

January 8, 2009

Kerri L. Briggs  
Assistant Secretary  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Assistant Secretary Briggs:

I am writing to obtain clarification on how a subgroup, school, or local educational agency (LEA) can make progress on one or more of the "other academic indicators" in order to make adequate yearly progress (AYP) through "safe harbor" under section 1111(b)(2)(I) of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act (Act).

Pursuant to 34 C.F.R. § 200.19(c) "the State may include additional indicators [as] determined by the State." If the State utilizes an additional indicator, it must also ensure that this indicator is "valid and reliable, consistent with relevant, nationally recognized professional and technical standards, if any, and consistent throughout the State within each grade span." 34 C.F.R. § 200.19(d). The State cannot use indicators to "reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring if those indicators were not used." 34 C.F.R. § 200.19(e).

Pursuant to section 1111(b)(2)(I) of the Act if a subgroup, school, or LEA does not meet the State's annual measurable objective in any particular year "the school shall be considered to have made adequate yearly progress if the percentage of students in that group who did not meet or exceed the proficient level of academic achievement on the State assessments...for that year decreased by 10 percent of that percentage from the preceding school year and that group made progress on one or more of the academic indicators." Our question concerns D-5 of the High School Graduation Rate Non-Regulatory Guidance (December 22, 2008), which asks "what does it mean to make 'progress on one or more of the academic indicators' in order to make AYP through 'safe harbor?'"

In response to question D-5, the guidance stated that when it comes to other academic indicator for high schools: "'making progress' on the other academic indicator for high schools means meeting or exceeding the State's graduation rate goal or annual targets. This is because 34 C.F. R. §200.19(b)(3) requires a State to set (1) a single graduation rate goal that represents the rate the State expects all high schools to meet and (2) annual graduation rate targets that reflect continuous and substantial improvement from the prior year toward meeting or exceeding

the State's graduation rate goal. Accordingly, a subgroup, school, or LEA must meet or exceed the State's graduation rate goal or annual targets in order to make AYP through "safe harbor."

When it comes to "making progress" for a high school, can a subgroup, school, or LEA make AYP through "safe harbor" by utilizing progress on an additional academic indicator beyond graduation rates?

Thank you for the opportunity to raise this question. This issue is of compelling and immediate interest to many of our state clients and your response will be greatly appreciated. Thank you in advance for your prompt assistance.

Sincerely,

Leigh M. Manasevit