September 14, 2007

The Honorable George Miller               The Honorable Howard “Buck” McKeon
Chairman                                      Ranking Member
House Education and Labor Committee         House Education and Labor Committee
2181 Rayburn House Office Building          2101 Rayburn House Office Building
Washington, DC 20515                         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 remaining draft ESEA/NCLB titles that were issued by the Committee on September 7. 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 remaining titles for the proposed language for the bill so that the public and interested parties may provide comment. However, we are disappointed that the Committee again chose to allow just one 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.

**CEC Analysis and Recommendations**

**Title V, Subpart 6: Students With Gifts and Talents:**

As you know, NCLB is focused on bringing the achievement of all students up to a minimum standard, but does not focus on truly advanced learning. There is increasing concern, however, that advanced learning and high achievement must be encouraged if our country is to stay globally competitive. These policy goals do not have to be mutually exclusive; federal education policy should seek to strike a balance between them. The reauthorization of NCLB offers an opportunity to create incentives and reduce disincentives to providing an appropriate education to high-ability students.

CEC and the National Association of Gifted Children (NAGC) have worked collaboratively to advocate for the educational needs and outcomes for students with gifts and talents. We are deeply distressed that the Committee did not see fit to make any
improvements to the Jacob K. Javits grant program for gifted and talented students in Subpart 6 of Title V. The Javits program, the only federally supported program devoted to addressing the characteristics and needs of gifted learners with a focus on those from disadvantaged backgrounds, has developed numerous strategies to modify the procedures and instruments used to identify gifted learners; to prepare teachers; to change attitudes and expectations of school personnel, frequently the gatekeepers of gifted education, about the nature of giftedness; and to incorporate gifted education pedagogy into regular classrooms to improve total student achievement. NAGC and CEC are strongly supportive of continuing the program, and the reauthorization of ESEA/NCLB provides an opportunity for Congress to build on the Javits program to systematically develop the pipeline of advanced talent that this nation will require in the future.

CEC and NAGC propose building on the research and best practices developed through the Javits program by restructuring the existing state capacity grants into formula grants to state education agencies to distribute to local school districts, on a competitive basis, to support programs and services for students with gifts and talents. Because each state is unique, we recommend leaving the individual spending priorities to the states, but focus the grant funds in key areas, including training regular education teachers in recognizing the classroom indicators of giftedness, developing advanced curriculum, and establishing innovative programs and services.

We would expect states to require districts to provide data or other appropriate assessment information regarding their use of the funds, and, we recommend a matching formula be included in the grants to encourage a strong state and local commitment to their programs and services. A similar formula grant strategy was included in the Senate-passed version of the original No Child Left Behind Act; however, the final version of the law contains a somewhat watered down competitive grant program to states.

The lack of federal support for gifted and talented students has resulted in a patchwork of gifted education programs between and within states. As a result, appropriate services are often available only in resource-rich areas, in spite of the fact that gifted students exist in every community—including low-income areas—and are from every background, including those with disabilities or are English language learners. With more than three million students with gifts and talents in the United States, coupled with the growing need to develop highly skilled professionals in every field to face future challenges in a changing world, we believe that it is time to restructure the Javits program so that it can have the truly systemic, nationwide impact as was intended. We request that the Committee address these issues by enacting NAGC’s and CEC’s recommendations.

CEC recommends that Congress increase the breadth and depth of the Jacob K. Javits Act during the reauthorization of ESEA. To do this, CEC recommends that Congress:

- Authorize $150 million in funding to support and expand the Javits program;
- Establish a comprehensive technical assistance and dissemination network;
• Expand the Javits program to increase the number of children directly impacted, especially those children who are economically disadvantaged, have limited English proficiency, and/or have disabilities; and

• Establish an agency-wide coordinating function for advanced learners within the U.S. Department of Education.

CEC would have serious reservations about supporting a final bill that does not include the recommendations for the Javits program set forth by CEC and NAGC.

Universal Design for Learning:

CEC, as a member of a national working group on Universal Design for Learning (UDL), is also submitting recommendations for the inclusion of UDL in the remaining titles of the ESEA/NCLB reauthorization discussion draft. As you are aware, UDL is a research-based framework for designing curricula—including goals, teaching methods, instructional materials, and assessments—to reduce barriers, provide appropriate supports and challenges, and maintain high achievement standards for all students, including those with disabilities and limited English proficiency. The use of technology is an important component of universal design for learning which is consistent with other efforts to provide America’s students with a 21st century education. For more information on universal design for learning see www.udl4allstudents.com.

