

**DEPARTMENT OF EDUCATION****34 CFR Parts 200 and 299**

[Docket ID ED–2016–OESE–0032]

RIN 1810–AB27

**Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans**

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final regulations; CRA revocation.

**SUMMARY:** Under the Congressional Review Act, Congress has passed, and the President has signed, a resolution of disapproval of the accountability and State plans final regulations that were published on November 29, 2016. Because the resolution of disapproval invalidates these final regulations, the Department of Education (Department) is hereby removing these final regulations from the Code of Federal Regulations.

**DATES:** This action is effective July 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Melissa Siry, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W104, Washington, DC 20202. Telephone: (202) 260–0926 or by email: [Melissa.Siry@ed.gov](mailto:Melissa.Siry@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On November 29, 2016, the Department published the accountability and State plans final regulations (81 FR 86076). The regulations were effective on March 21, 2017. On March 27, 2017, President Trump signed into law Congress' resolution of disapproval of the accountability and State plans final regulations under the Congressional Review Act as Public Law 115–13. Section 801(f) of the Congressional Review Act states that “[a]ny rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.” Accordingly, the Department is hereby removing the accountability and State plans final regulations from the Code of Federal Regulations, and ensuring the CFR is returned to the state it would have been if this “rule had never taken effect.” Consistent with Executive Order 13777,

the Department is evaluating all existing regulations and making recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. As part of that effort, we will review the regulations in parts 200 and 299.

**List of Subjects***34 CFR Part 200*

Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

*34 CFR Part 299*

Administrative practice and procedure, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

Dated: June 7, 2017.

**Betsy DeVos,**

*Secretary of Education.*

**Amendment to 34 CFR Chapter II**

For the reasons discussed in the preamble, and under the authority of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and Public Law 115–13 (March 27, 2017), the Secretary of Education amends parts 200 and 299 of title 34 of the Code of Federal Regulations as follows:

**PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED**

- 1. The authority citation for part 200 is revised to read as follows:

**Authority:** 20 U.S.C. 6301 through 6578, unless otherwise noted.

- 2. Section 200.7 is added to read as follows:

**§ 200.7 Disaggregation of data.**

(a) *Statistically reliable information.*

(1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2)(i) Based on sound statistical methodology, each State must determine the minimum number of students sufficient to—

(A) Yield statistically reliable information for each purpose for which disaggregated data are used; and

(B) Ensure that, to the maximum extent practicable, all student subgroups in § 200.13(b)(7)(ii) (economically disadvantaged students; students from major racial and ethnic groups; students with disabilities as defined in section 9101(5) of the Act; and students with limited English proficiency as defined in section 9101(25) of the Act) are included, particularly at the school level, for purposes of making accountability determinations.

(ii) Each State must revise its Consolidated State Application Accountability Workbook under section 1111 of the Act to include—

(A) An explanation of how the State's minimum group size meets the requirements of paragraph (a)(2)(i) of this section;

(B) An explanation of how other components of the State's definition of adequate yearly progress (AYP), in addition to the State's minimum group size, interact to affect the statistical reliability of the data and to ensure the maximum inclusion of all students and student subgroups in § 200.13(b)(7)(ii); and

(C) Information regarding the number and percentage of students and student subgroups in § 200.13(b)(7)(ii) excluded from school-level accountability determinations.

(iii) Each State must submit a revised Consolidated State Application Accountability Workbook in accordance with paragraph (a)(2)(ii) of this section to the Department for technical assistance and peer review under the process established by the Secretary under section 1111(e)(2) of the Act in time for any changes to be in effect for AYP determinations based on school year 2009–2010 assessment results.

(iv) Beginning with AYP decisions that are based on the assessments administered in the 2007–08 school year, a State may not establish a different minimum number of students under paragraph (a)(2)(i) of this section for separate subgroups under § 200.13(b)(7)(ii) or for the school as a whole.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section 444(b) of the General Education

Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (b)(2) of this section shall be construed to abrogate the responsibility of States to implement the requirements of section 1116(a) of the Act for determining whether States, LEAs, and schools are making AYP on the basis of the performance of each subgroup under section 1111(b)(2)(C)(v) of the Act.

(4) Each State shall include in its State plan, and each State and LEA shall implement, appropriate strategies to protect the privacy of individual students in reporting achievement results under section 1111(h) of the Act and in determining whether schools and LEAs are making AYP on the basis of disaggregated subgroups.

(c) *Inclusion of subgroups in assessments.* If a subgroup under § 200.2(b)(10) is not of sufficient size to produce statistically reliable results, the State must still include students in that subgroup in its State assessments under § 200.2.

(d) *Disaggregation at the LEA and State.* If the number of students in a subgroup is not statistically reliable at the school level, the State must include those students in disaggregations at each level for which the number of students is statistically reliable—*e.g.*, the LEA or State level.

(Authority: 20 U.S.C. 6311(b)(3); 1232g)

■ 3. Section 200.12 is revised to read as follows:

**§ 200.12 Single statewide accountability system.**

(a)(1) Each State must demonstrate in its State plan that the State has developed and is implementing, beginning with the 2002–2003 school year, a single, statewide accountability system.

(2) The State's accountability system must be effective in ensuring that all public elementary and secondary schools and LEAs in the State make AYP as defined in §§ 200.13 through 200.20.

(b) The State's accountability system must—

(1) Be based on the State's academic standards under § 200.1, academic assessments under § 200.2, and other academic indicators under § 200.19;

(2) Take into account the achievement of all public elementary and secondary school students;

(3) Be the same accountability system the State uses for all public elementary and secondary schools and all LEAs in the State; and

(4) Include sanctions and rewards that the State will use to hold public

elementary and secondary schools and LEAs accountable for student achievement and for making AYP, except that the State is not required to subject schools and LEAs not participating under subpart A of this part to the requirements of section 1116 of the ESEA.

(Authority: 20 U.S.C. 6311(b)(2)(A))

**§ 200.12 [Amended]**

■ 4. Add an undesignated center heading “Adequate Yearly Progress (AYP)” following § 200.12.

■ 5. Section 200.13 is revised to read as follows:

**§ 200.13 Adequate yearly progress in general.**

(a) Each State must demonstrate in its State plan what constitutes AYP of the State and of all public schools and LEAs in the State—

(1) Toward enabling all public school students to meet the State's student academic achievement standards; while

(2) Working toward the goal of narrowing the achievement gaps in the State, its LEAs, and its public schools.

(b) A State must define adequate yearly progress, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Applies the same high standards of academic achievement to all public school students in the State, except as provided in paragraph (c) of this section;

(2) Is statistically valid and reliable;

(3) Results in continuous and substantial academic improvement for all students;

(4) Measures the progress of all public schools, LEAs, and the State based primarily on the State's academic assessment system under § 200.2;

(5) Measures progress separately for reading/language arts and for mathematics;

(6) Is the same for all public schools and LEAs in the State; and

(7) Consistent with § 200.7, applies the same annual measurable objectives under § 200.18 separately to each of the following:

(i) All public school students.

(ii) Students in each of the following subgroups:

(A) Economically disadvantaged students.

(B) Students from major racial and ethnic groups.

(C) Students with disabilities, as defined in section 9101(5) of the ESEA.

(D) Students with limited English proficiency, as defined in section 9101(25) of the ESEA.

(c)(1) In calculating AYP for schools, LEAs, and the State, a State must,

consistent with § 200.7(a), include the scores of all students with disabilities.

(2) A State may include the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards described in § 200.1(d), provided that the number of those scores at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics.

(3) A State may not request from the Secretary an exception permitting it to exceed the cap on proficient and advanced scores based on alternate academic achievement standards under paragraph (c)(2) of this section.

(4)(i) A State may grant an exception to an LEA permitting it to exceed the 1.0 percent cap on proficient and advanced scores based on the alternate academic achievement standards described in paragraph (c)(2) of this section only if—

(A) The LEA demonstrates that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the combined grades assessed;

(B) The LEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the LEA that have drawn large numbers of families of students with the most significant cognitive disabilities, or that the LEA has such a small overall student population that it would take only a few students with such disabilities to exceed the 1.0 percent cap; and

(C) The LEA documents that it is implementing the State's guidelines under § 200.1(f).

(ii) The State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted.

(5) In calculating AYP, if the percentage of proficient and advanced scores based on alternate academic achievement standards under § 200.1(d) exceeds the cap in paragraph (c)(2) of this section at the State or LEA level, the State must do the following:

(i) Consistent with § 200.7(a), include all scores based on alternate academic achievement standards.

(ii) Count as non-proficient the proficient and advanced scores that exceed the cap in paragraph (c)(2) of this section.

(iii) Determine which proficient and advanced scores to count as non-proficient in schools and LEAs responsible for students who are assessed based on alternate academic achievement standards.

(iv) Include non-proficient scores that exceed the cap in paragraph (c)(2) of this section in each applicable subgroup at the school, LEA, and State level.

(v) Ensure that parents of a child who is assessed based on alternate academic achievement standards are informed of the actual academic achievement levels of their child.

(d) The State must establish a way to hold accountable schools in which no grade level is assessed under the State's academic assessment system (e.g., K–2 schools), although the State is not required to administer a formal assessment to meet this requirement.

(Authority: 20 U.S.C. 6311(b)(2))

■ 6. Section 200.14 is revised to read as follows:

**§ 200.14 Components of Adequate Yearly Progress.**

A State's definition of AYP must include all of the following:

(a) A timeline in accordance with § 200.15.

(b) Starting points in accordance with § 200.16.

(c) Intermediate goals in accordance with § 200.17.

(d) Annual measurable objectives in accordance with § 200.18.

(e) Other academic indicators in accordance with § 200.19.

(Authority: 20 U.S.C. 6311(b)(2))

■ 7. Section 200.15 is revised to read as follows:

**§ 200.15 Timeline.**

(a) Each State must establish a timeline for making AYP that ensures that, not later than the 2013–2014 school year, all students in each group described in § 200.13(b)(7) will meet or exceed the State's proficient level of academic achievement.

(b) Notwithstanding subsequent changes a State may make to its academic assessment system or its definition of AYP under §§ 200.13 through 200.20, the State may not extend its timeline for all students to reach proficiency beyond the 2013–2014 school year.

(Authority: 20 U.S.C. 6311(b)(2))

■ 8. Section 200.16 is revised to read as follows:

**§ 200.16 Starting points.**

(a) Using data from the 2001–2002 school year, each State must establish starting points in reading/language arts and in mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement.

(b) Each starting point must be based, at a minimum, on the higher of the

following percentages of students at the proficient level:

(1) The percentage in the State of proficient students in the lowest-achieving subgroup of students under § 200.13(b)(7)(ii).

(2) The percentage of proficient students in the school that represents 20 percent of the State's total enrollment among all schools ranked by the percentage of students at the proficient level. The State must determine this percentage as follows:

(i) Rank each school in the State according to the percentage of proficient students in the school.

(ii) Determine 20 percent of the total enrollment in all schools in the State.

(iii) Beginning with the lowest-ranked school, add the number of students enrolled in each school until reaching the school that represents 20 percent of the State's total enrollment among all schools.

(iv) Identify the percentage of proficient students in the school identified in paragraph (b)(2)(iii) of this section.

(c)(1) Except as permitted under paragraph (c)(2) of this section, each starting point must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7).

(2) A State may use the procedures under paragraph (b) of this section to establish separate starting points by grade span.

(Authority: 20 U.S.C. 6311(b)(2))

■ 9. Section 200.17 is revised to read as follows:

**§ 200.17 Intermediate goals.**

Each State must establish intermediate goals that increase in equal increments over the period covered by the timeline under § 200.15 as follows:

(a) The first incremental increase must take effect not later than the 2004–2005 school year.

(b) Each following incremental increase must occur in not more than three years.

(Authority: 20 U.S.C. 6311(b)(2))

■ 10. Section 200.18 is revised to read as follows:

**§ 200.18 Annual measurable objectives.**

(a) Each State must establish annual measurable objectives that—

(1) Identify for each year a minimum percentage of students that must meet or exceed the proficient level of academic achievement on the State's academic assessments; and

(2) Ensure that all students meet or exceed the State's proficient level of academic achievement within the timeline under § 200.15.

(b) The State's annual measurable objectives—

(1) Must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7); and

(2) May be the same for more than one year, consistent with the State's intermediate goals under § 200.17.

(Authority: 20 U.S.C. 6311(b)(2))

■ 11. Section 200.19 is revised to read as follows:

**§ 200.19 Other academic indicators.**

(a) *Elementary and middle schools.*

(1) *Choice of indicator.* To determine AYP, consistent with § 200.14(e), each State must use at least one other academic indicator for public elementary schools and at least one other academic indicator for public middle schools, such as those in paragraph (c) of this section.

(2) *Goals.* A State may, but is not required to, increase the goals of its other academic indicators over the course of the timeline under § 200.15.

(3) *Reporting.* A State and its LEAs must report under section 1111(h) of the Act (annual report cards) performance on the academic indicators for elementary and middle schools at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii).

(4) *Determining AYP.* A State—

(i) Must disaggregate its other academic indicators for elementary and middle schools by each subgroup described in § 200.13(b)(7)(ii) for purposes of determining AYP under § 200.20(b)(2) (“safe harbor”) and as required under section 1111(b)(2)(C)(vii) of the Act (additional academic indicators under paragraph (c) of this section); but

(ii) Need not disaggregate those indicators for determining AYP under § 200.20(a)(1)(ii) (meeting the State's annual measurable objectives).

(b) *High schools—*(1) *Graduation rate.* Consistent with paragraphs (b)(4) and (b)(5) of this section regarding reporting and determining AYP, respectively, each State must calculate a graduation rate, defined as follows, for all public high schools in the State:

(i)(A) A State must calculate a “four-year adjusted cohort graduation rate,” defined as the number of students who graduate in four years with a regular high school diploma divided by the number of students who form the adjusted cohort for that graduating class.

(B) For those high schools that start after grade nine, the cohort must be calculated based on the earliest high school grade.

(ii) The term “adjusted cohort” means the students who enter grade 9 (or the earliest high school grade) and any students who transfer into the cohort in grades 9 through 12 minus any students removed from the cohort.

