



September 5, 2007

The Honorable George Miller  
Chairman  
House Education and Labor Committee  
2181 Rayburn House Office Building  
Washington, DC 20515

The Honorable Howard "Buck" McKeon  
Ranking Member  
House Education and Labor Committee  
2101 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

The Council for Exceptional Children (CEC) is the largest professional organization of teachers, administrators, parents, and others concerned with the education of children with disabilities, giftedness, or both. CEC is writing to provide our initial comments in response to the draft language for the reauthorization of the Elementary and Secondary Education Act/No Child Left Behind Act that was issued by the House Education and Labor Committee on August 28. CEC will continue to provide the Committee and Congress with our comments and recommendations for ESEA/NCLB reauthorization as the reauthorization process moves forward on Capitol Hill.

CEC is pleased that the Committee has released the proposed language for the bill so that the public and interested parties may provide comment. However, we are disappointed that the Committee chose to release the draft language just days before a federal holiday and is only allowing a week for the public to provide comments. CEC believes that legislation that reauthorizes a law as overarching and critical as ESEA/NCLB should be considered in a deliberate and thoughtful manner. Providing the public with scant days to read, comprehend, and comment on a 435-page piece of complex legislation is a daunting task.

## **CEC Analysis and Recommendations**

### **Overview:**

CEC is pleased that the Committee has included many of CEC's recommendations for students with disabilities in the Committee's draft language for the reauthorization of ESEA/NCLB. This includes assessments for all children, multiple measures, and growth models. We also support some new, important provisions, including authorizing states to use valid and reliable local assessments as part of their state assessment systems and a pilot project to help states develop such assessments, allowing states to use indicators other than only reading and math scores in determining school and district progress, and

reforming the school improvement process to provide more assistance and give schools more time to implement necessary changes once they adopt an improvement plan.

However, CEC is concerned that some of its recommendations were not included in the Committee's draft language. CEC is troubled that the Committee's draft language provided little or no attention to students with gifts and talents, an issue that we address in greater detail below.

Also, CEC is still concerned that the Committee has chosen to maintain the goal of proficiency for all students by 2014, a goal that CEC opposes and one that most researchers indicate is impossible to attain. We are also still concerned that the bill relies overwhelmingly on sanctions to punish schools for failing to achieve goals as opposed to providing needed supports, including funding, to assist schools.

A recent Phi Delta Kappa/Gallup poll shows that the American public seeks fundamental reforms in NCLB, consistent with those proposed by CEC and the Forum on Education Accountability (FEA), to which CEC belongs. The Committee draft falls short of fundamental reforms to NCLB goal by overemphasizing testing at the expense of improving teaching and learning, continuing to rely on sanctions that have no evidence they will be successful, and paying too little attention to correcting NCLB's perverse incentives, which narrow curriculum and reduce education to test-prep, especially for the "left behind" groups.

The law, while improved, would remain too much a test-and-punish law. To ensure that the federal role becomes strongly supportive of genuine school improvement, CEC and FEA support the following additional changes in ESEA:

- Replacing the goal that nearly all students score "proficient" by 2014 and the Adequate Year Progress mandate based on it -- targets that nearly all experts agree are impossible to attain -- with an accountability approach based on implementing systemic changes that will improve teaching and learning and on demonstrating steady progress in learning results consistent with the rates of improvement at the nation's better Title I schools.
- Increasing the weight given to indicators other than reading and math tests, so that schools will be supported in providing a comprehensive curriculum to educate the whole child.
- Giving schools sufficient time to implement improvement plans before more drastic steps are taken.
- Allowing districts and states more flexibility to develop effective solutions for schools that have not turned around since there is no strong evidence to support any of the required options for "redesign" proposed in the Committee draft.

- The parent involvement provisions likewise need improvement, as do some aspects of the language on professional development, recognizing that most of the planned improvements in that area will be in Title II.
- Ensure that sufficient funds are authorized so include all eligible children in Title I and to support the many improvement proposals in the law.

CEC would have grave reservations about supporting a bill that does not include these provisions.

### **Assessments:**

CEC is pleased that the Committee has chosen to include all children in the assessment and accountability system in the reauthorization of ESEA/NCLB. In our recommendations to Congress for ESEA/NCLB reauthorization, CEC recommends that Congress ensure that all children with disabilities and/or gifts and talents be included in all assessments and a balanced accountability system, and have available the opportunity to participate in general assessments, assessments with accommodations, and alternate assessments.

