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In accordance with section 1901(b) of the Elementary and Secondary Education Act of 1965 (ESEA), as recently amended by the No Child Left Behind Act of 2001, the Assistant Secretary for Elementary and Secondary Education is convening a negotiating group, including Federal, State, and local education administrators, parents, teachers, and members of local boards of education, to participate in a negotiated rulemaking process prior to publishing proposed regulations to implement Part A of Title I of the ESEA. The regulations to be negotiated relate to the statutory provisions involving academic content and student achievement standards and academic assessments under Title I. Based on advice and recommendations received, the Department has prepared the following draft proposed regulations to serve as the basis for discussion during the negotiations. Following the negotiated rulemaking process, the Department will publish proposed regulations in the *Federal Register* for public comment.

We are posting these draft proposed regulations for information purposes. Please note that they are in draft form and subject to change during the negotiated rulemaking process.

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

STANDARDS AND ASSESSMENT

§200.1 State responsibilities for developing challenging academic standards.

(a) Academic standards in general. A State shall develop challenging academic content and student academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out this subpart. These academic standards must—

(1) Be the same academic standards that the State applies to all public schools and public schoolchildren in the State, including the **schools and** children served under this subpart;

(2) Include the same knowledge, skills, and levels of achievement expected of all children; and

(3) Include at least mathematics, reading/language arts, and, beginning in the 2005-2006 school year, science,

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and may include other subjects determined by the State.

(b) Academic content standards. (1) The challenging academic content standards required under paragraph (a) of this section must--

(i) Specify what **all** children are expected to know and be able to do;

(ii) Contain coherent and rigorous content; and

(iii) Encourage the teaching of advanced skills.

(2) A State's academic content standards may cover more than one grade.

(3) At the high school level, the academic content standards must define the core knowledge that all high school students are expected to achieve, independent of course titles or years completed.

(c) Academic achievement standards. (1) The challenging student academic achievement standards required under paragraph (a) of this section must--

(i) Be aligned with the State's academic content standards; and

(ii) Include the following components for each content area:

(A) Achievement levels that describe--

(1) Two levels of high achievement--proficient and advanced--that determine how well children are mastering the material in the State's academic content standards; and

(2) A third level of achievement--basic--to provide complete information about the progress of lower-achieving

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children toward mastering the proficient and advanced levels of achievement.

(B) Achievement descriptors that describe, in narrative format, the competencies associated with each achievement level.

(C) "Cut scores" on an assessment that separate one level of achievement from another, supported by student work.

(2) A State must develop academic achievement standards for every grade and subject assessed, even if the State's academic content standards cover more than one grade.

(3) With respect to academic achievement standards in science, a State must develop—

(i) Achievement levels and descriptors no later than the 2005-2006 school year; and

(ii) Cut scores after the State has developed its science assessments but no later than the 2007-2008 school year.

(d) Subjects without standards. If students are served under this subpart in subjects for which a State has not developed academic standards, the State shall describe in its State plan a strategy for ensuring that those students are taught the same knowledge and skills and held to the same expectations in those subjects as are all children.

(Authority: 20 U.S.C.)

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§200.2 State responsibilities for assessment.

(a) (1) Each State, in consultation with its LEAs, shall implement a **system** of high-quality yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts and, beginning in the 2007-08 school year, science.

(2) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging academic content and student academic achievement standards.

(b) The **assessment system** required under this section must meet the following requirements:

(1) Be the same **assessment system** used to measure the achievement of all children in accordance with §200.3 or §200.4.

(2) (i) Be aligned with the State's challenging academic content and student academic achievement standards; and

(ii) Provide coherent information about student attainment of those standards.

(3) (i) Be used for purposes for which the **assessment system** is valid and reliable; and

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(ii) Be consistent with relevant, nationally recognized professional and technical standards.

(4) **Be designed to be accessible and valid with respect to the widest possible range of students, including students with disabilities and students with limited English proficiency.**

(5) Be supported by evidence from test publishers or other relevant sources that the assessment **system** is—

(i) Of adequate technical quality for each purpose required under the Act; and

(ii) Consistent with the requirements of this section.

(6) Be administered in accordance with the timeline in §200.5.

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of **challenging content.**

(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, **except that this provision does not preclude the use of—**

(i) **Essay, extended-response, or short-answer test items; or**

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(ii) Items that require a student to analyze a passage of text or to express opinions.

(9) Provide for participation in the assessment **system** of all students in the grades being assessed consistent with §200.6.

(10) Except as provided in §200.7, enable results to be disaggregated within each State, LEA, and school by--

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) English proficiency status;

(iv) Migrant status;

(v) Students with disabilities as compared to students without disabilities; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(11) Produce individual student reports consistent with §200.8(a).

(12) Enable itemized score analyses to be produced and reported to LEAs and schools consistent with §200.8(b).

(c) Academic assessments that do not meet the requirements in paragraph (b) of this section may be included in the assessment system as additional measures. Those additional assessments—

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(1) May not reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 of the Act if those assessments were not used; but

(2) May identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C.)

§200.3 Designing State Academic Assessment Systems.

