

the U.S. Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c and 1234f, that the District of Columbia Public Schools (DCPS) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, and that it is not feasible for DCPS to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that DCPS failed to meet a number of the Title I requirements concerning the development of performance standards and an aligned assessment system within the statutory time frame.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with DCPS to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these findings, DCPS will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements.

II. Relevant Statutory and Regulatory Provisions

A. Title I, Part A of the Elementary and Secondary Education Act of 1965

Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student performance standards. Under Title I each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standard. By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards. These assessments must meet the following requirements:

- The assessments must be aligned to a State's content and performance standards.
- They must be administered annually to students in at least one grade in each of three grade ranges: Grades 3 through 5, grades 6 through 9, and grades 10 through 12.
- They must be valid and reliable for the purpose for which they are used and of high technical quality.
- They must involve multiple measures, including measures that assess higher-order thinking skills.
- They must provide for the inclusion of all students in the grades assessed, including

students with disabilities and limited English proficient students.

- They must provide individual reports.
 - Results from the assessments must be disaggregated and reported by major racial and ethnic groups and other categories.
- 20 U.S.C. 6311(b)(3) ¹

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is “failing to comply substantially with any requirement of law applicable to such funds.” 20 U.S.C. 1234c. In such case, the Assistant Secretary is authorized to—

- (1) Withhold funds;
- (2) Obtain compliance through a cease and desist order;
- (3) Enter into a compliance agreement with the recipient; or
- (4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (4).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is “to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements.” 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the available evidence, the Assistant Secretary determines that compliance is genuinely not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and publish those findings together with the substance of any

¹ On January 8, 2002, the No Child Left Behind Act of 2001 reauthorized Title I of the Elementary and Secondary Education Act (NCLB) (Pub. L. 107–110). The NCLB made several significant changes to the Title I standards and assessment requirements. First, it requires that each State develop academic content and student achievement standards in science by the 2005–06 school year. Second, by the 2005–06 school year, it requires a system of aligned assessments in each of grades 3 through 8 and once during grades 10 through 12. Third, it requires science assessments in at least three grade spans by the 2007–08 school year. Fourth, the NCLB significantly changes the definition of adequate yearly progress each State must establish to hold schools and school districts accountable, based on data from the 2001–02 test administration. Finally, by the 2002–03 school year, the NCLB requires State and school district report cards that include, among other things, assessment results disaggregated by various subgroups, two-year trend data, and percent of students tested.

compliance agreement, in the **Federal Register**. (20 U.S.C. 1234f(b)(2)).

A compliance agreement must set forth an expiration date later than three years from the date of these written findings, by which time the recipient must be in full compliance with all program requirements (20 U.S.C. 1234f(c)(1)). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect (20 U.S.C. 1234f(c)(2)). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement no longer in effect and may take any of the compliance actions described previously (20 U.S.C. 1234f(d)).

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and DCPS is appropriate, the Assistant Secretary must first determine whether compliance by DCPS with the Title I standards and assessment requirements is genuinely not feasible until a future date (20 U.S.C. 1234f(b)). The second issue that the Assistant Secretary must resolve is whether DCPS will be able, within a period of up to three years to come into compliance with the Title I requirements. Not only must DCPS come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible then a compliance agreement between the Assistant Secretary and DCPS would not be appropriate.

B. DCPS Has Failed To Comply Substantially With Title I Standards and Assessment Requirements.

In October 2000, DCPS submitted evidence of its final assessment system. The Assistant Secretary submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that DCPS' proposed final assessment system did not meet a number of the Title I requirements. Specifically the Acting Deputy Assistant Secretary determined that DCPS must do the following:

- Develop or select an assessment system that represents the full range of the DCPS content standards in at least reading/language arts and mathematics at the benchmark grades.
- In addition, DCPS must document the alignment of the assessments with DCPS' content and performance standards.
- Complete the creation of DCPS' performance standards by identifying the scores on the assessments that define each of DCPS' performance levels.
- Provide data showing that all assessments used for Title I accountability meet commonly accepted professional standards for technical quality consistent with DCPS' use of the results.