CEC recommends that Congress ensure equal access and opportunity for all children and ensure inclusive and balanced accountability in all local and state accountability indices. The performance on assessments of children with disabilities must have the same impact on the final accountability index as the performance of other children. CEC also recommends that Congress ensure that the IEP team determine how the child will participate in assessments as part of the review of the overall individualized education program and be based on individual student needs.

### **Graduation Rates:**

CEC is also pleased that graduation rates for all students will be disaggregated and that the state report card will publicly report the results for each group of students, including those with disabilities. CEC, however, would like to see language that would allow schools to count toward graduation rates all levels of diplomas at an indexed rate for purposes of accountability. CEC hopes that this language will demonstrate the success of students with disabilities in the classroom and that it will also help schools use the data to ensure students with disabilities are given the opportunity to graduate.

CEC supports the Committee's draft provision that allows counting 1% of students as having earned a regular standard diploma, including the IEP diploma. CEC continues to advocate for a seventh year for students with severe cognitive disabilities to complete their multi-year IEP and achieve graduation status. CEC would like to see the Committee include language that would allow schools to count diplomas given to students who continue their education through age 21 as determined by their Individualized Education Program (IEP). We believe that this will result in an increase in the number of students with disabilities who will be included in a district's graduation rate for achieving AYP.

### **Students with Gifts and Talents:**

CEC is disappointed that the disaggregation of data for those students who are gifted and talented is not addressed in the draft legislation. ESEA/NCLB does not address the performance of top students until they fall below the proficient level. This may be the most serious criticism of the accountability system regarding gifted children. In an effort to ensure that schools not only continuously monitor the performance of all students, including the top students, but also that all schools make every effort to ensure that their students progress from proficient to advanced on state tests, we propose that additional reporting requirements be triggered when schools are in a situation where (a) there are zero (or a minimal number) students scoring at the advanced level or (b) there is a significant reduction in percentage of students performing at the advanced level, by grade, compared to the previous year. Such schools would be required to provide information (possibly using a checklist developed by the state) to be included on the local report card that will provide parents information on what programs and services are offered for advanced learners and the professional development being offered to teachers to enhance their skills in supporting advanced students.

In addition, the current reporting system in ESEA/NCLB does not address how well the top students are doing, nor does it report the number of students participating in gifted and talented courses. Current section 1111(b)(2)(C)(vii) of NCLB permits states to include other academic indicators in their calculation of AYP, including the percentages of students “completing gifted and talented courses.” We propose to amend the state report card section of ESEA/NCLB to show the number of students *participating* in gifted and talented courses in the state, which will require a corresponding modification in the section cited above. Our request should not be problematic because similar data is currently reported to the Civil Rights Division on its biannual survey of the largest school districts. Again, CEC would like to see the disaggregation of data for all student groups, including those with gifts and talents.

CEC would have serious reservations about supporting a final bill that does not include provisions for students with gifts and talents.

### **“N Size”:**

CEC is pleased that the maximum “n size” for state reporting and accountability is fixed at 30, with allowable exceptions to 40. In many instances states had sought to increase the maximum size to exclude the results for students with disabilities and other groups from reporting and accountability requirements. The establishment of a national fixed maximum “n size” is welcome. We are hopeful that the Secretary of Education will use discretion when reviewing state proposals for exceptions to allow an “n size” of 40 for certain groups.

### **Multiple Measures:**

CEC believes that the inclusion of language to allow states to use multiple measures of student achievement for purposes of determining AYP is crucial to the measurement of success for students with disabilities. In our recommendations to Congress, CEC recommends that Congress provide a comprehensive picture of children's and schools' performance by moving from an overwhelming reliance on standardized tests to using multiple indicators of student achievement including progress monitoring, in addition to these tests. CEC is pleased that the Committee has decided to include that language in the draft legislation.

### **Growth Models:**

CEC is pleased that growth models are included in the draft language. CEC recommends that Congress allow states to pilot measures of progress by using children's indexed growth in achievement, as well as their performance in relation to pre-determined levels of academic proficiency. These measures need to take into account the unique characteristics of children with disabilities and/or gifts and talents. The pilots must include and carefully examine the effects on all subgroups of children. CEC has advocated for the use of growth models because they take into account the unique abilities of students with disabilities and those with gifts and talents.

### **Response-to-Intervention:**

CEC is pleased that the draft language includes Response-to-Intervention (RTI) as a required provision for state plans and as a possible intervention model or strategy for low-performing schools. CEC recommends that Congress support the inclusion of a process based on a child's response to scientific, research-based intervention, RTI, in the reauthorization of ESEA/NCLB. Emphasis in the law must provide guidance to general educators on their roles in implementing RTI as a school-wide intervention process and their collaboration with special educators.

