

THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

April 1, 2009

Dear Chief State School Officers:

This is a critical time in our country, and an extraordinary time to be working in education. As President Barack Obama said when he announced the goals of the Administration's education reform agenda, America will not remain true to its highest ideals unless we give our nation's children the knowledge and skills they need in this new and changing world. Moreover, reforming our education system is essential to restoring our economic prosperity. The *American Recovery and Reinvestment Act of 2009 (ARRA)* provides over \$100 billion for education and early childhood programs and services. This funding will not only help to save jobs and support States and school districts, but also creates a historic opportunity to advance reforms and improvements that will create long-lasting results for our students and our nation.

I support the core principles of the *Elementary and Secondary Education Act of 1965 (ESEA)*, including closing achievement gaps and demanding accountability for ensuring that all students achieve to high standards. But the law can be improved. In the coming months, I will be traveling the country and listening to States and local educators, as well as other stakeholders, to learn about the ways in which the ESEA and its resulting policies can be enhanced. I look forward to receiving your input.

In the meantime, I am writing with regard to the Title I regulations that were issued by my predecessor in October 2008 [73 FR 64436 (Oct. 29, 2008)]. I have heard various comments on these regulations from a number of interested parties – some supporting the regulations and others urging me to repeal them. I have carefully reviewed each of the October 2008 Title I regulations with these comments in mind. I am also mindful of the fact that it is important to balance the need to plan for the reauthorization of the ESEA with the need to review existing regulations. On the whole, these regulations support the educational goals for which I will advocate as Secretary: greater transparency, particularly for parents; flexibility in return for accountability; improved assessment and data systems to better track the growth of students and improve instruction; and increased focus on high school graduation. I have decided to propose changes in a few of the regulations, while leaving the majority of these regulations in effect.

Summary of changes: In a few cases, I will be proposing to change the regulations, or provide flexibility through waivers. I intend to propose, through notice and comment rulemaking, a repeal of the requirement that a State revise its Accountability Workbook with respect to its definition of adequate yearly progress (AYP) and submit those revisions for peer review. In addition, if a State's current assessment timeline precludes its districts from meeting the 14-day public school choice notice requirement, I will consider a one-year waiver of this requirement. Finally, I intend to propose to amend or repeal a regulatory provision that was issued in December of 2002 prohibiting a State from approving districts and schools identified for improvement to be supplemental educational services (SES) providers.

I will fully discuss my reasons for the proposed changes in a notice of proposed rulemaking that invites public comments. Below is a description of the more significant regulatory provisions, the proposed changes and available flexibility, and the reasons for leaving the remaining provisions intact.

High school graduation rate. I support the provisions in the October 2008 Title I regulations regarding graduation rate. It is increasingly clear that a high school diploma is the minimum credential needed for success in the labor force. High schools and districts with low graduation rates must be held accountable for their failures and must take action to improve these rates. The new regulations related to graduation rate are an important first step. In addition to requiring an accurate method of calculating a graduation rate that is uniform across States, the rate must be disaggregated by student subgroups for both reporting and accountability purposes. The regulations also require each State to set a single graduation rate goal as well as annual targets that hold districts and schools accountable for graduating more of their students each year. At the same time, the regulations provide flexibility by allowing schools to receive credit for students who take longer to graduate, including students who take five or more years to receive a regular high school diploma, thus encouraging schools and districts to create alternative paths to graduation and to improve dropout recovery programs. I believe these regulations strike the right balance between accountability and flexibility, thereby encouraging schools to serve all student populations.

Accountability Workbook peer review. Given the tremendous work each State will be undertaking to implement the *ARRA*, I am sensitive to the burden of a State's having to revise its Accountability Workbook to include information about the State's AYP definition for peer review, especially given the technical nature of these revisions. In addition, the upcoming reauthorization of the *ESEA* might result in changes to the statute that would trigger the need for a State to modify its Accountability Workbook. Therefore, although the current substantive requirements related to minimum group size and inclusion of students in AYP remain in effect, I do not believe it makes sense to require a State to revise its Accountability Workbook and undergo peer review of its AYP definition at this time. For these reasons, I intend to propose, through notice and comment rulemaking, a repeal of the provisions that require this particular peer review. Please note, however, that I intend to proceed with the peer review of information related to a State's graduation rate, which I believe will provide important information without being significantly burdensome. We will provide additional guidance to States regarding that review soon.

