans (DCIP) and Comprehensive Educational Plans (CEPs), in compliance with Section 100.11 of the Regulations requiring school districts to include parents and teachers in school-based planning and shared decision-making.
- Local leaders should review information on what specifically will be shared with parents regarding Supplemental Educational Services (SES) and Public School Choice.