NO CHILD LEFT BEHIND – 2008

DETAILED SUMMARY OF PROPOSED TITLE I REGULATIONS

April 22, 2008

The purpose of the proposed regulations is to build on the advancements of State accountability and assessment systems over the last six years since NCLB was signed into law, while incorporating key feedback from the field into an even clearer vision of what it takes to educate each and every one of our Nation's school children. The Notice of Proposed Rulemaking (NPRM) would clarify and strengthen current Title I regulations in the areas of assessment, accountability, supplemental educational services (SES), and public school choice. The public comment period is 60 days and the deadline for submitting comments is June 23.

The proposed regulations address the following:

1. Assessments and multiple measures.

- The proposed regulations clarify in §200.2(b)(7) that measures of student academic achievement may include multiple question formats that range in cognitive complexity within a single assessment, as well as multiple assessments within a subject area.

- This change addresses the misunderstanding of some in the field that accountability under Title I must be based on a single measure or form of assessment.

2. Minimum subgroup size and increasing inclusion of students in accountability determinations.

- There are large numbers of students and subgroups whose achievement data are excluded from AYP determinations at the school-level due to large subgroup sizes and other elements that States include in their adequate yearly progress (AYP) definitions, such as confidence intervals and their definitions of a full academic year.

- Proposed §200.7(a)(2) would require States to explain in their State Accountability Workbook how their subgroup size and the other components of the State's definition of AYP (e.g., confidence intervals, indexes, definition of full academic year) provide statistically reliable information while ensuring the maximum inclusion of subgroups, particularly at the school level, in AYP determinations.

- States also would be required to include data on exclusion rates (the number and percentage of students and subgroups excluded from school-level accountability determinations) in their Accountability Workbook. No later than six months after the effective date of the regulations, States would be required to submit their Accountability Workbooks to the Department for technical assistance and peer review. The National Technical Advisory Council (National TAC) will assist the Department in determining the criteria by which States' Accountability Workbooks will be reviewed.

- Requiring States to justify their subgroup size in concert with the other components that States use to make AYP determinations and to make this information (along with their exclusion rates) available and transparent to the public should push States to establish a reasonable subgroup size and other policies.

3. **NAEP data on State and local report cards**.
   - Proposed §200.11(c) would require States and LEAs to report the most recent available academic achievement results from NAEP reading and math assessments on the same public report card as they report the results of their State assessments.

   - Information on how students in a State are performing on State assessments compared to their performance on NAEP will provide greater transparency about State standards and assessments and provide parents with another tool to assess the education system in their State.

4. **Graduation rates and AYP**. The proposed regulations would make the following changes:

   A. Establish a uniform definition of graduation rate by 2012-2013
      - Current regulations give States latitude in determining how graduation rates are measured. A uniform and accurate method of calculating graduation rates is needed to raise expectations and to hold schools, districts, and States accountable for increasing the number of students who graduate on time with a regular high school diploma.
      - In proposed §200.19(a)(1) the graduation rate would be defined as the number of students who graduate in the standard number of years with a regular high school diploma divided by the number of students who form the adjusted cohort for that graduating class. The standard number of years would be four years.
      - The proposed definition is consistent with the definition agreed to by the National Governors Association (NGA).
      - A State that does not have in effect a system to accurately track student transfers, which is needed to calculate the NGA graduation rate, would use the averaged freshman graduation rate (AFGR) on a transitional basis. However, by 2012-2013, all States would have to use the more rigorous NGA definition of graduation rate.

   B. Provide flexibility for States to propose an alternate definition of "standard number of years."
      - Proposed §200.19(a)(1)(i)(C) would permit States to propose, for approval by the Secretary, an alternate definition of "standard number of years" for limited categories of students who, under certain conditions, may take longer to graduate (e.g., certain students with disabilities, and students in "early college high schools" who earn an associate's degree along with a high school diploma.).

   C. Require States to set a graduation rate goal, and define "continuous and substantial improvement" for AYP determinations.
      - Under current regulations, most States require schools to make only a small amount of improvement from one year to the next or meet a very low graduation rate goal (e.g., 50 percent) in order to make AYP. Permitting schools and LEAs with extremely low graduation rates to make AYP by showing minimal improvement does not provide sufficient accountability for ensuring that students graduate on time.

- Under proposed §200.19(d) States would be required to (a) set a graduation rate goal (for example, 90 percent) that represents the rate the State expects all high schools to meet and (b) define how schools and LEAs demonstrate continuous and substantial improvement from the prior school year toward meeting or exceeding that goal. Beginning in the 2008-2009 school year, a high school or LEA would have to meet the graduation rate goal or demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding that goal in order to make AYP.