SES and public school choice. *ESEA* requires certain schools to make tutoring and public school choice available to students. In my time with Chicago Public Schools, I saw how providing high-quality expanded learning opportunities, such as effective tutoring, can improve student achievement. To the extent that these regulations enhance program effectiveness and increase transparency, they help provide parents and students with better access to valuable services. The most significant of these regulations include:

- Fourteen day notice for public school choice. I believe the requirement that a district provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the school year serves an important goal of ensuring that parents have sufficient time to make an informed decision regarding whether to transfer their child to another school. Indeed, to the extent feasible, I encourage all districts to provide notice to parents at least *30 days* in advance of the start of the school year to ensure that parents can give meaningful consideration to this important decision.

I have heard legitimate concerns, however, that, given the timing of the October 2008 regulations, some States cannot change their assessment schedules or existing contracts with test vendors to obtain assessment results in time for their districts to meet the 14-day deadline with respect to the 2009-2010 school year. As a result, I will consider a one-year waiver request from a State whose districts cannot comply with this requirement this year because of the State's current assessment timeline. Please note that, even in a State that receives a waiver, all districts must comply with the statutory requirement to provide notice of public school choice before the start of the school year. In addition, although I understand that some States and districts have a justifiable need for some limited additional time to come into compliance with this regulatory provision, all districts must provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the school year beginning with the 2010–2011 school year.

- Districts and schools in need of improvement as SES providers. I intend to propose a change to a preexisting Title I regulation that prohibits a State from approving as an SES provider a district identified for improvement or corrective action, or a school identified for improvement, corrective action, or restructuring. These regulatory provisions hold identified districts and schools to different standards than other entities applying to be SES providers while limiting competition among SES providers. Therefore, I intend to propose and invite public comment on a potential repeal of these provisions. If these provisions are repealed, a State still has the authority to make determinations about SES providers based on its approval criteria, including an examination of a provider's demonstrated record of effectiveness. However, identified districts and schools would not be automatically disqualified because of their status under the accountability provisions related to AYP. Because it will take some time to go through the rulemaking process for this proposed change, I will consider a waiver of this regulatory provision for the 2009-2010 school year.

The flexibility I have just discussed is balanced by the additional accountability required by many of the new regulations regarding public school choice and SES.

- Approval and monitoring of SES providers. The regulations require States to implement additional standards for approving SES providers and improve their monitoring of SES.
- Funding reservation for choice-related transportation and SES. The new regulations also include provisions aimed at ensuring that all eligible students whose parents seek a public school choice or SES option are able to exercise such an option. Before a district spends funds reserved for choice-related transportation and SES on other allowable Title I activities, the district must take certain actions intended to ensure that it has met all demand for public school choice and SES. If the district takes these actions, in the following year, it is not required to use the same amount it spent on the other allowable Title I activities for choice-related transportation and SES. I recognize that there are concerns in the field about this provision. However, I believe this level of transparency and accountability is valuable for parents and other stakeholders. In the interest of supporting these goals, I am committed to working with states and school districts to address any logistical challenges associated with these regulations.

The Department also has received questions from States and districts about how the funding requirements for public school choice-related transportation and SES will be affected by the supplemental funding appropriated under the *ARRA*. I will consider a waiver that would allow a district to exclude the *ARRA* funds when determining (1) the amount the district must spend to meet the obligation for SES and public school choice-related transportation; and (2) the per-pupil amount to be spent for SES. The Department will be providing additional information regarding these waiver opportunities soon.

