

June 20, 2008

Mr. Zollie Stevenson, Jr.
Director
Office of Student Achievement and School Accountability
U.S. Department of Education
400 Maryland Avenue, SW, Room 3W230
Washington, DC 20202-6132

Re: ***Docket ID ED-2008-OESE-0003***
National School Boards Association Comments on U.S. Department of Education Proposed Amendments to Regulations Governing Program Administered under Part A of Title I of the Elementary and Secondary Education Act (ESEA) of 1965, as amended (34 CFR Part 200)

Dear Mr. Stevenson:

The National School Boards Association (NSBA), representing over 95,000 local school board members across the nation through our state associations is pleased to submit our formal comments on the proposed amendments which are enclosed.

NSBA is pleased that the proposed regulations address some needed program improvements that will enable states to obtain federal approval to use growth models to track individual progress and determine AYP. However, in relation to all that needs to be done, NSBA feels that the proposed regulations fall short of the improved accountability system that can be achieved, and adds requirements that are both questionable and objectionable. Additionally, many of these proposed regulations will have a significant impact for local school districts as they continue to face funding challenges due to revenue reductions at both the state and local levels.

In addition to concerns over how the proposed regulations address ongoing problem areas, several new objectionable requirements are introduced that are briefly set forth below.

First, we have serious concerns over the proposed additional requirements for schools identified for restructuring. While we agree that remedies for schools identified for restructuring must be substantial, it is important to remember that in many instances these same schools have been identified based on the results of assessments that were not reliable, or valid, or both. A more effective approach would be to provide significantly more technical assistance to states in designing and developing more successful ways to address the needs of such schools rather than to simply impose greater penalties.

Second, we have serious concerns regarding the manner in which the proposed regulations would incorporate graduation rates into the calculations for determining whether or not schools and LEAs meet their AYP targets. NSBA supports incentives to improve graduation rates, but opposes the manner in which the proposed regulations would incorporate graduation rates as part of AYP determinations. We urge the Secretary to review again the National Governors Association (NGA) recommendations. It is our interpretation that NGA endorsed a comprehensive compact that included a definition of graduation rate which includes five-year and six-year graduation rates and did not endorse the use of the graduation rate calculations in determining AYP. Therefore, we



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strongly urge you to defer use of the formula for calculating AYP until such times as *all* states have their data systems in place, and the States (and others) have an opportunity to determine the propriety of this data for AYP determinations, including the factors to be included in calculating graduation rates for AYP purposes..

Third, NSBA has serious concerns with the proposed requirement for states to report the most recently available academic achievement results from NAEP on the same report card as it reports the results of its state assessments. We believe that such a requirement would be problematic and of questionable value to parents and the local school level – requiring extensive explanation which may not fully help parents to determine how their own child compares with the data. While well intended, parents and the local community could easily draw conclusions that are inaccurate if not misleading, negating any perceived potential value from such a requirement. NAEP reports may serve the interest of national policymakers, but are not appropriate or sufficiently relevant for individual school or school district report cards to be mandated by regulation. Therefore, we recommend that this regulation should be deleted.

Finally, in addition to our concerns with the introduction of the above and other new concepts that are addressed in our enclosure, NSBA continues to be concerned with long-standing issues that the proposed regulations would take in the wrong direction such as the potential for lowering the “N-size”; burdensome administrative requirements; unreasonable timelines for implementation of requirements; and mandated sanctions that have proven to have little if any impact on improving academic performance.

NSBA very much appreciates the opportunity to comment. Questions concerning our concerns should be directed to Reginald M. Felton, director of federal relations at 703-838-6782, or by e-mail, rfelton@nsba.org.

Sincerely,



Michael A. Resnick
Associate Executive Director

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National School Boards Association (NSBA)
Comments on U.S. Department of Education Proposed Amendments to Regulations
Governing Programs Administered under Part A of Title I of the Elementary and Secondary
Education Act (ESEA) of 1965, as amended (34 CFR Part 200)

Submitted June 20, 2008

A. Section 200.2 – STATE RESPONSIBILITY FOR ASSESSMENT (p. 22021)

Proposed Regulation (Multiple Measures)

Proposed § 200.2(b)(7) (i) and (ii) would clarify that measures of student academic achievement may include multiple types of questions that range in complexity and reflect the cognitive concepts and processes in the State content standards within a single assessment, as well as multiple assessments within a subject area.

