

DEPARTMENT OF EDUCATION

34 CFR Chapter II

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); Improving the Academic Achievement of the Disadvantaged

AGENCY: Department of Education.

ACTION: Request for advice and recommendations on regulatory issues.

SUMMARY: The Secretary of Education (Secretary) is soliciting advice and recommendations from interested parties prior to publishing proposed regulations to implement programs under Title I of the Elementary and Secondary Education Act of 1965, as recently amended. Programs under Title I are designed to help disadvantaged children meet high academic standards. They include programs operated by local educational agencies in high-poverty schools (Part A), Reading First (Part B, Subpart 1), Early Reading First (Part B, Subpart 2), Even Start family literacy programs (Part B, Subpart 3), programs for migratory children (Part C), prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out (Part D), Comprehensive School Reform (Part F), Advanced Placement Programs (Part G), and School Dropout Prevention (Part H). The Secretary invites advice and recommendations concerning issues for which regulations may be helpful to clarify statutory ambiguities or to provide appropriate flexibility.

DATES: We must receive your written comments on or before February 19, 2002.

ADDRESSES: Address all comments to Susan B. Neuman, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W331, Washington, DC 20202. If you prefer to send your comments through the Internet, use the following address: TitleIrulemaking@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person identified in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: See the **SUPPLEMENTARY INFORMATION** section for further information contacts.

SUPPLEMENTARY INFORMATION:

For Further Information Contact: For programs under Part A, Susan Wilhelm, Telephone (202) 260-0982; for programs under Part B, Subparts 2 and 3, Patricia McKee, Telephone (202) 260-0991; for programs under Part D, Gary Rutkin, Telephone (202) 260-4412; Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W230, Washington, DC 20202-6132.

For programs under Part B, Subpart 1, Chris Doherty, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW, Room 3W311, Washington, DC 20202-6132. Telephone: (202) 401-2176.

For programs under Part C, James English, Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E333, Washington, DC 20202-6135. Telephone: (202) 260-1989.

For programs under Part F and Part H, Hugh Burkett, Academic Improvement and Demonstration Programs, 400 Maryland Avenue, SW, Room 2W100, Washington, DC 20202-6135. Telephone: (202) 260-1989.

For programs under Part G, Edith Harvey, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-6135. Telephone: (202) 260-1393.

Background

On January 8, 2002, the President signed into law the "No Child Left Behind Act of 2001" (NCLB Act), amending the Elementary and Secondary Education Act of 1965 (ESEA). The NCLB Act reauthorizes the ESEA and incorporates the major reforms proposed by President Bush in his *No Child Left Behind* framework for education reform, particularly in the areas of assessment, accountability, and school improvement. The NCLB Act will strengthen Title I accountability by requiring States to implement statewide accountability systems covering all public schools and their students. These systems must be based on challenging State standards in at least reading and mathematics, annual testing for all students in grades 3 through 8, and annual statewide progress objectives for ensuring that all students reach proficiency within 12 years. Assessment results and State progress objectives must be disaggregated by poverty, race or ethnicity, disability and limited-English proficiency to ensure that schools address the educational needs

of all students. Schools that meet or exceed State adequate yearly progress (AYP) objectives or close achievement gaps will be eligible for State Academic Achievement Awards. School districts and schools that fail to make AYP toward statewide proficiency goals will, over time, be subject to improvement, corrective action, and restructuring measures to help them meet State standards. Furthermore, parents of students in those schools will have the opportunity to transfer their children to a better public school or to obtain supplemental educational services for them.

The programs included in Title I of the ESEA, as amended by the NCLB Act, are designed to help disadvantaged children meet high academic standards. They include: Improving Basic Programs Operated by Local Educational Agencies (Part A), Reading First (Part B, Subpart 1), Early Reading First (Part B, Subpart 2), Even Start family literacy programs (Part B, Subpart 3), programs for migratory children (Part C), prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out (Part D), Comprehensive School Reform (Part F), Advanced Placement Programs (Part G), and School Dropout Prevention (Part H).