Growth models and improved data systems. I support the regulatory provisions that enable a State to apply for a waiver to include a measure of individual student growth in calculating AYP, thereby providing States with the flexibility to explore different avenues for holding schools and districts accountable for the achievement of all students. One necessary component for implementing a growth model is a robust data system to track student growth. As President Obama has said, we must provide teachers and principals with the information they need to make sure students are prepared to meet academic standards. Therefore, I encourage all States, not just those applying to incorporate student academic growth in AYP determinations, to focus efforts on building robust longitudinal data systems.

National Assessment of Educational Progress (NAEP) data on State and district report cards. The inclusion of NAEP results on State and district report cards promotes transparency and gives parents easy access to an important tool for assessing the educational performance of students within their State through a uniform measure of academic achievement. In addition to complying with the regulatory requirements to include the most recently available State-level NAEP results, States and districts are encouraged to include the national NAEP results on their report cards. Simple

comparisons of student performance on the NAEP and State assessments cannot be made without some understanding of the key differences between the two assessments. Therefore, the Department will be providing States and districts with guidance on how best to convey this information to parents and the public.

Restructuring. The October 2008 Title I regulations regarding restructuring support strong accountability for some of the lowest-achieving schools. The provisions emphasize that restructuring should be a significant reform that is part of a comprehensive strategy to improve student achievement. The language in the statute and regulations gives States flexibility to determine what type of significant reform addresses the particular issues that cause a school to be identified. As more schools enter the restructuring phase, States and districts will need to better target their resources to help those schools. The Department began a “Differentiated Accountability Pilot” initiative in 2008 that provides eligible States greater flexibility to focus their technical assistance and interventions more precisely on schools with the greatest need. All States, even those that are not currently participating in this pilot initiative, are free to build on the statutory requirements and to develop differentiated responses based on the particular failures that caused a school not to make AYP.

States and districts now have the opportunity to use additional resources to implement school improvement strategies to turn around low-performing schools, and to focus renewed attention on improving the quality of early childhood services and high schools. The *ARRA* provides significant new funding for programs under Title I of the *ESEA*, including \$3 billion for School Improvement Grants to be used over two years. I believe that the School Improvement Grants, in particular, will be useful for helping States to improve the performance of schools that have been identified for improvement, corrective action, and restructuring under the *ESEA*. (You can find more information about the *ARRA* at the following site:

<http://www.ed.gov/policy/gen/leg/recovery/index.html>.)

A summary of each of the regulatory provisions discussed above is located below. In the next few weeks, the Department will issue information about the process for requesting the referenced waivers. The Department also intends to provide to States and districts additional guidance and technical assistance on the implementation of these regulations. If you have any questions or concerns, please e-mail them to oes@ed.gov.

I am enthusiastic about the opportunity to address all that lies ahead and am committed to working in partnership with you to ensure that all of America’s students reach their fullest potential. I look forward to hearing your ideas on how to best improve the *ESEA* as we prepare for reauthorization. Thank you for your efforts to raise the achievement of all of your students.

Sincerely,

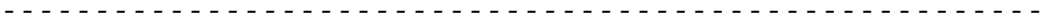
/s/

Arne Duncan

cc: Governors

PROVISION	DESCRIPTION
§200.2(b)(7): Multiple measures	Clarifies the requirement that State assessments involve multiple measures of student achievement.
§200.7(a)(2)(i): AYP definition	Requires a State's subgroup size to yield statistically reliable information while ensuring maximum inclusion of student subgroups.
§200.11(c): NAEP data on State and district report cards	Requires each State and LEA to include on its respective report card the most recent NAEP reading and math results for the State (data must be disaggregated by student subgroup on the State report card).
§200.19(b)(1): Graduation rate definition	Requires a State to report a four-year adjusted cohort graduation rate and use it for AYP purposes in the aggregate and disaggregated by subgroup. Allows a State to establish an extended-year adjusted cohort graduation rate or rates.
§200.19(b)(3): Graduation rate goal and targets	Requires a State to set a single graduation rate goal that represents the rate the State expects all high schools in the State to meet and annual graduation rate targets that reflect continuous and substantial improvement from the prior year toward meeting or exceeding the graduation rate goal.
§200.19(b)(6): Peer review of graduation rate information	Requires a State to submit its Accountability Workbook for peer review of certain information about its graduation rate.
§200.20(h): Growth in AYP	Permits a State to propose to ED the inclusion of measures of individual student growth in its definition of AYP.
§200.22: National Technical Advisory Council (NTAC)	Establishes the NTAC to advise the Secretary on technical issues related to State standards, assessment, and accountability systems.
§§200.32 and 200.50: Same subject identification	Permits a district to identify a school or a State to identify a district for improvement if the school or district does not meet the annual measurable objective in the same subject for two consecutive years. Prohibits a district or State from limiting identification for improvement to schools or districts that miss AYP in the same subject and the same subgroup for two consecutive years.
§200.37(b)(4)(iv): Public school choice notice to parents	Requires an LEA's notice to parents of eligible students of the availability of public school choice to be provided at least 14 days before the start of the school year.
§200.37(b)(5): Supplemental educational services (SES) notice to parents	Requires an LEA to notify parents of eligible students of the availability of SES in a manner that is clear and concise, as well as clearly distinguishable from other school improvement information that parents receive.

