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New York State Education Department
ATTN: Dr. Lisa Long
Office of Accountability
Room 400
55 Hanson Place
Brooklyn, New York 11217

Dear Commissioner Elia:

The following are NYSUT's formal submission of comments on the draft ESSA state plan which was released by the State Education Department on May 8, 2017.

The ESSA law provides states with the opportunity to modernize and redesign their school accountability systems without undue restrictions from Washington. It provides a reset for states to throw off the shackles of No Child Left Behind (NCLB) and the related waivers. New York State should take this opportunity to provide for a fair and comprehensive accountability system.

ESSA requires that each state identify the lowest five percent performing schools as well as high schools with graduation rates below 67%. The methodologies used to meet this requirement are left to each state to determine. NYSUT supports the use of multiple measures in the accountability system as detailed in the draft plan. We hope that the use of this broader set of indicators will help to properly identify those schools that will be classified as a Comprehensive Support and Improvement school (CSI). In addition, NYSUT strongly supports the use of a 1 to 4 rating system for each indicator and the use of decision tables to determine the accountability status of each school. The nature of our educational system is far too complex to reduce the multiple measurements in thousands of school buildings into a single numeric score or letter grade.

Further, NYSUT supports the use of six year graduation rates to determine graduation rate levels for school accountability purposes. The former accountability system used a four year graduation rate and therefore school districts received no credit for ensuring that struggling students continued with their studies beyond the four year mark to obtain a high school diploma. Schools should be rewarded for encouraging students to reach graduation even if it takes longer than the traditional four years.

We have identified several areas of concern with the draft ESSA state plan on behalf of our 600,000 members.

Inadequate Funding: All of the schools currently identified as Priority Schools and those in Receivership come from high poverty school districts and educate a high poverty student body. There are many components of the plan that require resources to implement and while there are references to state and/or ESSA funding, there are no details about where the funding will come from or how much low performing schools can expect. For example, the state plan includes a discussion about base grant allocation for CSI schools, with additional allocations in future years based on gains and supports needed. However, the plan lacks details about levels of funding or the source of these potential funds.

New York State must properly fund high poverty schools in order to reasonably expect student performance to significantly improve in low performing school buildings. It is not realistic to expect federal funding to support all of the initiatives that are in the draft plan; in fact, federal funding is likely to decrease under the Trump administration. It is also improbable that the state will provide the funding for ESSA initiatives when the state does not meet its current obligation for Foundation Aid.

In the upcoming school year; New York State **owes public school districts \$3.6 billion** in Foundation Aid and 75% (\$2.7 billion) of those funds are owed to high need school districts. Without proper funding, our accountability system is certain to identify high poverty schools. **High poverty schools need proper resources in order to give all students the opportunity to a sound basic education. We applaud the strong advocacy the Regents have undertaken in recent years to fully fund the Foundation Aid formula.**

All of the school districts with low performing schools need additional funds. Priority schools have been starved for resources; they need financial stability and time to implement strategies. We are concerned that SED is setting up these schools for further financial stress. Unpredictable funding through an overreliance on grants and stretching scarce resources over too many initiatives is an underlying issue with struggling schools. **We urge the Regents to continue to advocate for full funding of the Foundation Aid formula.**

Treatment of Students who opt out of State Tests: NYSUT strongly supports the right of parents to opt out their children from state tests. Under the current accountability system the state does not penalize schools when children opt out. This policy should be continued under the new accountability system that will be developed to comply with ESSA.

However, based on the documents released by the State Education Department regarding the draft state plan it is unclear how this process will work under the new accountability system. The formal state plan document indicates that opt out students will be counted as “non-proficient” in the calculation used to create the Performance Index (PI) that will be used to identify Comprehensive Support and Improvement (CSI) and Targeted Support and Improvement (TSI) schools. Using PI-1 (Performance Index 1) as detailed below would penalize schools with opt outs.

State Plan - page 32:

*“PI-1 = [(number of continuously enrolled tested students scoring at Level 2 + (Level 3 * 2) + (Level 4 * 2.5) ÷ the greater of the number of continuously enrolled tested students or 95% of continuously enrolled students] × 100*

*PI-2 = [(number of continuously enrolled tested students scoring at Level 2 + (Level 3 * 2) + (Level 4 * 2.5) ÷ the number of continuously enrolled tested students] × 100*

The Department uses both PI-1 and PI-2 to identify schools for Comprehensive Support and Improvement and Targeted Support and Improvement.”

However, SED also released a second document called a “Plan Summary”, which provides that the state will use the higher of PI-1 or PI-2 to determine proficiency levels and the accountability designation for each school. This approach would appear to not punish schools for opt outs.

Plan Summary Document – page 26:

“New York State will use PI-1 to set long-term goals and measures of interim progress and to determine progress. The State will use the higher ranking of PI-1 or PI-2 to determine whether a subgroup is in the lowest-performing 10% and would cause a school to potentially be identified for Comprehensive or Targeted Support and Improvement.”