(A) The term “students who transfer into the cohort” means the students who enroll after the beginning of the entering cohort’s first year in high school, up to and including in grade 12.

(B) To remove a student from the cohort, a school or LEA must confirm in writing that the student transferred out, emigrated to another country, or is deceased.

(1) To confirm that a student transferred out, the school or LEA must have official written documentation that the student enrolled in another school or in an educational program that culminates in the award of a regular high school diploma.

(2) A student who is retained in grade, enrolls in a General Educational Development (GED) program, or leaves school for any other reason may not be counted as having transferred out for the purpose of calculating graduation rate and must remain in the adjusted cohort.

(iii) The term “students who graduate in four years” means students who earn a regular high school diploma at the conclusion of their fourth year, before the conclusion of their fourth year, or during a summer session immediately following their fourth year.

(iv) The term “regular high school diploma” means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State’s academic content standards or a higher diploma and does not include a GED credential, certificate of attendance, or any alternative award.

(v) In addition to calculating a four-year adjusted cohort graduation rate, a State may propose to the Secretary for approval an “extended-year adjusted cohort graduation rate.”

(A) An extended-year adjusted cohort graduation rate is defined as the number of students who graduate in four years or more with a regular high school diploma divided by the number of students who form the adjusted cohort for the four-year adjusted cohort graduation rate, provided that the adjustments account for any students who transfer into the cohort by the end of the year of graduation being considered minus the number of students who transfer out, emigrate to another country, or are deceased by the end of that year.

(B) A State may calculate one or more extended-year adjusted cohort graduation rates.

(2) *Transitional graduation rate.* (i) Prior to the deadline in paragraph (b)(4)(ii)(A) of this section, a State must calculate graduation rate as defined in paragraph (b)(1) of this section or use, on a transitional basis—

(A) A graduation rate that measures the percentage of students from the beginning of high school who graduate with a regular high school diploma in the standard number of years; or

(B) Another definition, developed by the State and approved by the Secretary, that more accurately measures the rate of student graduation from high school with a regular high school diploma.

(ii) For a transitional graduation rate calculated under paragraph (b)(2)(i) of this section—

(A) “Regular high school diploma” has the same meaning as in paragraph (b)(1)(iv) of this section;

(B) “Standard number of years” means four years unless a high school begins after ninth grade, in which case the standard number of years is the number of grades in the school; and

(C) A dropout may not be counted as a transfer.

(3) *Goal and targets.* (i) A State must set—

(A) A single graduation rate goal that represents the rate the State expects all high schools in the State to meet; and

(B) Annual graduation rate targets that reflect continuous and substantial improvement from the prior year toward meeting or exceeding the graduation rate goal.

(ii) Beginning with AYP determinations under § 200.20 based on school year 2009–2010 assessment results, in order to make AYP, any high school or LEA that serves grade 12 and the State must meet or exceed—

(A) The graduation rate goal set by the State under paragraph (b)(3)(i)(A) of this section; or

(B) The State’s targets for continuous and substantial improvement from the prior year, as set by the State under paragraph (b)(3)(i)(B) of this section.

(4) *Reporting.* (i) In accordance with the deadlines in paragraph (b)(4)(ii) of this section, a State and its LEAs must report under section 1111(h) of the Act (annual report cards) graduation rate at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii).

(ii)(A) Beginning with report cards providing results of assessments administered in the 2010–2011 school year, a State and its LEAs must report the four-year adjusted cohort graduation rate calculated in accordance with paragraph (b)(1)(i) through (iv) of this section.

(B) If a State adopts an extended-year adjusted cohort graduation rate calculated in accordance with paragraph (b)(1)(v) of this section, the State and its LEAs must report, beginning with the first year for which the State calculates such a rate, the extended-year adjusted cohort graduation rate separately from the four-year adjusted cohort graduation rate.

(C) Prior to the deadline in paragraph (b)(4)(ii)(A) of this section, a State and its LEAs must report a graduation rate calculated in accordance with paragraph (b)(1) or (b)(2) of this section in the aggregate and disaggregated by the subgroups in § 200.13(b)(7)(ii).

(5) *Determining AYP.* (i) Beginning with AYP determinations under § 200.20 based on school year 2011–2012 assessment results, a State must calculate graduation rate under paragraph (b)(1) of this section at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii).

(ii) Prior to the AYP determinations described in paragraph (b)(5)(i) of this section, a State must calculate graduation rate in accordance with either paragraph (b)(1) or (b)(2) of this section—

(A) In the aggregate at the school, LEA, and State levels for determining AYP under § 200.20(a)(1)(ii) (meeting the State’s annual measurable objectives), except as provided in paragraph (b)(7)(iii) of this section; but

(B) In the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii) for purposes of determining AYP under § 200.20(b)(2) (“safe harbor”) and as required under section 1111(b)(2)(C)(vii) of the Act (additional academic indicators under paragraph (c) of this section).

(6) *Accountability workbook.* (i) A State must revise its Consolidated State Application Accountability Workbook submitted under section 1111 of the Act to include the following:

(A) The State’s graduation rate definition that the State will use to determine AYP based on school year 2009–2010 assessment results.

(B) The State’s progress toward meeting the deadline in paragraph (b)(4)(ii)(A) of this section for calculating and reporting the four-year adjusted cohort graduation rate defined in paragraph (b)(1)(i) through (iv) of this section.

(C) The State’s graduation rate goal and targets.

(D) An explanation of how the State’s graduation rate goal represents the rate the State expects all high schools in the State to meet and how the State’s targets demonstrate continuous and substantial

improvement from the prior year toward meeting or exceeding the goal.

(E) The graduation rate for the most recent school year of the high school at the 10th percentile, the 50th percentile, and the 90th percentile in the State (ranked in terms of graduation rate).

(F) If a State uses an extended-year adjusted cohort graduation rate, a description of how it will use that rate with its four-year adjusted cohort graduation rate to determine whether its schools and LEAs have made AYP.

(ii) Each State must submit, consistent with the timeline in § 200.7(a)(2)(iii), its revised Consolidated State Application Accountability Workbook in accordance with paragraph (b)(6)(i) of this section to the Department for technical assistance and peer review under the process established by the Secretary under section 1111(e)(2) of the Act.

(7) *Extension.* (i) If a State cannot meet the deadline in paragraph (b)(4)(ii)(A) of this section, the State may request an extension of the deadline from the Secretary.

(ii) To receive an extension, a State must submit to the Secretary, by March 2, 2009—

(A) Evidence satisfactory to the Secretary demonstrating that the State cannot meet the deadline in paragraph (b)(4)(ii)(A) of this section; and

(B) A detailed plan and timeline addressing the steps the State will take to implement, as expeditiously as possible, a graduation rate consistent with paragraph (b)(1)(i) through (iv) of this section.

(iii) A State that receives an extension under this paragraph must, beginning with AYP determinations under § 200.20 based on school year 2011–2012 assessment results, calculate graduation rate under paragraph (b)(2) of this section at the school, LEA, and State levels in the aggregate and disaggregated by each subgroup described in § 200.13(b)(7)(ii).

(c) The State may include additional academic indicators determined by the State, including, but not limited to, the following:

(1) Additional State or locally administered assessments not included in the State assessment system under § 200.2.

(2) Grade-to-grade retention rates.

(3) Attendance rates.

(4) Percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

(d) A State must ensure that its other academic indicators are—

(1) Valid and reliable;

(2) Consistent with relevant, nationally recognized professional and technical standards, if any; and

(3) Consistent throughout the State within each grade span.

(e) Except as provided in § 200.20(b)(2), a State—

(1) May not use the indicators in paragraphs (a) through (c) of this section to reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring if those indicators were not used; but

(2) May use the indicators to identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C. 6311(b)(2), (h))

■ 12. Section 200.20 is revised to read as follows:

**§ 200.20 Making adequate yearly progress.**

A school or LEA makes AYP if it complies with paragraph (c) and with either paragraph (a) or (b) of this section separately in reading/language arts and in mathematics.

(a)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

(i) Each group of students under § 200.13(b)(7) meets or exceeds the State's annual measurable objectives under § 200.18; and

(ii) The school or LEA, respectively, meets or exceeds the State's other academic indicators under § 200.19.

(2) For a group under § 200.13(b)(7) to be included in the determination of AYP for a school or LEA, the number of students in the group must be sufficient to yield statistically reliable information under § 200.7(a).

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes AYP if, consistent with paragraph (f) of this section—

(1) The percentage of students in that group below the State's proficient achievement level decreased by at least 10 percent from the preceding year; and

(2) That group made progress on one or more of the State's academic indicators under § 200.19 or the LEA's academic indicators under § 200.30(c).

(c)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

(i) Not less than 95 percent of the students enrolled in each group under § 200.13(b)(7) takes the State assessments under § 200.2; and

(ii) The group is of sufficient size to produce statistically reliable results under § 200.7(a).

(2) The requirement in paragraph (c)(1) of this section does not authorize

a State, LEA, or school to systematically exclude 5 percent of the students in any group under § 200.13(b)(7).

(3) To count a student who is assessed based on alternate academic achievement standards described in § 200.1(d) as a participant for purposes of meeting the requirements of this paragraph, the State must have, and ensure that its LEAs adhere to, guidelines that meet the requirements of § 200.1(f).

(d) For the purpose of determining whether a school or LEA has made AYP, a State may establish a uniform procedure for averaging data that includes one or more of the following:

(1) *Averaging data across school years.* (i) A State may average data from the school year for which the determination is made with data from one or two school years immediately preceding that school year.

(ii) If a State averages data across school years, the State must—

(A) Implement, on schedule, the assessments in reading/language arts and mathematics in grades 3 through 8 and once in grades 10 through 12 required under § 200.5(a)(2);

(B) Report data resulting from the assessments under § 200.5(a)(2);

(C) Determine AYP under §§ 200.13 through 200.20, although the State may base that determination on data only from the reading/language arts and mathematics assessments in the three grade spans required under § 200.5(a)(1); and

(D) Implement the requirements in section 1116 of the ESEA.

(iii) A State that averages data across years must determine AYP on the basis of the assessments under § 200.5(a)(2) as soon as it has data from two or three years to average. Until that time, the State may use data from the reading/language arts and mathematics assessments required under § 200.5(a)(1) to determine adequate yearly progress.

(2) *Combining data across grades.* Within each subject area and subgroup, the State may combine data across grades in a school or LEA.

(e)(1) In determining the AYP of an LEA, a State must include all students who were enrolled in schools in the LEA for a full academic year, as defined by the State.

(2) In determining the AYP of a school, the State may not include students who were not enrolled in that school for a full academic year, as defined by the State.

(f)(1) In determining AYP for a school or LEA, a State may—

(i) Count recently arrived limited English proficient students as having participated in the State assessments for

purposes of meeting the 95 percent participation requirement under paragraph (c)(1)(i) of this section if they take—

(A) Either an assessment of English language proficiency under § 200.6(b)(3) or the State's reading/language arts assessment under § 200.2; and

(B) The State's mathematics assessment under § 200.2; and

(ii) Choose not to include the scores of recently arrived limited English proficient students on the mathematics assessment, the reading/language arts assessment (if administered to these students), or both, even if these students have been enrolled in the same school or LEA for a full academic year as defined by the State.

(2)(i) In determining AYP for the subgroup of limited English proficient students and the subgroup of students with disabilities, a State may include, for up to two AYP determination cycles, the scores of—

(A) Students who were limited English proficient but who no longer meet the State's definition of limited English proficiency; and

(B) Students who were previously identified under section 602(3) of the IDEA but who no longer receive special education services.

(ii) If a State, in determining AYP for the subgroup of limited English proficient students and the subgroup of students with disabilities, includes the scores of the students described in paragraph (f)(2)(i) of this section, the State must include the scores of all such students, but is not required to—

(A) Include those students in the limited English proficient subgroup or in the students with disabilities subgroup in determining if the number of limited English proficient students or students with disabilities, respectively, is sufficient to yield statistically reliable information under § 200.7(a); or

(B) With respect to students who are no longer limited English proficient—

(1) Assess those students' English language proficiency under § 200.6(b)(3); or

(2) Provide English language services to those students.

(iii) For the purpose of reporting information on report cards under section 1111(h) of the Act—

(A) A State may include the scores of former limited English proficient students and former students with disabilities as part of the limited English proficient and students with disabilities subgroups, respectively, for the purpose of reporting AYP at the State level under section 1111(h)(1)(C)(ii) of the Act;

(B) An LEA may include the scores of former limited English proficient

students and former students with disabilities as part of the limited English proficient and students with disabilities subgroups, respectively, for the purpose of reporting AYP at the LEA and school levels under section 1111(h)(2)(B) of the Act; but

(C) A State or LEA may not include the scores of former limited English proficient students or former students with disabilities as part of the limited English proficient or students with disabilities subgroup, respectively, in reporting any other information under section 1111(h) of the Act.

(g) *Student academic growth.* (1) A State may request authority under section 9401 of the Act to incorporate student academic growth in the State's definition of AYP under this section.

(2) A State's policy for incorporating student academic growth in the State's definition of AYP must—

(i) Set annual growth targets that—

(A) Will lead to all students, by school year 2013–2014, meeting or exceeding the State's proficient level of academic achievement on the State assessments under § 200.2;

(B) Are based on meeting the State's proficient level of academic achievement on the State assessments under § 200.2 and are not based on individual student background characteristics; and

(C) Measure student achievement separately in mathematics and reading/language arts;

(ii) Ensure that all students enrolled in the grades tested under § 200.2 are included in the State's assessment and accountability systems;

(iii) Hold all schools and LEAs accountable for the performance of all students and the student subgroups described in § 200.13(b)(7)(ii);

(iv) Be based on State assessments that—

(A) Produce comparable results from grade to grade and from year to year in mathematics and reading/language arts;

(B) Have been in use by the State for more than one year; and

(C) Have received full approval from the Secretary before the State determines AYP based on student academic growth;

(v) Track student progress through the State data system;

(vi) Include, as separate factors in determining whether schools are making AYP for a particular year—

(A) The rate of student participation in assessments under § 200.2; and

(B) Other academic indicators as described in § 200.19; and

(vii) Describe how the State's annual growth targets fit into the State's accountability system in a manner that

ensures that the system is coherent and that incorporating student academic growth into the State's definition of AYP does not dilute accountability.

