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NYSED Commissioner MaryEllen Elia
89 Washington Avenue
Albany, New York 12234

NYS Board of Regents Chancellor Betty Rosa
89 Washington Avenue
Albany, New York 12234

October 26, 2018

Dear Commissioner Elia and Chancellor Rosa,

We are writing to you during the open comment period for the [September 2018: Proposed Draft Commissioner's Regulations Related to New York's Approved ESSA Plan](#). We want to thank you for the removal of the egregious penalty that school districts “set aside a portion of their Title I funds to implement the recommendations of a state participation rate audit in schools that have failed to meet the 95% participation rate and show improvement for five years”. We are, however, concerned about the revisions to the plan, which seem to set up two sets of rules for students. We are focused on the following revisions in the “Summary of Changes to Regulations: Participation Rate Requirements” which state:

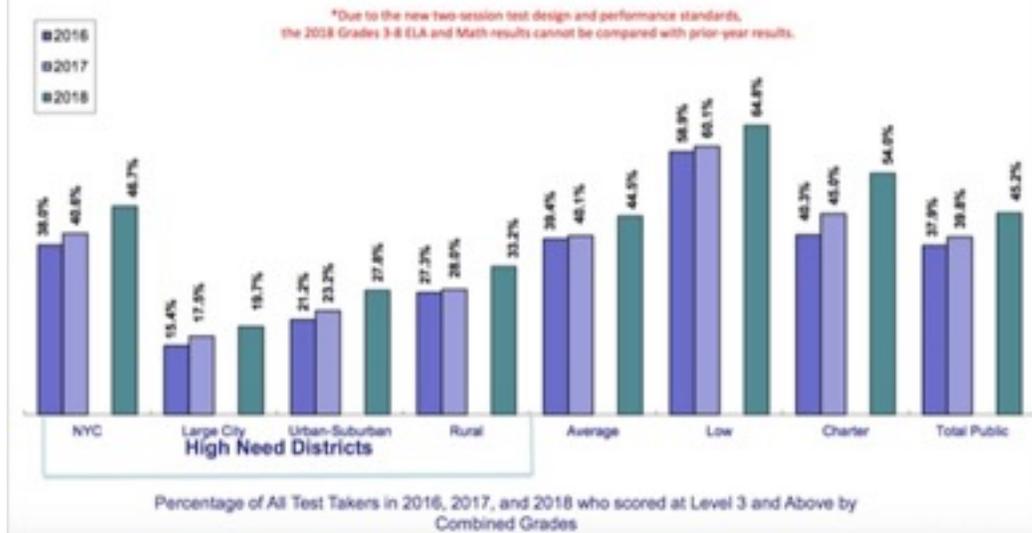
- **Revision:** A Targeted Support and Improvement (TSI) School or Comprehensive Support and Improvement (CSI) School that is implementing a participation rate improvement plan will be eligible for removal, as long as the accountability group(s) for which a plan is required is not performing at Level 1 on the Weighted Average Achievement Index.
- **Revision:** If an accountability group has a Weighted Average Achievement Index that is above the state average (Level 3 or 4), a school is not required to develop a participation rate improvement plan for that group, regardless of the group's participation rate.

Source: ([ESSA Plan](#))

In this plan, **some** schools with less than 95% participation will be required to come up with “participation plans” while others will be relieved of this requirement. The variable for the different rule systems is based on scores, and this will be especially onerous to schools in high-need districts, as it is highly understood that test scores are most closely correlated with socioeconomic status (see chart below).

Statewide Performance in ELA by Need/Resource Group

Low-need districts continue to outperform other groups. In addition, Charter Schools and NYC exceed the performance of public schools statewide.



Source: [NYSED 2018 3-8 ELA and Math Test Results](#)

This sets up a two-tiered system where the right to opt out in a higher performing/more privileged school can be exercised freely while the same action at a lower performing/less privileged school will be met with additional burdens. A parent's right to opt out should not be determined by the score their child would get if they participate in testing, nor should it be dependent on the scores of their classmates. The lowest performing schools will likely be in the bottom half of the WAAI even with 100% participation, so any opt out over 5% will trigger consequences. Every child in NY State should have equal rights under our regulations; the right to opt out cannot be conditional upon what school one's child attends.

For the past several years, almost one in five students in New York have refused to participate in state ELA and Math testing. Punitive or burdensome measures do nothing to address the reasons that parents are opting out, and we feel this is not a valid way to encourage test participation. Instead, we strongly urge the Regents and Commissioner to respond to the long-standing concerns regarding state math & ELA tests. We acknowledge the improvements made in response to the issues including, most significantly, the reduction in testing days from 3 to 2. However, deep concerns remain, as outlined in [our letter sent to the Commissioner & Board of Regents in June 2017](#). We encourage the Board of Regents to revisit these revisions and apply an equitable lens to the choices of all NY families.

Sincerely,

The PS 321 School Leadership Team

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