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August 9, 2004

Jacquelyn Jackson  
Acting Director  
Student Achievement and School Accountability Programs  
U.S. Department of Education  
400 Maryland Ave. S.W.  
Room 3W230 FB-6  
Washington, D.C. 20202-6132

RE: Comments on 34 CFR Part 200  
RIN 1820-AB55

Dear Ms. Jackson:

On behalf of the Council of Chief State School Officers, I write to comment on the Notice of Proposed Rulemaking regarding Improving the Academic Achievement of the Disadvantaged published in the Federal Register on June 24<sup>th</sup>. The proposed rulemaking would codify flexibility regarding the treatment of Limited English Proficient (LEP) students under the No Child Left Behind Act. We appreciate the opportunity to comment on the proposed changes in regulation.

The Council of Chief State School Officers (CCSSO) is a nonpartisan, nationwide, nonprofit organization of public officials who head departments of elementary and secondary education in the states, the District of Columbia, the Department of Defense Education Activity, and five U.S. extra-state jurisdictions. CCSSO provides leadership, advocacy, and technical assistance on major educational issues. The Council seeks member consensus on major educational issues and expresses their views to civic and professional organizations, federal agencies, Congress, and the public.

Because of our strong interest in maximizing the flexibility provided under NCLB, we commend the U.S. Department of Education for promulgating these regulations and permitting states to quickly utilize the flexibility afforded under them on a transitional basis as offered in the Secretary's letter dated February 20<sup>th</sup>.

The proposed regulations closely reflect the elements of flexibility provided to the states in February. And indeed, most states have already embraced the elements contained in

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the notice. However, there are two areas where the Council would seek modifications to the proposed rule.

1) Section 2006 Inclusion of All Students

The proposed regulations would provide a new assessment option for recently arrived LEP students. We commend ED for this interpretation as it is an important option for state to have, given the mobility of this specific sub-group of students. The proposed regulation defines this subgroup as students who have attended schools in the United States for less than ten months.

In order to fully accommodate all states' testing schedules, CCSSO strongly urges the regulation to be modified to include in the definition of the subgroups those students who have attended school for less than ten months or less than one full academic year as defined by the state.

2) Section 200.20 Making Adequate Yearly Progress (AYP) Determinations

Under the proposed regulations, a state would not be required to include the assessment results of recently arrived LEP students in making AYP determinations. However, the regulations do not clarify how these results should be included for reporting purposes. Treating such student differently for AYP and reporting purposes will result in a significantly increased data management burden for states. In addition, such inconsistent treatment will cause potential confusion for parents and schools in interpreting and reacting to school and student scores.

In order to treat the assessment results of recently arrived LEP students consistently, the Council calls on ED to modify the regulations to clarify that test results for this subset of students be treated the same both for making AYP determinations and for reporting purposes.

We appreciate your careful consideration of our concerns. Please contact me at 202-336-7000 or at [pattys@ccsso.org](mailto:pattys@ccsso.org) if you have questions.

Sincerely,

Patricia Sullivan