June 23, 2008

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

RE: Docket ID ED-2008-OESE-0003

Dear Dr. Stevenson:

The Association for Supervision and Curriculum Development (ASCD), representing more than 178,000 educators, extends its appreciation to the United States Department of Education for the opportunity to comment on the proposed regulatory changes to programs under Title I, Part A of the Elementary and Secondary Education Act of 1965. We applaud the Department’s efforts to strengthen Title I and to provide guidance to state and local educational agencies as they continue to implement the law. While we are confident that some of the proposed changes will prove beneficial to kids and schools, we are troubled by others that we feel will place additional burdens on local educational agencies (LEAs) and state educational agencies (SEAs) without facilitating the improvements being sought by the Department as well as other interested parties. Our comments on the specific proposed regulations are below. If there are any additional questions or comments, please contact Tina Dove, legislative advocate for ASCD, at 1-703-575-5641 or tdove@ascd.org.
Section 200.2—State responsibilities for assessment

ASCD has publicly supported the use of multiple measures of assessment in determining adequate yearly progress (AYP) under No Child Left Behind (NCLB). Specifically, we have called upon Congress to incorporate assessments such as growth models, formative assessments, grade point averages, student exhibitions, Advanced Placement (AP) and International Baccalaureate (IB) courses, and portfolio assessments. We are encouraged by the language contained in the proposed regulation clarifying the ability of states to use multiple types of questions utilizing varying degrees of complexity and cognitive processes and concepts. Pedagogy dictates, and we agree, that properly assessing student knowledge in any subject area requires more than a single question format contained in a single assessment administered at one time in the school year. This regulation affirms a SEA’s ability to allow for multiple assessments within a subject area as well as multiple types of questions within a single test, which our members at the LEA level have been seeking since the passage of NCLB.

Our concern stems from the realities of education funding. Over the last seven years, states have struggled to manage the costs associated with meeting NCLB requirements, including those associated with creating state assessments that satisfy the law. Many states have been forced—by time, reporting, or cost constraints—to utilize multiple choice exams. We believe that if the Department truly wants to encourage states to utilize multiple assessment methods, it can do so by ensuring that the funding required to create more rich, complex assessments is available. We recognize that Congress is responsible for appropriating federal funding; however, the Department has the power to submit budget requests. It is our hope that in future budget requests,
the Department will place a greater emphasis on securing the funding needed to improve state assessment tools.

In addition to advocating for sufficient funding for better tests, the Department could aid SEAs and LEAs in the development of these tests by making the reporting requirements under NCLB less burdensome. States, such as Nebraska, attempted to utilize more pedagogically sound, locally-developed assessment systems under its School-based Teacher-led Assessment and Reporting System, or STARS. Unfortunately, pressure to conform to less complex, more standardized testing methods in order to come into compliance with NCLB was brought to bear, prompting the state’s legislature to virtually dismantle the STARS system. If we are to educate our children for the 21st century, we must resist the pressure to revert to 20th century assessment methods. The Department of Education has a critical role to play in this process. Acknowledging the need for multiple assessments within subject areas as well as multiple methods of assessment within content areas is a step in the right direction. It is our hope that the Department will do more.