NSBA Comment

NSBA supports the clarification relating to the use of multiple assessments beyond the “single test,” as previously interpreted. This would enable schools and school districts to have better measurements of student achievement in specific subjects. In addition to testing, NSBA also supports incorporation of other indicators of student achievement when assessing student and school performance.

B. Section 200.7 – DISAGGREGATION OF DATA (p. 22021)

1. Proposed Regulation (Minimum Subgroup Size/N-Size)

Proposed § 200.7(a) (2)(i)(B) would require a State, as it considers statistical reliability in setting a minimum subgroup size, to ensure, to the maximum extent practicable, that all student subgroups are included, particularly at the school level, for purposes of making accountability decisions.

NSBA Comment

NSBA opposes this proposed regulation. It appears that the Department is encouraging smaller “N-sizes” in an attempt to broaden the base of schools ultimately identified for sanctions. We believe that there is a separation between the need to be statistically reliable and the policy issue of when a school or school district should be identified for sanctions. From an operational basis, maintaining statistical reliability and ensuring greater coverage of students for accountability purposes are totally different. Discontinuing the current policy on N-size will result in a greater likelihood of schools and school districts being over-identified for improvement and ultimately for more severe sanctions based on the performance of only a small

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percentage of students within the school. In addition, the Secretary has already acknowledged the need to differentiate consequences for schools with larger percentages of students who are non-proficient and those with only small percentages of students who are non-proficient. Especially since the issue of differentiated consequences is not yet fully addressed, we recommend maintaining the current policy on “N-size.”

2. Proposed Regulation (Consolidated State Application Accountability Workbook)

Proposed § 200.7(a)(2)(ii) would require each State to revise its Consolidated State Application Accountability Workbook (part of the State Plan) to include: (1) an explanation of how the State’s minimum subgroup size meets proposed § 200.7(a)(2)(i); (2) an explanation of how other components of the State’s AYP definition, in addition to the State’s minimum subgroup size, interact to affect the statistical reliability of the data and to ensure maximum inclusion of all students and student subgroups; and (3) information on the number and percentage of students and student subgroups excluded from school-level accountability determinations.

NSBA Comment

Given our comments on N-size in § 200.7(a) (2)(i)(B), NSBA recommends that the Department defer the proposed reporting requirements for Consolidated State Application Accountability Workbook until the policy of N-size is clarified.

3. Proposed Regulation (Accountability Workbook)

Proposed § 200.7(a)(2)(iii) would require each State to submit a revised Accountability Workbook that incorporates the information in proposed § 200.7(a)(2)(ii) for technical assistance and peer review no later than six months after the effective date of the regulation.

NSBA Comment

Given our comments on N-size in § 200.7(a) (2)(i)(B), NSBA recommends that the Department defer this proposed regulation until the policy on N-size is clarified.

C. Section 200.11 – PARTICIPATION IN NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS (NAEP) (p. 22023)

Proposed Regulation (National Assessment of Educational Progress/NAEP)

Proposed § 200.11(c) would require a State to report the most recent available academic achievement results from NAEP reading and mathematics assessments on the same public report card as it reports the results of its State assessments. It also would require an LEA to report the State NAEP assessment data on its report card.

NSBA Comment

NSBA recognizes the desire to make this information public on local report cards, but to do so would be problematic and of questionable value to parents and the local school level. Specifically, inaccurate if not misleading conclusions could be drawn for several reasons.

First, both the state and NAEP set their bars for success at “proficiency” (or above). However, the NAEP bar for proficiency is set very high. Indeed, studies reported by the Center for Public Education show that even in top-scoring countries like Singapore and Hong Kong between one in [three and one in four](#) students would fail to perform at the NAEP proficient level. Even

Secretary Spellings has publicly stated that the achievement of “basic” on NAEP should be the measure of success. That distinction would have to be adequately explained on a report card.

