



February 2, 2021

The Honorable Phil Murphy, Governor of New Jersey

Re: ESSA Testing Waiver for School Year 2020-2021

Dear Governor Murphy:

As you know, Education Law Center (ELC) advocates to ensure the rights of all New Jersey public school children under state and federal laws, including their right to a thorough and efficient education under our State Constitution.

We write in response to the Department of Education's (DOE) recently announced plans to proceed with the New Jersey Student Learning Assessments (NJSLA), including an "option to administer the NJSLA remotely during the spring 2021 assessment administration, which runs from March 15, 2021 to June 11, 2021." (Memo from January 27, 2021).

ELC urges you to reconsider these plans and instead to apply—as your Administration did last year—for a waiver of section 1111(b)(2) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 ("ESSA"), for school year 2020-2021.

The compelling reasons for submitting such a request have been acknowledged repeatedly by your Administration since the COVID-19 pandemic began. In fact, they are the same reasons that motivated your Administration to suspend state graduation testing last year, secure an ESSA testing waiver for spring of 2020, suspend state testing this fall, and suspend state graduation testing again this year.

As your Executive Order of April 7, 2020 clearly stated: "It is not feasible to move forward with statewide assessments while students are unable to physically attend school due to necessary COVID-19-related closures."

Unfortunately, due to the pandemic's ongoing public health challenges, extensive COVID-19-related closures continue throughout the state. This was confirmed by Executive Order 214 of January 11, 2021, which noted that "337 districts are providing all-remote instruction, 351 districts are providing hybrid instruction, 79 districts are providing full in-person instruction, and 44 districts are providing a combination

of instructional modalities across school buildings.”

Your Administration has readily acknowledged the uneven access to remote learning and the differential impact of the digital divide. The extended testing window proposed by the DOE in its January 27 memo would span nearly three months and further restrict the instructional time and educator interaction available to the state’s most vulnerable students, including students of color, students with disabilities and students from low-income families.

Moreover, the DOE’s plans to implement an untested and highly problematic computer-based “remote option” for state testing raises issues of the reliability and validity of the results, the security of the data, and the privacy of student information. None of these issues has been adequately addressed.

Any effort to proceed with existing testing mandates also raises significant public health issues. For example, the DOE’s scheduled WIDA ACCESS testing for English learner students is scheduled to begin on February 16 and requires in-person testing. As detailed in a letter to Acting Commissioner of Education Dr. Angelica Allen-McMillan spearheaded by the Lawyers Committee for Civil Rights, these plans need urgent review and modification to address student and educator health and safety issues posed by the pandemic. Similar, urgent concerns apply to the DOE’s plans to administer the NJSLA to the state’s students.

It is also important to point out that the DOE’s January 27 memo to Chief School Administrators is in error when it states that the United States Department of Education “has not indicated that there will be any form of waiver of states’ statewide assessment obligations for the 2020-2021 school year.”

Just the day before the DOE released the January 27 memo, the U.S. Office of Elementary and Secondary Education sent the attached letter addressed to all Chief State School Officers acknowledging “that a State may submit an amendment to its ESEA consolidated State plan *at any time.*” The letter specifically extended the deadline “for submission of [ESSA] plan amendments, including related requests for waivers” in order “to *provide additional time as part of the new Administration’s overall review of all policies.*” [emphasis added]

Multiple states, including New York, have publicly announced plans to seek an ESSA testing waiver and more such requests are likely. The national teachers’ unions and their state affiliates, as well as grassroots groups, parents and advocates, including many here in New Jersey, have urged states to request waivers. The Biden Administration has made clear that it has extended the deadline for waiver requests as part of its review of all policies.

It is incumbent on your Administration to respond pro-actively to the ongoing pandemic conditions in our state and our public schools. In

order to do so, it is essential that your Administration initiate an application for a waiver of section 1111(b)(2) of the Elementary and Secondary Education Act of 1965 for the current school year.

We request your urgent response to the issue raised here and stand ready to work with you to protect the health and safety and academic progress of New Jersey school children.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sciarra". The signature is fluid and cursive, with a large initial "D" and "S".

David G. Sciarra, Esq.
Executive Director

Via Electronic Mail

Cc: George Helmy, Governor's Chief of Staff
Parimal Garg, Governor's Counsel
Gurbir Grewal, Attorney General of New Jersey
Dr. Angelica Allen-McMillan, Acting Commissioner of
Education