(3) A State's proposal to incorporate student academic growth in the State's definition of AYP will be peer reviewed under the process established by the Secretary under section 1111(e)(2) of the Act.

(Authority: 20 U.S.C. 6311(b)(2), (b)(3)(C)(xi); 7861)

■ 13. Section 200.21 is revised to read as follows:

**§ 200.21 Adequate yearly progress of a State.**

For each State that receives funds under subpart A of this part and under subpart 1 of part A of Title III of the ESEA, the Secretary must, beginning with the 2004–2005 school year, annually review whether the State has—

(a)(1) Made AYP as defined by the State in accordance with §§ 200.13 through 200.20 for each group of students in § 200.13(b)(7); and

(2) Met its annual measurable achievement objectives under section 3122(a) of the ESEA relating to the development and attainment of English proficiency by limited English proficient students.

(b) A State must include all students who were enrolled in schools in the State for a full academic year in reporting on the yearly progress of the State.

(Authority: 20 U.S.C. 7325)

■ 14. Section 200.22 is revised to read as follows:

**§ 200.22 National Technical Advisory Council.**

(a) To provide advice to the Department on technical issues related to the design and implementation of standards, assessments, and accountability systems, the Secretary shall establish a National Technical Advisory Council (hereafter referred to as the "National TAC"), which shall be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, as amended; 5 U.S.C. App.).

(b)(1) The members of the National TAC must include persons who have knowledge of and expertise in the design and implementation of educational standards, assessments, and accountability systems for all students, including students with disabilities and limited English proficient students, and experts with technical knowledge related to statistics and psychometrics.

(2) The National TAC shall be composed of 10 to 20 members who

may meet as a whole or in committees, as the Secretary may determine.

(3) The Secretary shall, through a notice published in the **Federal Register**—

(i) Solicit nominations from the public for members of the National TAC; and

(ii) Publish the list of members, once selected.

(4) The Secretary shall screen nominees for membership on the National TAC for potential conflicts of interest to prevent, to the extent possible, such conflicts, or the appearance thereof, in the National TAC's performance of its responsibilities under this section.

(c) The Secretary shall use the National TAC to provide its expert opinions on matters that arise during the State Plan review process.

(d) The Secretary shall prescribe and publish the rules of procedure for the National TAC.

(Authority: 20 U.S.C. 6311(e))

**§ 200.23 [Removed and Reserved]**

■ 15. Remove and reserve § 200.23.

**§ 200.24 [Removed and Reserved]**

■ 16. Remove and reserve § 200.24.

**§ 200.29 [Amended]**

■ 17. Revise the undesignated center heading following § 200.29 to read as follows:

**LEA and School Improvement**

■ 18. Section 200.30 is revised to read as follows:

**§ 200.30 Local review.**

(a) Each LEA receiving funds under subpart A of this part must use the results of the State assessment system described in § 200.2 to review annually the progress of each school served under subpart A of this part to determine whether the school is making AYP in accordance with § 200.20.

(b)(1) In reviewing the progress of an elementary or secondary school operating a targeted assistance program, an LEA may choose to review the progress of only the students in the school who are served, or are eligible for services, under subpart A of this part.

(2) The LEA may exercise the option under paragraph (b)(1) of this section so long as the students selected for services under the targeted assistance program are those with the greatest need for special assistance, consistent with the requirements of section 1115 of the ESEA.

(c)(1) To determine whether schools served under subpart A of this part are

making AYP, an LEA also may use any additional academic assessments or any other academic indicators described in the LEA's plan.

(2)(i) The LEA may use these assessments and indicators—

(A) To identify additional schools for school improvement or in need of corrective action or restructuring; and

(B) To permit a school to make AYP if, in accordance with § 200.20(b), the school also reduces the percentage of a student group not meeting the State's proficient level of academic achievement by at least 10 percent.

(ii) The LEA may not, with the exception described in paragraph (c)(2)(i)(B) of this section, use these assessments and indicators to reduce the number of, or change the identity of, the schools that would otherwise be identified for school improvement, corrective action, or restructuring if the LEA did not use these additional indicators.

(d) The LEA must publicize and disseminate the results of its annual progress review to parents, teachers, principals, schools, and the community.

(e) The LEA must review the effectiveness of actions and activities that schools are carrying out under subpart A of this part with respect to parental involvement, professional development, and other activities assisted under subpart A of this part.

(Authority: 20 U.S.C. 6316(a) and (b))

■ 19. Section 200.31 is revised to read as follows:

**§ 200.31 Opportunity to review school-level data.**

(a) Before identifying a school for school improvement, corrective action, or restructuring, an LEA must provide the school with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based.

(b)(1) If the principal of a school that an LEA proposes to identify for school improvement, corrective action, or restructuring believes, or a majority of the parents of the students enrolled in the school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal may provide supporting evidence to the LEA.

(2) The LEA must consider the evidence referred to in paragraph (b)(1) of this section before making a final determination.

(c) The LEA must make public a final determination of the status of the school with respect to identification not later than 30 days after it provides the school with the opportunity to review the data

on which the proposed identification is based.

(Authority: 20 U.S.C. 6316(b)(2))

■ 20. Section 200.32 is revised to read as follows:

**§ 200.32 Identification for school improvement.**

(a)(1)(i) An LEA must identify for school improvement any elementary or secondary school served under subpart A of this part that fails, for two consecutive years, to make AYP as defined under §§ 200.13 through 200.20.

(ii) In identifying schools for improvement, an LEA—

(A) May base identification on whether a school did not make AYP because it did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for two consecutive years; but

(B) May not limit identification to those schools that did not make AYP only because they did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for the same subgroup under § 200.13(b)(7)(ii) for two consecutive years.

(2) The LEA must make the identification described in paragraph (a)(1) of this section before the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make AYP for a second consecutive year.

(b)(1) An LEA must treat any school that was in the first year of school improvement status on January 7, 2002 as a school that is in the first year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must, in accordance with § 200.44, provide public school choice to all students in the school.

(c)(1) An LEA must treat any school that was identified for school improvement for two or more consecutive years on January 7, 2002 as a school that is in its second year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must—

(i) In accordance with § 200.44, provide public school choice to all students in the school; and

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school.

(d) An LEA may remove from improvement status a school otherwise subject to the requirements of

paragraphs (b) or (c) of this section if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school makes AYP for a second consecutive year.

(e)(1) An LEA may, but is not required to, identify a school for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school fails to make AYP for a second consecutive year.

(2) An LEA that does not identify such a school for improvement, however, must count the 2001–2002 school year as the first year of not making AYP for the purpose of subsequent identification decisions under paragraph (a) of this section.

(f) If an LEA identifies a school for improvement after the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make AYP for a second consecutive year—

(1) The school is subject to the requirements of school improvement under § 200.39 immediately upon identification, including the provision of public school choice; and

(2) The LEA must count that school year as a full school year for the purposes of subjecting the school to additional improvement measures if the school continues to fail to make AYP.

(Authority: 20 U.S.C. 6316)

■ 21. Section 200.33 is revised to read as follows:

**§ 200.33 Identification for corrective action.**

(a) If a school served by an LEA under subpart A of this part fails to make AYP by the end of the second full school year after the LEA has identified the school for improvement under § 200.32(a) or (b), or by the end of the first full school year after the LEA has identified the school for improvement under § 200.32(c), the LEA must identify the school for corrective action under § 200.42.

(b) If a school was subject to corrective action on January 7, 2002, the LEA must—

(1) Treat the school as a school identified for corrective action under § 200.42 for the 2002–2003 school year; and

(2) Not later than the first day of the 2002–2003 school year—

(i) In accordance with § 200.44, provide public school choice to all students in the school;

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school; and

(iii) Take corrective action under § 200.42.

(c) An LEA may remove from corrective action a school otherwise subject to the requirements of paragraphs (a) or (b) of this section if, on the basis of assessments administered by the LEA during the 2001–2002 school year, the school makes AYP for a second consecutive year.

(Authority: 20 U.S.C. 6316)

■ 22. Section 200.34 is revised to read as follows:

**§ 200.34 Identification for restructuring.**

(a) If a school continues to fail to make AYP after one full school year of corrective action under § 200.42, the LEA must prepare a restructuring plan for the school and make arrangements to implement the plan.

(b) If the school continues to fail to make AYP, the LEA must implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (a) of this section.

(Authority: 20 U.S.C. 6316(b)(8))

■ 23. Section 200.35 is revised to read as follows:

**§ 200.35 Delay and removal.**

(a) *Delay.* (1) An LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, under corrective action, or under restructuring if—

(i) The school makes AYP for one year; or

(ii) The school's failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school.

(2) The LEA may not take into account a period of delay under paragraph (a) of this section in determining the number of consecutive years of the school's failure to make AYP.

(3) Except as provided in paragraph (b) of this section, the LEA must subject the school to further actions as if the delay never occurred.

(b) *Removal.* If any school identified for school improvement, corrective action, or restructuring makes AYP for two consecutive school years, the LEA may not, for the succeeding school year—

(1) Subject the school to the requirements of school improvement, corrective action, or restructuring; or

(2) Identify the school for improvement.

(Authority: 20 U.S.C. 6316(b))

■ 24. Section 200.36 is revised to read as follows:

**§ 200.36 Communication with parents.**

(a) Throughout the school improvement process, the State, LEA, or school must communicate with the parents of each child attending the school.

(b) The State, LEA, or school must ensure that, regardless of the method or media used, it provides the information required by §§ 200.37 and 200.38 to parents—

(1) In an understandable and uniform format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

(c) The State, LEA, or school must provide information to parents—

(1) Directly, through such means as regular mail or email, except that if a State does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and

(2) Through broader means of dissemination such as the internet, the media, and public agencies serving the student population and their families.

(d) All communications must respect the privacy of students and their families.

(Authority: 20 U.S.C. 6316)

■ 25. Section 200.37 is revised to read as follows:

**§ 200.37 Notice of identification for improvement, corrective action, or restructuring.**

(a) If an LEA identifies a school for improvement or subjects the school to corrective action or restructuring, the LEA must, consistent with the requirements of § 200.36, promptly notify the parent or parents of each child enrolled in the school of this identification.

(b) The notice referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary and secondary schools served by the LEA and the SEA involved.

(2) The reasons for the identification.

(3) An explanation of how parents can become involved in addressing the academic issues that led to identification.

(4)(i) An explanation of the parents' option to transfer their child to another public school, including the provision of transportation to the new school, in accordance with § 200.44.

(ii) The explanation of the parents' option to transfer must include, at a minimum, information on the academic achievement of the school or schools to which the child may transfer.

(iii) The explanation may include other information on the school or schools to which the child may transfer, such as—

(A) A description of any special academic programs or facilities;

(B) The availability of before- and after-school programs;

(C) The professional qualifications of teachers in the core academic subjects; and

(D) A description of parental involvement opportunities.

(iv) The explanation of the available school choices must be made sufficiently in advance of, but no later than 14 calendar days before, the start of the school year so that parents have adequate time to exercise their choice option before the school year begins.

(5)(i) If the school is in its second year of improvement or subject to corrective action or restructuring, a notice explaining how parents can obtain supplemental educational services for their child in accordance with § 200.45.

(ii) The annual notice of the availability of supplemental educational services must include, at a minimum, the following:

(A) The identity of approved providers of those services available within the LEA, including providers of technology-based or distance-learning supplemental educational services, and providers that make services reasonably available in neighboring LEAs.

(B) A brief description of the services, qualifications, and demonstrated effectiveness of the providers referred to in paragraph (b)(5)(ii)(A) of this section, including an indication of those providers who are able to serve students with disabilities or limited English proficient students.

(C) An explanation of the benefits of receiving supplemental educational services.

(iii) The annual notice of the availability of supplemental educational services must be—

(A) Clear and concise; and

(B) Clearly distinguishable from the other information sent to parents under this section.

(Authority: 20 U.S.C. 6316)

■ 26. Add § 200.38 to read as follows:

**§ 200.38 Information about action taken.**

(a) An LEA must publish and disseminate to the parents of each student enrolled in the school, consistent with the requirements of

§ 200.36, and to the public information regarding any action taken by a school and the LEA to address the problems that led to the LEA's identification of the school for improvement, corrective action, or restructuring.

(b) The information referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the school is doing to address the problem of low achievement.

(2) An explanation of what the LEA or SEA is doing to help the school address the problem of low achievement.

(3) If applicable, a description of specific corrective actions or restructuring plans.

(Authority: 20 U.S.C. 6316(b))

■ 27. Add § 200.39 to read as follows:

**§ 200.39 Responsibilities resulting from identification for school improvement.**

(a) If an LEA identifies a school for school improvement under § 200.32—

(1) The LEA must—

(i) Not later than the first day of the school year following identification, with the exception described in § 200.32(f), provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA; and

(ii) Ensure that the school receives technical assistance in accordance with § 200.40; and

(2) The school must develop or revise a school improvement plan in accordance with § 200.41.

(b) If a school fails to make AYP by the end of the first full school year after the LEA has identified it for improvement under § 200.32, the LEA must—

(1) Continue to provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA;

(2) Continue to ensure that the school receives technical assistance in accordance with § 200.40; and

(3) Make available supplemental educational services in accordance with § 200.45.

(c)(1) Except as provided in paragraph (c)(2) of this section, the LEA must prominently display on its Web site, in a timely manner to ensure that parents have current information, the following information regarding the LEA's implementation of the public school choice and supplemental educational services requirements of the Act and this part:

(i) Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of

students who were eligible for and the number of students who participated in public school choice.

(ii) Beginning with data from the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in supplemental educational services.

(iii) For the current school year, a list of supplemental educational services providers approved by the State to serve the LEA and the locations where services are provided.

(iv) For the current school year, a list of available schools to which students eligible to participate in public school choice may transfer.

(2) If the LEA does not have its own Web site, the SEA must include on the SEA's Web site the information required in paragraph (c)(1) of this section for the LEA.

(Authority: 20 U.S.C. 6316(b))

■ 28. Add § 200.40 to read as follows:

**§ 200.40 Technical assistance.**

(a) An LEA that identifies a school for improvement under § 200.32 must ensure that the school receives technical assistance as the school develops and implements its improvement plan under § 200.41 and throughout the plan's duration.