Second, comparing a state’s performance on a statewide assessment to NAEP results (including the comparison to other states) doesn’t necessarily lead to accurate conclusions or even suggestions about performance in an individual school or school district. That too would have to be explained.

Third, unless state and national data is disaggregated by group, the relative performance of a state compared to other states is likely to mask relevant demographic variations—and, even then is not going to be directly reflective of group compositions in individual schools or school districts.

Fourth, in some states there may be curriculum alignment issues as to what is taught, and at what grade level, for some items appearing on the NAEP assessment that could questionably affect NAEP results.

Fifth, while the intent of the proposed regulation is to ensure that additional data are provided to parents so that they would have a better understanding of the performance of their school in comparison with state and national data, it is unlikely that the school would be able to provide sufficient explanation of the data for the parents to have a totally accurate picture of their schools as related to NAEP.

Given these and other factors, states would have to be given latitude to explain in their own plain language how NAEP results should be read, compared, and interpreted to mitigate against misleading the public at the local level. Yet, when it is all said and done statewide NAEP results probably won’t be all that significant to parents when evaluating their own school. In the final analysis, NAEP reports may serve the interest of national policymakers, but are not appropriate or sufficiently relevant for individual school or school district report cards to be mandated by regulation. The proposed regulation should be deleted.

D. Section 200.19 – OTHER ACADEMIC INDICATORS (p. 22023)

1. Proposed Regulation (Graduation Rate: Uniform Calculation)

Consistent with the definition adopted by the National Governors Association (NGA) and agreed to by all 50 governors in 2005, proposed § 200.19(a)(1) would require States to use a uniform and accurate method of calculating graduation rates by defining graduation rate as the number of students who graduate in the standard number of years with a regular high school diploma divided by the number of students who form the “adjusted cohort” for that graduating class. The “adjusted cohort” is the group of students who entered the 9th grade four years earlier, and any students who transferred into or entered the cohort in grades 9 through 12, minus any students removed from the cohort. To remove a student from the cohort, a school or LEA would need to confirm that the student either enrolled in another educational program that culminates in the award of a regular high school diploma or is deceased. A student, who is retained in grade, enrolls in a GED program or leaves school for any other reason would remain in the adjusted cohort for the purposes of calculating the graduation rate. States would have to calculate graduation rates under this section after 2011-2012.

NSBA Comment

NSBA opposes the definition of the “standard number of years” in the proposal. The Department defined the standard number of years for graduation as four, and therefore excluded students who take longer to graduate. As NSBA understands, the “NGA Compact,” on which the Department’s proposal was based, allows states to account for an extended graduation rate (five- or six-year cohort) for some students.

NSBA recommends that all states be allowed to use an alternate standard number of years to calculate an extended graduation rate for certain categories of students who need extra time without having to make a separate application to the Department (see comment #2 below). These students should include but not be limited to students with disabilities and limited English proficiency, those who are in dual enrollment or early college programs, alternative educational programs/schools, and home school programs in appropriate circumstances; as well as those who have medical conditions and/or family crisis, etc. There needs to be a mechanism to credit schools and school districts for keeping students in schools. The four-year rate and the extended rate should be used to determine how well schools and school districts are serving their students.

In terms of verifying student transfer, schools and school districts have the responsibility to verify students who transferred and remove them from the cohort. However, NSBA urges the Department not to penalize schools and school districts if after multiple attempts they are unsuccessful in contacting the parents/students to confirm transfer. In addition, students who leave school to be home schooled should be removed from the cohort and not be counted as dropouts.

2. Proposed Regulation (Graduation Rate: Alternate Definition)

Proposed § 200.19(a)(1)(i)(C)(2) would permit a State to propose, for approval by the Secretary, an alternate definition of “standard number of years” that would apply to limited categories of students who, under certain conditions, may take longer to graduate.

NSBA Comment

NSBA supports the concept of an alternate definition of “standard number of years” in graduation rate that would recognize students who need extra time to graduate (see more details in comment #1 above). However, we do not agree that states have to make a separate request to use the alternate definition that is subject to the Secretary’s approval. In addition, NSBA opposes the proposed language of “limited categories of students” that would be eligible for the alternate definition of “standard number of years.” We recommend that the language should include but not be limited to the categories we have set forth above in comment #1 (in the event the latter is not automatically included). The Department should not stipulate what “limited categories of students” would need more time to graduate. Such decisions should be made at the state and local levels based on the students’ educational and individual needs. Therefore, NSBA recommends the Department remove such language from the proposed regulations.

3. Proposed Regulation (Graduation Rate: AFGR)

A State that does not have in effect a system to accurately track transfers for calculation of the graduation rate would be required to use the averaged freshman graduation rate (AFGR) on a transitional basis. The AFGR would be defined as the number of high school students who

graduate in the standard number of years with a regular high school diploma divided by the number of students in the incoming freshman class four years earlier, which is estimated by averaging the enrollment of that freshman class with the enrollment of that class in eighth grade the prior year and in tenth grade the subsequent year.

For any school or district that does not have an eighth grade, the AFGR would be estimated by averaging the enrollment of the tenth grade class in the subsequent year.

The proposed regulations would not permit States to use the AFGR to calculate graduation rates after 2011-2012; after 2011-2012, all States would have to calculate graduation rates under the proposed § 200.19(a)(1).

NSBA Comment

NSBA does not support requiring states to use the AFGR as the interim calculation. The proposed requirement would divert attention and resources in data development from implementation of the NGA graduation rate in a timely manner. In addition, research showed that the AFGR under-estimates the graduation rates of some student groups because it fails to adequately account for the “ninth grade bulge” (the higher percentage of grade retentions). Given that the method is known to produce inaccurate data, it would be time consuming and costly for states to change now to use this calculation, then change again to use the NGA calculation by the required timeline.

4. Proposed Regulation (Graduation Rate: Goal and Progress)

Proposed § 200.19(d)(1) would provide two ways for States to determine whether their schools and LEAs meet the graduation rate component of AYP beginning in the 2008-2009 school year: 1) meet the graduation rate goals, established by the State and approved by the Secretary that represents the rate the State expects all high schools to achieve; or 2) demonstrate continuous and substantial improvement from the prior year toward meeting or exceeding that goal, as defined by the State and approved by the Secretary.

NSBA Comment

NSBA does not support tightening the regulations in any states unless the current one-size-fits-all accountability framework which does not differentiate consequences for schools and school districts is improved. Requiring states to adopt graduation goals and define what substantial improvement should be each year for schools and school districts to move toward these goals would essentially add more AYP indicators to the current accountability system, which desperately needs to be fixed. This is especially problematic because it is not clear what role, if any, the Department would play in approving the goal and rate of progress suggested by the states.

Based on our comments in #5 below, NSBA urges the Department not to add more AYP cells before the entire accountability system is improved. If despite this concern, the Department decides to include this proposal in the final regulations, NSBA urges that it allow states an additional year so that initial efforts at differentiated consequences can be properly tied to this provision. It should also allow states to still offer other options to meet the requirement for graduation rate improvement that would take into consideration current student performance and the needs of their student populations. All states would need to be able to differentiate

consequences for schools and school districts to help target interventions to improve graduation rates, if this provision is included in the final regulations.

5. Proposed Regulation (Graduation Rate: Disaggregation of Subgroup for Reporting and AYP)

Proposed § 200.19(e)(1) would require each State, no later than the 2012-2013 school year, to calculate the graduation rate at the school, LEA, State levels in the aggregate and disaggregated by the subgroups for reporting under section 1111 of the ESEA and for determining AYP.

Proposed § 200.19(e)(2)(i) and (ii) would require a State, prior to the 2012-2013 school year, to disaggregate the graduation rate data at the school, LEA, and State levels for reporting purposes and for determining “safe harbor” and at the LEA and State levels for determining AYP.

NSBA Comment

NSBA opposes using the NGA Compact on graduation rate for NCLB accountability. We understand the need to account for subgroup graduation rates. However, we do not support adding more AYP indicators (disaggregated graduation rates) until NCLB’s flawed accountability framework is fixed. The current framework misidentifies schools and school districts for improvement and therefore imposes broad sanctions that do not target students who need help most and have not been proven effective. NSBA believes that now is not the right time to add new cells for AYP when efforts to improve NCLB’s accountability system such as differentiated consequences have not taken effect and remain small scale. The priority should be to improve the current system, not to add onto it.

While the original NGA Compact was not designed for high-stake accountability, the concept of how graduation rate should be included for accountability purposes must be carefully examined. Some critical questions must be answered. These include: how to credit schools and school districts for keeping at-risk students in schools and helping them graduate; what should the improvement targets be for schools with a disproportional number of students at risk of dropping out and/or returning after dropping out, what should graduation rate accountability look like in a special education school, etc.

NSBA supports reporting disaggregated graduation rates by subgroup. However, it’s one thing to identify which subgroups do not meet graduation rate requirement; it’s another to attach sanctions to such identification particularly when state and local resources are limited and federal resources are not forthcoming. NSBA believes that the intent of the law’s graduation requirement is to guard against schools from pushing out students who are low performing, not to be a main accountability measure which should be based on student achievement.

In the objectionable event that schools and school districts are required to disaggregate graduation rate by subgroup for AYP, NSBA opposes counting students belonging to multiple subgroups several times. Schools and school districts with significant numbers of students belonging to more than one subgroup would be unfairly affected, particularly those that have diverse student populations. NSBA recommends that special formulas should be used to count students belonging to more than one subgroup when using graduation rates for AYP so that the data would more accurately reflect the true performance of schools and school districts. In addition, NSBA also recommends that states, school districts and schools be allowed to apply a

minimum N-size, as determined by the state, before including subgroup graduation rates in AYP, should this proposed rule be adopted.

E. Section 200.20 – MAKING ADEQUATE YEARLY PROGRESS (p. 22026)

Proposed Regulation (Growth Models)

Proposed § 200.20(h) would establish the criteria that a State must meet in order for the Secretary to permit a State, under the waiver authority of section 940 of the ESEA, to establish and implement policies for incorporating individual student academic progress into the State's definition of AYP. A State that desires to incorporate individual student academic growth into its definition of AYP would be required to:

- (a) Set annual growth targets that –
 - (1) 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;
 - (2) Are based on meeting the State's proficient level of academic achievement on the State's assessments under § 200.2 and are not based on individual student background characteristics; and
 - (3) Measure student achievement separately in mathematics and reading/language arts;
- (b) Ensure that all students who are tested using the State's assessments under § 200.2 are included in the State's assessment and accountability systems;
- (c) Hold all schools and LEAs accountable for the performance of all students and the student subgroups described in § 200.13(b)(7)(ii);
- (d) Be based on State assessments that –
 - (1) Produce comparable results from grade to grade and from year to year in mathematics and reading/language arts;
 - (2) Have been in use by the State for more than one year; and
 - (3) Have received full approval from the Secretary before the State determines AYP based on student academic growth;
- (e) Track student progress through a State-developed data system;
- (f) Include, as separate factors in determining whether schools are making AYP for a particular year –
 - (1) The rate of student participation in assessments; and
 - (2) Other academic indicators as described in § 200.19; and
- (g) Describe how the proposed annual growth targets fit into a State's accountability system in a manner that ensures that the system is coherent and that incorporating individual student academic growth into a State's definition of AYP does not dilute accountability.

With the additions proposed in these regulations a State could permit its LEAs and schools to make AYP by meeting: (1) the State's proficiency targets; (2) growth targets; or (3) the "safe harbor" provision.

NSBA Comment

NSBA supports the proposed regulations that would grant greater flexibility for States in determining whether local school districts have met their AYP targets. By expanding the options to include: 1) the State's proficiency targets; 2) growth targets; or 3) "safe harbor" provisions – the Secretary has acknowledged that the "cut-score approach" which is tied to different cohorts of students reaching proficiency each year is not the best way to determine AYP. While these provisions reflect a step in the right direction, they are not a substitute for the immediate need for Congress to reauthorize the Elementary and Secondary Education Act (ESEA).

F. Section 200.22 – NATIONAL TECHNICAL ADVISORY COUNCIL (p. 22027)**Proposed Regulation (National Technical Advisory Council)**

Proposed § 200.22 would require the establishment of a National Technical Advisory Council (TAC) to advise the Secretary on key technical issues related to State standards, assessments, and accountability systems that are part of State plans. However, the National TAC would not replace the peer review panels the Department uses to evaluate State standards, assessments. The Secretary would solicit nominations from the public for experts in the fields of assessment design and implementation, and the field of accountability to serve on the National TAC, and select 10 to 15 members.

NSBA Comment

More information is needed before NSBA can comment on the National TAC as proposed in the regulations. We want to ensure that work of the council will not become a judgment on what state standards should be because this is not a function of the federal government. Further, NSBA believes that the nominations should include individuals who have knowledge and expertise in school operations. Such representation would ensure that advice from the council would help to effectively address both the technical and operational components of new assessment and accountability designs.

G. Sections 200.32 and 200.50(d) (1) – IDENTIFICATION OF SCHOOLS AND LEAS FOR IMPROVEMENT (p. 22027)**Proposed Regulation (School Improvement Identification-Same Subgroup)**

Proposed § 200.32 and proposed § 200.50(d) (1) would codify existing policy that requires the identification of schools for improvement when the school fails to meet the annual measurable objectives (AMO) in the same subject or meet the same other academic indicator for two consecutive years, even if the subgroup not meeting AYP in one year is different from the subgroup that did not meet the AMO in the previous year. The rationale is that such a change would be inconsistent with the current statute.

NSBA Comment

NSBA opposes this proposed regulation and the Department's interpretation of the statute as prohibiting consideration of performance by the "same subgroup" as a prerequisite for the school being identified for improvement. This interpretation punishes districts and schools that are successful in raising student achievement in a specific subgroup in just one year but have a

different subgroup fail AYP for the first time in the next. This doesn't even give the school a chance to address the problems of the second subgroup before sanctions are imposed. The Secretary is correct to place a priority on the need to measure student and subgroup performance. However, she cannot ignore the operational impact of such a restriction which currently results in the unnecessary mislabeling of schools and constant shifts in the reallocation of limited federal funds that must be targeted to the "newest low-performing group" rather than strategically directing resources based on longer-trend documentation.

NSBA recommends that sanctions for schools and school districts should only apply when AYP is not met by the "same subgroup" for two or more consecutive years in the same subject or the "same indicator," rather than when different subgroups are involved from year to year. We believe that our recommendation would represent a more reasonable approach in the identification of schools. By requiring at least a two-year pattern of low performance of a specific group, limited resources can be strategically targeted and the number of schools identified would more accurately reflect the needs of certain subgroups.

H. Section 200.37 – NOTICE OF IDENTIFICATION FOR IMPROVEMENT, CORRECTIVE ACTION, OR RESTRUCTURING (p. 22028)

1. Proposed Regulation (School Choice Notification Timeline)

Proposed § 200.37(b)(4)(iv) would require school districts to notify parents at least 14 calendar days before the start of the next school year the option to transfer their children to another public school and the available school choices.

NSBA Comment

NSBA opposes the proposed 14-day timeline that would be imposed on school districts, which do not control when test results and/or individual school AYP results are available. While school districts across the country will work to inform parents of school choice as early as possible, delayed notification is inevitable when states are not able to report data to districts in time. School districts should not be penalized when state issues and challenges make it difficult to make test results available in a timely manner.

NSBA is also concerned that this proposed policy would place pressure on states to test students too early in the school year in order to meet their reporting timeline. It also would potentially discourage the use of multiple assessments and negate the effectiveness of summer remediation, which could help some students achieve proficiency on a retest and therefore change a school's AYP status (a common sense concept that the Department should permit). It would be a mistake to require the 14-day notification timeline at this point because states do not have the capacities to process and analyze test data on time. NSBA recommends that the Department maintain the current policy that requires school districts to offer choice option to parents no later than the first day of school with some flexibility on a case-by-case basis. If the 14-day early notice goal is to be implemented, districts and states should be given flexibility to accommodate the educational and operational concerns mentioned above.

2. Proposed Regulation (School Choice and SES: Parental Notification)

Proposed § 200.37(b)(5)(ii)(c) would require school districts to provide annual notice of the availability of SES, explain its benefits, identify and describe the services of approved providers

available within the district. Proposed § 200.37 (b)(5)(iii) would require parental notices on SES clear and concise as well as clearly distinguishable from other information sent to parents.

NSBA Comment

NSBA opposes the language in the proposed regulations that requires SES parent notifications to be “clearly distinguishable” from other information that is sent home. Schools and school districts currently provide many notices which are important to parents. The proposed policy would draw attention to a particular notice at the expense of downplaying other information which can also be very important to parents. In addition, is it the Department’s job to tell schools and districts how to lay out their many notifications? NSBA recommends that proposed § 200.37(b)(5)(iii) be eliminated.

I. Section 200.39 – RESPONSIBILITIES RESULTING FROM IDENTIFICATION FOR SCHOOL IMPROVEMENT (p. 22029)

Proposed Regulation (School Choice and SES: Website Information)

Proposed § 200.39(c) would require school districts to publish the following information on their websites: 1) the number of students eligible for and that participated in school choice; 2) the number of students eligible for and that participated in SES; 3) a list of approved SES providers that serve the district and the locations of their services; 4) a list of available schools for choice.

NSBA Comments

NSBA supports making information on choice and SES transparent through such means as the Internet.

J. Section 200.43 – RESTRUCTURING (p. 22029)

Proposed Regulation (Restructuring)

Proposed § 200.43(a)(4) would require a school’s restructuring plan to be “significantly more rigorous and comprehensive” than interventions under corrective action. Proposed § 200.43(a)(5) would require that the plan address the reasons for the school’s restructuring and cannot be simply replacing the principal alone.

NSBA Comment

NSBA opposes the broad sweeping direction of this proposed regulation on restructuring. We are concerned that this proposal can potentially move schools into strategies to simply demonstrate that they are doing something different from the year before. In some cases, continuing the current efforts may make more educational sense since many reforms take time to show results – especially when the AYP bar rises from year to year. Given the current NCLB improvement timeline, school districts and schools do not have sufficient time to implement and reap the benefits of specific interventions before they are advanced to the next level of sanctions.

As AYP targets rise, many more schools are expected to be in restructuring even if the persistence failure of a school to make AYP is tied to just one subgroup. Restructuring

interventions must be based on what works for the school, not on a specific sequence of strategies. NSBA recommends that school districts and schools be allowed to implement any major restructuring interventions which local educators determine to be effective in meeting the needs of the students and raising achievement.

K. Section 200.47 – SEA RESPONSIBILITIES FOR SUPPLEMENTAL EDUCATIONAL SERVICES (SES) (p. 22031)

Proposed Regulation (SES: State Responsibilities)

Proposed § 200.47(a)(4)(iii) would require states to develop, implement and publicly report on standards and techniques used to monitor the implementation of SES at school districts.

Proposed § 200.47(b)(2)(ii) would clarify that an SES provider must provide the state with evidence that the instructions and contents it uses are aligned with state academic content and are research-based. When monitoring the quality of SES providers, proposed § 200.47(c) would require states to examine whether the provider’s instructional program is aligned with state and district standards; addresses students’ individual needs and contributes to student achievement.

NSBA Comment

NSBA supports the proposed regulations to strengthen the role of the state in monitoring the quality of tutoring services. We agree with the Department that enhancing the criteria for SES providers and making sure tutoring is contributing to improved student achievement are important. However, we remain concerned that the proposed criteria do not require SES tutors to be “highly qualified” teachers comparable to that required of public school teachers. In addition, NSBA recommends that school districts play a more significant role in ensuring the quality of SES providers because if an SES provider’s failure causes the student to fail, the school, not the provider, is held accountable.

NSBA recommends that SES tutors must meet the “highly qualified” definition and that states establish a procedure through which school districts can file complaints on or terminate providers which fail to adhere to contract provisions and/or to raise student achievement. In addition, school districts that are in need of improvement should be allowed to become SES providers. There is nothing in the statute to prohibit this practice.

L. Section 200.48 – FUNDING FOR CHOICE-RELATED TRANSPORTATION AND SUPPLEMENTAL EDUCATIONAL SERVICE (SES) (p. 22032)

1. Proposed Regulation (School Choice & SES: Parental Outreach Costs)

Proposed § 200.48(a)(2)(iii)(c) would allow school districts to count costs for providing outreach to parents to promote choice and SES toward meeting the 20 percent set-aside funds obligation. That amount would be capped at 0.2 percent of the district’s Title I, Part A allocation. Currently, these expenses cannot be part of the set-asides so districts must use other funds to conduct outreach.

NSBA Comment

NSBA supports counting parental outreach expenses toward the 20 percent set-aside funds. School districts have had to take funds from other programs to conduct outreach. The costs of

administering these programs will increase as the number of eligible students for choice and SES is expected to rise.

2. Proposed Regulation (School Choice & SES: Release of Unspent Set-aside Funds)

Proposed § 200.48(d) would require school districts, prior to releasing the unspent portion of the 20 percent set-aside, to demonstrate to the state that it: 1) partnered with community-based organizations or other groups to reach out to eligible students and their parents about choice and SES; 2) provided timely and accurate notice to parents; 3) distributed sign-up forms widely and made them available through such means as the Internet, other media and communications through public agencies working with families; 4) allowed eligible students and their parents to sign up for SES throughout the year; 5) ensured that SES providers are given access to school facilities on the same terms as other groups seeking access to schools.

If school districts cannot demonstrate the above activities, the funds must be carried over for next year's choice and SES.

NSBA Comment

NSBA opposes restricting school districts' ability to use the unneeded portion of choice and SES funds for other programs. The proposed regulation is heading in the wrong direction. It requires school districts to show evidence that certain activities have taken place before they can release the unexpended funds. These requirements would incur significant amounts of administrative/paperwork/collecting and reporting burdens as well as delay the help that is sorely needed for struggling schools. Timely release of these unspent funds will help prepare students for the remaining school year since much of the planning of instruction and interventions, etc, takes place early in the school year.

NSBA recommends that the Department remove the conditions proposed in §200.48(d) for the release of the unspent portion of the choice and SES side-aside funds. In addition, the Department should add a provision that allows states to set a date by which the unexpended funds can be spent for other Title I uses. To ensure these funds are used in an effective manner, the regulations should specify that the date be no later than December 15.

M. Section 200.56 – DEFINITION OF “HIGHLY QUALIFIED TEACHER (HQT)” (p. 22033)

Proposed Regulation (Highly Qualified Teacher)

Proposed § 200.56(d) would add a cross-reference to the definition of highly qualified special education teachers as it appears in the IDEA regulations. Under section 602 (10)(A) of the IDEA and 34 CFR 300.18, a highly qualified special education teacher must have full state special education certification. IDEA also: 1) requires special education teachers who teach core academic subjects exclusively to children who are assessed on alternate achievement standards to meet the NCLB requirements for elementary school teachers and have subject matter knowledge appropriate to the level of instruction; 2) gives NEW special education teachers who teach multiple subjects and who are highly qualified in math, language arts or science, two more years to demonstrate competency on the other core area subjects through the use of a single high objective uniform state standard of evaluation (HOUSSE).

NSBA Comment

NSBA supports the definition of highly qualified special education teachers in IDEA and its inclusion in the NCLB regulations. We believe this flexibility for special education teachers is needed given the current practice and the shortage of these teachers.

NSBA, however, recommends the Department improve the HQT definitions of social studies and rural teachers. Similar to science teachers, social studies teachers should be allowed to meet the HQT definition based on a “broad field” degree or certification that considers social studies a core academic subject as opposed to the current definition that splits it into five subjects (geography, history, civics, government and economics). In addition, teachers in rural school districts often teach multiple subjects for which the current HQT requirements are unnecessarily burdensome. Although the Department has granted some flexibility several years ago, more is needed.

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