The Department intends to implement Title I programs in a manner that respects State and local control over education while ensuring strong accountability for results. In particular, the Department intends to issue regulations only where absolutely necessary: for example, where the statute requires a regulation or where a regulation is necessary to provide flexibility or clarification for State and local educational agencies. Rather than regulating extensively, the Department intends to issue nonregulatory guidance addressing legal and policy issues under the Title I programs. This guidance can inform schools, parents, school districts, States, and other affected parties about the flexibility that exists under the statute, including multiple approaches that may be available in carrying out the statute's requirements.

The Secretary invites advice and recommendations from interested parties involved with the implementation and operation of programs under Title I concerning issues for which regulations may be necessary or for which nonregulatory guidance would be helpful to clarify statutory ambiguities or to provide appropriate flexibility. The Secretary specifically invites advice and recommendations from States and local administrators, parents, teachers,

paraprofessionals, members of local boards of education, charter school operators and public chartering authorizers, and other organizations (including civil rights groups, test publishers, representatives of private schools, and faith-based organizations with educational expertise).

Issues for Negotiated Rulemaking

Before publishing any proposed regulations to implement programs under Title I, the Secretary must establish a negotiated rulemaking process (unless regulations must be issued within a very limited time to assist State and local educational agencies with the operation of Title I programs). Negotiated rulemaking can improve the substance of regulations; increase understanding of, and support for, those regulations; encourage affected parties to communicate with each other and share information, knowledge, expertise, and analysis; and discourage expensive and time-consuming litigation concerning the regulations. The Secretary will select individuals to participate in this process from among the individuals or groups providing advice and recommendations on Title I regulatory issues. The Secretary will publish a separate notice in the **Federal Register** providing details about the negotiated rulemaking process.

Section 1901 of Title I requires that, at a minimum, the negotiated rulemaking process address issues concerning standards and assessments. The Secretary is also considering conducting negotiated rulemaking on the statutory provisions dealing with adequate yearly progress in section 1111. Therefore, the Secretary specifically invites comments on these provisions, including whether regulations are necessary and whether nonregulatory guidance would be helpful. The following discussion describes these statutory provisions. Commenters should use this discussion to guide their comments. The discussion, however, is not intended to restrict the issues that commenters may address.

Academic Standards

Under section 1111(b)(1) of Title I, each State must adopt challenging academic content standards and student academic achievement standards (formerly called "student performance standards") that will be used by the State, its local educational agencies, and its schools to carry out Part A. These academic standards must be the same standards that the State applies to all students and all schools in the State.

States must have such standards in subjects determined by the State, but at a minimum, in mathematics, reading/language arts, and (beginning in the 2005–2006 school year) science. These standards must include challenging content standards in academic subjects that specify what children are expected to know and be able to do. They must contain coherent and rigorous content, and encourage the teaching of advanced skills. States also must have challenging student academic achievement standards that are aligned with the State's content standards and describe three levels of achievement: Advanced, proficient, and basic. Advanced and proficient levels determine how well children are mastering the State's content standards; the basic level provides complete information about the progress of lower-performing children toward achieving the proficient and advanced levels of achievement.

Academic Assessments

Under section 1111(b)(3) of Title I, each State also must implement a set of high-quality, yearly student academic assessments in, at a minimum, mathematics, reading/language arts, and (by school year 2007–08) science that will be used as the primary means of determining the yearly achievement of the State and each local educational agency and public school in enabling all children to meet the State's student academic achievement standards. These assessments must be the same ones used to measure the achievement of all children, be aligned with the State's academic content and student achievement standards, and be used for purposes for which they are valid and reliable. The statutory timeline for developing and administering assessments unfolds in three stages. In stage one, through school year 2004–05, assessments in mathematics and reading/language arts must be administered no less than one time during grades 3 through 5, grades 6 through 9, and grades 10 through 12. In stage two, beginning no later than school year 2005–2006, assessments in mathematics and reading/language arts, at a minimum, must be administered in grades 3 through 8 and one time during grades 10 through 12. In stage three, beginning no later than school year 2007–2008, assessments that measure proficiency in science must be administered no less than one time during grades 3 through 5, grades 6 through 9, and grades 10 through 12. Assessments must involve multiple up-to-date measures of academic achievement, including measures that

assess higher-order thinking skills and understanding.