(b) The LEA may arrange for the technical assistance to be provided by one or more of the following:

(1) The LEA through the statewide system of school support and recognition described under section 1117 of the ESEA.

(2) The SEA.

(3) An institution of higher education that is in full compliance with all of the reporting provisions of Title II of the Higher Education Act of 1965.

(4) A private not-for-profit organization, a private for-profit organization, an educational service agency, or another entity with experience in helping schools improve academic achievement.

(c) The technical assistance must include the following:

(1) Assistance in analyzing data from the State assessment system, and other examples of student work, to identify and develop solutions to problems in—

(i) Instruction;

(ii) Implementing the requirements for parental involvement and professional development under this subpart; and

(iii) Implementing the school plan, including LEA- and school-level responsibilities under the plan.

(2) Assistance in identifying and implementing professional development and instructional strategies and methods

that have proved effective, through scientifically based research, in addressing the specific instructional issues that caused the LEA to identify the school for improvement.

(3) Assistance in analyzing and revising the school's budget so that the school allocates its resources more effectively to the activities most likely to—

(i) Increase student academic achievement; and

(ii) Remove the school from school improvement status.

(d) Technical assistance provided under this section must be based on scientifically based research.

(Authority: 20 U.S.C. 6316(b)(4))

■ 29. Add § 200.41 to read as follows:

**§ 200.41 School improvement plan.**

(a)(1) Not later than three months after an LEA has identified a school for improvement under § 200.32, the school must develop or revise a school improvement plan for approval by the LEA.

(2) The school must consult with parents, school staff, the LEA, and outside experts in developing or revising its school improvement plan.

(b) The school improvement plan must cover a 2-year period.

(c) The school improvement plan must—

(1) Specify the responsibilities of the school, the LEA, and the SEA serving the school under the plan, including the technical assistance to be provided by the LEA under § 200.40;

(2)(i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in the core academic subjects at the school and address the specific academic issues that caused the LEA to identify the school for improvement; and

(ii) May include a strategy for implementing a comprehensive school reform model described in section 1606 of the ESEA;

(3) With regard to the school's core academic subjects, adopt policies and practices most likely to ensure that all groups of students described in § 200.13(b)(7) and enrolled in the school will meet the State's proficient level of achievement, as measured by the State's assessment system, not later than the 2013–2014 school year;

(4) Establish measurable goals that—

(i) Address the specific reasons for the school's failure to make adequate progress; and

(ii) Promote, for each group of students described in § 200.13(b)(7) and enrolled in the school, continuous and substantial progress that ensures that all

these groups meet the State's annual measurable objectives described in § 200.18;

(5) Provide an assurance that the school will spend not less than 10 percent of the allocation it receives under subpart A of this part for each year that the school is in school improvement status, for the purpose of providing high-quality professional development to the school's teachers, principal, and, as appropriate, other instructional staff, consistent with section 9101(34) of the ESEA, that—

(i) Directly addresses the academic achievement problem that caused the school to be identified for improvement;

(ii) Is provided in a manner that affords increased opportunity for participating in that professional development; and

(iii) Incorporates teacher mentoring activities or programs;

(6) Specify how the funds described in paragraph (c)(5) of this section will be used to remove the school from school improvement status;

(7) Describe how the school will provide written notice about the identification to parents of each student enrolled in the school;

(8) Include strategies to promote effective parental involvement at the school; and

(9) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year.

(d)(1) Within 45 days of receiving a school improvement plan, the LEA must—

(i) Establish a peer-review process to assist with review of the plan;

(ii) Promptly review the plan;

(iii) Work with the school to make any necessary revisions; and

(iv) Approve the plan if it meets the requirements of this section.

(2) The LEA may condition approval of the school improvement plan on—

(i) Inclusion of one or more of the corrective actions specified in § 200.42; or

(ii) Feedback on the plan from parents and community leaders.

(e) A school must implement its school improvement plan immediately on approval of the plan by the LEA.

(Authority: 20 U.S.C. 6316(b)(3))

■ 30. Add § 200.42 to read as follows:

**§ 200.42 Corrective action.**

(a) *Definition.* “Corrective action” means action by an LEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure of a school that led the LEA to identify the school for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the school;

(2) Is designed to increase substantially the likelihood that each group of students described in § 200.13(b)(7) and enrolled in the school will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Requirements.* If an LEA identifies a school for corrective action, in accordance with § 200.33, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Continue to ensure that the school receives technical assistance consistent with the requirements of § 200.40.

(3) Make available supplemental educational services in accordance with § 200.45.

(4) Take at least one of the following corrective actions:

(i) Replace the school staff who are relevant to the school's failure to make AYP.

(ii) Institute and fully implement a new curriculum, including the provision of appropriate professional development for all relevant staff, that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students and of enabling the school to make AYP.

(iii) Significantly decrease management authority at the school level.

(iv) Appoint one or more outside experts to advise the school on—

(A) Revising the school improvement plan developed under § 200.41 to address the specific issues underlying the school's continued failure to make AYP and resulting in identification for corrective action; and

(B) Implementing the revised improvement plan.

(v) Extend for that school the length of the school year or school day.

(vi) Restructure the internal organization of the school.

(5) Continue to comply with § 200.39(c).

(Authority: 20 U.S.C. 6316(b)(7))

**§ 200.42 [Amended]**

■ 31. Remove the undesignated center heading “Other State Plan Provisions” following § 200.42.

■ 32. Revise § 200.43 to read as follows:

**§ 200.43 Restructuring.**

(a) *Definition.* “Restructuring” means a major reorganization of a school’s governance arrangement by an LEA that—

(1) Makes fundamental reforms to improve student academic achievement in the school;

(2) Has substantial promise of enabling the school to make AYP as defined under §§ 200.13 through 200.20;

(3) Is consistent with State law;

(4) Is significantly more rigorous and comprehensive than the corrective action that the LEA implemented in the school under § 200.42, unless the school has begun to implement one of the options in paragraph (b)(3) of this section as a corrective action; and

(5) Addresses the reasons why the school was identified for restructuring in order to enable the school to exit restructuring as soon as possible.

(b) *Requirements.* If the LEA identifies a school for restructuring in accordance with § 200.34, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Make available supplemental educational services in accordance with § 200.45.

(3) Prepare a plan to carry out one of the following alternative governance arrangements:

(i) Reopen the school as a public charter school.

(ii) Replace all or most of the school staff (which may include, but may not be limited to, replacing the principal) who are relevant to the school’s failure to make AYP.

(iii) Enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the school as a public school.

(iv) Turn the operation of the school over to the SEA, if permitted under State law and agreed to by the State.

(v) Any other major restructuring of a school’s governance arrangement that makes fundamental reforms, such as significant changes in the school’s staffing and governance, in order to improve student academic achievement in the school and that has substantial promise of enabling the school to make AYP. The major restructuring of a school’s governance may include replacing the principal so long as this change is part of a broader reform effort.

(4) Provide to parents and teachers—

(i) Prompt notice that the LEA has identified the school for restructuring; and

(ii) An opportunity for parents and teachers to—

(A) Comment before the LEA takes any action under a restructuring plan; and

(B) Participate in the development of any restructuring plan.

(5) Continue to comply with § 200.39(c).

(c) *Implementation.* (1) If a school continues to fail to make AYP, the LEA must—

(i) Implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (b)(3) of this section;

(ii) Continue to offer public school choice and supplemental educational services in accordance with §§ 200.44 and 200.45; and

(iii) Continue to comply with § 200.39(c).

(2) An LEA is no longer required to carry out the requirements of paragraph (c)(1) of this section if the restructured school makes AYP for two consecutive school years.

(d) *Rural schools.* On request, the Secretary will provide technical assistance for developing and carrying out a restructuring plan to any rural LEA—

(1) That has fewer than 600 students in average daily attendance at all of its schools; and

(2) In which all of the schools have a School Locale Code of 7 or 8, as determined by the National Center for Education Statistics.

(Authority: 20 U.S.C. 6316(b)(8))

■ 33. Add § 200.44 to read as follows:

**§ 200.44 Public school choice.**

(a) *Requirements.* (1) In the case of a school identified for school improvement under § 200.32, for corrective action under § 200.33, or for restructuring under § 200.34, the LEA must provide all students enrolled in the school with the option to transfer to another public school served by the LEA.

(2) The LEA must offer this option, through the notice required in § 200.37, so that students may transfer in the school year following the school year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring.

(3) The schools to which students may transfer under paragraph (a)(1) of this section—

(i) May not include schools that—

(A) The LEA has identified for improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34; or

(B) Are persistently dangerous as determined by the State; and

(ii) May include one or more public charter schools.

(4) If more than one school meets the requirements of paragraph (a)(3) of this section, the LEA must—

(i) Provide to parents of students eligible to transfer under paragraph (a)(1) of this section a choice of more than one such school; and

(ii) Take into account the parents’ preferences among the choices offered under paragraph (a)(4)(i) of this section.

(5) The LEA must offer the option to transfer described in this section unless it is prohibited by State law in accordance with paragraph (b) of this section.

(6) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action before January 8, 2002, the State must ensure that the LEA provides a public school choice option in accordance with paragraph (a)(1) of this section not later than the first day of the 2002–2003 school year.

(b) *Limitation on State law prohibition.* An LEA may invoke the State law prohibition on choice described in paragraph (a)(5) of this section only if the State law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school.

(c) *Desegregation plans.* (1) If an LEA is subject to a desegregation plan, whether that plan is voluntary, court-ordered, or required by a Federal or State administrative agency, the LEA is not exempt from the requirement in paragraph (a)(1) of this section.

(2) In determining how to provide students with the option to transfer to another school, the LEA may take into account the requirements of the desegregation plan.

(3) If the desegregation plan forbids the LEA from offering the transfer option required under paragraph (a)(1) of this section, the LEA must secure appropriate changes to the plan to permit compliance with paragraph (a)(1) of this section.

(d) *Capacity.* An LEA may not use lack of capacity to deny students the option to transfer under paragraph (a)(1) of this section.

(e) *Priority.* (1) In providing students the option to transfer to another public school in accordance with paragraph (a)(1) of this section, the LEA must give priority to the lowest-achieving students from low-income families.

(2) The LEA must determine family income on the same basis that the LEA

uses to make allocations to schools under subpart A of this part.

(f) *Status.* Any public school to which a student transfers under paragraph (a)(1) of this section must ensure that the student is enrolled in classes and other activities in the school in the same manner as all other students in the school.

(g) *Duration of transfer.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must permit the student to remain in that school until the student has completed the highest grade in the school.

(2) The LEA's obligation to provide transportation for the student may be limited under the circumstances described in paragraph (i) of this section and in § 200.48.

(h) *No eligible schools within an LEA.* If all public schools to which a student may transfer within an LEA are identified for school improvement, corrective action, or restructuring, the LEA—

(1) Must, to the extent practicable, establish a cooperative agreement for a transfer with one or more other LEAs in the area; and

(2) May offer supplemental educational services to eligible students under § 200.45 in schools in their first year of school improvement under § 200.39.

(i) *Transportation.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must, consistent with § 200.48, provide or pay for the student's transportation to the school.

(2) The limitation on funding in § 200.48 applies only to the provision of choice-related transportation, and does not affect in any way the basic obligation to provide an option to transfer as required by paragraph (a) of this section.

(3) The LEA's obligation to provide transportation for the student ends at the end of the school year in which the school from which the student transferred is no longer identified by the LEA for school improvement, corrective action, or restructuring.

(j) *Students with disabilities and students covered under Section 504 of the Rehabilitation Act of 1973 (Section 504).* For students with disabilities under the IDEA and students covered under Section 504, the public school choice option must provide a free appropriate public education as that term is defined in section 602(8) of the IDEA or 34 CFR 104.33, respectively.

(Authority: 20 U.S.C. 6316)

■ 34. Add § 200.45 to read as follows:

**§ 200.45 Supplemental educational services.**

(a) *Definition.* "Supplemental educational services" means tutoring and other supplemental academic enrichment services that are—

(1) In addition to instruction provided during the school day;

(2) Specifically designed to—

(i) Increase the academic achievement of eligible students as measured by the State's assessment system; and

(ii) Enable these children to attain proficiency in meeting State academic achievement standards; and

(3) Of high quality and research-based.

(b) *Eligibility.* (1) Only students from low-income families are eligible for supplemental educational services.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(c) *Requirement.* (1) If an LEA identifies a school for a second year of improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34, the LEA must arrange, consistent with paragraph (d) of this section, for each eligible student in the school to receive supplemental educational services from a State-approved provider selected by the student's parents.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the State must ensure that the LEA makes available, consistent with paragraph (d) of this section, supplemental educational services to all eligible students not later than the first day of the 2002–2003 school year.

(3) The LEA must, consistent with § 200.48, continue to make available supplemental educational services to eligible students until the end of the school year in which the LEA is making those services available.

(4)(i) At the request of an LEA, the SEA may waive, in whole or in part, the requirement that the LEA make available supplemental educational services if the SEA determines that—

(A) None of the providers of those services on the list approved by the SEA under § 200.47 makes those services available in the area served by the LEA or within a reasonable distance of that area; and

(B) The LEA provides evidence that it is not otherwise able to make those services available.

(ii) The SEA must notify the LEA, within 30 days of receiving the LEA's

request for a waiver under paragraph (c)(4)(i) of this section, whether it approves or disapproves the request and, if it disapproves, the reasons for the disapproval, in writing.

(iii) An LEA that receives a waiver must renew its request for that waiver on an annual basis.

(d) *Priority.* If the amount of funds available for supplemental educational services is insufficient to provide services to each student whose parents request these services, the LEA must give priority to the lowest-achieving students.

(Authority: 20 U.S.C. 6316)

■ 35. Add § 200.46 to read as follows:

**§ 200.46 LEA responsibilities for supplemental educational services.**

(a) If an LEA is required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the LEA must do the following:

(1) Provide the annual notice to parents described in § 200.37(b)(5).

(2) If requested, assist parents in choosing a provider from the list of approved providers maintained by the SEA.

(3) Apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all eligible students whose parents request services consistent with § 200.45.