In addition, the responsibility of the entire educational system for its implementation must be articulated. However, because RTI is a relatively new concept to the education field, CEC would like to see the Committee provide guidance to states and educators on developing effective RTI models for classroom utilization in the final version of the bill. CEC recommends that Congress direct the U.S. Secretary of Education to develop and implement pilot programs to determine effective RTI models and processes and provide technical assistance, professional development, and dissemination of these models to the field.

### **Early Intervening Services:**

CEC is also pleased that Early Intervening Services (EIS) are included as mandatory for state plans, a requirement for statewide school programs, and as an optional component of a targeted assistance program. However, CEC believes that emphasis needs to be

placed on the shared responsibility of the school system for the implementation of these programs. CEC is concerned that no mention is made of using NCLB funds for implementing EIS. Under IDEA, up to 15 percent of Part B funds can be used for EIS. Funding mechanisms must be established in ESEA, as they are in IDEA, to provide EIS for situations where there is disproportionality in special education. Because Congress has failed to live up to its promise of full funding for IDEA, states and localities are already financially strapped to comply with the law and provide FAPE to students with disabilities and siphoning funds from IDEA to pay for a general education initiative only exacerbates already tenuous funding situations. Congress should recommend the use of NCLB matching funds to allow schools to implement EIS under the reauthorization of NCLB.

### **Highly Qualified Teachers:**

CEC is pleased that the Committee continues to require states to ensure that teachers are highly qualified. CEC's focus, naturally, is on requirements for special educators. In our recommendations, CEC states that implications of the highly qualified requirements for special education teachers are far reaching. Currently, many special education teachers participate in providing instruction across core academic subject areas. When special education teachers assume responsibility for teaching a core academic subject, IDEA requires those special educators to have a solid knowledge base in the subject matter content by meeting the new highly qualified requirements.

While provisions in IDEA 2004 provide some flexibility in determining the qualifications of special education teachers teaching multiple subjects, meeting the standard of being highly qualified in every core academic subject is likely to present a significant challenge, especially for teachers teaching across elementary, middle, and secondary levels. The challenge for special education teachers to meet the content knowledge requirements for each core content area at each level may result in many children with disabilities receiving their primary instruction in core academic subjects in the regular classroom from the regular classroom teacher with consultation services from "highly qualified" special educators. Assuming that this shift of responsibility to regular education occurs, the skills required to meet the standard will demand effective preparation of both special and general educators.

We are concerned that there is no definition of what constitutes "effective" in Section 1119 (a)(2)(B) of the draft language. Because this is new terminology that is vague and not specifically defined in the draft language, CEC recommends deleting this term.

### **Universal Design for Learning:**

CEC, as a member of the UDL workgroup, is very pleased to see Section 1111(c)(15) in the discussion draft regarding the development of a comprehensive state plan to address the implementation of universal design for learning in consultation with experts and stakeholders. This provision represents a landmark commitment to the principles of universal design for learning, which will result in improved instruction and assessment for all students. We strongly urge the inclusion of this provision in the bill.

CEC and the UDL workgroup are also pleased to see draft legislative language in the assessment provisions and other provisions concerning accessible curricula which was drawn from the principles for universal design for learning. Even though this new language is an important addition to the Act, we strongly urge the Committee to add additional language to clearly link these provisions to the principles universal design for learning. This would tap into a large body of research on universal design for learning that includes assessment design and accessible curricula. Much of this research been funded by the U.S. Department of Education and is well known in the education field. There are also a number of other places in the Act where it would be beneficial to add more of our recommended UDL legislative language.

CEC and the UDL workgroup support the following specific recommendations for the inclusion in the final draft for the reauthorization of ESEA/NCLB:

- Amend Section 1111(b)(1)(D) to incorporate a reference to standards consistent with the principles of universal design for learning.
- Amend Section 1111(b)(3)(D)(iv) on assessments to start (after the word “shall”) with the phrase “consistent with the principles of universal design for learning” and add a provision to the end which states “ and provide appropriate supports for students to demonstrate the knowledge, skills, and abilities according to the intended learning standards.”
- Amend Section 1111(b)(11)(D) on state assurances regarding the delivery of accessible curricula by the LEAs to end with the phrase “consistent with the principles of universal design for learning.”
- Retain Section 1111(c)(15) on State assurances regarding a comprehensive plan for the implementation of universal design for learning. Also, we recommend that teachers be specifically named as one of the stakeholder groups to include in the consultation process because the use of UDL will directly impact how teachers provide instruction. Specifically, change line #17 to read " ...consultation with experts, teachers, and other stakeholders..."
- Add a new provision following Section 1111(c)(15) requiring an assurance in the State plan that the State educational agency, to the extent that it is involved in selecting and recommending textbooks and other instructional materials, will encourage the purchase of textbooks and materials that are consistent with the principles of universal design for learning.
- Amend Section 1112(c)(1)(P) on LEA assurances regarding the delivery of accessible curricula by the schools to end with the phrase “consistent with the principles of universal design for learning.”
- Add a new provision after Section 1112(c)(1)(P), requiring an assurance that the LEA shall encourage the use of teaching methods, instructional materials and

assessments that are consistent with the principles of universal design for learning.