States must administer assessments to all students, providing reasonable adaptations and accommodations for students with disabilities and students with limited English proficiency. Moreover, students with limited English proficiency must be assessed, to the extent practicable, in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved English proficiency. With respect to reading/language arts, students with limited English proficiency who have attended schools in the United States (excluding Puerto Rico) for three or more consecutive school years must be assessed in English, unless a local educational agency determines, on a case-by-case basis, that academic assessments in another language for up to an additional two years would likely yield more accurate and reliable information.

The results of assessments must be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged. Finally, States must produce individual student interpretive, descriptive, and diagnostic reports and itemized score analyses that allow parents, teachers, and principals to understand and address the specific academic needs of students relative to their achievement against State standards.

Adequate Yearly Progress

Under section 1111(b)(2)(B), each State must demonstrate what constitutes adequate yearly progress of the State, and of all public elementary and secondary schools and local educational agencies in the State, toward enabling all students to meet the State's student achievement standards, while working toward the goal of narrowing achievement gaps in the State. "Adequate yearly progress" definitions must apply the same high standards of academic achievement to all public elementary and secondary school students in the State, be statistically valid and reliable, and measure progress based primarily on the State's academic assessments. The definition must include separate annual measurable objectives for continuous and substantial improvement in both mathematics and reading/language arts

for all students and for each of the following specific groups of students: Students who are economically disadvantaged, students from each major racial and ethnic group, students with disabilities, and students with limited English proficiency. However, disaggregated data are not required in cases when the number of students in a category is insufficient to yield statistically reliable information or when the results would reveal personally identifiable information about an individual student.

“Adequate yearly progress” definitions must include graduation rates for public secondary schools and at least one other academic indicator for public elementary schools, and may include other academic indicators. However, although additional indicators may be used to identify additional schools for school improvement, corrective action, or restructuring, they may not be used to reduce the number of, or change the identity of, the schools that would otherwise be subject to school improvement, corrective action, or restructuring.

Each State must use data from the 2001–2002 school year to establish the starting point for measuring the percentage of students meeting or exceeding the State’s proficient level of academic achievement. The starting point must, at a minimum, be based on the higher of two levels defined in the statute.

“Adequate yearly progress” must include a timeline that ensures that all students in each subgroup meet or exceed the State’s proficient level of academic achievement no later than 12 years after the end of the 2001–2002 school year. The timeline must include intermediate goals for meeting adequate yearly progress. These intermediate goals must increase in equal increments over the timeline; the first increment must occur in not more than two years, and the following increases must occur in not more than three years. In calculating whether a school has made “adequate yearly progress,” the State

may establish procedures for averaging data. These procedures may include averaging scores across grade spans and averaging data over three years.

To make “adequate yearly progress,” a school must meet two criterias. First, the school must meet or exceed the State’s annual measurable objectives with respect to all students and students in each subgroup. If students in any subgroup fail to make the requisite progress, however, the school need not be identified for improvement if the percentage of students in that group below proficient decreased by at least 10 percent compared to the preceding year and that group made progress on one or more of the additional academic indicators. Second, at least 95 percent of the students in each group who have been enrolled in the local educational agency’s schools for at least one year must take the assessment.

Invitation to Comment

This request for comments on regulatory issues under Title I is designed to elicit the views of interested parties, particularly State and local administrators, parents, teachers, paraprofessionals, members of local boards of education, charter school operators and public chartering authorities, and other organizations (including civil rights groups, test publishers, representatives of private school children, and faith-based organizations with educational expertise) involved with the implementation and operation of Title I programs.

In addition to inviting specific comments on issues relating to standards, assessments and adequate yearly progress, the Secretary invites comments on other regulatory issues concerning provisions under Title I, including suggestions that regulations are not needed to resolve particular issues.

The Secretary requests that each commenter identify his or her role in education and the perspective from which he or she views the educational

system—either as a representative of an association, agency, or school (public or private), or as an individual teacher, student, parent, or private citizen. The Secretary urges each commenter to be specific regarding his or her recommendations, including the statutory citation pertinent to the comment.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in 400 Maryland Avenue, SW, Room 3W202, Washington, DC 20202 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

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(Catalog of Federal Domestic Assistance Numbers: 84.010, Improving Programs Operated by Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.213, Even Start)

Program Authority: Public Law 107–110.

Dated: January 14, 2002.

Rod Paige,

Secretary of Education.

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