AASA's Score Card on the Final Title I Regulations
November 26, 2002

The following is a listing of the issues we raised in our comments on the Title I draft regulations and the result released today in the final regulations.

1. Section 200.13 (c) (1) permits the state to define new achievement standards for IDEA students taking alternative assessments. AASA is concerned that this will result in a lowering of achievement goals and go against the mission to leave no child behind. In addition, there is a fear this will develop into dual systems within each state making data disaggregation more difficult to understand and use.

   The Department hardly mentions this draft provision, citing only that they will hold "schools and LEAs accountable for the improved achievement of ***all*** *students." This issue is more directly addressed under our item number three.*

2. Section 200.13 through 200.20 addresses Adequate Yearly Progress (AYP). This section discusses multiple indicators for calculating AYP. At the secondary level, the calculation must include graduation rate. The regulations call for a **similar** (emphasis added) academic indicator at the elementary and middle school level. AASA brings attention to the use of the word similar to define the academic indicator used at the lower grades. We feel this oversteps the language of the law which simply states "at least 1 other academic indicator … for all public school students" and does not narrow down to any specific indicator.

   For this draft provision, the Department clarified that "States are required to use the other indicators to determine whether or not a school or LEA has made AYP." In addition, they return the additional indicator for elementary and middle schools to the broad level in the actual legislation. This result is very consistent with AASA's position.

   AASA verdict: Win!

3. Section 200.13 also calls for a limit of .5 percent of seriously disabled children who would be permitted to take the alternative assessments as called for by their IEP. AASA believes this is a contradiction of IDEA statute and goes beyond what was called for in "NCLB." This would work to penalize school districts that have strong IDEA programs that attract a large number of low incidence students. In addition, there are generally higher numbers of low incidence cases in districts surrounding prominent research hospitals. This would put those districts at a disadvantage. Mostly it would cancel out the student's IEP that was developed by a comprehensive team with the student's best interests in mind. AASA urges the Department not to abuse this process by imposing an arbitrary limit on the number of students who are eligible

to take the alternative assessments. In turn, it could have an adverse affect on those students it was meant to help.

The Department cited numerous comments on this particular draft provision and assumed that comments had misinterpreted their intentions. According to them, comments "misunderstood this proposal as limiting the number of students with disabilities that could take an alternative assessment, rather than providing flexibility by allowing the use of alternative achievement standards to determine proficiency for calculating AYP for a limited group of students with disabilities."
According to AASA, we saw this issue as two different points. If districts are limited to the number of alternative assessments that can count towards their 95 percent requirement for AYP, that could be just a difficult. School districts are still required to provide FAPE regardless. However later on in the regulations, the Department declares that for the time being all alternative assessments will be held to the same grade level academic content and achievement standards that apply to all public school students.

Either way, the Department recognized this needed additional study and will be issuing another call for comments on this issue in near future.

AASA verdict: Win! (at least for now)

4. In addition to the comments above on Section 200.13 through 200.20, the Department calls for increased flexibility to help the state set their AYP model in a way that may coordinate with their current achievement level settings within the state. While AASA supports this provision, we strongly urge the Department to monitor this increased flexibility to ensure that this state flexibility does not go beyond its original intention.

   Once again, the Department was consistent with AASA's position on this provision, by allowing states to maintain their current AYP structures as long as they fit the parameters of NCLB. In terms of AASA's calls for increased monitoring, states are required to submit their current procedures to peer review if they plan on maintain their current systems.

   AASA verdict: Win!

5. Section 200.32 calls for school identification to occur "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." AASA remains unsure if states will be able to get their assessment scores in a timely manner to make these identifications on time. Currently, very few states are able to get their scores before the start of the school year. In fact, just yesterday, New York State finally released its list of failing schools. Even if they were to release it a few days earlier, to before the first day of school, it still would not give districts enough time to set up the complex systems called for in Title I school improvement, such as public school choice.

The final regulations maintain the call for school identification to take affect in the school year following the year in which the assessments were administered. This maintains the concern that most districts will not find out their status until near the beginning of their school year.

AASA verdict: Lose

6. Section 200.37 (b) (4) would add a requirement that parents would be notified of the "performance" of the schools to which a student may transfer. AASA feels that adding this requirement, which is not detailed in the law, will make the process more administratively burdensome for local school district. In addition, there is no detail as to what is included in "performance." Does it just include test scores? Or retention rates? Or curriculum? The list can go on and on.

   The Department upheld the LEA requirement to notify the parents, "at a minimum, information on the academic achievement of the school or schools to which the child may transfer."

