Part III

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; Proposed Rule
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, audiotape, 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.


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 authorities, 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 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 at least once 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 2007–08, 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 continued 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 criteria. 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.
Rod Paige.
Secretary of Education.
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