September 5, 2002

Jacquelyn C. Jackson, Ed.D.
Acting Director
Student Achievement and School Accountability Programs
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Ave. SW, Room 3W230, FB-6
Washington, DC  20202-6132

Dear Dr. Jackson;

This document is in response to the August 6, 2002, Federal Register announcement requesting public comment on the Secretary’s proposed rule for Title I – Improving the Academic Achievement of the Disadvantaged – to implement recent changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act). These comments are on behalf of the Council for Exceptional Children (CEC), the largest professional organization committed to improving educational outcomes for individuals with exceptionalities.

The Council for Exceptional Children (CEC) is committed to the achievement of successful outcomes for children and youth with exceptionalities, through the promotion of professional excellence in special education and the provision of high quality professional supports and quality conditions for teaching and learning.

CEC shares the Secretary’s basic belief that a strong ESEA represents an important and necessary component of the education system in this country. It is fundamental to the success of all children and youth, including children and youth with disabilities. We appreciate the opportunity to provide these comments, and we trust that these comments will be helpful as OESE develops its final rule. We would be happy to assist the agency in any way, at your request.

Our comments address 3 general areas and focus primarily on matters affecting children and youth with disabilities and their families:

1. State Accountability System/Adequate Yearly Progress
2. Qualifications of Teachers
3. Supplemental Educational Services
State Accountability System/Adequate Yearly Progress

CEC supports the general policy proposed in Section 200.12 requiring a single, statewide accountability system consistent with the NCLB Act. We also support proposed language requiring states to include, in their accountability system, guidelines for identifying the students with disabilities who should take alternative assessments and requiring reporting on the number students with disabilities who take an alternative assessment.

However, CEC opposes proposed regulations that would place a limit on the number of children with disabilities included in the accountability measure using alternate standards to ½ of 1%, and further limit the reporting and use of alternative assessments in calculating Average Yearly Progress (AYP) to this group of students only. Specifically, CEC opposes the language under the proposed rule for AYP under Section 200.13(c), which essentially establishes a cap on the number of children and youth with disabilities who may be included in the calculations for AYP using alternate standards and alternative assessments to ½ of 1% (i.e., .5%). CEC believes that states should be free to develop alternative assessments designed to measure students' achievement of State standards, and that each child's IEP Team should subsequently determine if the use of such alternative measures is appropriate for measuring academic progress for a child on an individualized basis without imposition of an artificial cap on participation. There should be no artificial cut-off on the percentage of students with disabilities who may participate in alternative assessments (which are aligned to state content standards) as a factor of calculating AYP. The proposed .5% cut-off for the participation of children in alternative assessments and resultant calculation/reporting of AYP will inadvertently undermine IDEA’s policy of individualization within the context of the IEP development process. CEC recommends eliminating this cap; however, we support the policy specified in proposed Section 200.12 of providing guidelines and technical assistance to states and localities for identifying students with disabilities who should take alternative assessments and the required reporting of such participation rates.

In general, CEC supports the underlying policy in Sections 200.13 through 200.20 of the proposed rule; that is, that AYP definitions must apply the same high standards of academic achievement to all public school children in the state and that such definitions must include separate annual measurable goals for continuous and substantial improvement in specified academic areas for specific groups of students, including children and youth with disabilities. However, CEC recommends that Section 200.19 of the proposed regulations include a provision that AYP must address the progress made on graduation rates (and other appropriate academic indicators when judging elementary and middle schools), which is a particular concern to CEC in light of the disproportionately high dropout rate among youth with disabilities. Consistent with our interpretation of the NCLB Act, its implementing regulations should make clear that graduation rate is a factor in AYP, and an increase in dropouts (or a decrease in graduation rate) will impact whether a school or LEA achieves AYP.
CEC also supports the general rule in proposed Section 200.20 that a minimum of 95% of all children, including individual subgroups of children such as children with disabilities, must participate in the assessment system. CEC also supports proposed regulations that would require that children with disabilities who take an alternative assessment must be included in the minimum 95% participation rate for children and youth with disabilities enrolled in the school. However, CEC recommends that the regulations clarify that failure to meet the 95% threshold should not be considered a failure to meet AYP if the number of students in the initial group is so small as to make its reporting statistically unreliable (e.g., where there are only 5 children with disabilities in the school). However, even if the number of students in a subgroup is too small at one particular level of analysis (one particular school), those students’ scores must be included in the next level up (e.g., school district) and be broken out by subgroup at that level if their number reaches a statistically reliable threshold at that level.

Qualifications of Teachers

CEC believes that all teachers should be highly qualified, including special education teachers and related services providers. It is our understanding that proposed Section 200.55 requires that all new teachers hired in the 2002-2003 school year to teach core academic subjects in a program supported with Title I funds must be highly qualified as defined in proposed Section 200.56. Further, it is our understanding that under the proposed rule each state that receives Title I funds must ensure that all teachers in the state (i.e., not limited to teachers in Title I programs) who teach core academic subjects must be highly qualified by the end of the 2005-2006 school year. In defining core academic subjects, it is our understanding that proposed Section 200.55(c) does not include special education and related services as core academic subjects.

CEC is deeply concerned that, as the policies of proposed Sections 200.55 and 200.56 interact, special education teachers and related services providers are essentially excluded from the highly qualified personnel standards of the proposed regulations. CEC strongly opposes excluding special education teachers and related services providers from this high standard. Children and youth with disabilities deserve high quality teachers just like other students. CEC believes that school districts should be required to assure that special education teachers and related services providers are similarly highly qualified.

CEC recommends that the final rule include special education and related services providers as subject to the highly qualified standards of the NCLB Act and that special education teachers and related services providers hold full state licensure in their respective field.

Supplemental Educational Services

Regarding the policy of supplemental educational services, CEC supports the policy of providing appropriate accommodations as proposed under Section 200.46(a)(4), which
requires LEAs to ensure that eligible children and youth with disabilities (i.e., students receiving special education services or Section 504 services) receive appropriate supplemental educational services and accommodations in the provision of those services. However, we are deeply concerned that, with regard to states’ responsibilities for supplementary aids and services, proposed Section 200.47(b)(3) would allow private providers to exclude children with disabilities. Specifically, it is our understanding that proposed Section 200.47(b)(3) states that a private provider may not exclude a qualified student on the basis of disability if the student can, with “minor adjustments” be provided supplementary educational services. What constitutes a minor adjustment? Section 504 clearly specifies that any recipient of federal funds must provide “appropriate accommodations” for children and youth with disabilities. However, the proposed rule seems to water down this basic guarantee by defining an appropriate accommodation as a “minor adjustment.” We believe that this proposed rule undermines the rights and protections afforded to children and youth with disabilities under IDEA and Section 504. CEC strongly recommends amending Section 200.47(b)(3) to clearly state that a private provider may not, on the basis of disability, exclude a child or youth with a disability and must provide appropriate accommodations consistent with the requirements of Section 504 and IDEA.

Thank you for considering our views. For more information please contact Deborah A. Ziegler, Assistant Executive Director for Public Policy at debz@cec.sped.org; 1-800-224-6830 ext. 406 or David Egnor, Senior Director for Public Policy at davide@cec.sped.org; 1-800-224-6830 ext. 452.