   AASA verdict: Lose

7. Section 200.39 restates that an LEA identified for school improvement must offer **all students** (emphasis added) the option to transfer to another public school. While AASA concurs that is true, it leaves out the idea that the LEA should give "priority to the lowest achieving children from low-income families … for the purpose of allocating funds to schools." With limited funds and room, it is those students who should be given the first opportunity. Therefore, we should not mislead parents to believe that all students will be afforded the opportunity to transfer if eligible.

   *For this provision, the Department clearly states that "an LEA may not use lack of capacity to deny an eligible student the opportunity to transfer." In addition, they fail to talk of the prioritizing of students in the final regulations and simply talk about offering **all** students in the eligible school choice. Priority only comes in when discussion offering transportation or making assignments to the parent's preferred transfer school.*

   AASA Verdict: Lose

8. Also within the realm of public school choice, Section 200.44 (a) (4) would require LEAs to offer eligible students **more than one school** (emphasis added) choice to transfer to within the LEA. AASA firmly believes that this oversteps the language of the statue which reads the LEA shall "provide all students enrolled in the school with the option to transfer to **another** (emphasis added) public school" within the LEA.

   Within this provision, the Department returns to the original language of the law and requires that districts offer an option of choice to "another" public school served by

the LEA. "Eligible" schools may not be identified as in need of improvement or persistently dangerous. The language goes on to say that if there is more than one "eligible" school within the district the LEA must offer the parents a choice of "more than one" school for transferring. "However, the regulations do not prohibit an LEA from limiting choice options on the basis of such factors as transportation arrangements, so long as it provides more than one option to students enrolled in schools identified form improvement, corrective action or restructuring."

AASA Verdict: Lose

9. Section 200.44 (c) states that "LEA implementation of a desegregation plan does not exempt the LEA from the public school choice requirement." AASA is concerned that this contradicts the court desegregation orders and that federal education law can not overrule them. In order for a district to overturn their court order, they must first negotiate with the plaintiffs and then bring it back to the judge. All of this can be a very costly and time consuming process that will needlessly take precious dollars away from the students who need it the most. In addition Section 1116 (d) states that "Nothing in this section shall be construed to alter or otherwise affect the rights, remedies or procedures afforded school or school district employees under Federal, State or local laws (including applicable regulations or court orders)." It is clear from that section that this proposed regulation oversteps the intent of the law.

   According to the final regulations, LEAs operating under a desegregation plan must operate public school choice programs within the requirements of their desegregation plan. If their plan prohibits "the LEA from offering the transfer option … the LEA must secure appropriate changes to the plan to permit compliance" with this section. School districts with desegregation plans will not be exempted from offering public school choice provisions. However, "it is not the Secretary's intent to deny Title I funding to an LEA that in good faith takes appropriate action to seek amendments to the desegregation plan in order to comply with the public school choice requirements."

   AASA verdict: Lose

10. Section 200.50 states that an SEA **may** (emphasis added) remove from improvement or corrective action status an LEA that has achieved AYP for two consecutive years. AASA is concerned with the addition of the word may, which seems to give the SEA flexibility, when the statue clearly states that if an LEA makes AYP for "2 consecutive school years … the State education agency need no longer subject the local education agency to corrective action for the succeeding school year."

    The final regulations clarify that a school will no longer be subject to offering public school choice and supplemental services once it has achieved AYP for two or more "consecutive" years.

    AASA verdict: Win!

11. Section 200.54 (c) requires that LEAs ensure that any collective bargaining agreements negotiated after January 8, 2002, does not prohibit actions an LEA must take with respect to school or school district employees with regard to corrective action in failing schools. AASA agrees with this provision but does not think it is enforceable for two reasons. First of all, state contract law would have to be aligned with the words and intent of Section 200.54 and generally it is not. Secondly it would be a violation of the collective bargaining agreements exemption under the construction language of Section 1116 (d) as it is currently written.

    While the Department reasserts that collective bargaining agreements can prevent LEAs from implementing effective school improvement measures, they found that this proposed resolution was inconsistent with a strict reading of the law and state and local statutes. Therefore they removed this provision.

    AASA verdict: Win!

12. Section D-2 of the draft guidance on Supplemental Services or Section 200.47 (b) of the Title regulations calls for SEAs and LEAs to provide supplemental services for students who have an IEP or are covered under Section 504. In addition, the guidance prohibits discrimination towards these students. Yet, within the same description it claims that "private" providers do not have to accept these students if more than minor accommodations are needed. AASA finds this concerning because it allows providers to discriminate on basis of a disability. In addition, the use of the phrase "minor accommodations" could make it easier for private providers to claim they can not meet any IDEA student's accommodations, because no scope of definition is included.