- Amend Section 1851 regarding the Core Curriculum Development Grant. LEAs that use the funds from the grant to develop curriculum, provide essential materials and textbooks, provide staff development and/or create and use formative assessments under Section 1851(d) should do so in manner consistent with the principles of universal design for learning.

### **Alternate Assessments Based on Modified Achievement Standards:**

CEC supports the inclusion of alternate assessments based on modified achievement standards with conditions. Because this new rule has only been in place since May 9, 2007, states have not been afforded the opportunity to fully implement the regulations. States have not yet developed alternate assessments, nor have they had the opportunity to disaggregate data on the effects of the using alternate assessments for the 2% group that it targets. CEC would ideally like states to be given enough time to implement and evaluate the alternate assessments before it is codified into law. In that way, once the states and the education field have the chance to review the success of the regulations, adjustments can be made. CEC is concerned that some states may simply place students in the 2% category as one solution to achieving AYP. CEC recommends that the Committee ensure that the Secretary of Education's report on the implementation of this measure is rigorous and that Congress act in an expeditious manner any potential issues related to that report.

### **Assessment and Accountability:**

CEC supports language in the draft bill that that allows special education students to remain in that group for accountability purposes for three years after they exit those programs.

### **Funding:**

CEC notes that funding is not specifically addressed in the Committee's draft. CEC recommends that Congress increase authorized levels of ESEA funding to cover a substantial percentage of the costs that states and districts will incur to carry out these recommendations and fully fund the law at those levels without reducing expenditures for other education programs. CEC also recommends that Congress fully fund Title I to ensure that 100 percent of eligible children are served, and we recommend that funds should not be arbitrarily or automatically used for school choice or supplemental education services (SES), and that they instead be used to invest in improving schools.

Since No Child Left Behind's passage, school districts and states around the country have struggled to meet the basic requirements of NCLB, in large part due to the overwhelming lack of funding from the federal government. While substantial funds were appropriated for NCLB in 2002, funding for NCLB has declined since then. Funding for Title I

programs that serve diverse populations has suffered as well. Transportation costs for school choice and supplemental education services are consuming a great deal of schools' funds, and funding is almost nonexistent to help low-performing schools come into compliance with the law.

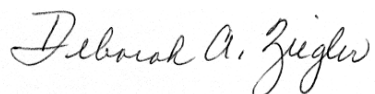
Further, no funds have ever been provided by Congress for the school improvement grants, a situation that forces school districts to rely on Title I funding to meet those needs. Funding should not be arbitrarily or automatically used for school choice or supplemental education services (SES). School choice hampers the ability of low-performing schools to improve, and SES have been shown to discriminate against children with disabilities because SES providers are reluctant to serve these children, many are not prepared to instruct children with disabilities, and results cannot be readily demonstrated for those children. Congress must dramatically increase funding for ESEA so that the goals of ESEA can be achieved.

CEC also recommends that funding be increased overall for data collection, but particularly for data surrounding multiple measures. In addition, CEC recommends that funding be included to for the construction of reliable and valid standards and assessments, including multiple measures, modified and alternate achievement standards, as well as assessments and appropriate accommodations.

### **The Reauthorization Process:**

Finally, CEC recommends that the House Education and Labor Committee pursue a deliberate course of action during the reauthorization process of NCLB and that it takes an appropriate amount of time to allow the public and other interested parties to have their input into the final legislation. NCLB is too large, complex, and impacts too many lives to be rushed through the legislative process. We hope that the Committee will pursue a thoughtful course of action in developing final language for this vital program.

Thank you for allowing the public to provide comment on the draft language for ESEA/NCLB reauthorization. If you need additional information please contact Deborah Ziegler, Associate Executive Director for Policy and Advocacy Services at [debz@cec.sped.org](mailto:debz@cec.sped.org) or 703-264-9406, or Dan Blair, Senior Director for Policy and Advocacy Services at [danb@cec.sped.org](mailto:danb@cec.sped.org) or 703-264-9403.  
Sincerely,



Deborah A. Ziegler, Ed.D  
Associate Executive Director  
Policy and Advocacy Services