Section 200.11—State responsibilities for assessment

Under current law, states receiving Title I, Part A funding must participate in biennial National Assessment of Educational Progress (NAEP) testing. The purpose of NAEP is to act as a common yardstick to determine students’ knowledge in a variety of subject areas. While the NAEP tests skills and concepts being taught in classrooms across the country every day, it is not aligned to any one state’s curriculum standards. Given this, the proposed regulation requiring
SEAs to add NAEP test scores to the same public report card listing state assessment results and requiring LEAs to add state NAEP assessment scores to their report cards has the potential of leaving parents and the general public confused. State and local assessments are already difficult for many to master. NCLB attempts to tackle this problem with specific reporting requirements aimed at informing educators, parents, and the general public of what annual testing means for their students, schools, and state. The addition of a new test will only increase the degree of confusion by adding yet another level of complexity. In the document presenting these proposed regulations, the Department claims to “…recognize that simple comparisons of student performance on the NAEP and state assessments cannot be made without some understanding of the key differences between the two assessments.” This is attributed to the fact that the NAEP is not aligned to state content and academic standards. While we wholeheartedly believe that providing parents, educators, and community members with information about the progress of our public schools is important, and we similarly value accountability and educationally driven assessments, we do not believe that reporting NAEP scores on state and local reports will lead to these goals, but will instead further confuse an area in desperate need of clarity. The fallout from such confusion could have dire consequences for schools, local governments, and state education agencies, which in the end would harm our students, teachers, and parents.

Section 200.19—Other academic indicators

ASCD has been an outspoken advocate for high school reform. We believe that the current high school dropout statistics constitute an epidemic that threatens our national and economic security. As such, we have worked with Congress on legislation to move our secondary schools
from the 20th century agrarian system under which they presently function, to the innovative learning institutions today’s students require to succeed in school, work, and life in the 21st century.

While we are glad to see a move toward uniform graduation calculation, we are concerned about the implications that defining a “standard number of years” to complete high school could have on kids, particularly those with special learning needs, such as special education students and those with limited English proficiency. Under the proposed regulations [§200.19 (a) (1) (i) (c) (2)], this graduation rate would be calculated based on a standard four-year high school completion goal, with a provision allowing states to apply for exceptions for limited categories of students who take longer to graduate. The lack of flexibility to accommodate the individual learning needs of students is a contributing factor to the current high school completion crisis. By codifying this inflexibility, we believe the effort to facilitate more successful high school completions will be thwarted by yet another “one-size-fits-all” approach. Instead, we believe that a system allowing for a completion range of three to five years would better serve all students—from those who excel academically and finish high school in less than four years, to those who need a little more time.

We are encouraged by the Department’s efforts to come to a consensus on how to calculate graduation rates [§200.19 (a) (1)]. The leadership shown by the nations’ governors on this issue is noteworthy. By devising a uniform means of determining how many kids successfully complete high school, we can get a better grasp on the interventions needed to ensure that all students graduate. The transition period laid out in the proposed regulations will provide states
with the flexibility they will need to convert their current systems for calculating graduation rates.

**Section 200.20—Making adequate yearly progress**

In our recommendations to Congress on the reauthorization of NCLB, ASCD called for an adjustment to the current AYP model to incorporate multiple measures of assessment, including growth models among other indicators. Under these proposed regulations, SEAs would be permitted to use a growth model, but only if they have (1) set annual growth targets (which are based on the current performance trajectory of 100 percent proficiency by 2014); (2) ensured that all children are included in SEA assessment and accountability systems; (3) held all schools and LEAs accountable for all students’ performance; (4) established an assessment system that meets certain prescript requirements laid out by the Department; (5) tracked student progress through a state-developed data system; (6) included student rate of participation in state assessments and other academic indicators (i.e., graduation rates) in AYP determinations; and (7) described how the state’s growth targets fit into their accountability system in a way that makes sense, incorporates individual student growth, and does not dilute accountability. We would ask that the Department take a few issues into consideration pertaining to this regulation.

First, we believe that including limited English proficient (LEP) students into the testing system after they have been receiving services for only one year is unfair to both the kids and their schools. In our NCLB recommendations, we called on Congress to give English language learners (ELLs) at least three years. While we all agree that all children should be held to the
same high standards, we believe that fairness and proper pedagogy insist that ELLs be given more time to acquire the language skills they need to be successful before they are held to the same academic content standards as their non-LEP peers. We also requested that special needs learners be assessed based on their Individualized Education Plan (IEP) rather than their state’s assessment. We believe this to be a more student-specific method of accountability for special needs learners. Given these two beliefs, we are concerned that states looking to follow these actions would be prohibited from using growth models. We agree that states should be held accountable for the performance of all students. However, this accountability must be fair and take individual student needs into consideration. To do otherwise subverts the goals of a growth model system.