(a)(1) Provided its system meets the requirements in paragraph (a)(2) of this section for each grade and subject assessed, a State may include, in its academic assessment system under §200.2, either or both--

(i) Criterion-referenced assessments; and

(ii) Assessments that yield national norms, provided that assessments referenced only against national norms--

(A) Are augmented with additional items to address fully and accurately the depth and breadth of the State's academic content standards; and

(B) Express student results in terms of the State's student academic achievement standards.

(2) For each grade and subject assessed, a State's assessments must--

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(i) Fully address the depth and breadth of the State's academic content standards;

(ii) Be valid, reliable, and of high technical quality; and

(iii) Express student results in terms of the State's student academic achievement standards.

(b) A State that includes a combination of State assessments or a combination of State and local assessments in its State system shall demonstrate that the system has a rational and coherent design that--

(1) Identifies the assessments to be used;

(2) Indicates the relative contribution of each assessment towards--

(i) Ensuring full alignment with the State's academic content standards; and

(ii) Determining the adequate yearly progress of each school and LEA; and

(3) Is able to provide information regarding the progress of students relative to the State's academic standards in order to inform instruction.

(c) A State that includes local assessments in its State system shall--

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(1) Establish technical criteria to ensure that each local assessment meets the requirements of paragraph (a) (2) of this section;

(2) Demonstrate that local assessments are of equivalent content, rigor, and quality--and that their results are of concurrent validity with respect to groups of students described in section 1111(b) (2) (c) (v) (II) of the Act--to make a fair, rational, and consistent determination of the annual progress of schools and LEAs within the State;

(3) Review and approve each local assessment to ensure that it meets or exceeds the State's technical criteria in paragraph (c) (1) and the requirements in paragraph (c) (2) of this section; and

(4) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(d) A State's academic assessment system may rely exclusively on local assessments only if it meets the requirements of §200.4.

(Authority: 20 U.S.C.)

§200.4 State law exception.

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(a) If a State provides satisfactory evidence to the Secretary that neither the SEA nor any other State government official, agency, or entity has sufficient authority under State law to adopt academic content standards, student academic achievement standards, and academic assessments applicable to all students enrolled in the State's public schools, the State may meet the requirements under §§200.1–200.2 by--

(1) Adopting academic standards and academic assessments that meet the requirements of §§200.1-200.2 on a Statewide basis and limiting their applicability to students served under this subpart; or

(2) Adopting and implementing policies that ensure that each LEA in the State that receives funds under this subpart will adopt academic standards and academic assessments aligned with those standards that--

(i) Meet the requirements in §§200.1-200.2; and

(ii) Are applicable to all students served by the LEA.

(b) A State that qualifies under paragraph (a) of this section shall--

(1) Establish technical criteria for evaluating whether each LEA's--

(i) Academic content and student academic achievement standards meet the requirements in §200.1; and

(ii) Academic assessments meet the requirements in §200.2, particularly regarding validity and reliability, technical quality, alignment with the LEA's academic

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standards, and inclusion of all students in the grades assessed;

(2) Review and approve each LEA's academic standards and academic assessments to ensure that they--

(i) Meet or exceed the State's technical criteria; and

(ii) Are of equivalent content, rigor, and quality--and that the assessment results are of concurrent validity with respect to groups of students described in section 1111(b) (2) (C) (v) (II) of the Act--to make a fair, rational, and consistent determination of the annual progress of schools and LEAs within the State; and

(3) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(Authority: 20 U.S.C.)

§200.5 Timeline for assessments.

(a) Reading/language arts and mathematics. (1)

Through no later than the 2004-2005 school year, a State must administer the assessments required under §200.2 not less than one time during--

(i) Grades 3 through 5;

(ii) Grades 6 through 9; and

(iii) Grades 10 through 12.

(2) Except as provided in paragraph (a) (3) of this section, beginning no later than the 2005-2006 school year,

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a State must administer **both** the reading/language arts and mathematics assessments required under §200.2—

(i) In each of grades 3 through 8; and

(ii) At least once in grades 10 through 12.

(3) The Secretary may extend, for one additional year, the timeline in paragraph (a)(2) of this section if a State demonstrates that—

(i) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(A) A natural disaster; or

(B) A precipitous and unforeseen decline in the financial resources of the State; and

(ii) The State can complete implementation within the additional one-year period.

(b) Science. Beginning no later than the 2007-2008 school year, the assessments required under §200.2 must be administered not less than one time during—

(1) Grades 3 through 5;

(2) Grades 6 through 9; and

(3) Grades 10 through 12.

(c) High school assessments. **The high school assessments reflected in these timelines must measure the standards that the State expects all students at the high school level to meet, independent of the grade in which those assessments are administered.**

(d) Timing of results. A State shall promptly provide the results of its assessments no later than before the

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beginning of the next school year to LEAs, schools, and teachers in a manner that is clear and easy to understand.

(Authority: 20 U.S.C.)

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§200.6 Inclusion of all students.

A State's academic assessment system required under §200.2 must provide for the participation of all students in the grades assessed.

(a) Students with disabilities. (1) A State's academic assessment system must provide for reasonable adaptations and accommodations for students with disabilities necessary to measure the academic achievement of those students relative to the State's standards.

