



June 23, 2008

Zollie Stevenson, Jr.
U.S. Department of Education
400 Maryland Avenue, S.W.
Room 3W230
Washington, DC 20202-6132

**Re: Notice of Proposed Rulemaking for programs administered
under Part A of Title I of the Elementary Secondary Education
Act: 34 CFR Part 200 / Docket ID ED-2008-OESE-0003**

Dear Mr. Stevenson:

The National Women's Law Center submits the following comments on the Department's proposed amendments to the regulations implementing the No Child Left Behind Act, 73 Fed.Reg. 22020 (April 23, 2008) (hereinafter "proposed regulations"). For over 35 years, the National Women's Law Center has worked to expand the possibilities for women and girls in the areas of education and employment, family economic security, and health. The Center is a leader in the struggle to ensure that women and girls have equal educational opportunities and has worked since Congress enacted Title IX of the Education Amendments of 1972 to advance and protect the rights of female students in educational institutions. To that end, the Center believes that all children should have equal access to high quality education programs and that federal education policy must ensure that all students can benefit equally from rigorous academic standards. Neither concentrated poverty, nor race, disability, English language status, or gender should stand as barriers to student achievement.

First, the Center must point out a serious error in the proposed regulations. NCLB's plain language (Section 1111(h) of the Act re: annual state report cards) provides that gender is a required category for the disaggregation of graduation rate data for reporting purposes (albeit not for purposes of determining Adequate Yearly Progress ("AYP")). However, Section 200.19(d)(1) of the proposed regulations calls for disaggregation of graduation rate data by "each subgroup in Sec. 200.13(b)(7)(ii)," which is the AYP section of the regulations. In parentheses, the proposed regulation enumerates those categories meant to be included in the disaggregation requirement: "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." The proposed regulation states that these shall be the disaggregation categories *both* for purposes of reporting under

section 1111(h) *and* for determining AYP. But this is inconsistent with the statute, which also requires disaggregation by gender and migrant status for reporting purposes.

The omission of disaggregation requirements for gender will create harmful consequences. Girls, as well as boys, are dropping out of school at alarmingly high rates, and the rates are even worse for girls of color. And girls who drop out face even more severe economic consequences than male dropouts, as they are more likely to be unemployed, to earn lower wages, and to need to rely on public support programs than are their male counterparts. As a result, and to give the fullest picture of the educational progress of both boys and girls, it is important to track the graduation rates of male and female students separately; the public should have access to data that enables a comparison of the relative graduation rates of the full range of subgroups of students at particular schools. Thus, as required under the plain language of the statute, the Center urges the Department to mandate that schools continue to report graduation rate data disaggregated by gender and migrant status, as well as by the other required categories.

Second, nowhere do the proposed regulations address the cross-tabulation of data. NCLB regulations should require that all disaggregated data be maintained and reported in a format that may be fully cross-tabulated – that is, that will enable users of the data to identify and evaluate the interplay of race, ethnicity, gender and other characteristics. Cross-tabulation offers valuable insight into whether educational systems are adequately serving subgroups of students and how their situations may be improved and will make more efficacious the disaggregation requirement contained in both the statute and the regulations. For example, cross-tabulation of graduation data will enable users to track the graduation rate of Hispanic girls and to compare that rate to the graduation rates both of Hispanic boys and of non-Hispanic girls.

Third, one subgroup that should be specifically addressed under NCLB is pregnant and parenting students. Research has shown that nearly one-half of female students report that becoming a parent was a factor in their decision to drop out of high school, while one-third of female students and one-fifth of male students said it was a *major* factor. And those who left school to care for a family member or because they became a parent were, among dropouts, “most likely to say they would have worked harder if their schools had demanded more of them and provided the necessary support.” As a result, monitoring the educational status of pregnant and parenting students is likely to facilitate a school’s efforts to reduce its dropout rate. Therefore, the Center recommends that the Department require schools to track and report the graduation rates of pregnant and parenting students (for reporting purposes, not for purposes of determining AYP), to the extent that schools can identify students who are pregnant or parenting. To ensure privacy and facilitate the sharing of relevant information, the Center further recommends that information for all pregnant and parenting students be shared by individual schools with their school districts but that the requirement to publicly report the data attach only once a minimum subgroup size is reached, whether at the school level or the district level.

Additionally, NCLB regulations should make clear that supplemental education services (“SES”) providers must serve the full range of students, including English language learners and students with disabilities, and cannot discriminate in violation of our nation’s civil rights laws. In the past, the Department has asserted that SES providers are not recipients of federal funds and therefore are not directly subject to critical federal civil rights laws, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The Center disagrees with this assertion as a matter of interpretation of these civil rights laws. But this position in any event contravenes Congress’ intent in NCLB, as demonstrated by its inclusion in the law of section 9534(a), which provides that:

Nothing in this Act shall be construed to permit discrimination on the basis of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, or disability in any program funded under this Act.

This language shows that Congress intended non-discrimination requirements to apply to *any* entity that receives funds through NCLB, which SES providers clearly do, whether or not they would qualify as “recipients” of federal financial assistance for purposes of Title VI and other civil rights statutes. The Department should reverse its assertion about SES providers to ensure – consistent with NCLB’s civil rights provision – that federal funds are not used in a discriminatory manner. Because the proposed regulations (in section 200.47) address State educational agency responsibilities for approving SES providers, for monitoring the quality and effectiveness of the services offered by approved providers, and for monitoring local educational agency implementation of the statute’s SES requirements, this is an opportune time for the Department to clarify for all parties involved, and for the public, that federal funds cannot be used in a discriminatory manner and that SES providers cannot engage in illegal discrimination.

Finally, the Center applauds the Department’s proposed adoption of a uniform definition of graduation rates. Tracking graduation rates consistently is key to enabling researchers to effectively compare and analyze dropout rates. Additionally, the Center suggests that the Department provide incentives for and request funds to enable the development of longitudinal data systems that can track individual students over time, whether they drop out of high school and re-enter at a later date, enroll in GED programs, enter alternative schools or are placed in juvenile detention centers. These systems would benefit all students, but especially students such as pregnant and parenting teens, who may drift in and out of school, move, or otherwise fall through the cracks.

* * * *

In sum, it is critical that the Department correct the significant omission from proposed regulation 200.19(d)(1) of gender and migrant status as required categories for the disaggregation of graduation rate data for reporting purposes. To fully effectuate the statute’s requirement that data be disaggregated for reporting purposes and the policy

goals underlying that requirement, the Center recommends that the Department require data disaggregated for reporting purposes be maintained in a format that can be cross-tabulated. Also, to strengthen the usefulness of the disaggregation requirement, it recommends that the Department add an additional subgroup for reporting purposes, that of pregnant and parenting students, who are often overlooked but are dropping out of high school in large numbers. And the Center urges the Department to take this opportunity to ensure that federal funds are not used in a discriminatory manner by clarifying that SES providers cannot discriminate against students in violation of federal civil rights laws.

We would be happy to discuss our comments further or answer any questions you may have. For additional information, please contact Jocelyn Samuels, Vice President for Education and Employment, Neena Chaudhry, Senior Counsel for Education and Employment, or Lara Kaufmann, Senior Counsel for Education and Employment, at 202-588-5180.

Sincerely,



Jocelyn Samuels
Vice President for
Education and Employment



Marcia D. Greenberger
Co-President