(4) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(5) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

(6) Not disclose to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(b)(1) In addition to meeting the requirements in paragraph (a) of this section, the LEA must enter into an agreement with each provider selected by a parent or parents.

(2) The agreement must—

(i) Require the LEA to develop, in consultation with the parents and the provider, a statement that includes—

(A) Specific achievement goals for the student;

(B) A description of how the student's progress will be measured; and

(C) A timetable for improving achievement;

(ii) Describe procedures for regularly informing the student's parents and teachers of the student's progress;

(iii) Provide for the termination of the agreement if the provider is unable to meet the goals and timetables specified in the agreement;

(iv) Specify how the LEA will pay the provider; and

(v) Prohibit the provider from disclosing to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(3) In the case of a student with disabilities under IDEA or a student covered under Section 504, the provisions of the agreement referred to in paragraph (b)(2)(i) of this section must be consistent with the student's individualized education program under section 614(d) of the IDEA or the student's individualized services under Section 504.

(4) The LEA may not pay the provider for religious worship or instruction.

(c) If State law prohibits an SEA from carrying out one or more of its responsibilities under § 200.47 with respect to those who provide, or seek approval to provide, supplemental educational services, each LEA must carry out those responsibilities with respect to its students who are eligible for those services.

(Authority: 20 U.S.C. 6316(e))

■ 36. Add § 200.47 to read as follows:

**§ 200.47 SEA responsibilities for supplemental educational services.**

(a) If one or more LEAs in a State are required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the SEA for that State must do the following:

(1)(i) In consultation with affected LEAs, parents, teachers, and other interested members of the public, promote participation by as many providers as possible.

(ii) This promotion must include—

(A) Annual notice to potential providers of—

(1) The opportunity to provide supplemental educational services; and  
(2) Procedures for obtaining the SEA's approval to be a provider of those services; and

(B) Posting on the SEA's Web site, for each LEA—

(1) The amount equal to 20 percent of the LEA's Title I, Part A allocation available for choice-related transportation and supplemental educational services, as required in § 200.48(a)(2); and

(2) The per-child amount for supplemental educational services calculated under § 200.48(c)(1).

(2) Consistent with paragraph (b) of this section, develop and apply to potential providers objective criteria.

(3)(i) Maintain by LEA an updated list of approved providers, including any technology-based or distance-learning providers, from which parents may select; and

(ii) Indicate on the list those providers that are able to serve students with disabilities or limited English proficient students.

(4) Consistent with paragraph (c) of this section, develop, implement, and publicly report on standards and techniques for—

(i) Monitoring the quality and effectiveness of the services offered by each approved provider;

(ii) Withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental educational services from that provider; and

(iii) Monitoring LEAs' implementation of the supplemental educational services requirements of the Act and this part.

(5) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(6) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

(b) *Standards for approving providers.*  
(1) As used in this section and in § 200.46, "provider" means a non-profit entity, a for-profit entity, an LEA, an educational service agency, a public school, including a public charter school, or a private school that—

(i) Has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the State's academic content and student achievement standards described under § 200.1;

(ii) Is capable of providing supplemental educational services that are consistent with the instructional program of the LEA and with the State academic content standards and State student achievement standards described under § 200.1;

(iii) Is financially sound; and

(iv) In the case of—

(A) A public school, has not been identified under § 200.32, § 200.33, or § 200.34; or

(B) An LEA, has not been identified under § 200.50(d) or (e).

(2) In order for the SEA to include a provider on the State list, the provider must agree to—

(i)(A) Provide parents of each student receiving supplemental educational services and the appropriate LEA with information on the progress of the student in increasing achievement; and

(B) This information must be in an understandable and uniform format, including alternative formats upon request, and, to the extent practicable, in a language that the parents can understand;

(ii) Ensure that the instruction the provider gives and the content the provider uses—

(A) Are consistent with the instruction provided and the content used by the LEA and the SEA;

(B) Are aligned with State academic content and student academic achievement standards;

(C) Are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children; and

(D) Are secular, neutral, and nonideological; and

(iii) Meet all applicable Federal, State, and local health, safety, and civil rights laws.

(3) In approving a provider, the SEA must consider, at a minimum—

(i) Information from the provider on whether the provider has been removed from any State's approved provider list;

(ii) Parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement; and

(iii) Evaluation results, if any, demonstrating that the instructional program has improved student achievement.

(4) As a condition of approval, a State may not require a provider to hire only staff who meet the requirements under §§ 200.55 and 200.56.

(c) *Standards for monitoring approved providers.* To monitor the quality and effectiveness of services offered by an approved provider in order to inform the renewal or the withdrawal of approval of the provider—

(1) An SEA must examine, at a minimum, evidence that the provider's instructional program—

(i) Is consistent with the instruction provided and the content used by the LEA and the SEA;

(ii) Addresses students' individual needs as described in students' supplemental educational services plans under § 200.46(b)(2)(i);

(iii) Has contributed to increasing students' academic proficiency; and

(iv) Is aligned with the State's academic content and student academic achievement standards; and

(2) The SEA must also consider information, if any, regarding—

(i) Parent recommendations or results from parent surveys regarding the success of the provider's instructional program in increasing student achievement; and

(ii) Evaluation results demonstrating that the instructional program has improved student achievement.

(Authority: 20 U.S.C. 6316(e))

#### **§ 200.47 [Amended]**

■ 37. Remove the undesignated center heading "Local Educational Agency Plans" following § 200.47.

■ 38. Revise § 200.48 to read as follows:

#### **§ 200.48 Funding for choice-related transportation and supplemental educational services.**

(a) *Amounts required.* (1) To pay for choice-related transportation and supplemental educational services required under section 1116 of the ESEA, an LEA may use—

(i) Funds allocated under subpart A of this part;

(ii) Funds, where allowable, from other Federal education programs; and

(iii) State, local, or private resources. (2) Unless a lesser amount is needed, the LEA must spend an amount equal to 20 percent of its allocation under subpart A of this part ("20 percent obligation") to—

(i) Provide, or pay for, transportation of students exercising a choice option under § 200.44;

(ii) Satisfy all requests for supplemental educational services under § 200.45; or

(iii) Pay for both paragraph (a)(2)(i) and (ii) of this section, except that—

(A) The LEA must spend a minimum of an amount equal to 5 percent of its allocation under subpart A of this part on transportation under paragraph (a)(2)(i) of this section and an amount equal to 5 percent of its allocation under subpart A of this part for supplemental educational services under paragraph (a)(2)(ii) of this section, unless lesser amounts are needed to meet the requirements of §§ 200.44 and 200.45;

(B) Except as provided in paragraph (a)(2)(iii)(C) of this section, the LEA may not include costs for administration or transportation incurred in providing supplemental educational services, or administrative costs associated with the provision of public school choice options under § 200.44, in the amounts required under paragraph (a)(2) of this section; and

(C) The LEA may count in the amount the LEA is required to spend under paragraph (a) of this section its costs for outreach and assistance to parents concerning their choice to transfer their child or to request supplemental educational services, up to an amount equal to 0.2 percent of its allocation under subpart 2 of part A of Title I of the Act.

(3) If the amount specified in paragraph (a)(2) of this section is insufficient to pay all choice-related transportation costs, or to meet the demand for supplemental educational services, the LEA may make available any additional needed funds from Federal, State, or local sources.

(4) To assist an LEA that does not have sufficient funds to make available supplemental educational services to all students requesting these services, an SEA may use funds that it reserves under part A of Title I and part A of Title V of the ESEA.

(b) *Cap on school-level reduction.* (1) An LEA may not, in applying paragraph (a) of this section, reduce by more than 15 percent the total amount it makes available under subpart A of this part to a school it has identified for corrective action or restructuring.

(2) [Reserved]

(c) *Per-child funding for supplemental educational services.* For each student receiving supplemental educational services under § 200.45, the LEA must make available the lesser of—

(1) The amount of its allocation under subpart A of this part, divided by the number of students from families below the poverty level, as counted under section 1124(c)(1)(A) of the ESEA; or

(2) The actual costs of the supplemental educational services received by the student.

(d) *Unexpended funds for choice-related transportation and supplemental educational services.*

(1)(i) Except as provided in paragraph (d)(2) of this section, if an LEA does not meet its 20 percent obligation in a given school year, the LEA must spend the unexpended amount in the subsequent school year on choice-related transportation costs, supplemental educational services, or parent outreach and assistance (consistent with paragraph (a)(2)(iii)(C) of this section).

(ii) The LEA must spend the unexpended amount under paragraph (d)(1)(i) of this section in addition to the amount it is required to spend to meet its 20 percent obligation in the subsequent school year.

(2) To spend less than the amount needed to meet its 20 percent obligation, an LEA must—

(i) Meet, at a minimum, the following criteria:

(A) Partner, to the extent practicable, with outside groups, such as faith-based organizations, other community-based organizations, and business groups, to help inform eligible students and their families of the opportunities to transfer or to receive supplemental educational services.

(B) Ensure that eligible students and their parents have a genuine opportunity to sign up to transfer or to obtain supplemental educational services, including by—

(1) Providing timely, accurate notice as required in §§ 200.36 and 200.37;

(2) Ensuring that sign-up forms for supplemental educational services are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the internet, other media, and communications through public agencies serving eligible students and their families; and

(3) Providing a minimum of two enrollment "windows," at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting supplemental educational services and selecting a provider.

(C) Ensure that eligible supplemental educational services providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities;

(ii) Maintain records that demonstrate the LEA has met the criteria in paragraph (d)(2)(i) of this section; and

(iii) Notify the SEA that the LEA—

(A) Has met the criteria in paragraph (d)(2)(i) of this section; and

(B) Intends to spend the remainder of its 20 percent obligation on other allowable activities, specifying the amount of that remainder.

(3)(i) Except as provided in paragraph (d)(3)(ii) of this section, an SEA must ensure an LEA's compliance with paragraph (d)(2)(i) of this section through its regular monitoring process.

(ii)(A) In addition to its regular monitoring process, an SEA must review any LEA that—

(1) The SEA determines has spent a significant portion of its 20 percent obligation for other activities under paragraph (d)(2)(iii)(B) of this section; and

(2) Has been the subject of multiple complaints, supported by credible evidence, regarding implementation of the public school choice or

supplemental educational services requirements; and

(B) The SEA must complete its review by the beginning of the next school year.

(4)(i) If an SEA determines under paragraph (d)(3) of this section that an LEA has failed to meet any of the criteria in paragraph (d)(2)(i) of this section, the LEA must—

(A) Spend an amount equal to the remainder specified in paragraph (d)(2)(iii)(B) of this section in the subsequent school year, in addition to its 20 percent obligation for that year, on choice-related transportation costs, supplemental educational services, or parent outreach and assistance; or

(B) Meet the criteria in paragraph (d)(2)(i) of this section and obtain permission from the SEA before spending less in that subsequent school year than the amount required by paragraph (d)(4)(i)(A) of this section.

(ii) The SEA may not grant permission to the LEA under paragraph (d)(4)(i)(B) of this section unless the SEA has confirmed the LEA's compliance with paragraph (d)(2)(i) of this section for that subsequent school year.

(Authority: 20 U.S.C. 6316)

■ 39. Add § 200.49 to read as follows:

**§ 200.49 SEA responsibilities for school improvement, corrective action, and restructuring.**

(a) *Transition requirements for public school choice and supplemental educational services.* (1) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school provides public school choice in accordance with § 200.44 not later than the first day of the 2002–2003 school year.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school makes available supplemental educational services in accordance with § 200.45 not later than the first day of the 2002–2003 school year.

(b) *State reservation of funds for school improvement.* (1) In accordance with § 200.100(a), an SEA must reserve 2 percent of the amount it receives under this part for fiscal years 2002 and 2003, and 4 percent of the amount it receives under this part for fiscal years 2004 through 2007, to—

(i) Support local school improvement activities;

(ii) Provide technical assistance to schools identified for improvement, corrective action, or restructuring; and

(iii) Provide technical assistance to LEAs that the SEA has identified for improvement or corrective action in accordance with § 200.50.

(2) Of the amount it reserves under paragraph (b)(1) of this section, the SEA must—

(i) Allocate not less than 95 percent directly to LEAs serving schools identified for improvement, corrective action, and restructuring to support improvement activities; or

(ii) With the approval of the LEA, directly provide for these improvement activities or arrange to provide them through such entities as school support teams or educational service agencies.

(3) In providing assistance to LEAs under paragraph (b)(2) of this section, the SEA must give priority to LEAs that—

(i) Serve the lowest-achieving schools;

(ii) Demonstrate the greatest need for this assistance; and

(iii) Demonstrate the strongest commitment to ensuring that this assistance will be used to enable the lowest-achieving schools to meet the progress goals in the school improvement plans under § 200.41.

(c) *Technical assistance.* The SEA must make technical assistance available, through the statewide system of support and improvement required by section 1117 of the ESEA, to schools that LEAs have identified for improvement, corrective action, or restructuring.

(d) *LEA failure.* If the SEA determines that an LEA has failed to carry out its responsibilities with respect to school improvement, corrective action, or restructuring, the SEA must take the actions it determines to be appropriate and in compliance with State law.

(e) *Assessment results.* (1) The SEA must ensure that the results of academic assessments administered as part of the State assessment system in a given school year are available to LEAs before the beginning of the next school year and in such time as to allow for the identification described in § 200.32(a)(2).

(2) The SEA must provide the results described in paragraph (e)(1) of this section to a school before an LEA may identify the school for school improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34.

(f) *Accountability for charter schools.* The accountability provisions under section 1116 of the ESEA must be overseen for charter schools in accordance with State charter school law.

(g) *Factors affecting student achievement.* The SEA must notify the

Secretary of Education of major factors that have been brought to the SEA's attention under section 1111(b)(9) of the ESEA that have significantly affected student academic achievement in schools and LEAs identified for improvement within the State.

(Authority: 20 U.S.C. 6311 and 6316)

■ 40. Add § 200.50 to read as follows:

**§ 200.50 SEA review of LEA progress.**

(a) *State review.* (1) An SEA must annually review the progress of each LEA in its State that receives funds under subpart A of this part to determine whether—

(i) The LEA's schools served under this part are making AYP, as defined under §§ 200.13 through 200.20, toward meeting the State's student academic achievement standards; and

(ii) The LEA is carrying out its responsibilities under this part with respect to school improvement, technical assistance, parental involvement, and professional development.

