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Limited Testimony of Kathleen B. Boundy, Co-Director, Center for Law and Education on Proposed Title I Regulations §200.2, 200.7, and 200.19 May 14, 2008

I am the co-director of the Center for Law and Education (CLE), a national advocacy organization with offices in Boston and Washington, D.C., whose primary mission is to ensure high quality education for all students, in particular those from low-income families, and to help their school communities to effectuate change.

While CLE will be providing detailed comments on the NPRM issued in the Federal Register on April 29, 2008, 73 Fed. Reg. 23154, today I am going to comment upon two proposed areas of rulemaking, specifically use of multiple measures in assessment and the graduation rate. In addition, I will very briefly suggest a different and additional approach for more effectively addressing the systemic issues of retention and drop-outs that virtually guarantee students being left behind.

NPRM at §200.2 –State Responsibilities for Assessment

First, with respect to the issue of testing students based on multiple measures, CLE believes the Department's proposed regulatory amendments at §200.2(b)(7)(i) and (ii) are too limited and fail to address the primary purpose for Congress requiring the use of "multiple measures" in State assessment systems – i.e., to enhance the validity of the assessments being used as part of the State assessment system. The Department indicates that its proposed amendment is necessary to clarify "a misunderstanding among parents, teachers, and administrators that student achievement, for purposes of accountability determinations under Title I, must be based on a single assessment." 73 Fed. Reg. 22021. Toward this end the proposed regulation offers minimal guidance and merely reiterates the plain language of the statute and current regulation.

The proposed regulation's narrow and limited interpretation of "multiple measures" as focusing on multiple question formats and multiple assessments for the same subject makes no reference to the statutory requirement that state assessments shall be "valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards..." 20 U.S.C. §6311(b)(3)(C)(iii). Probably the single most controversial issue raised by NCLB concerns the inappropriate use of standardized tests – whether administered once or multiple times, through multiple-choice or other test formats – as the sole criterion for making educational decisions. The Department should, therefore, once and for all, clarify that use of "multiple measures" is necessary and critical in helping to ensure that inferences based on evidence gathered from the State assessment system are fair, accurate and reliable, thereby improving the quality and use of data from State assessments and mitigating unintended consequences.

According to the nationally recognized Joint Standards of Testing, before using and relying upon a criterion based test score, a variety of different and multiple measures of performance ought to be gathered and reviewed, for example, alternative performance measures, other forms of authentic assessments, portfolios, and projects. Moreover, enhancing the validity of the assessments for all students, including those within the subpopulation groups, should by definition improve participation among subgroup members and reduce the "n" size associated with different results for different populations on a single assessment, thus increasing

accountability of the State, schools and school districts so as to leave no child behind.

The Department is missing a major opportunity to improve validity and reliability (i.e., consistency in measurement) and to help ensure fairness in testing so as to prevent incorrect inferences from being made, e.g., based on a test that fails to measure what is intended to be measured (e.g., writing proficiency based on a multiple choice test), or, conversely, based on student characteristics that are irrelevant to the construct being measured (e.g., students are assessed based on a performance task that requires dexterity as well as critical thinking skills in mathematics resulting in the inference that certain students who lack manual dexterity lack higher order knowledge and skills in mathematics).

NPRM §200.19 –other Academic Indicators

CLE believes that there is a need to move away from the monolithic and stigmatizing framework of AYP to a more nuanced, non-punitive, continuous improvement framework. We support, in a non-punitive context, paying attention to graduation rates by integrating proficiency and graduation rates.

There is no question that many states are currently using a variety of methods that generate inflated graduation rates. CLE supports the Department’s proposed regulation that will establish a uniform method of calculating graduation rates. However, CLE would encourage the Department to use a graduation rate definition that utilizes a cumulative graduation rate formula that would incorporate students who graduate in more than 4 years after having been retained or having dropped out of school. Allowing this group of students to be added to the numerator of students who graduate in 4 years, will create incentives for schools and school districts to identify and educate through graduation students from a prior 4 year cohort who have dropped out and/or been retained in grade. Additionally, under CLE’s approach, the “adjusted cohort” or denominator would include all students from the original 4 year cohort and would include those who have dropped out (with the exception of the very small percentage who had met proficiency) or been retained. A 4 year graduation rate should be the standard for all students, and those who are retained in grade or drop out who are not proficient must be counted in the adjusted cohort.

CLE opposes the proposed regulation §200.19(a)(1)(i)(C)(2) that will allow a State to propose, for approval by the Secretary, an open-ended, overly discretionary, alternate definition of “standard number of years” that would apply to “limited categories” of undefined students who, under an amorphously described “certain conditions” may take longer to graduate.

However, CLE supports States being authorized to establish procedures to allow local educational agencies and schools to count the actual number of students, in no case no greater than 1% of all students assessed, with the most significant cognitive disabilities (approx. 9% of students with disabilities) who are performing *at a proficient level* on a State’s alternate assessment based on alternate achievement standards as a graduate for purposes of the cumulative graduation rate calculation.

CLE opposes the Department’s proposed regulation at §200.19(d)(1)(i) that would permit States to set a graduation rate that it expects all schools to meet without identifying any target goal or requiring any criteria other than evidence of continuous improvement. Under the proposed regulation even though significant numbers of students do not graduate [20-30-40%], if the school meets its target or merely demonstrates continuous improvement toward the target, the school or school district will make AYP. The Department should require states to adopt a tightly controlled model with a graduation rate goal of 100% graduation to be attained in 4 years based on a gap closing formula with ambitious AMOs with even increments of improvement over the timeline applicable to each subgroup.

For purposes of reporting and accountability CLE supports the Department’s proposal requiring States to disaggregate graduation rates for all student subgroups and urges immediate implementation by schools as well as LEAs.