    *The draft version of the regulations called for "A private provider may not, on the basis of disability, exclude a qualified student with disabilities or a student covered under Section 504 if the student can, **with minor adjustments**, be provided supplemental educational services designed to meet the individual educational needs of the student unless otherwise provided in law." The final regulation eliminates the term "with minor adjustments" from the provision. While not the best case scenario for providing students with disabilities with services, it will hopefully work to provide a certain element of equal access with private providers who may not have made adjustments based on the Americans Disabilities Act, such as the installation of entrance ramps.*

    AASA verdict: Win!

13. Under Section 200.47 (b)(4)(ii), the regulations clearly state that providers do not have to the new "highly qualified" standards required of public school teachers and not have to use "scientifically based research" strategies. Both of these allowances seem to work against the central themes within the "No Child Left Behind Act." First of all, it has been proven that the greatest achievement gains happen when a student is

connecting to a "highly qualified" teacher. By allowing the provider to not meet this standard, the Department is saying that it is okay for your most struggling students to be taught by less qualified individuals. This seems to contradict the effort that has been made to get the most qualified educators around the students who need the most help.

Also, by not requiring providers to use scientifically based research, which is now being required in all school districts, it is hard to judge the quality of their performance and determine their proven record of effectiveness. The providers are supposed to align their work with the work of the LEA and the state; however, this becomes difficult when the provider is not required to work within the same boundaries that schools and states will now operate. The Department has declared the only way to get results is by using methods that have already been proven to work. By not holding providers to this standard and giving them two years to show effectiveness, opens the possibility that many students will be left behind.

The final regulation eliminated the provision prohibiting states from requiring supplemental service providers to use scientifically based research as a condition of approval. However the final regulation allows supplemental service providers to employ instructors who do not meet the "highly qualified" provisions of the law and prevents states from requiring this for state list approval.

AASA verdict: Win/ Lose

14. AASA remains concerned about the supplemental services opportunities within rural areas. While we believe that the use of technology will be critical to the delivery of these services to isolated locations, their isolated locations, in it of itself, often limit the internet accessibility for those districts. In general, the technological infrastructure of many rural schools is far below what is normal for suburban districts or even inner cities. AASA recommends that the Department keep this limitation in mind and work with rural districts to upgrade their technological infrastructure.

    No additional comments made by the Department on this matter within the final regulations.

15. We are concerned by the omission of Education Service Agencies (ESAs) in Section 200.46 among the list of eligible providers. Section 9101 (26) (A-D) of "NCLB" gives the definition of LEA to be used throughout the law. In particular, it lists that Education Services Agencies can be considered LEAs under the law. The inclusion of ESAs in the definition is critical because they become an important provider of these services, especially in rural areas where providers will be difficult to locate. Most specifically, in the current PA tutoring program, Intermediate Units (ESAs as they are called in PA) are among the largest category of providers within the state. AASA strongly urges the Department to encourage the SEAs to specifically include ESAs in the definition of eligible providers.

In the final regulations, the list of eligible supplemental service providers now includes Educational Service Agencies (ESAs).

AASA verdict: Win!

16. Within Section J-12 of the Supplemental Services Guidance or Section 200.48 of the Title I Regulations, the Department asks if an "LEA does not incur any choice related transportation costs, must it use the full 20-percent amount to pay for supplemental services?" This question is answered as yes; the LEA must spend the full 20 percent if the demand exists. However, we see this as a direct contradiction to the reading of the law. Section 1116 (b) (10) (B) clearly states that the "total amount described in subparagraph (A) (ii) is the maximum amount the local education agency shall be required to spend under this part on supplemental services." The amount Congress is referring to is an amount equal to 5 percent of its Title I allocation. By interpreting the law as suggested in the guidance, the Department is abusing the Congressional intent and infringing on the local flexibility and control that was written into the funding caps within Title I. AASA strongly urges you to reconsider J-12 within the Draft Guidance on supplemental services.

    The final regulations work to clarify the LEA expenditure responsibilities under supplemental services, reiterating that districts can use an amount equal up to 20 percent of their Title I allocation. Yet, the regulations also clarify that a district is only required to spend 5 percent on choice related transportation and 5 percent on supplemental services. The remaining ten percent can be used for any combination of those two options, though only if there is a demand.

    AASA verdict: Win!

Any comments or questions please contact:

Mary Conk Kusler
Legislative Specialist
American Association of School Administrators
1801 N. Moore Street
Arlington, VA 22209

703-875-0733
mkusler@aasa.org