(2) Students with disabilities are students—

(i) Defined under section 602(3) of the Individuals with Disabilities Education Act; or

(ii) Covered under section 504 of the Rehabilitation Act of 1973.

(3) (i) The State's academic assessment system must include one or more alternate assessments for those students with disabilities who cannot participate in all or part of the regular State assessments, even with reasonable adaptations and accommodations.

(ii) Alternate assessments must yield results in at least reading/language arts, mathematics, and, beginning in the 2007-2008 school year, science.

(b) Limited English proficient students. A State shall include limited English proficient students in its academic assessment system as follows:

(1) (i) In general. Consistent with paragraph (b) (2) of this section, a State must assess limited English

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proficient students in a valid and reliable manner that includes--

(A) Reasonable accommodations; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English until the students have achieved English language proficiency.

(ii) To meet this requirement, a State--

(A) Shall make every effort to develop linguistically accessible academic assessment measures; and

(B) May request assistance from the Secretary in the identification of appropriate assessment measures.

(2) Assessing reading/language arts in English. (i)

Unless an extension of time is warranted under paragraph (b)(2)(ii) of this section, a State shall assess, using assessments written in English, the achievement of any limited English proficient student in meeting the State's reading/language arts academic standards if the student has attended schools in the United States (excluding Puerto Rico) for three or more consecutive years.

(ii) An LEA may continue, for no more than two additional consecutive years, to assess a limited English proficient student under paragraph (b)(1) of this section if the LEA determines, on a case-by-case individual basis, that the student has not reached a level of English

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language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English.

(iii) The requirement in this subparagraph does not permit a three-year exemption from participating in the State assessment system for limited English proficient students.

(3) Assessing English proficiency. (i) Unless a State receives an extension under paragraph (b)(3)(ii) of this section, beginning no later than the 2002-2003 school year, the State shall require each LEA to assess annually the English proficiency, including reading, writing, speaking and listening skills, of all students with limited English proficiency in schools in the LEA.

(ii) The Secretary may extend, for one additional year, the deadline in paragraph (b)(3)(i) of this section if the State demonstrates that—

(A) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(1) A natural disaster; or

(2) A precipitous and unforeseen decline in the financial resources of the State; and

(B) The State can complete implementation within the additional one-year period.

(c) Migrant and other mobile children. A State's academic assessment system must include migrant children,

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as defined in Title I, Part C, of the Act, and other mobile children in the grades assessed, even if those students are not included for accountability purposes under §200.____ [not in school or LEA for full academic year].

(Authority: 20 U.S.C.)

§200.7 Disaggregation of data.

(a) Statistically reliable information. (1) A State may not use disaggregated data for one or more subgroups under §200.2(b)(10) to report achievement results under section 1111(h) of the Act [report cards] or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2) **Based on sound statistical methodology, a State shall determine the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.**

(b) Personally identifiable information. (1) A State may not use disaggregated data for one or more subgroups under §200.2(b)(10) to report achievement results under section 1111(h) of the Act [report cards] or to identify schools in need of improvement, corrective action, or

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restructuring under section 1116 of the Act if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State shall apply the requirements under section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) A State shall make every effort to maximize the use of disaggregated data while protecting the privacy of individual students.

(Authority: 20 U.S.C.)

§200.8 Assessment reports.

(a) Student reports. A State's academic assessment system must produce individual student interpretive, descriptive, and diagnostic reports that—

(1) Include information regarding achievement on the academic assessments under §200.2 **measured against the State's student academic achievement standards;**

(2) Allow parents, teachers, and principals to understand and address the specific academic needs of students; and

(3) Are provided to parents, teachers, and principals—

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(i) As soon as is practicable after the assessment is given;

(ii) In an understandable and uniform format; and

(iii) To the extent practicable, in a language that parents can understand.

(b) Itemized score analyses. (1) A State's academic assessment system must produce and report to LEAs and schools itemized score analyses so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students.

(2) The itemized score analyses required by this paragraph do not require the release of information on each test item.

(Authority: 20 U.S.C.)

§200.9 Deferral of assessments.

(a) A State may defer the commencement or suspend the administration of the assessments required under §200.2 that were not required prior to the date of enactment of this Act for one year for each year for which the amount appropriated for State assessment grants under section 6204(c) of the Act is less than the trigger amount in section 1111(b)(3)(D) of the Act.

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(b) A State may not cease the development of the assessments referred to in paragraph (a) of this section even if sufficient funds are not appropriated under section 6204(c) of the Act.

(Authority: 20 U.S.C.)

§200.10 Applicability of a State's academic assessments to private schools.

(a) Nothing in §200.2 requires a private school to participate in a State's academic assessment system.

(b) If an LEA provides services to eligible private school students this subpart, the LEA must—

(1) Assess the effectiveness of those services, **using the State's academic assessment system under §200.2 or other academic assessments, as appropriate;** and

(2) Consult with appropriate private school officials regarding how services to eligible private school students will be academically assessed and how the results of that assessment will be used to improve those services.

(Authority: 20 U.S.C.)