



**ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND**

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January 30, 2012

Mr. Ira Schwartz  
Assistant Commissioner  
Office of Accountability  
New York State Department of Education  
89 Washington Avenue, 365 EBA  
Albany, New York 12234

**RE: AALDEF Public Comments On New York State ESEA Flexibility Request**

Dear Mr. Schwartz:

The Asian American Legal Defense and Education Fund (“AALDEF”) is pleased to submit the following public comments regarding the New York State Department of Education's (“the Department”) Draft Elementary and Secondary Education Act Flexibility Request (“draft waiver”). Last fall, AALDEF along with Advocates for Children of New York, submitted joint recommendations to the New York State School and District Accountability Think Tank regarding accountability provisions related to English Language Learners (“ELLs”). We attach those joint recommendations for reference and offer the following input regarding the draft waiver’s effectiveness at addressing the broad concerns outlined therein.

We are heartened by the Department's efforts to update ELL standards and resources and align these to the Common Core, and support its plans to consult and draw leadership from both state and national experts in ELL and Common Core instruction. We also support the Department's plans to develop English as a Second Language (“ESL”) and Native Language Arts curricula that are aligned with new English Language Arts (“ELA”) curricula, and to provide professional development trainings for teachers relating to these new curricula as well as on broader scaffolding and support for ELLs. Finally, we support its plans to align the New York State English As A Second Language Achievement Test (“NYSESLAT”) to the Common Core.

The above efforts are in agreement with core components of our joint recommendations, and we are pleased they are under way. However, we are concerned with certain elements of the waiver infrastructure as they relate to ELLs. Although initial implementation of the waiver must necessarily occur before the above ELL-related reforms are completed, the waiver infrastructure must possess the flexibility to incorporate them once completed. Therefore, the draft waiver should provide guidance and parameters regarding how these reforms are to be integrated into its infrastructure.

**Need for Improved Assessments and Measures for ELLs**

We recognize that initial designations and determinations under the waiver scheme must utilize student accountability data that is currently available – and hence, is drawn from current

assessments and measures for school and district accountability. However, to the extent that additional alternative measures and assessments may become available during the period that the waiver infrastructure is in place, we urge that the draft waiver set forth a framework for and issue specific guidelines to allow and facilitate the phasing in of newer alternative measures and assessments.

Currently and under the proposed waiver infrastructure, only ELLs in grades 3-8 who are enrolled for less than one year may take the NYSESLAT instead of the standard state ELA test for language arts accountability purposes. All other ELLs are currently and under the waiver subject to standard ELA accountability measures. This scheme does not lead to accurate language arts accountability assessment for ELLs, as neither the current NYSESLAT nor the standard ELA assessments are appropriate instruments of ELL accountability. The current NYSESLAT is not aligned to ELA standards and curricula, and is intended to determine placement not accountability. Further, standard ELA assessments are not aligned to the actual instruction ELLs receive. Therefore, any data yielded under this scheme will not produce an accurate picture of ELL achievement for accountability purposes.

The Department anticipates the new Common Core-aligned NYSESLAT to be available as early as spring 2013. The draft waiver should include plans and guidelines to retain and consult ELL instruction experts to contemplate a possible expanded role for the new revised NYSESLAT in ELL language arts accountability, provided that the alignment, scaling, and other problems with the current NYSESLAT are resolved.

### **Concerns Regarding NYSESLAT as a Measure in Educator Evaluation and Support**

We are also concerned by the possibility that the current flawed NYSESLAT could be used under the waiver scheme as a growth measure (or in the interim incorporated into ELL teachers' Student Learning Objectives). Due to the time lag before the NYSESLAT's revision, it seems likely that the current version of the NYSESLAT will still be in place when the draft waiver is initially implemented. As discussed above and in our joint recommendations, the current version of the NYSESLAT is neither aligned with current standards and curricula, nor is it scaled for accountability purposes. Further, the current NYSESLAT scoring system is exceedingly exacting at the higher levels, making it next to impossible for high school ELLs to pass it and be designated as mainstream. Therefore, it is inadvisable to use student scores on the current NYSESLAT within the teacher and principal evaluation process.

### **Lack of Sufficient Details Regarding Supports and Interventions for ELLs**

Overall, we are pleased with the emphasis placed by the draft waiver on identifying areas of need, providing increased supports to schools and districts, and streamlining the provision of those supports in a coherent, integrated manner. We are also encouraged by the Department's recognition of the importance of parent and community input in school improvement plans. However, the draft waiver would benefit from more details about the specific needs of and tailored interventions geared toward particular populations like ELLs – as well as specific subgroups within the ELL population like long-term ELLs and students with interrupted formal education. Also, within Priority Schools – where school staff may be in flux due to past or ongoing restructuring efforts – interventions and support should include an expanded role for external (non site-based) instructional specialists to provide support and

guidance as well as to partner with site-based staff to ensure continuity of mandated services like ESL classes and other ELL programming.

## **Conclusion**

AALDEF thanks the Department for the opportunity to participate in the creation of New York state's system of differentiated recognition, accountability and support by joining the School and District Accountability Think Tank. We look forward to continued collaboration with the Department through this project. Any questions relating to these comments or the Joint Recommendations on ELL accountability that AALDEF presented jointly with Advocates for Children should be directed to Khin Mai Aung, Director, Educational Equity and Youth Rights Project at 212 966-5932 x219, or [kaung@aaldef.org](mailto:kaung@aaldef.org).

Very truly yours,

Khin Mai Aung  
Director  
Educational Equity & Youth Rights