(2) In reviewing the progress of an LEA, the SEA may, in the case of targeted assistance schools served by the LEA, consider the progress only of the students served or eligible for services under this subpart, provided the students selected for services in such schools are those with the greatest need for special assistance, consistent with the requirements of section 1115 of the ESEA.

(b) *Rewards.* If an LEA has exceeded AYP as defined under §§ 200.13 through 200.20 for two consecutive years, the SEA may—

(1) Reserve funds in accordance with § 200.100(c); and

(2) Make rewards of the kinds described under section 1117 of the ESEA.

(c) *Opportunity for review of LEA-level data.* (1) Before identifying an LEA for improvement or corrective action, the SEA must provide the LEA with an opportunity to review the data, including academic assessment data, on which the SEA has based the proposed identification.

(2)(i) If the LEA believes that the proposed identification is in error for statistical or other substantive reasons, the LEA may provide supporting evidence to the SEA.

(ii) The SEA must consider the evidence before making a final determination not later than 30 days after it has provided the LEA with the opportunity to review the data under paragraph (c)(1) of this section.

(d) *Identification for improvement.*

(1)(i) The SEA must identify for

improvement an LEA that, for two consecutive years, including the period immediately before January 8, 2002, fails to make AYP as defined in the SEA's plan under section 1111(b)(2) of the ESEA.

(ii) In identifying LEAs for improvement, an SEA—

(A) May base identification on whether an LEA did not make AYP because it did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for two consecutive years; but

(B) May not limit identification to those LEAs that did not make AYP only because they did not meet the annual measurable objectives for the same subject or meet the same other academic indicator for the same subgroup under § 200.13(b)(7)(ii) for two consecutive years.

(2) The SEA must identify for improvement an LEA that was in improvement status on January 7, 2002.

(3)(i) The SEA may identify an LEA for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA fails to make AYP for a second consecutive year.

(ii) An SEA that does not identify such an LEA for improvement, however, must count the 2001–2002 school year as the first year of not making AYP for the purpose of subsequent identification decisions under paragraph (d)(1) of this section.

(4) The SEA may remove an LEA from improvement status if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA makes AYP for a second consecutive year.

(e) *Identification for corrective action.* After providing technical assistance under § 200.52(b), the SEA—

(1) May take corrective action at any time with respect to an LEA that the SEA has identified for improvement under paragraph (d) of this section;

(2) Must take corrective action—

(i) With respect to an LEA that fails to make AYP, as defined under §§ 200.13 through 200.20, by the end of the second full school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make AYP for a second consecutive year and led to the SEA's identification of the LEA for improvement under paragraph (d) of this section; and

(ii) With respect to an LEA that was in corrective action status on January 7, 2002; and

(3) May remove an LEA from corrective action if, on the basis of assessments administered by the LEA

during the 2001–2002 school year, it makes AYP for a second consecutive year.

(f) *Delay of corrective action.* (1) The SEA may delay implementation of corrective action under § 200.53 for a period not to exceed one year if—

(i) The LEA makes AYP for one year; or

(ii) The LEA's failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the LEA's financial resources.

(2)(i) The SEA must not take into account the period of delay referred to in paragraph (f)(1) of this section in determining the number of consecutive years the LEA has failed to make AYP; and

(ii) The SEA must subject the LEA to further actions following the period of delay as if the delay never occurred.

(g) *Continuation of public school choice and supplemental educational services.* An SEA must ensure that an LEA identified under paragraph (d) or (e) of this section continues to offer public school choice in accordance with § 200.44 and supplemental educational services in accordance with § 200.45.

(h) *Removal from improvement or corrective action status.* If an LEA makes AYP for two consecutive years following identification for improvement under paragraph (d) or corrective action under paragraph (e) of this section, the SEA need no longer—

(1) Identify the LEA for improvement; or

(2) Subject the LEA to corrective action for the succeeding school year.

(Authority: 20 U.S.C. 6316(c))

■ 41. Add § 200.51 to read as follows:

**§ 200.51 Notice of SEA action.**

(a) *In general.* (1) An SEA must—

(i) Communicate with parents throughout the review of an LEA under § 200.50; and

(ii) Ensure that, regardless of the method or media used, it provides information to parents—

(A) In an understandable and uniform format, including alternative formats upon request; and

(B) To the extent practicable, in a language that parents can understand.

(2) The SEA must provide information to the parents of each student enrolled in a school served by the LEA—

(i) Directly, through such means as regular mail or email, except that if an SEA does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and

(ii) Through broader means of dissemination such as the internet, the

media, and public agencies serving the student population and their families.

(3) All communications must respect the privacy of students and their families.

(b) *Results of review.* The SEA must promptly publicize and disseminate to the LEAs, teachers and other staff, the parents of each student enrolled in a school served by the LEA, students, and the community the results of its review under § 200.50, including statistically sound disaggregated results in accordance with §§ 200.2 and 200.7.

(c) *Identification for improvement or corrective action.* If the SEA identifies an LEA for improvement or subjects the LEA to corrective action, the SEA must promptly provide to the parents of each student enrolled in a school served by the LEA—

(1) The reasons for the identification; and

(2) An explanation of how parents can participate in improving the LEA.

(d) *Information about action taken.* (1) The SEA must publish, and disseminate to the parents of each student enrolled in a school served by the LEA and to the public, information on any corrective action the SEA takes under § 200.53.

(2) The SEA must provide this information—

(i) In a uniform and understandable format, including alternative formats upon request; and

(ii) To the extent practicable, in a language that parents can understand.

(3) The SEA must disseminate the information through such means as the internet, the media, and public agencies.

(Authority: 20 U.S.C. 6316(c))

■ 42. Add § 200.52 to read as follows:

**§ 200.52 LEA improvement.**

(a) *Improvement plan.* (1) Not later than 3 months after an SEA has identified an LEA for improvement under § 200.50(d), the LEA must develop or revise an LEA improvement plan.

(2) The LEA must consult with parents, school staff, and others in developing or revising its improvement plan.

(3) The LEA improvement plan must—

(i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in core academic subjects in schools served by the LEA;

(ii) Identify actions that have the greatest likelihood of improving the achievement of participating children in meeting the State's student academic achievement standards;

(iii) Address the professional development needs of the instructional

staff serving the LEA by committing to spend for professional development not less than 10 percent of the funds received by the LEA under subpart A of this part for each fiscal year in which the SEA identifies the LEA for improvement. These funds—

(A) May include funds reserved by schools for professional development under § 200.41(c)(5); but

(B) May not include funds reserved for professional development under section 1119 of the ESEA;

(iv) Include specific measurable achievement goals and targets—

(A) For each of the groups of students under § 200.13(b)(7); and

(B) That are consistent with AYP as defined under §§ 200.13 through 200.20;

(v) Address—

(A) The fundamental teaching and learning needs in the schools of the LEA; and

(B) The specific academic problems of low-achieving students, including a determination of why the LEA's previous plan failed to bring about increased student academic achievement;

(vi) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year;

(vii) Specify the responsibilities of the SEA and LEA under the plan, including the technical assistance the SEA must provide under paragraph (b) of this section and the LEA's responsibilities under section 1120A of the ESEA; and

(viii) Include strategies to promote effective parental involvement in the schools served by the LEA.

(4) The LEA must implement the improvement plan—including any revised plan—expeditiously, but not later than the beginning of the school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make AYP for a second consecutive year and led to the SEA's identification of the LEA for improvement under § 200.50(d).

(b) *SEA technical assistance.* (1) An SEA that identifies an LEA for improvement under § 200.50(d) must, if requested, provide or arrange for the provision of technical or other assistance to the LEA, as authorized under section 1117 of the ESEA.

(2) The purpose of the technical assistance is to better enable the LEA to—

(i) Develop and implement its improvement plan; and

(ii) Work with schools needing improvement.

(3) The technical assistance provided by the SEA or an entity authorized by the SEA must—

(i) Be supported by effective methods and instructional strategies grounded in scientifically based research; and

(ii) Address problems, if any, in implementing the parental involvement and professional development activities described in sections 1118 and 1119, respectively, of the ESEA.

(Authority: 20 U.S.C. 6316(c))

■ 43. Add § 200.53 to read as follows:

**§ 200.53 LEA corrective action.**

(a) *Definition.* For the purposes of this section, the term “corrective action” means action by an SEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure that caused the SEA to identify an LEA for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the LEA;

(2) Is designed to meet the goal that each group of students described in § 200.13(b)(7) and enrolled in the LEA's schools will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Notice and hearing.* Before implementing any corrective action under paragraph (c) of this section, the SEA must provide notice and a hearing to the affected LEA—if State law provides for this notice and hearing—not later than 45 days following the decision to take corrective action.

(c) *Requirements.* If the SEA identifies an LEA for corrective action, the SEA must do the following:

(1) Continue to make available technical assistance to the LEA.

(2) Take at least one of the following corrective actions:

(i) Defer programmatic funds or reduce administrative funds.

(ii) Institute and fully implement a new curriculum based on State and local content and academic achievement standards, including the provision of appropriate professional development for all relevant staff that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students.

(iii) Replace the LEA personnel who are relevant to the failure to make AYP.

(iv) Remove particular schools from the jurisdiction of the LEA and establish alternative arrangements for public governance and supervision of these schools.

(v) Appoint a receiver or trustee to administer the affairs of the LEA in

place of the superintendent and school board.

(vi) Abolish or restructure the LEA.

(vii) In conjunction with at least one other action in paragraph (c)(2) of this section—

(A) Authorize students to transfer from a school operated by the LEA to a higher-performing public school operated by another LEA in accordance with § 200.44, and

(B) Provide to these students transportation, or the costs of transportation, to the other school consistent with § 200.44(h).

(Authority: 20 U.S.C. 6316(c)(10))

**§ 200.54 [Amended]**

■ 44. Revise the undesignated center heading following reserved § 200.54 to read as follows:

**Qualifications of Teachers and Paraprofessionals**

■ 45. Revise § 200.55 to read as follows:

**§ 200.55 Qualifications of teachers.**

(a) *Newly hired teachers in Title I programs.* (1) An LEA must ensure that all teachers hired after the first day of the 2002–2003 school year who teach core academic subjects in a program supported with funds under subpart A of this part are highly qualified as defined in § 200.56.

(2) For the purpose of paragraph (a)(1) of this section, a teacher teaching in a program supported with funds under subpart A of this part is—

(i) A teacher in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A teacher in a schoolwide program school; or

(iii) A teacher employed by an LEA with funds under subpart A of this part to provide services to eligible private school students under § 200.62.

(b) *All teachers of core academic subjects.* (1) Not later than the end of the 2005–2006 school year, each State that receives funds under subpart A of this part, and each LEA in that State, must ensure that all public elementary and secondary school teachers in the State who teach core academic subjects, including teachers employed by an LEA to provide services to eligible private school students under § 200.62, are highly qualified as defined in § 200.56.

(2) A teacher who does not teach a core academic subject—such as some vocational education teachers—is not required to meet the requirements in § 200.56.

(c) *Definition.* The term “core academic subjects” means English, reading or language arts, mathematics,

science, foreign languages, civics and government, economics, arts, history, and geography.

(d) *Private school teachers.* The requirements in this section do not apply to teachers hired by private elementary and secondary schools.

(Authority: 20 U.S.C. 6319; 7801(11))

■ 46. Revise § 200.56 to read as follows:

**§ 200.56 Definition of “highly qualified teacher.”**

A teacher described in § 200.55(a) and (b)(1) is a “highly qualified teacher” if the teacher meets the requirements in paragraph (a) and paragraphs (b), (c), or (d) of this section.

(a) *In general.* (1) Except as provided in paragraph (a)(3) of this section, a teacher covered under § 200.55 must—

(i) Have obtained full State certification as a teacher, which may include certification obtained through alternative routes to certification; or

(ii)(A) Have passed the State teacher licensing examination; and

(B) Hold a license to teach in the State.

(2) A teacher meets the requirement in paragraph (a)(1) of this section if the teacher—

(i) Has fulfilled the State’s certification and licensure requirements applicable to the years of experience the teacher possesses; or

(ii) Is participating in an alternative route to certification program under which—

(A) The teacher—

(1) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(2) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(3) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(4) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(B) The State ensures, through its certification and licensure process, that the provisions in paragraph (a)(2)(ii) of this section are met.

(3) A teacher teaching in a public charter school in a State must meet the certification and licensure requirements, if any, contained in the State’s charter school law.

(4) If a teacher has had certification or licensure requirements waived on an emergency, temporary, or provisional basis, the teacher is not highly qualified.

(b) *Teachers new to the profession.* A teacher covered under § 200.55 who is new to the profession also must—

(1) Hold at least a bachelor’s degree; and

(2) At the public elementary school level, demonstrate, by passing a rigorous State test (which may consist of passing a State certification or licensing test), subject knowledge and teaching skills in reading/language arts, writing, mathematics, and other areas of the basic elementary school curriculum; or

(3) At the public middle and high school levels, demonstrate a high level of competency by—

(i) Passing a rigorous State test in each academic subject in which the teacher teaches (which may consist of passing a State certification or licensing test in each of these subjects); or

(ii) Successfully completing in each academic subject in which the teacher teaches—

(A) An undergraduate major;

(B) A graduate degree;

(C) Coursework equivalent to an undergraduate major; or

(D) Advanced certification or credentialing.

(c) *Teachers not new to the profession.* A teacher covered under § 200.55 who is not new to the profession also must—

(1) Hold at least a bachelor’s degree; and

(2)(i) Meet the applicable requirements in paragraph (b)(2) or (3) of this section; or

(ii) Based on a high, objective, uniform State standard of evaluation in accordance with section 9101(23)(C)(ii) of the ESEA, demonstrate competency in each academic subject in which the teacher teaches.

(d) A special education teacher is a “highly qualified teacher” under the Act if the teacher meets the requirements for a “highly qualified special education teacher” in 34 CFR 300.18.

