

June 20, 2008

Mr. Zollie Stevenson, Jr.
Director, Student Achievement and School Accountability Programs
U.S. Department of Education
400 Maryland Ave, SW, 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:

We, the undersigned education, civil rights, and advocacy organizations offer the following comments and recommendations regarding the Notice of Proposed Rulemaking issued April 23, 2008. Our comments specifically address the proposed regulations on graduation rate reporting and accountability in section 200.19—Other academic indicators. The below comments represent consensus that has emerged on how to calculate and report graduation rates, and how to hold schools and districts accountable for graduating all students. While we believe this effort would be better served through a No Child Left Behind Act (NCLB) reauthorization, we agree that measurement of graduation rates is critical in determining a high school's success and an equally critical step in ensuring all students graduate from high school prepared to succeed in college and the workplace. As such, we appreciate the Secretary's effort to move the issue forward and hope the following comments are reflected in the final regulation.

§200.19(a)(1) – Definition of graduation rate and §200.19 (a)(1)(i)(C)(2)

Proposed regulation 200.19(a)(1) requires all states to uniformly and accurately calculate graduation rates consistent with the calculation adopted by the National Governors Association in 2005 (NGA rate). That calculation is based on dividing the number of students who graduate in the standard number of years (commonly understood as four years for high schools beginning in grade nine) by the number of students who formed the adjusted cohort for that class. The adjusted cohort consists of those students who entered in ninth grade, plus transfers in and minus transfers out.

Proposed regulation 200.19 (a)(1)(i)(C)(2) would allow states to propose a different definition of “standard number of years” for different populations of students who “may take longer to graduate.” Under this proposed regulation, this different definition of “standard number of years” would require Secretarial approval.

Comments

§200.19(a)(1), together with §200.19 (a)(1)(i)(C)(2), results in cohort reassignment for certain populations of students, recognizing that some students take more than four years to graduate. However, cohort reassignment is problematic for students and for the accuracy and use of the calculation.

For students, proposed regulation 200.19 (a)(1)(i)(C)(2) would allow states to predetermine when certain whole categories of students will graduate from high school. The proposed regulation does not provide clarity on who makes such decisions, how such decisions are made, when and how often they are made, and based on what information. The proposed regulation does not provide clarity on who would make such decisions, how such decisions would be made, when and how often they would be made, and based on what information. The potential for states to predetermine—for entire groups of students—their graduation outcomes is particularly troubling given that the populations that have the highest dropout rates are most likely to be reassigned to longer graduation timelines. Furthermore, students who are held back are less likely to graduate. Therefore, policies that allow for entire categories to be held back despite the education needs of individual students are inherently damaging to students' education outcomes.

For the calculation, use of cohort reassignment renders the rate less accurate, transparent, and comparable. Given that each state can propose to the Secretary which populations of students in their states 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.

Recommendations

The proposed regulation clearly recognizes that some students take longer to graduate than others. Instead of attempting to address that reality by allowing states to apply adjusted graduation timelines to whole categories of students, we suggest that schools be held accountable for increasing four and extended-year graduation rates. Under such a system, schools and districts would be held accountable for increasing the number of students who graduate in four years and for increasing the number of students who graduate in any given year (regardless if it takes the student more than four years to graduate). Maintaining the primacy of the four-year graduation rate is critical under such a system and, therefore, for accountability purposes, a high percentage (we recommend 90 percent) of all graduates in any given year should be made up of four-year graduates. This requirement should apply both in the aggregate and disaggregated by each major subgroup.

The proposed regulations raise early college high schools as an example of students who will take longer than four years to graduate. Use of an extended-year rate will cover this population. However, early college high schools and alternative education settings—such as those designed for students who are over age and under-credited or have dropped out of high school—and that award a regular high school diploma should be provided a waiver for meeting the four-year requirement for accountability purposes. The regulations should allow a state to grant on a case-by-case basis waivers to such schools.