Second, under the prescripts spelled out by the Department that states must follow in order to utilize growth models, other academic indicators must be included as separate factors determining whether schools are making AYP for a particular year. While we applaud the inclusion of “other indicators,” we are concerned that the only indicator listed for consideration is graduation rates (based on the model spelled out in earlier sections of the proposed regulations). It is our hope that indicators such as formative assessments, grade point averages, student exhibitions, AP and IB courses, and student portfolio assessments be recognized as “other indicators” that can be used by SEAs and LEAs in meeting AYP targets.
Section 200.37—Notice of identification for improvement, corrective action, or restructuring & Section 200.47—SEA responsibilities for supplemental educational services

Under proposed §200.37 (b) (5) (ii) (C), LEAs would be required to make information regarding the availability of supplemental educational services (SES) public. Additionally, this notification would need to include information explaining the benefits of receiving SES, identify approved providers within the LEA and the services offered, and list the qualifications and demonstrated effectiveness of the providers. Under §200.47 (b) (2) (ii), the criterion upon which SEAs would base their approval of SES providers is spelled out and contains minimum considerations states must make in approving or removing providers.

ASCD has asked that the full complement of intervention strategies be made available to schools immediately so as to get services directly to the kids who are most in need. We have also voiced our concerns surrounding the qualifications of SES providers, specifically requesting that they only use instructors who meet the same “highly qualified” criterion required of public school teachers.

Current regulations specifically prohibit SEAs from requiring SES providers to only hire staff who meet highly qualified teacher requirements [§ 200.47 (b) (3)]. We believe that this does more to endanger the possible success of SES services than anything else. Our kids deserve to have the very best educators placed in front of them in their classrooms. We know from the abundant research available that student success is largely determined by the quality of the
teacher in front of them. It would therefore stand to reason that any teacher providing them with supplemental assistance should be of equally high quality as the one serving them in their classroom. We would hope that the Department would address this area of concern as it looks at ways in which to improve the accessibility and effectiveness of SES for kids.

**Section 200.48—Funding for choice-related transportation and supplemental educational services (SES)**

The Department’s desire to make school choice and SES more readily available to parents and to dramatically increase participation rates is apparent throughout the provisions of this section. By prescribing the steps that LEAs must take in order to satisfy the parental outreach requirements, the Department seeks to ensure that schools and districts are doing everything possible to implement these interventions. Sadly, the Department’s recommended procedure also decreases LEA flexibility. After meeting the outreach requirements spelled out in the law, many LEAs repurpose unused SES and school-choice related monies for other Title I purposes. Given the tremendous need associated with Title I, Part A implementation, many schools are trying to find innovative ways to keep up with growing demands and utilize whatever flexibility afforded to them to optimize available intervention strategies. By dictating how and when LEAs can use their intervention funds, the Department once again limits the flexibility and local control LEAs desperately need to better serve their students. It is our desire to see more flexibility given to LEAs and states rather than less. We believe this will promote better decision making on the part of states and local school districts to devise plans that they know will work best for their kids.
Given their proximity to the problems, we believe that they are far better suited to determine how best to spend their funds.

**Conclusion**

ASCD believes very strongly that education is one of our most important domestic priorities. We fully comprehend the importance of getting these regulations and all other policies pertaining to the education of our kids correct. It is our hope that ASCD’s comments have contributed in a positive way toward this effort. One thing is certain: the system we create for our children today will directly correlate with the caliber of leaders and the economic strength our nation enjoys tomorrow.

Thank you again for the opportunity to share ASCD’s priorities. We look forward to working with the Department of Education in the coming days to bring about sound public policy for the good of our children and our future. Please contact me at 1-703-575-5600 with any questions or concerns. Thank you for your consideration.

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Gene R. Carter  
Executive Director and CEO