(Authority: 20 U.S.C. 1401(10); 7801(23))

■ 47. Revise § 200.57 to read as follows:

**§ 200.57 Plans to increase teacher quality.**

(a) *State plan.* (1) A State that receives funds under subpart A of this part must develop, as part of its State plan under section 1111 of the ESEA, a plan to ensure that all public elementary and secondary school teachers in the State who teach core academic subjects are highly qualified not later than the end of the 2005–2006 school year.

(2) The State’s plan must—

(i) Establish annual measurable objectives for each LEA and school that include, at a minimum, an annual increase in the percentage of—

(A) Highly qualified teachers at each LEA and school; and

(B) Teachers who are receiving high-quality professional development to enable them to become highly qualified and effective classroom teachers;

(ii) Describe the strategies the State will use to—

(A) Help LEAs and schools meet the requirements in paragraph (a)(1) of this section; and

(B) Monitor the progress of LEAs and schools in meeting these requirements; and

(iii) Until the SEA fully complies with paragraph (a)(1) of this section, describe the specific steps the SEA will take to—

(A) Ensure that Title I schools provide instruction by highly qualified teachers, including steps that the SEA will take to ensure that minority children and children from low-income families are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers; and

(B) Evaluate and publicly report the progress of the SEA with respect to these steps.

(3) The State’s plan may include other measures that the State determines are appropriate to increase teacher qualifications.

(b) *Local plan.* An LEA that receives funds under subpart A of this part must develop, as part of its local plan under section 1112 of the ESEA, a plan to ensure that—

(1) All public elementary and secondary school teachers in the LEA who teach core academic subjects, including teachers employed by the LEA to provide services to eligible private school students under § 200.62, are highly qualified not later than the end of the 2005–2006 school year; and

(2) Through incentives for voluntary transfers, professional development, recruitment programs, or other effective strategies, minority students and students from low-income families are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers.

(Authority: 20 U.S.C. 6311(b)(8)(C), 6312(c)(1)(I), (L); 6319(a)(2)–(3); 7801(34))

■ 48. Revise § 200.58 to read as follows:

**§ 200.58 Qualifications of paraprofessionals.**

(a) *Applicability.* (1) An LEA must ensure that each paraprofessional who is hired by the LEA and who works in a program supported with funds under subpart A of this part meets the requirements in paragraph (b) of this section and, except as provided in paragraph (e) of this section, the requirements in either paragraph (c) or (d) of this section.

(2) For the purpose of this section, the term “paraprofessional”—

(i) Means an individual who provides instructional support consistent with § 200.59; and

(ii) Does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties).

(3) For the purpose of paragraph (a) of this section, a paraprofessional working in “a program supported with funds under subpart A of this part” is—

(i) A paraprofessional in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A paraprofessional in a schoolwide program school; or

(iii) A paraprofessional employed by an LEA with funds under subpart A of this part to provide instructional support to a public school teacher covered under § 200.55 who provides equitable services to eligible private school students under § 200.62.

(b) *All paraprofessionals.* A paraprofessional covered under paragraph (a) of this section, regardless of the paraprofessional’s hiring date, must have earned a secondary school diploma or its recognized equivalent.

(c) *New paraprofessionals.* A paraprofessional covered under paragraph (a) of this section who is hired after January 8, 2002 must have—

(1) Completed at least two years of study at an institution of higher education;

(2) Obtained an associate’s or higher degree; or

(3)(i) Met a rigorous standard of quality, and can demonstrate—through a formal State or local academic assessment—knowledge of, and the ability to assist in instructing, as appropriate—

(A) Reading/language arts, writing, and mathematics; or

(B) Reading readiness, writing readiness, and mathematics readiness.

(ii) A secondary school diploma or its recognized equivalent is necessary, but not sufficient, to meet the requirement in paragraph (c)(3)(i) of this section.

(d) *Existing paraprofessionals.* Each paraprofessional who was hired on or before January 8, 2002 must meet the requirements in paragraph (c) of this section no later than January 8, 2006.

(e) *Exceptions.* A paraprofessional does not need to meet the requirements in paragraph (c) or (d) of this section if the paraprofessional—

(1)(i) Is proficient in English and a language other than English; and

(ii) Acts as a translator to enhance the participation of limited English proficient children under subpart A of this part; or

(2) Has instructional-support duties that consist solely of conducting parental involvement activities.

(Authority: 20 U.S.C. 6319(c)–(f))

■ 49. Revise § 200.59 to read as follows:

**§ 200.59 Duties of paraprofessionals.**

(a) A paraprofessional covered under § 200.58 may not be assigned a duty inconsistent with paragraph (b) of this section.

(b) A paraprofessional covered under § 200.58 may perform the following instructional support duties:

(1) One-on-one tutoring for eligible students if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher.

(2) Assisting in classroom management.

(3) Assisting in computer instruction.

(4) Conducting parent involvement activities.

(5) Providing instructional support in a library or media center.

(6) Acting as a translator.

(7) Providing instructional support services.

(c)(1) A paraprofessional may not provide instructional support to a student unless the paraprofessional is working under the direct supervision of a teacher who meets the requirements in § 200.56.

(2) A paraprofessional works under the direct supervision of a teacher if—

(i) The teacher plans the instructional activities that the paraprofessional carries out;

(ii) The teacher evaluates the achievement of the students with whom the paraprofessional is working; and

(iii) The paraprofessional works in close and frequent physical proximity to the teacher.

(d) A paraprofessional may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under subpart A of this part—including non-instructional duties and duties that do not benefit participating students—if the amount of time the paraprofessional spends on those duties is the same proportion of total work time as the time spent by similar personnel at the same school.

(Authority: 20 U.S.C. 6319(g))

■ 50. Revise § 200.60 to read as follows:

**§ 200.60 Expenditures for professional development.**

(a)(1) Except as provided in paragraph (a)(2) of this section, an LEA must use funds it receives under subpart A of this part as follows for professional development activities to ensure that

teachers and paraprofessionals meet the requirements of §§ 200.56 and 200.58:

(i) For each of fiscal years 2002 and 2003, the LEA must use not less than 5 percent or more than 10 percent of the funds it receives under subpart A of this part.

(ii) For each fiscal year after 2003, the LEA must use not less than 5 percent of the funds it receives under subpart A of this part.

(2) An LEA is not required to spend the amount required in paragraph (a)(1) of this section for a given fiscal year if a lesser amount is sufficient to ensure that the LEA’s teachers and paraprofessionals meet the requirements in §§ 200.56 and 200.58, respectively.

(b) The LEA may use additional funds under subpart A of this part to support ongoing training and professional development, as defined in section 9101(34) of the ESEA, to assist teachers and paraprofessionals in carrying out activities under subpart A of this part.

(Authority: 20 U.S.C. 6319(h), (l); 7801(34))

■ 51. Add § 200.61 to read as follows:

**§ 200.61 Parents’ right to know.**

(a) At the beginning of each school year, an LEA that receives funds under subpart A of this part must notify the parents of each student attending a Title I school that the parents may request, and the LEA will provide the parents on request, information regarding the professional qualifications of the student’s classroom teachers, including, at a minimum, the following:

(1) Whether the teacher has met State qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.

(2) Whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived.

(3) The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.

(4) Whether the child is provided services by paraprofessionals and, if so, their qualifications.

(b) A school that participates under subpart A of this part must provide to each parent—

(1) Information on the level of achievement of the parent’s child in each of the State academic assessments required under § 200.2;

(2) Timely notice that the parent’s child has been assigned, or has been taught for four or more consecutive weeks by, a teacher of a core academic subject who is not highly qualified.

(c) An LEA and school must provide the notice and information required under this section—

(1) In a uniform and understandable format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

#### § 200.61 [Amended]

■ 52. Add an undesignated center heading “Participation of Eligible Children in Private Schools” following § 200.61.

(Authority: 20 U.S.C. 6311(h)(6))

■ 53. Add § 200.62 to read as follows:

#### § 200.62 Responsibilities for providing services to private school children.

(a) After timely and meaningful consultation with appropriate officials of private schools, an LEA must—

(1) In accordance with §§ 200.62 through 200.67 and section 1120 of the ESEA, provide special educational services or other benefits under subpart A of this part, on an equitable basis and in a timely manner, to eligible children who are enrolled in private elementary and secondary schools; and

(2) Ensure that teachers and families of participating private school children participate on a basis equitable to the participation of teachers and families of public school children receiving these services in accordance with § 200.65.

(b)(1) Eligible private school children are children who—

(i) Reside in participating public school attendance areas of the LEA, regardless of whether the private school they attend is located in the LEA; and

(ii) Meet the criteria in section 1115(b) of the ESEA.

(2) Among the eligible private school children, the LEA must select children to participate, consistent with § 200.64.

(c) The services and other benefits an LEA provides under this section must be secular, neutral and nonideological.

#### § 200.62 [Amended]

■ 54. Remove the undesignated center heading “Allocations to LEAs” following § 200.62.

(Authority: 20 U.S.C. 6315(b); 6320(a))

■ 55. Revise § 200.63 to read as follows:

#### § 200.63 Consultation.

(a) In order to have timely and meaningful consultation, an LEA must consult with appropriate officials of private schools during the design and development of the LEA’s program for eligible private school children.

(b) At a minimum, the LEA must consult on the following:

(1) How the LEA will identify the needs of eligible private school children.

(2) What services the LEA will offer to eligible private school children.

(3) How and when the LEA will make decisions about the delivery of services.

(4) How, where, and by whom the LEA will provide services to eligible private school children.

(5) How the LEA will assess academically the services to eligible private school children in accordance with § 200.10, and how the LEA will use the results of that assessment to improve Title I services.

(6) The size and scope of the equitable services that the LEA will provide to eligible private school children, and, consistent with § 200.64, the proportion of funds that the LEA will allocate for these services.

(7) The method or sources of data that the LEA will use under § 200.78 to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data if a survey is used.

(8) The equitable services the LEA will provide to teachers and families of participating private school children.

(c)(1) Consultation by the LEA must—

(i) Include meetings of the LEA and appropriate officials of the private schools; and

(ii) Occur before the LEA makes any decision that affects the opportunity of eligible private school children to participate in Title I programs.

(2) The LEA must meet with officials of the private schools throughout the implementation and assessment of the Title I services.

(d)(1) Consultation must include—

(i) A discussion of service delivery mechanisms the LEA can use to provide equitable services to eligible private school children; and

(ii) A thorough consideration and analysis of the views of the officials of the private schools on the provision of services through a contract with a third-party provider.

(2) If the LEA disagrees with the views of the officials of the private schools on the provision of services through a contract, the LEA must provide in writing to the officials of the private schools the reasons why the LEA chooses not to use a contractor.

(e)(1) The LEA must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

(2) If the officials of the private schools do not provide the affirmations within a reasonable period of time, the LEA must submit to the SEA documentation that the required consultation occurred.

(f) An official of a private school has the right to complain to the SEA that the LEA did not—

(1) Engage in timely and meaningful consultation; or

(2) Consider the views of the official of the private school.

(Authority: 20 U.S.C. 6320(b))

■ 56. Revise § 200.64 to read as follows:

#### § 200.64 Factors for determining equitable participation of private school children.

(a) *Equal expenditures.* (1) Funds expended by an LEA under subpart A of this part for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low-income families under paragraph (a)(2) of this section.

(2) An LEA must meet this requirement as follows:

(i)(A) If the LEA reserves funds under § 200.77 to provide instructional and related activities for public elementary or secondary school students at the district level, the LEA must also provide from those funds, as applicable, equitable services to eligible private school children.

(B) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

(ii) The LEA must reserve the funds generated by private school children under § 200.78 and, in consultation with appropriate officials of the private schools, may—

(A) Combine those amounts, along with funds under paragraph (a)(2)(i) of this section, if appropriate, to create a pool of funds from which the LEA provides equitable services to eligible private school children, in the aggregate, in greatest need of those services; or

(B) Provide equitable services to eligible children in each private school with the funds generated by children from low-income families under § 200.78 who attend that private school.

(b) *Services on an equitable basis.* (1) The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits that the LEA provides to public school children participating under subpart A of this part.

(2) Services are equitable if the LEA—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;

(ii) Meets the equal expenditure requirements under paragraph (a) of section; and

(iii) Provides private school children with an opportunity to participate that—

(A) Is equitable to the opportunity provided to public school children; and

(B) Provides reasonable promise of the private school children achieving the high levels called for by the State's student academic achievement standards or equivalent standards applicable to the private school children.

(3)(i) The LEA may provide services to eligible private school children either directly or through arrangements with another LEA or a third-party provider.

(ii) If the LEA contracts with a third-party provider—

(A) The provider must be independent of the private school and of any religious organization; and

(B) The contract must be under the control and supervision of the LEA.

(4) After timely and meaningful consultation under § 200.63, the LEA must make the final decisions with respect to the services it will provide to eligible private school children.

(Authority: 20 U.S.C. 6320)

■ 57. Revise § 200.65 to read as follows:

**§ 200.65 Determining equitable participation of teachers and families of participating private school children.**

(a)(1) From applicable funds reserved for parent involvement and professional development under § 200.77, an LEA shall ensure that teachers and families of participating private school children participate on an equitable basis in professional development and parent involvement activities, respectively.

(2) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

(b) After consultation with appropriate officials of the private schools, the LEA must conduct professional development and parent involvement activities for the teachers and families of participating private school children either—

(1) In conjunction with the LEA's professional development and parent involvement activities; or

(2) Independently.

(c) Private school teachers are not covered by the requirements in § 200.56.

(Authority: 20 U.S.C. 6320(a))

■ 58. Revise § 200.66 to read as follows:

**§ 200.66 Requirements to ensure that funds do not benefit a private school.**

(a) An LEA must use funds under subpart A of this part to provide services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children.

(b)(1) The LEA must use funds under subpart A of this part to meet the special educational needs of participating private school children.

(2) The LEA may not use funds under subpart A of this part for—

(i) The needs of the private school; or

(ii) The general needs of children in the private school.

(Authority: 20 U.S.C. 6320(a), 6321(b))

■ 59. Revise § 200.67 to read as follows:

**§ 200.67 Requirements concerning property, equipment, and supplies for the benefit of private school children.**

(a) The LEA must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under subpart A of this part for the benefit of eligible private school children.

(b) The LEA may place equipment and supplies in a private school for the period of time needed for the program.

