CEC’s Response to the Department of Education’s “Common Sense” Guidelines for NCLB Flexibility

On May 10, 2005, Secretary of Education Margaret Spellings announced new "common sense" guidelines in providing states additional flexibility in implementing the No Child Left Behind Act. On April 7, Spellings announced that states will be allowed to test up to 2% of students who still do not meet grade-level standards, even with high quality instruction. This new 2% subgroup of students is in addition to the separate 1% group of student with the most significant cognitive disabilities who are permitted to take alternate assessments aligned to alternate achievement standards. In the most recent announcement, Spellings stated that the Department of Education will allow schools to adjust their adequate yearly progress (AYP) for the 2005-2006 school year based on modified assessments it could have given to this 2 percent of students in the 2004-2005 school year under these new guidelines.

In order for schools within a state to be eligible to adjust their AYP for the 2005-2006 school year, states must meet the following criteria: they must test at least 95% of their students with disabilities; they must have appropriate accommodations for students with disabilities, they must have alternative assessments in math and language arts for students with disabilities who cannot take these tests with accommodations, and the minimum number of students counted for AYP (“N”) must be the same for students with disabilities as it is for other subgroups.

Any state that wishes to take advantage of this new flexibility must apply to the Department of Education no later than June 1 and include:

- An explanation of why the state wants to take part in the plan and what parts of the state's accountability plan would be affected by the change;
- A justification of how the flexibility will result in more meaningful accountability and increased student achievement. States should consult with the Department's publication Raising Achievement: A New path for No Child Left Behind (http://www.ed.gov/policy/elsec/guid/raising/new-path-long.html) to ensure that they are adhering to the principles set forth in NCLB; and
- A date by which the state needs approval from the Department in order to make timely AYP determinations.

CEC's Position on NCLB Flexibility for Students With Disabilities

CEC is committed to all students with disabilities being included in state and district-wide accountability systems. CEC recently developed a policy on Assessment and Accountability to ensure that students with disabilities are appropriately assessed under educational assessment and accountability systems. To read this policy, go to http://www.cec.sped.org/pp/Assessment-Accountability_Policy.pdf.

CEC recognizes that there is a small group of students with disabilities, in addition to those students identified under NCLB as having the most significant cognitive disabilities (1% of all students), who should be assessed by an alternate measure that is different from what currently exists today under the NCLB requirements. These students can make progress toward but may not reach grade-level achievement standards.

CEC has advocated for a longitudinal growth model to be included in the accountability system to allow more focus on individual student achievement. CEC recommends replacing the law's arbitrary proficiency targets with ambitious achievement targets based on rates of success actually achieved by the most effective public schools. In addition, we recommend allowing states to measure progress by using students' growth in achievement as well as their performance in relation to pre-determined levels of academic proficiency.

CEC is encouraged that the Department of Education has recognized that the current accountability framework does not accurately or fairly assess student or school performance and has developed interim flexibility. Although this flexibility is far short of what is needed, it is an important step by the Department of Education to recognize that we need to examine alternative ways of measuring student progress. CEC will continue to urge the Department to move toward a growth model. The new approach is better for children with disabilities because it allows educators to align curriculum and instruction with standards and assessment to better meet the needs of individual children.

While CEC supports the interim flexibility with conditions, we remain cautious until we see the regulations. CEC worries about those who will view the proposed 2% cap as an invitation to fill that cap with as many students with disabilities as possible to shield school authorities and schools from any negative impact brought forward by AYP.

Different standards for a "new category" would modify the number of students eligible for alternate assessments and has the potential to take large numbers of students out of the mainstream curriculum – forcing them into an instructional category that won't allow them direct access to grade level content and eventual graduation from high
school with a regular diploma. Therefore, CEC offers support of the interim flexibility with the following conditions:

- Students with disabilities have access to grade-level content;
- Students with disabilities have access to early and effective scientifically-based interventions to remediate academic skill deficits;
- Students with disabilities have access to highly qualified teachers qualified to teach core academic subjects;
- Educators embrace high expectations for students with disabilities;
- IEP team members, including families, receive intense training to make appropriate and responsible decisions about identifying children in this subgroup and what type of assessment is appropriate;
- Appropriate stakeholders receive intense training on the development of modified achievement standards and alternate assessments;
- Research and development of more effective universally designed accountability and assessment systems that better meet the goal of high academic achievement for all children is funded by the Department of Education;
- Involving the special education, general education, disability, and family communities in the development of the notice for proposed rulemaking; and
- Involving the special education, general education, disability, and family communities in the development of the growth model.

CEC will continue to work with its members to further refine its positions and policies on assessment and accountability.

We need concrete system-wide reforms necessary to ensure all students learn to high levels. What do educational systems where all children learn to high levels look like? What requirements are needed at the governance, administrative, curriculum, instruction, classroom, community, and support services levels to make this happen? We know that many districts and schools have not implemented standards-based reform in a meaningful way for any of their students. We know that aligned, coherent systems of educational standards, assessments, curriculum and instruction are necessary for this approach to school reform to be successful.

This is more than training on differentiated instruction or technology-based texts or standards-based IEPs. It is a focus on the system-wide reform of educational organizations that in the past were organized to "sort" children into varying achievement levels. It is redesigning our educational system to ensure that all of our decisions, all of our resources are focused on successful learning outcomes for every single child we serve.

We have to expect much of our educational systems and do nothing that sends a message that it is okay to lower expectations for some students. For these students, we must expect states and districts to grapple with defining high expectations for these students and then carry out policies and practices that ensure high expectations.