§200.19(a)(1)(i) – Transitional use of AFGR

Under proposed regulation 200.19(a)(1)(i), states that are not capable of accurately calculating the NGA rate are required to use the averaged freshman graduation rate (AFGR). Under the proposed regulations, states may use AFGR through the 2011–2012 school, after which states must use the rate under §200.19(a)(1).

Comments

The proposed regulations recognize that AFGR is less accurate at the school level, given that the proposed regulations do not require that graduation rates be disaggregated for accountability purposes until use of the NGA rate is required in the 2012–2013. We share the concerns that AFGR is a less accurate measure at the school level and we are particularly concerned that AFGR can overestimate student outcomes, particularly for poor and minority students—those populations currently facing the highest dropout rates. AFGR becomes even less meaningful when combined with the cohort reassignment allowed under §200.19 (a)(1)(i)(C)(2). In addition, nothing in the proposed regulation requires those states that can use the NGA rate immediately or before 2012–2013 to do so.

Recommendations

Rather than urging states to adopt AFGR as a measure for the interim period, we suggest that the regulations require states that have the ability to immediately implement the NGA rate to do so. Further, given that most states can or are close to being able to calculate the NGA rate, we urge the Secretary to move up the timeframe. We strongly urge the Secretary to require use of the NGA rate by 2010–2011. States that cannot immediately implement the NGA rate should have to demonstrate to the Secretary through their plans why they do not have the data system capacity to do so, what changes will need to be made to their systems, what interim rate the state will use to measure graduation rates, and the timeframe in which those changes will be made. In no case should that timeframe extend beyond 2012–2013. Given that most states can or are close to having the data systems necessary to support calculating the NGA rate, the regulations should support states moving to the NGA rate as soon as possible.

§200.19(d)(1) – Graduation rate goals and continuous and substantial improvement measures

Under proposed regulation 200.19(d)(1), states would be required to submit for Secretarial approval both the graduation rate and improvement goals that meet the “continuous and substantial” standard. To make Adequate Yearly Progress (AYP) at the school and district levels, states have to either make the state-set graduation rate goal or meet the state-set “continuous and substantial” improvement measure.

Comments

We agree that the current state-set graduation rate goals and growth targets are weak and meaningless. However, the proposed regulations do not actually require meaningful goals or growth targets beyond the “continuous and substantial” language. Further, the proposed regulations do not state that the goals and growth targets will be consistent state to state, which is critical for transparency and comparability of graduation rates.

Recommendations

We recommend if the Secretary does not believe she has the legal authority to establish graduation rate goals and growth targets, that the regulations should indicate more clearly what standards states will be expected to meet. Such standards should include high, ambitious end goals and growth targets both in the aggregate and disaggregated. The regulations should also indicate that such standards will apply consistently state-to-state. Further, we urge the Secretary

to require states to use more transparency in proposing their graduation rate goals and growth requirements.

Related Issues

Exit Coding

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 the student 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 nearly 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 General Education Development (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." In some cases, 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 district-driven, the practice further masks the accuracy of graduation rates and contributes to a lack of comparability between rates.

The proposed regulations do not directly address how states should reconcile existing exit code policies in calculating graduation rates. We recommend that the regulations require states to propose for Secretarial approval their exit coding policy to ensure that the use of exit codes does not undermine the accuracy, comparability, and transparency of rates.

N-Size

The proposed regulations regarding graduation rate calculations do not specifically address how n-size will apply. We recommend that the regulations clarify that policies and regulations governing n-size apply to graduation rate calculations for reporting and accountability.

Sincerely,

Alliance for Excellent Education
Bazelon Center for Mental Health Law
Big Brothers Big Sisters
Council for Exceptional Children
First Focus
Learning Disabilities Association of America
League of United Latin American Citizens
Mexican American Legal Defense and Educational Fund (MALDEF)
National Association of Community Health Centers
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Collaboration for Youth
National Council of La Raza

National Disability Rights Network
National PTA
Public Education Network (PEN)
School Social Work Association of America
Southeast Asia Resource Action Center (SEARAC)
United Way of America
Work, Achievement, Values & Education Inc. (WAVE)
YMCA of the USA