(c) The LEA must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Title I purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The LEA must remove equipment and supplies from a private school if—

(1) The LEA no longer needs the equipment and supplies to provide Title I services; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Title I purposes.

(e) The LEA may not use funds under subpart A of this part for repairs, minor remodeling, or construction of private school facilities.

**§ 200.68 [Removed and Reserved]**

■ 60. Remove and reserve § 200.68.

**§ 200.69 [Amended]**

■ 61. Revise the undesignated center heading following reserved § 200.69 to read as follows:

**Allocations to LEAs**

■ 62. Revise § 200.70 to read as follows:

**§ 200.70 Allocation of funds to LEAs in general.**

(a) The Secretary allocates basic grants, concentration grants, targeted grants, and education finance incentive grants, through SEAs, to each eligible LEA for which the Bureau of the Census has provided data on the number of children from low-income families residing in the school attendance areas of the LEA (hereinafter referred to as the "Census list").

(b) In establishing eligibility and allocating funds under paragraph (a) of this section, the Secretary counts children ages 5 to 17, inclusive (hereinafter referred to as "formula children")—

(1) From families below the poverty level based on the most recent satisfactory data available from the Bureau of the Census;

(2) From families above the poverty level receiving assistance under the Temporary Assistance for Needy Families program under Title IV of the Social Security Act;

(3) Being supported in foster homes with public funds; and

(4) Residing in local institutions for neglected children.

(c) Except as provided in §§ 200.72, 200.75, and 200.100, an SEA may not change the Secretary's allocation to any LEA that serves an area with a total census population of at least 20,000 persons.

(d) In accordance with § 200.74, an SEA may use an alternative method, approved by the Secretary, to distribute the State's share of basic grants, concentration grants, targeted grants, and education finance incentive grants to LEAs that serve an area with a total census population of less than 20,000 persons.

(Authority: 20 U.S.C. 6333–6337)

■ 63. Revise § 200.71 to read as follows:

**§ 200.71 LEA eligibility.**

(a) *Basic grants.* An LEA is eligible for a basic grant if the number of formula children is—

(1) At least 10; and

(2) Greater than two percent of the LEA's total population ages 5 to 17 years, inclusive.

(b) *Concentration grants.* An LEA is eligible for a concentration grant if—

(1) The LEA is eligible for a basic grant under paragraph (a) of this section; and

(2) The number of formula children exceeds—

(i) 6,500; or

(ii) 15 percent of the LEA's total population ages 5 to 17 years, inclusive.

(c) *Targeted grants.* An LEA is eligible for a targeted grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(d) *Education finance incentive grants.* An LEA is eligible for an education finance incentive grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(Authority: 20 U.S.C. 6333–6337)

**§ 200.71 [Amended]**

■ 64. Remove the undesignated center heading “Fiscal Requirements” following § 200.71.

■ 65. Add § 200.72 to read as follows:

**§ 200.72 Procedures for adjusting allocations determined by the Secretary to account for eligible LEAs not on the Census list.**

(a) *General.* For each LEA not on the Census list (hereinafter referred to as a “new” LEA), an SEA must determine the number of formula children and the number of children ages 5 to 17, inclusive, in that LEA.

(b) *Determining LEA eligibility.* An SEA must determine basic grant, concentration grant, targeted grant, and education finance incentive grant eligibility for each new LEA and re-determine eligibility for the LEAs on the Census list, as appropriate, based on the number of formula children and children ages 5 to 17, inclusive, determined in paragraph (a) of this section.

(c) *Adjusting LEA allocations.* An SEA must adjust the LEA allocations calculated by the Secretary to determine allocations for eligible new LEAs based on the number of formula children determined in paragraph (a) of this section.

(Authority: 20 U.S.C. 6333–6337)

■ 66. Revise § 200.73 to read as follows:

**§ 200.73 Applicable hold-harmless provisions.**

(a) *General.* (1) Except as authorized under paragraph (c) of this section and § 200.100(d)(2), an SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts established under paragraph (a)(4) of this section.

(2) The hold-harmless protection limits the maximum reduction of an LEA's allocation compared to the LEA's allocation for the preceding year.

(3) Except as provided in § 200.100(d), an SEA must apply the hold-harmless requirement separately for basic grants, concentration grants, targeted grants, and education finance incentive grants as described in paragraph (a)(4) of this section.

(4) Under section 1122(c) of the ESEA, the hold-harmless percentage varies based on the LEA's proportion of formula children, as shown in the following table:

| LEA's number of formula children ages 5 to 17, inclusive, as a percentage of its total population of children ages 5 to 17, inclusive | Hold-harmless percentage | Applicable grant formulas  |
|---|--------------------------|--|
| (i) 30% or more .....   | 95                       | Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants. |
| (ii) 15% or more but less than 30% .....  | 90                       |  |
| (iii) Less than 15% .....   | 85                       |  |

(b) *Targeted grants and education finance incentive grants.* The number of formula children used to determine the hold-harmless percentage is the number before applying the weights described in section 1125 and section 1125A of the ESEA.

(c) *Adjustment for insufficient funds.* If the amounts made available to the State are insufficient to pay the full amount that each LEA is eligible to receive under paragraph (a)(4) of this section, the SEA must ratably reduce the allocations for all LEAs in the State to the amount available.

(d) *Eligibility for hold-harmless protection.* (1) An LEA must meet the eligibility requirements for a basic grant, targeted grant, or education finance incentive grant under § 200.71 in order for the applicable hold-harmless provision to apply.

(2) An LEA not meeting the eligibility requirements for a concentration grant under § 200.71 must be paid its hold-harmless amount for four consecutive years.

(Authority: 20 U.S.C. 6332(c))

■ 67. Add § 200.74 to read as follows:

**§ 200.74 Use of an alternative method to distribute grants to LEAs with fewer than 20,000 residents.**

(a) For eligible LEAs serving an area with a total census population of less than 20,000 persons (hereinafter referred to as “small LEAs”), an SEA may apply to the Secretary to use an alternative method to distribute basic grant, concentration grant, targeted grant, and education finance incentive grant funds.

(b) In its application, the SEA must—

(1) Identify the alternative data it proposes to use; and

(2) Assure that it has established a procedure through which a small LEA that is dissatisfied with the determination of its grant may appeal directly to the Secretary.

(c) The SEA must base its alternative method on population data that best reflect the current distribution of children from low-income families among the State's small LEAs and use the same poverty measure consistently for small LEAs across the State for all Title I, part A programs.

(d) Based on the alternative poverty data selected, the SEA must—

(1) Re-determine eligibility of its small LEAs for basic grants,

concentration grants, targeted grants, and education finance incentive grants in accordance with § 200.71;

(2) Calculate allocations for small LEAs in accordance with the provisions of sections 1124, 1124A, 1125, and 1125A of the ESEA, as applicable; and

(3) Ensure that each LEA receives the hold-harmless amount to which it is entitled under § 200.73.

(e) The amount of funds available for redistribution under each formula is the separate amount determined by the Secretary under sections 1124, 1124A, 1125, and 1125A of the ESEA for eligible small LEAs after the SEA has made the adjustments required under § 200.72(c).

(f) If the amount available for redistribution to small LEAs under an alternative method is not sufficient to satisfy applicable hold-harmless requirements, the SEA must ratably reduce all eligible small LEAs to the amount available.

(Authority: 20 U.S.C. 6333–6337)

■ 68. Add § 200.75 to read as follows:

**§ 200.75 Special procedures for allocating concentration grant funds in small States.**

(a) In a State in which the number of formula children is less than 0.25 percent of the national total on January 8, 2002 (hereinafter referred to as a "small State"), an SEA may either—

(1) Allocate concentration grants among eligible LEAs in the State in accordance with §§ 200.72 through 200.74, as applicable; or

(2) Without regard to the allocations determined by the Secretary—

(i) Identify those LEAs in which the number or percentage of formula children exceeds the statewide average number or percentage of those children; and

(ii) Allocate concentration grant funds, consistent with § 200.73, among the LEAs identified in paragraph (a)(2)(i) of this section based on the number of formula children in each of those LEAs.

(b) If the SEA in a small State uses an alternative method under § 200.74, the SEA must use the poverty data approved under the alternative method to identify those LEAs with numbers or percentages of formula children that exceed the statewide average number or percentage of those children for the State as a whole.

(Authority: 20 U.S.C. 6334(b))

■ 69. Add § 200.77 to read as follows:

**§ 200.77 Reservation of funds by an LEA.**

Before allocating funds in accordance with § 200.78, an LEA must reserve funds as are reasonable and necessary to—

(a) Provide services comparable to those provided to children in participating school attendance areas and schools to serve—

(1) Homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where homeless children may live;

(2) Children in local institutions for neglected children; and

(3) If appropriate—

(i) Children in local institutions for delinquent children; and

(ii) Neglected and delinquent children in community-day school programs;

(b) Provide, where appropriate under section 1113(c)(4) of the ESEA, financial incentives and rewards to teachers who serve students in Title I schools identified for school improvement, corrective action, and restructuring for the purpose of attracting and retaining qualified and effective teachers;

(c) Meet the requirements for choice-related transportation and supplemental

educational services in § 200.48, unless the LEA meets these requirements with non-Title I funds;

(d) Address the professional development needs of instructional staff, including—

(1) Professional development requirements under § 200.52(a)(3)(iii) if the LEA has been identified for improvement or corrective action; and

(2) Professional development expenditure requirements under § 200.60;

(e) Meet the requirements for parental involvement in section 1118(a)(3) of the ESEA;

(f) Administer programs for public and private school children under this part, including special capital expenses, if any, incurred in providing services to eligible private school children, such as—

(1) The purchase and lease of real and personal property (including mobile educational units and neutral sites);

(2) Insurance and maintenance costs;

(3) Transportation; and

(4) Other comparable goods and services, including non-instructional computer technicians; and

(g) Conduct other authorized activities, such as school improvement and coordinated services.

(Authority: 20 U.S.C. 6313(c)(3) and (4), 6316(b)(10), (c)(7)(iii), 6318(a)(3), 6319(l), 6320, 7279d)

■ 70. Add § 200.78 to read as follows:

**§ 200.78 Allocation of funds to school attendance areas and schools.**

(a)(1) An LEA must allocate funds under subpart A of this part to school attendance areas and schools, identified as eligible and selected to participate under section 1113(a) or (b) of the ESEA, in rank order on the basis of the total number of children from low-income families in each area or school.

(2)(i) In calculating the total number of children from low-income families, the LEA must include children from low-income families who attend private schools.

(ii) To obtain a count of private school children, the LEA may—

(A) Use the same poverty data the LEA uses to count public school children;

(B)(1) Use comparable poverty data from a survey of families of private school students that, to the extent possible, protects the families' identity; and

(2) Extrapolate data from the survey based on a representative sample if complete actual data are unavailable;

(C) Use comparable poverty data from a different source, such as scholarship applications;

(D) Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or

(E) Use an equated measure of low income correlated with the measure of low income used to count public school children.

(iii) An LEA may count private school children from low-income families every year or every two years.

(iv) After timely and meaningful consultation in accordance with § 200.63, the LEA shall have the final authority in determining the method used to calculate the number of private school children from low-income families;

(3) If an LEA ranks its school attendance areas and schools by grade span groupings, the LEA may determine the percentage of children from low-income families in the LEA as a whole or for each grade span grouping.

(b)(1) Except as provided in paragraphs (b)(2) and (d) of this section, an LEA must allocate to each participating school attendance area or school an amount for each low-income child that is at least 125 percent of the per-pupil amount of funds the LEA received for that year under part A, subpart 2 of Title I. The LEA must calculate this per-pupil amount before it reserves funds under § 200.77, using the poverty measure selected by the LEA under section 1113(a)(5) of the ESEA.

(2) If an LEA is serving only school attendance areas or schools in which the percentage of children from low-income families is 35 percent or more, the LEA is not required to allocate a per-pupil amount of at least 125 percent.

(c) An LEA is not required to allocate the same per-pupil amount to each participating school attendance area or school provided the LEA allocates higher per-pupil amounts to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

(d) An LEA may reduce the amount of funds allocated under this section to a school attendance area or school if the area or school is spending supplemental State or local funds for programs that meet the requirements in § 200.79(b).

(e) If an LEA contains two or more counties in their entirety, the LEA must distribute to schools within each county a share of the LEA's total grant that is no less than the county's share of the child count used to calculate the LEA's grant.

**§ 200.78 [Amended]**

■ 71. Add an undesignated center heading “Fiscal Requirements” following § 200.78.

■ 72. Add § 200.79 to read as follows:

**§ 200.79 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.**

(a) For the purpose of determining compliance with the supplement not supplant requirement in section 1120A(b) and the comparability requirement in section 1120A(c) of the ESEA, a grantee or subgrantee under subpart A of this part may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 40 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to

support students in their achievement toward meeting the State’s challenging academic achievement standards that all students are expected to meet;

(iii) Is designed to meet the educational needs of all students in the school, particularly the needs of students who are failing, or most at risk of failing, to meet the State’s challenging student academic achievement standards; and

(iv) Uses the State’s assessment system under § 200.2 to review the effectiveness of the program; or

(2)(i) Serves only students who are failing, or most at risk of failing, to meet the State’s challenging student academic achievement standards;

(ii) Provides supplementary services designed to meet the special educational needs of the students who are participating in the program to support their achievement toward meeting the State’s student academic achievement standards; and

(iii) Uses the State’s assessment system under § 200.2 to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under

section 1113(b)(1)(D) and 1113(c)(2)(B) of the ESEA.

(Authority: 20 U.S.C. 6321(b)–(d))

**PART 299—GENERAL PROVISIONS**

■ 73. The authority citation for part 299 is revised to read as follows:

**Authority:** 20 U.S.C. 1221e–3(a)(1), 6511(a), and 7373(b), unless otherwise noted.

■ 74. In § 299.1 revise paragraph (a) to read as follows:

**§ 299.1 What are the purpose and scope of these regulations?**

(a) This part establishes uniform administrative rules for programs in titles I through XIII of the Elementary and Secondary Education Act of 1965, as amended (ESEA). As indicated in particular sections of this part, certain provisions apply only to a specific group of programs.

\* \* \* \* \*

**Subpart G—[Removed]**

■ 75. Remove subpart G.

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