D. Require disaggregated graduation rates in AYP.

- Current regulations do not require disaggregated graduation rate data to be included in AYP determinations. Given current graduation rate data, it has become clear that simply requiring disaggregated data to be reported has not been sufficient to ensure that graduation rates improve for all students. Therefore, the proposed regulations change the policy in the current regulations.
- No later than the 2012-2013 school year (when all States must use the NGA rate), proposed §200.19(e) would require each State to calculate the graduation rate at the school, LEA, and State levels and disaggregate the data by subgroup for reporting and determining AYP.
- Prior to the 2012-2013 school year, States would have to disaggregate the data at the school, LEA, and State levels for reporting purposes, but only at the LEA and State levels for AYP determinations. (We would not require AYP determinations based on disaggregated data at the school level until 2012-2013 because the AFGR, which some States would be using, is not accurate with smaller numbers of students.)

5. Including individual student academic progress in AYP.

- The proposed regulations in §200.20(h) would set the criteria that States must meet in order to incorporate individual student academic progress into the State's definition of AYP. The criteria build on the criteria that are part of the current "growth model" pilot program.

- By allowing States to include accurate measures of individual student academic progress in AYP calculations, districts and schools will still be held accountable for the achievement of all students, but States will have flexibility to use more sophisticated methods for doing so, provided that the regulatory criteria are met.

6. Strengthening State assessment and accountability systems.

- Proposed §200.22 would require the creation of a National Technical Advisory Council (National TAC) to advise the Secretary on key technical issues related to State standards, assessments, and accountability systems. The National TAC would not review State plans but, instead, would focus on large, complex issues that affect all States (e.g., minimum subgroup size). The National TAC would be selected by the Secretary and be composed of 10-15 members. Its work would be in addition to the work of the existing peer review panels that provide a detailed review of State standards, assessments, and accountability systems.

- A National TAC consisting of experts with knowledge in the fields of educational standards, assessments, accountability systems, statistics, and psychometrics would better enable the Department to address highly complex and technical issues. Regular access to a group of experts will help ensure that State standards and assessments are of the highest technical quality.

7. **Limiting identification for improvement by subject or subgroup**.
   - Proposed §200.32(a)(1)(ii) would codify current Department policy that an LEA may base identification of a school for improvement on whether the school did not make AYP because it did not meet the annual measurable objective (AMO) in the same subject (or meet the same other academic indicator) for two consecutive years. The LEA may *not*, however, limit such identification to those schools that did not make AYP only because they did not meet the AMO in the same subject (or meet the same other academic indicator) for the same subgroup for two consecutive years. A similar change with respect to State identification of LEAs for improvement is being proposed in §200.50(d).

   - Limiting identification to schools or districts that do not meet the AMO in the same subject for the same subgroup is inconsistent with NCLB's accountability provisions, which require that each subgroup meet the State's AMOs in each subject each year.

8. **Strengthening Restructuring.** Based on available data, the Department is concerned that the restructuring requirements are not being implemented effectively, and in some cases not at all. Proposed §200.43(a) would make the following clarifying changes to strengthen the implementation of these requirements and to make the statutory requirements as clear as possible:

   A. Restructuring interventions must be more rigorous than corrective action. Interventions implemented as part of a school's restructuring plan must be significantly more rigorous and comprehensive than the corrective action plan that the school implemented after it was identified for corrective action.

   B. Interventions must address the problem. LEAs must implement interventions that address the reasons for a school being in restructuring.

   C. **Replacing school staff may also include replacing the principal, but replacing the principal by itself is not sufficient**. In replacing all or most of the school staff, an LEA may also replace the principal; however, replacing the principal alone would not be sufficient to constitute restructuring.

9. **Supplemental Educational Services (SES) and Public School Choice**. The proposed regulations would make changes in the following areas:

   A. Public school choice and SES notification timeline.
      - Proposed §200.37(b)(4) would require districts to notify parents of eligible children that they may participate in public school choice, and detail their available options as far in advance as possible, but no later than 14 days before the start of the academic year. This will give parents adequate time to exercise their public school choice option before the academic year begins. With more time for parents to evaluate their public school choice options, the level of public school choice participation should increase.
      - Proposed §200.37(b)(5)(ii)(C) would require the SES eligibility notice to highlight the benefits of SES, and to be clear, concise, and clearly distinguishable from the other information sent to parents. This proposed change would address concerns that parents may be unaware of their child's eligibility for SES because the eligibility notice is not

clearly distinguishable from the information that LEAs provide when a school is in improvement.

