

No Child Left Behind—2008

Summary of Proposed Regulations for Title I

April 22, 2008

The U.S. Department of Education is proposing new regulations for Title I of the *ESEA* with the intent of building on the advancements of state assessment and accountability systems, as well as strengthening the public school choice and supplemental educational services (SES) provisions of the *No Child Left Behind Act of 2001*. The regulations also incorporate key feedback from the field. What follows is a summary of the Notice of Proposed Rulemaking (NPRM) that was published on April 23 in 2008.

Assessments, Accountability and Transparency

1. Assessments and Multiple Measures

Background: *There is a misunderstanding among some in the field that accountability under Title I must be based on a single measure or form of assessment.*

Proposal: The proposed regulations clarify that measures of student academic achievement may include multiple question formats (e.g., multiple choice, extended response) that range in difficulty within a single assessment, as well as multiple assessments within a subject area (e.g., reading and writing assessments to measure reading/language arts).

2. Strengthening State Assessment and Accountability Systems

Background: *Regular access to a group of experts with knowledge in the fields of education standards, assessments, accountability systems, statistics and psychometrics would help ensure that state standards and assessments are of the highest technical quality.*

Proposal: The proposed regulations 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 focus on significant, complex issues that affect all states. The secretary would select the 10 to 15 members who would make up the National TAC from nominations from the public.

3. Minimum Subgroup Size and Inclusion of Students in Accountability

Background: *Currently, there are many students and subgroups of students whose achievement data are excluded from adequate yearly progress (AYP) determinations at the school level. Data are excluded when states establish large minimum subgroup sizes and add other components (e.g., confidence intervals; definitions of “full academic year”) to their AYP definitions.*

Proposal: The proposed regulations require states to explain in their state accountability workbooks how the minimum subgroup size and other components of their AYP definitions (e.g., confidence intervals, indexes, definitions of “full academic year”) combine to provide statistically reliable information. States also would be required to ensure that the maximum number of students and subgroups are included in AYP determinations. Additionally, states would be required to include the number and percentage of students and subgroups excluded from school-level accountability determinations in their accountability workbooks.

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 Department plans to use the National TAC to help determine guidelines by which states’ accountability workbooks will be reviewed.

4. Inclusion of NAEP Data on State and Local Report Cards

Background: *More information about how students in a state are performing on state assessments as compared to how those students are performing on the National Assessment of Educational Progress (NAEP) would provide greater transparency about state standards and assessments. This information also would provide parents with another tool to assess the education systems in their states.*

Proposal: The proposed regulations require states and districts to report the most recent available results from the state NAEP reading and mathematics assessments on the same public report card that they use to report the results of state assessments.

5a. Uniform Definition of “Graduation Rate”

Background: *Current regulations give states latitude in determining how public high school graduation rates are calculated. 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.*

Proposal: The proposed regulations establish a uniform definition of the graduation rate that is consistent with the definition agreed to by the National Governors Association (NGA).

- The graduation rate would be defined as the number of students who graduate in a given year within the standard number of years with a regular high school diploma divided by the number of students who entered high school four years earlier (adjusting for transfers in and out). The standard number of years to earn a high school diploma would be four years.
- States would be able 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 than the standard four years.
- A state that does not have a system to accurately track students who transfer to another educational program that culminates in the award of a regular high school

- diploma, which is needed to calculate the NGA graduation rate, would use the averaged freshman graduation rate (AFGR) on a transitional basis.
- By 2012–13, all states would have to use the more rigorous NGA definition of graduation rate.

5b. Graduation Rates and AYP

Background: *Under current regulations, in order to make AYP, most states require schools to make only a small amount of improvement from one year to the next or to meet very low graduation rate goals (e.g., 50 percent). Permitting schools and districts with extremely low graduation rates or minimal levels of improvement to make AYP does not provide sufficient accountability for ensuring that students graduate on time.*

Proposal: States would be required to:

- Set a graduation rate goal (e.g., 90 percent) that represents the rate they expect all high schools to meet; and
- Define how schools and districts may demonstrate continuous and substantial improvement from the prior year.

To make AYP, a school or district would have to meet the graduation rate goal or demonstrate continuous and substantial improvement from the prior year.

5c. Disaggregation of Graduation Rates

Background: *Current regulations do not require disaggregated graduation rate data (i.e., data broken down by student subgroups) to be included in AYP determinations. Data show large disparities in the graduation rates of different subgroups. Simply requiring disaggregated data to be reported has not been sufficient to ensure that graduation rates improve for all students.*

Proposal: The proposed regulations require disaggregated graduation rates to be taken into account in AYP determinations. No later than the 2012–13 academic year (when all states must use the NGA rate), states would be required to disaggregate the data by subgroup at the school and district levels to determine and report AYP. Prior to the 2012–13 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 determining AYP.

6. Including Individual Student Growth in AYP

Background: *There is general consensus among teachers, administrators, researchers, and advocates that states should be permitted to include measures of individual student growth (i.e., growth models) when determining AYP. By allowing states to include measures of individual student progress in AYP calculations, schools will continue to be held accountable for the achievement of all students. At the same*

time, states will have the flexibility to use more sophisticated methods of determining AYP.

Proposal: The proposed regulations set the criteria that states must meet in order to incorporate individual student academic progress into their definitions of AYP. The proposed regulations build on criteria that are part of the current “growth model” pilot program.