	<p>Requires an LEA to notify parents of the benefits of receiving SES.</p> <p>Requires an LEA to indicate those providers who are able to serve students with disabilities or limited English proficient students.</p>
§200.39(c): Posting public school choice and SES information	Requires an LEA to post on its Web site certain information on its implementation of public school choice and SES.
§200.43: Restructuring	Clarifies the actions an LEA must take when schools are in “restructuring” status.
§200.44: Public School Choice	Conforms when notice of public school choice is required consistent with change in §200.37(b)(4)(iv).
§200.47(a)(1)(ii)(B): State responsibilities for SES	Requires a State to post on its Web site, for each LEA, the amount the LEA must spend for SES and choice-related transportation (20 percent obligation) and data on the LEA’s per-pupil allocation.
§200.47(a)(3)(ii): State responsibilities for SES	Requires a State to indicate on its list of approved providers which providers are able to serve students with disabilities or limited English proficient students.
§200.47(a)(4)(iii): State responsibilities for SES	Requires a State to develop, implement, and publicly report on standards and techniques for monitoring LEAs’ implementation of the SES requirements.
§200.47(b), (c): State responsibilities for SES	Requires a State to approve and monitor SES providers using certain specified criteria.
§200.48(a): Costs for parent outreach for choice and SES	Allows an LEA to count costs for parent outreach and assistance toward meeting its 20 percent obligation for public school choice-related transportation and SES funding (up to an amount equal to 0.2 percent of its Title I, Part A allocation).
§200.48(d): 20 percent obligation	<p>Requires an LEA that does not meet its 20 percent obligation for choice-related transportation and SES to spend the unexpended amount in the following school year unless it meets certain criteria.</p> <p>Allows an LEA that meets these criteria to use funds it would otherwise use to meet its 20 percent obligation on other allowable Title I costs.</p> <p>Requires a State to review certain LEAs and to complete each such review by the beginning of the next school year.</p> <p>Requires an LEA that the State determines has failed to meet the criteria to:</p> <ul style="list-style-type: none"> • Spend an amount equal to its unspent funds in the subsequent school year, in addition to the 20 percent obligation for the subsequent year; or • Meet the criteria and obtain permission from the state before spending less in the subsequent school year than it is required to spend.



SUMMARY OF TITLE I REGULATIONS

PROVISIONS ON WHICH THE DEPARTMENT INTENDS TO CONDUCT FURTHER RULEMAKING:

PROVISION	DESCRIPTION
§200.7(a)(2)(ii), (iii): Accountability Workbook Review	Requires each State to submit for peer review a revised Accountability Workbook that reflects requirements in this section regarding AYP determinations (e.g., n-size, inclusion).
§200.47(b)(1)(iv)(A), (B): Approval of SES Providers	Prohibits a State from approving as an SES provider a school identified for improvement, corrective action, or restructuring, or an LEA identified for improvement or corrective action.

OCTOBER 2008 PROVISIONS THAT WILL REMAIN IN EFFECT: