

Mr. Zollie Stevenson, Jr.
U.S. Department of Education
400 Maryland Avenue, SW
Room 3W230
Washington, DC 20202

Dear Mr. Stevenson,

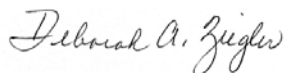
This document is in response to the April 23, 2008 *Federal Register* announcement requesting public comment on regulations for the Title I – Improving the Academic Achievement of the Disadvantaged proposed rule. These comments are on behalf of the Council for Exceptional Children (CEC), the largest professional organization committed to improving educational outcomes for individuals with disabilities and/or gifts and talents.

CEC is committed to the achievement of successful outcomes for children and youth with exceptionalities, through the promotion of professional excellence in special and gifted education and the provision of high quality professional supports and quality conditions for teaching and learning. CEC has strongly supported measures to ensure that all students are included in an accountability system that provides access to an educational experience that is academically challenging and builds upon strengths while addressing individual needs.

While CEC is pleased to provide feedback on the proposed regulations, CEC also wishes to stress the importance of recognizing the additional resources that will be necessary to implement many of the proposed regulations. At this time, many school districts and states are confronting financial hardships due, in part, to lack of support at the federal level for programs ranging from the Individuals with Disabilities Education Act to Medicaid. With this in mind, CEC urges the Department to fully utilize technical assistance mechanisms to assist school districts/states in implementing any final regulations.

Thank you for considering CEC's recommendations. If you need additional information please contact Deborah Ziegler, Associate Executive Director for Policy and Advocacy Services at debz@cec.sped.org or 703-264-9406.

Sincerely,



Deborah A. Ziegler, Ed.D
Associate Executive Director
Policy and Communication Services

Bolded text indicates additional language CEC supports in the inclusion of the final regulations.

§200.2 State responsibilities for assessment

CEC Recommendation: Modify §200.2 by adding additional language as follows:

§200.2(b)(2) Be designed **consistent with the principles of universal design for learning** to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency, by

- (i) minimizing the effect of construct-irrelevant factors—such as physical, sensory, learning, or cognitive disabilities, or language barriers—that may interfere with the accuracy of the assessment; and**
- (ii) providing appropriate supports for students to demonstrate the knowledge, skills, and abilities according to the intended learning standards.**

§200.2 (7) Involve multiple up-to-date measures of student academic achievement including measures that assess higher-order thinking skills and understanding of challenging content, as defined by the State. These measures may include:

(iii) Utilizing curriculum based measures and formative assessments within a subject area to determine student performance and inform instruction

Rationale: While CEC is pleased that the Department took this opportunity to clarify that multiple question formats can be used within assessments for the purposes of calculating adequate yearly progress (AYP), CEC believes that other scientifically-based measures must be included in the proposed regulation to demonstrate a student's performance over time.

Additionally, CEC believes the inclusion of Universal Design for Learning – which is tied to a body of research funded by the Department -- in the development of all assessments for all students is necessary to more accurately demonstrate a student's performance. Universal Design for Learning creates accessibility by providing a framework for designing assessments using multiple means of expression.

§200.7 Disaggregation of Data

CEC Recommendation: Modify §200.7 as follows:

(C) Information regarding the number and percentage of students and student subgroups excluded from school-level **subgroup** accountability determinations, **with that information disaggregated by each subgroup described in Sec. 200.13(b)(7)(ii); and**

(D) Information regarding the number and percentage of subgroups that were counted as having made AYP because of the safe harbor provision or confidence interval, with that information disaggregated by each subgroup described in Sec. 200.13(b)(7).

(iii) No later than six months following the effective date of this regulation, each State must submit a revised Consolidated State Application Accountability Workbook in accordance with paragraph (a)(2)(ii) to the Department for technical assistance and peer review under the process established by the Secretary under section 1111(e)(2) of the Act.

(iv) The information in paragraph (a)(2)(ii)(C) and (D) of this section shall also be included in the State and LEA report cards under Section 1111(h) of the Act, with the LEA report card reporting the information for the LEA as a whole and for each school.

Rationale: CEC believes that addressing the subgroup size goes directly to the heart of inclusion of all students in the accountability system. CEC is pleased that the Department, in its proposed regulations, has expressed a desire to keep the subgroup size to a minimum while balancing statistical reliability and protecting privacy.

Therefore, CEC recommends retaining all language that stresses this balance. To further support this goal of inclusion of all students in the accountability system, CEC requests that the Department include language to increase transparency of students who are excluded in the accountability system by disaggregating this data by subgroup and by including it in LEA and state report cards, which are more likely to be viewed by public than the Consolidated State Application Accountability Workbook.

§200.11 Participation in NAEP

CEC Recommendation: Modify §200.11 as follows:

(c) Report cards. Each State and LEA must report on its annual State or LEA report card, respectively, the most recent available academic achievement results in each grade assessed, in the aggregate and disaggregated **by each subgroup described in Sec. 200.13(b)(7)(ii)**, on the State's NAEP reading and mathematics assessments under paragraph (a) of this section **and report, to the best extent possible, the participation rate of students with disabilities.**

Rationale: CEC supports increased transparency to provide educators, parents, and the community with a better understanding of student and school performance. To that end, CEC supports making NAEP scores available on the same public report card that provides other information regarding state and local assessments. CEC supports providing the public with

disaggregated results by subgroup and the participation rate for students with disabilities, as this is necessary information to provide parents, educators and the community to make informed comparisons of the progress of their child/student.

§200.19 Other Academic Indicators – Graduation Rate Calculation

CEC Recommendation: Replace §200.19(a)(1) with a graduation rate calculation and reporting requirements that would:

- Adopt and utilize a consistent calculation of graduation rate that relies primarily upon a 4-year rate and also allows students who graduate in less than 4 years, 4 years, 5 years or beyond to be counted, recognizing that the Individuals with Disabilities Education Act allows students with disabilities to be educated until their 21st birthday.
- Address areas of overlap between IDEA and NCLB related to post-school outcomes for students with disabilities and support the development of data systems that utilize existing reporting requirements under IDEA to support graduation rate calculation within NCLB.
- Give schools credit toward the graduation rate for any student earning a regular high school diploma, including students who drop out and then re-enroll in a non-traditional school authorized to grant credit toward or issue a standard high school diploma; students who graduate in less than a standard number of years and earn a regular high school diploma.
- Report total aggregate graduation rate, as well as disaggregated data for students that have participated, aged out, transferred, graduated early, or are deceased, as well as those who have dropped out.
- Require a disaggregated graduation rate for all student groups (as currently required for performance and participation).
- Set high goals and growth targets both in the aggregate and disaggregated for all states.
- Incorporate disaggregated graduation data into AYP determinations for all student groups.
- Align NCLB and IDEA data systems and reporting requirements, specifically relating to post school/transition outcomes.

CEC Recommendation: Modify §200.19(a)(1)(i)(C)(2) to reflect that while some students may need additional time to graduate high school with a regular diploma beyond the traditional four years, this decision must be made based on individual student's need and not based on a "category" a student fits into. In addition, there should be recognition that some students complete high school with a regular diploma in less than four years.

Rationale: CEC supports a graduation rate that puts the needs of individual students at the forefront. The Department’s proposal in §200.19(a)(1)(i)(C)(2) which states, “A State may propose, for approval by the Secretary, an alternative definition of “standard number of years” that would apply to limited categories of students, who under certain conditions, may take longer to graduate” is of concern to CEC as it seems to represent cohort reassignment. The proposed regulation does not indicate what information such a decision would be based upon, nor the process that would be used, including, when, how, by whom, and how often such decisions would be made. In addition, the proposed regulation does not indicate oversight mechanisms for such decision making body.

Therefore, CEC is concerned that this regulation would permit States to prospectively assign a group of students on a path towards graduation, instead of making decisions based on the individual student. Because of the Individuals with Disabilities Education Act (IDEA), children with disabilities have had access to an educational system that builds upon their strengths and addresses their individual needs. CEC is concerned that this proposed regulation ignores the individual needs of students by seeking to apply a varying “standard number of years to limited categories of students”.

In addition, the graduation rate calculation must take into account that some students graduate high school in less than the standard number of years. The calculation must accurately reflect the achievement of these students and schools and ensure that these students are not coded as dropouts or having withdrawn from school.

From the calculation perspective, use of cohort reassignment would allow significant variations across states. It also renders the graduation rate data less accurate, transparent and comparable. Given that each state can propose to the Secretary which populations of students will be reassigned to a different year, rates will be difficult to compare between states. Within states, it will be difficult to tell which students have been moved to what years, thus making the rate less meaningful in determining whether or not a school is graduating students on time. This contradicts a longstanding goal of NCLB in ensuring that we have reliable data on student academic outcomes.

CEC Recommendation: The regulations must require states to seek approval of their exit coding policy to ensure the use of exit codes does not undermine the accuracy, comparability and transparency of rates.

Rationale: The proposed regulations do not directly address how states should reconcile existing exit code policies in the calculation of the required graduation rates. As students progress through and out of a school system, districts and states attach an exit code to each student’s records. That code determines—among other things—how he or she is counted in the graduation rate calculation, including defining a cohort of students. While some states have only a few exit codes, such as “dropout”, “transfer”, and “graduate”, the National Forum on

Education Statistics has found that some states have upwards of fifty different ways of categorizing students. In some cases, students who exit the system in ways that should make them dropouts for the intended purpose of the proposed graduation rate regulations (e.g., they have enrolled or plan to enroll in a GED program, have been incarcerated, or have left without reporting a reason) are instead placed in separate categories such as “administrative withdrawal” or “no data available”. For some, this means that students may be miscounted in the graduation rate or sometimes not counted as either dropouts or graduates—for the purposes of the graduation rate calculation, they simply cease to exist. While the use of exit codes is entirely state- and/or LEA-driven, the practice further masks the accuracy of graduation rates and contributes to a lack of comparability between rates.

Further, all efforts should be made to ensure consistency of terms used in other Federally supported research studies, such as the National Longitudinal Transition Study 1 and 2.

§200.20 Making Adequate Yearly Progress

CEC Recommendation: Retain proposed regulation which seeks to incorporate student academic growth in the state’s definition of AYP.

Rationale: CEC supports moving toward an accountability system that measures individual student growth over time, while simultaneously ensuring that all students – including those with disabilities – are held to high academic standards. Allowing schools, LEAs and States to track an individual students’ progress over time holds great promise for better understanding and addressing the academic needs of all students. While the Department has granted nine states the authority to implement growth models for purposes of calculating AYP, CEC believes that it is necessary for the Department to analyze and disseminate key findings from these pilot projects, so that best practices can be disseminated and inclusion of all students can be documented.

CEC believes that the Department should include the following criteria as it considers growth model proposals:

- Increasing scientifically based research in the development of growth models and its inclusion of students with disabilities and/or gifts and talents.
- Including an expert in assessments for students with disabilities and/or gifts and talents on the peer review committee.
- Ensure that states have solicited broad stakeholder input in the development of growth models.
- Require that students who take an alternate assessment – either based on alternate or modified academic achievement standards – be included in the growth model, not just in the overall accountability system.

§200.22 National Technical Advisory Council

CEC Recommendation: Modify §200.22(b)(2) as follows:

- (2) The National TAC shall be composed of 10 to 15 members **with several members having expertise on assessment and accountability issues related to students with exceptionalities, including those with disabilities and/or gifts and talents.**

Rationale: CEC supports the creation of an advisory council tasked with addressing technical issues related to the design and implementation of standards, assessments, and accountability systems. To ensure that this advisory council is able to address and make recommendations based on the unique learning needs of diverse learners – students with disabilities and/or gifts and talents – CEC urges the Department to include an advisory council member who has expertise in addressing the special education needs of students with disabilities and/or gifts and talents.

§200.39 Responsibilities resulting from identification for school improvement

CEC Recommendation: Modify §200.39(c) as follows:

- (1) 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, **disaggregated by subgroup.**
- (2) 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, **disaggregated by subgroup.**

Rationale: CEC believes that parents and the community should have access to a full range of information on school choice and supplemental educational services, including information on those participating in the programs. However, CEC is concerned that resources applied to school choice and supplemental educational services are diverted from other uses that a school/district may want to implement but cannot due to lack of resources.

§200.47 SEA responsibilities for supplemental educational services

CEC Recommendation: Modify §200.47(b)(3) by adding a new (iv):

- (iv) **Information from the provider, parent recommendations or feedback, evaluation results, regarding training the provider has had to address diverse learning needs, including training in working with students with disabilities and/or gifts and talents.**

Rationale: CEC believes that supplemental educational service providers must be able to address the unique learning needs of all students – including those with disabilities and/or gifts and talents. An August, 2006 report by the Government Accountability Office (GAO) found that many challenges exist in attracting providers to serve certain geographic areas (i.e. rural) and certain populations (i.e. students with disabilities). Consistent with this GAO report, states should ensure that the list of approved providers includes organizations/individuals that are able to serve students with disabilities and/or gifts and talents; and English language learners.