B. Reporting how LEAs implement SES and public school choice. Districts should make information about SES and public school choice options available to parents so that they can make informed decisions. Therefore, proposed §200.39(c) would require LEAs to include on their Web sites the following information:

- Beginning with data from the 2007-2008 school year and for each subsequent school year, the number of students who were eligible for and who participated in SES or public school choice.
- For the current school year, a list of SES providers approved to serve the LEA and the locations where services are provided.
- For the current school year, a list of available schools that are offered to students eligible to participate in public school choice.

C. Reporting on State monitoring of SES implementation by LEAs. Information should be available to the public about how States monitor LEAs to ensure that the SES and public school choice requirements are being met. Therefore, proposed §200.47(a)(4)(iii) would require States to develop, implement, and publicly report on the standards and techniques they use to monitor LEAs' implementation of the SES requirements. Requiring States to develop, implement, and publicly report on the criteria they use to monitor LEAs' implementation of SES will help ensure that SEAs set rigorous and clear expectations for their LEAs.

D. Approving SES providers. Proposed §200.47(b)(3) specifies what States must consider when approving SES providers. Specifying the minimum evidence that SEAs must consider in approving providers will help ensure that students receive high quality SES services and reinforce with States that they have the authority and the responsibility to approve only entities that will contribute to increased student academic achievement. In approving an SES provider, States would have to consider, in addition to the factors specified in the current regulations:

- Evidence from the provider that the instruction it would provide and the content it would use are research-based and aligned with Sate academic content and student achievement standards.
- Information from the provider on whether the provider has been removed from any State's approved provider list.
- Parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement.
- Evaluation results, if any, demonstrating that the instructional program has improved student achievement.

E. Monitoring the effectiveness of SES providers. Proposed §200.47(c) sets forth new requirements for States when monitoring SES providers. Specifying the evidence that States must consider in their monitoring of SES providers will result in stronger programs being approved, clearer expectations for monitoring, and better alignment between approval and monitoring criteria. In order to inform the renewal or the withdrawal of approval of a provider, States would have to examine, at a minimum, evidence that the provider's instructional program:

- Is consistent with the instruction provided and the content used by the LEA and SEA;
- Addresses students' individual needs as described in students' SES plans;
- Has contributed to increasing students' academic proficiency; and

- Is aligned with the State's academic content and achievement standards.

States also would be required to consider:

- Any recommendations from parents (including through parent surveys) concerning the provider, if such information is available; and
- Any evaluation results demonstrating that the instructional program has improved student achievement.

F. Costs for outreach and assistance to parents regarding SES and public school choice. Proposed §200.48(a)(2)(iii)(C) would permit an LEA to count the costs for providing parent outreach and assistance toward meeting its obligation to spend an amount equal to 20 percent of its Title I, Part A allocation to comply with requests for SES and to pay for the costs to provide transportation for students exercising the public school choice option. The amount that could be so counted would be capped at 0.2 percent of an amount equal to the LEA's Title I, Part A allocation. An LEA would still be able to spend more than that amount on parental outreach activities; the proposed regulations would only cap what could be counted toward meeting the 20 percent obligation.

Permitting LEAs to count a limited amount of funds for parent outreach and assistance will help ensure that LEAs provide parents with the information they need to make the best, most informed decisions for their children.

G. Unspent funds for public school choice and SES. In order to help ensure that an LEA has made sufficient effort to make public school choice and SES available to eligible students before reallocating the funds to other purposes, proposed §200.48(d) would require an LEA, before reallocating unused funds from choice-related transportation and SES to other purposes, to provide satisfactory evidence to the SEA that the LEA has demonstrated success in the following:

- Partnering with community-based organizations to inform students and parents of SES and public school choice.
- Ensuring that students and their parents have had a genuine opportunity to sign up to transfer or obtain SES, which includes:
    - Providing timely and accurate notice to parents.
    - Ensuring that sign-up forms are distributed directly to all eligible students and their parents and made widely available and accessible.
    - Allowing eligible students to sign up to receive SES throughout the school year.
- Ensuring that SES providers are given access to school facilities on the same basis and terms as are available to other groups that seek to use school facilities.

10. Highly qualified special education teachers.

- Current Title I regulations do not include all of the requirements for highly qualified special education teachers that are in the more recent IDEA regulations. For example, the current Title I regulations do not include the requirements for highly qualified special education teachers who do not teach core academic subjects.
- Proposed §200.56(d) would add a cross-reference to the definition of highly qualified special education teachers in the IDEA regulations. This is only a technical change and would not affect the requirements for highly qualified teachers.