



National School Boards Association

Federal Regulations Adversely Impacting Academic Achievement in Public Schools

November 2008

As our nation prepares for the inauguration of the 44th President and the convening of the 111th Congress, this transition period following the Presidential and congressional elections provides an opportune time to identify existing federal regulations that adversely impact our broader goal of ensuring access to quality education by all students enrolled in our public schools. The National School Boards Association (NSBA), representing over 95,000 local school board members through our state school boards associations, has reviewed current federal regulations negatively impacting student achievement and recommends the suspension of the following:

1. Regulations Implementing Title I of No Child Left Behind (NCLB) Act

On October 28, 2008, the outgoing U.S. Secretary of Education, Margaret Spellings, released final regulations implementing certain provisions of Title I of the *No Child Left Behind (NCLB) Act*, specifically Accountability, Uniform and Disaggregated Graduation Rates, and Supplemental Services and Public School Choice.

After close review, NSBA strongly urges President-Elect Obama and his new administration to defer implementation of these new regulations until they have had an opportunity to assess the need for such changes – given the impending reauthorization of the *Elementary and Secondary Education Act (ESEA)*.

In our view, these new Title I regulations will force schools and school districts across the nation to re-direct resources to meet new and unnecessary requirements that will be disruptive to current operations and in all likelihood will be modified when the *Elementary and Secondary Education Act (ESEA)* is reauthorized during the 111th Congress.

We believe that the new President and new Secretary of Education should have the opportunity to determine how best to approach the needed changes in the current law and to issue specific guidance pending the reauthorization. Over the past year, NSBA has lobbied Congress to secure additional resources and regulatory changes that facilitate both effective and efficient implementation by school districts—not more reporting requirements or barriers to achieving the goals of the law.

As one example, NSBA remains concerned that the final regulations establish additional barriers for the use of unspent Title I federal funds that are required to be set-aside for public school choice and SES. While the final regulations offer some relief in permitting school districts to release the set-aside funds if they meet the criteria established by the new regulations, the final regulations provide for review and certification by the state education agency – with the added requirement that if the criteria for releasing such funds have not been fully met, the amount of any unauthorized release of funds will be added to the 20 percent set-aside requirement in the subsequent year. In implementing this requirement, school districts could find themselves with a financial obligation for a subsequent academic year that is unnecessary or financially problematic to fulfill – especially at a time when a number of school districts, local governments and states are grappling with

serious budget shortfalls. The federal share of funding for NCLB—specifically for Title I grants for disadvantaged students—remains inadequate, thereby placing an additional burden on school districts and states. 29 states faced an aggregate budget shortfall of an estimated \$48 billion for FY 2009; and now, several states are challenged by mid-year shortfalls (from the Center on Budget and Policy Priorities, October 20, 2008).

2. E-Rate Program Exemption from the Anti-Deficiency Act

NSBA seeks a permanent suspension of the Federal Communications Commission (FCC) ruling or a new Executive Order that currently would place schools and libraries under the *Anti-Deficiency Act (ADA)*.

The E-rate program is a \$2.25 billion annual program which provides significant discounts of up to 90 percent to schools and libraries to help them build technology infrastructure and provide telecommunications and Internet services for students in low-income and rural areas. Schools and districts get funding from the Universal Services Administrative Company (USAC), which in turn collects the funds from levies imposed on interstate phone calls by telecommunications companies.

In 2004, the FCC ruled that E-rate fell under the ADA, which effectively forced the suspension of E-rate funding commitment decision letters to schools on the grounds that the federal government had not yet collected funds. In so doing, many school districts would have had to drop out of the program because they could not legally or financially enter into contracts with technology providers without a binding letter of commitment from the federal government that the money would be provided.

Over the past couple of years, Congress has passed legislation to extend the exemption from ADA so the federal letters of commitment would continue. This year, the education and library community again worked with members of Congress to seek additional extensions of the moratorium. However, unless such legislation is enacted, restrictions will be reinstated after December 2008. Rather than going through this legislative process every year, the FCC order should be rescinded.

3. Centers for Medicare and Medicaid Restrictions on Medicaid Reimbursement to School Districts

NSBA seeks the repeal of regulations issued by the Centers for Medicare and Medicaid Services (CMS) on December 28, 2007, that eliminates federal reimbursement under the Medicaid program to school districts for the costs of administrative activities (such as outreach and enrollment, program planning, and referrals) and certain types of transportation provided to students with disabilities. This action has been estimated to cost school districts \$3.6 billion over the next five years, and is inconsistent with the statute's eligibility determination provisions that expressly designate elementary and secondary schools as "qualified entities" for purposes of making presumptive and permanent eligibility determinations in order to afford eligible children and adults the ability to promptly apply for medical assistance and be enrolled.

Congress has twice passed legislation to delay the effective date of these regulations until April 1, 2009. Congress has spoken; it does not want to recoup federal funding by withdrawing funds targeted for poor children who receive certain medical services through the schools. Given the effective date, NSBA strongly recommends repeal of these regulations.

NSBA would very much appreciate the opportunity to discuss our recommendations. Questions concerning our positions may be directed to Michael A. Resnick, Associate Executive Director, at 703-838-6720, or by e-mail at mresnick@nsba.org.