SED staff indicated to the Committee of Practitioners (COP) that the Department’s intention is to use the higher of PI-1 or PI-2 to determine accountability status of schools and that the calculation that counts opt out students as “0” will be used for establishing long-term performance goals. SED should make it clear in the formal state plan that schools will not be punished if students and parents exercise their legal right to opt out of state tests. The plan should specify that the calculation of the Performance Index will be structured accordingly as will the related accountability status. **New York State should continue to ensure that schools with opt outs are not harmed.**

The language of the ESSA law is clear: states must determine how opt out data will be factored into the state accountability system. ESSA provides that states must **“(iii) Provide a clear and understandable explanation of how the State will factor the requirement of clause (i) of this subparagraph [the 95% participation rate requirement] into the statewide accountability system.”** Since Federal law provides that states make these determinations NYSUT strongly urges SED to revise the draft plan to ensure that schools are not harmed by student opt outs in any of metrics of the state accountability system including performance and progress indicators.

Creating Reasonable and Obtainable Long Term Achievement Goals: ESSA requires states to establish long-term, ambitious goals for improved academic achievement. New York State has proposed a methodology that establishes a long-term statewide goal that would ultimately require near proficiency for all students. Schools are required to reduce the performance gap between current levels and the end goal by 20 percent over five years. Each student subgroup would also

have a 20 percent gap closing target. While it is laudable to have rigorous long term academic goals – they must be reasonable and obtainable.

This is one of the most troubling aspects of the draft plan. The approach of “gap closing” with no adjustments to reflect the current performance levels of student subgroups is the continuance of the flawed thinking behind NCLB that NYSUT expected ESSA to correct.

The proposed methodology would require the schools and subgroups with the largest performance gaps to make the most academic progress. For instance, under the draft plan for Grade 3-8 ELA the “all students” group would need to increase performance levels by 24 percent over five years -- whereas special education students will need to almost double performance levels over the next five years to meet long term progress goals. This is not realistic or obtainable and it is setting up students and schools for failure.

Schools across the nation experienced the numerous problems that occurred in schools due to the setting of unobtainable academic goals in our public schools under NCLB. The expectation that the lowest performing subgroups will have the largest academic gains over the next five years without substantial additional resources is not reasonable. New York should use the flexibility given under ESSA to revise their approach and set reasonable targets that reflect current student performance levels and recognizes that one size does not fit all and some student populations may take longer to reach certain performance index levels. We encourage the Department to set reasonable five year performance index targets for all student subgroups that reflect current performance levels and not the overly ambitious long term goals. For instance, a set percentage increase in the Performance Index for each subgroup would better reflect the current performance levels of that subgroup than the current plan targets.

Impairment of Collective Bargaining Agreements: The ESSA law specifically states that it may not be construed to “*alter or otherwise affect the rights, remedies, and procedures afforded to school or local educational agencies employees under Federal, State, or local laws ... or under the terms of collective bargaining agreements, memorandum of understanding, or other agreements between such employers and their employees.*”

However, the draft state plan provides that all schools identified as Comprehensive Support and Improvement (CSI) may “*only permit incoming transfer of teachers who have been rated as Effective or Highly Effective in the most recent evaluation year.*” Many collective bargaining agreements contain provisions that govern the transfer of teachers. This provision of the draft state plan would impair these existing and long standing collective bargaining agreements. Since, the ESSA law does not allow states to impair collective bargaining agreements this provision should be removed from the state plan. Further, the final state plan should not propose to alter or impair any existing collective bargaining rights.

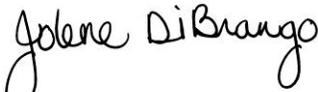
Status of Re-identified Targeted Support and Improvement (TSI) Schools: The Draft Plan and Plan Summary describe two different procedures for re-identifying TSI schools that do not make sufficient improvement after three years with identified student subgroups in that building. The Draft Plan indicates on page 50 that “*New York State will identify any TSI schools for additional targeted support if the school remains underperforming for any subgroup for which it has been identified for Targeted Support and Improvement for three consecutive years.*”

However, the Plan Summary document provides that “*any school that is re-identified as a TSI will automatically be classified as a Comprehensive Support and Improvement school*” (page 37).

NYSUT supports the approach described in the draft plan. TSI schools are identified for the performance of student subgroups and therefore should be identified accordingly. Deeming a school eligible for “comprehensive support” for the performance of a subgroup is misplaced and weakens the appropriate focus on the student subgroup that is in need of assistance.

Thank you in advance for your review and consideration of these important issues. We strongly encourage you to modify the draft state plan to reflect the issues raised in this correspondence.

Sincerely,



Jolene DiBrango
Executive Vice President

cc: Members of the New York State Board of Regents