7. Same Subject-Same Subgroup Identification for Improvement

Background: *Limiting the identification of schools and districts that are “in need of improvement” to those that do not meet the annual measurable objective (AMO) in the same subject for the same subgroup over consecutive years is inconsistent with the law’s accountability provisions. The law requires that every subgroup meet the state’s AMO in each subject, each year.*

Proposal: The proposed regulations codify current Department policy that a district may base improvement status on whether a school missed AYP because it did not meet the AMO in the same subject (or meet the same academic indicator) for two consecutive years. A district may not, however, limit identification for improvement to those schools that missed AYP only because they did not meet the AMO in the same subject (or meet the same academic indicator) for the same subgroup for two consecutive years.

8. Restructuring

Background: *Based on available data, the Department is concerned that the restructuring requirements are not being implemented effectively, and in some cases, not at all.*

Proposal: The proposed regulations require the following:

- 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 as in need of improvement.
- Districts must implement interventions that address the reasons why a school is in the restructuring phase.
- In replacing all or most of the school staff, a district may include replacing the principal; however, replacing the principal alone would not be sufficient to constitute restructuring.

Supplemental Educational Services (SES) and Public School Choice

9. Timely and Clear Notification to Parents

Background: *Too often, parents whose children attend Title I schools that are identified as in need of improvement are not notified until after the start of the school*

year that they may send their children to better-performing public schools in their districts. Additionally, parents may be unaware of their children's eligibility for SES because the eligibility notice is not clearly distinguishable from the information that districts provide when a school is in improvement status.

Proposal: The proposed regulations require timely notification to parents regarding public school choice and SES. Districts must:

- Notify parents of eligible children that they may elect to 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 school year. This requirement will give parents adequate time to exercise their choice option before the school year begins. With more time for parents to evaluate their choice options, the level of public school choice participation across the country should increase.
- Notify parents of eligible children of the availability of SES and highlight the benefits of SES. This notice must be clear and concise, as well as clearly distinguishable from the other information sent to parents notifying them that their child's school is in improvement status.

10. Access to Information on District Implementation of Public School Choice and SES

***Background:** Districts currently are not required to make information on public school choice and SES eligibility available to the public. Doing so would make districts' implementation more transparent and make it easier for parents to obtain the information they need.*

Proposal: The proposed regulations require districts to include on their Web sites the following information:

- The number of students who were eligible for and who participated in SES and public school choice during prior school years;
- A list of SES providers approved to serve the district, as well as the locations where services are provided for the current school year; and
- A list of available schools to which students eligible for public school choice may transfer for the current school year.

11. State Monitoring of Districts' Implementation of SES

***Background:** Although States have always had to monitor their districts to ensure that the SES requirements were being met, states have not been required to make their monitoring procedures public.*

Proposal: The proposed regulations require States to develop, implement and publicly report the standards and techniques they use to monitor how districts implement the SES requirements.

12. SES Provider Approval Process

Background: *The law currently sets forth the minimum criteria that states must consider in approving SES providers. However, more can be done to ensure that states approve only those providers with programs having evidence of contributing to increased student achievement.*

Proposal: In approving an SES provider, the regulations require states to consider, at a minimum:

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

13. State Monitoring of SES Provider Effectiveness

Background: *States are required to evaluate whether providers have contributed to increased student achievement for two consecutive years. However, the law does not specify the evidence a state must consider in making determinations about renewing approval of providers or withdrawing them from the state's approved list.*

Proposal: To inform the renewal or withdrawal of approval for a provider, the proposed regulations require a state to examine, at a minimum, evidence that the provider's instructional program:

- Is consistent with the instruction provided and content used by the district and state;
- Addresses students' needs as described in their SES plans;
- Has contributed to increasing students' academic proficiency; and
- Is aligned with state academic content and student academic achievement standards.

Additionally, states would have to consider, if available, parent recommendations, results from parent surveys or other evaluation results regarding the success of the provider's program in increasing student achievement.

14. Costs for Parent Outreach

Background: *Districts must provide parents with the information they need to make the best, most informed decisions regarding their children's education. Currently, districts are not allowed to count the costs of this outreach toward their obligation to spend an amount equal to 20 percent of their Title I, Part A funding on public school choice and SES.*

Proposal: The proposed regulations permit a district to count the costs associated with providing parent outreach and assistance toward meeting its 20 percent obligation for SES and transportation for public school choice. The amount that could be counted as such would be capped at 0.2 percent of the district's *Title I, Part A* allocation. A district still would be allowed to spend more than that amount on parental outreach activities.

15. Use of Funds for Public School Choice and SES

Background: Currently, the law does not require that districts meet certain requirements before reallocating funds for public school choice and SES to other purposes.

Proposal: The proposed regulations require a district, before reallocating unused funds from choice-related transportation and SES to other purposes, to provide satisfactory evidence to the state that it has demonstrated success in:

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

16. Highly Qualified Special Education Teachers

Background: *Current Title I regulations do not include all of the requirements for highly qualified special education teachers that are in the more recent Individuals with Disabilities Education Act (IDEA) regulations.*

Proposal: The proposed regulations add a cross-reference to the definition of “highly qualified special education teachers” in the IDEA regulations. This is a technical change.