We appreciate the reference to universally designed assessments in Section 6111(5) of the discussion draft and the addition of a definition for universal design in Section 901(m). However, we continue to urge the Committee to add the other language that was previously recommended by the national organizations listed at the end of this document. Our comments below describe that language in the context of the discussion draft and also recommend adding universal design for learning to some new provisions in the draft.

Of paramount importance is the need to add a definition of universal design for learning, which takes the definition of universal design in Section 901(m) from the Assistive Technology Act of 1998 and applies it to education in a way that will help students understand academic content and demonstrate their knowledge at the highest achievement level possible. It is also critically important to add universal design for learning language to the teacher training provisions and achievement through technology and innovation provisions in Title II.

We appreciate the opportunity to submit the following recommendations for your consideration.

Title II

Section 2122. Improving Professional Development Opportunities-Grants.

Recommendation: Amend Section 2122(e)(11) as follow in bold:
(11) Developing curricula, which is consistent with the principles of universal design for learning.

**Rationale:** In order to help States implement universal design for learning, these grants should have permissible activities about curricula development that are consistent with the principles of universal design for learning.

**Section 2215 State Application**

**Recommendation:** Add a new Section 2215(b)(8) as follows in bold.

(b) CONTENTS.—Each application shall include, at a minimum, the following:

(8) A description of how the State educational agency will encourage the use of funds under this part to provide training in the use of teaching methods, consistent with the principles of universal design for learning.

**Rationale:** Training is essential to help educators develop the skills they need for students to benefit from implementation of universal design for learning.

**Section 2401 Mathematics Success**

**Recommendation:** Amend Section 2401(h)(4)(D) as follows in bold.

(h) APPLICATIONS.—In order to receive a grant under this section, a State educational agency shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each such application shall meet the following conditions:

(4) It shall include a program plan that contains a description of the following:

(D) How the State educational agency will help eligible local educational agencies identify appropriate and effective materials, programs, and assessments, consistent with the principles of universal design for learning, for all students, including students with disabilities and English language learners.

**Rationale:** LEAs need the help of their SEA to identify materials, programs and assessments that are appropriate and effective for all students, including students with disabilities and English language learners. The principles of universal design for learning will ensure that the needs of all these students are met.

**Section 2601 Purposes and Goals of Part F Achievement through Technology and Innovation**
**Recommendation:** Add a new Section 2601(a)(4) as follows:

(4) To permit the purchase and implementation of universally designed technology; to ensure that all students, including those with disabilities, will have an opportunity to benefit from the integration of technology into the general education curriculum; to provide frequent experiences in the use of universally designed technologies that may be applied to large scale assessments and to measure the impact of universally designed technologies on the learning and achievement of all learners.

**Rationale:** Any plan to improve achievement through technology and innovation must be developed with all students in mind. In order to ensure that this happens, one of the purposes of Title II Part F should be about universally designed technology. All students need experience with technology to be ready for 21st century employment. Also, they may use it to improve access to grade-level content and as part of universally designed assessments. The academic impact of these technologies should be measured under Part F and there should be adequate funding provided for staff development and technical support so the technology is usable by the students and teachers.

**Section 2602 Definitions**

**Recommendation:** Add a definition of universally designed technology to Section 2602, as follows.

In this part the term “universally designed technology” means hardware and software that—

(A) include the features necessary for use by all learners or supports integration with the necessary assistive hardware and software technologies to ensure that they are accessible and optimized for all learners; and

(B) provide flexibility in the ways that information is presented, in the ways that students respond or demonstrate knowledge, and in the ways in which students are engaged in order to provide appropriate support and challenge and enhance the performance for diverse learners.

**Rationale:** It is important to provide clear criteria for universally designed technology. It is not cost effective to create technology plans that do not work for all students, nor is it consistent with the tenets of No Child Left Behind.

**Section 2614 State Activities**

(a) IN GENERAL.—From funds made available under section 2612(a)(1), a State educational agency—
(2) may carry out the following activities:

(A) Assisting recipients of funds under this part in the development and utilization of research-based or innovative strategies for the delivery of specialized or rigorous academic courses and curricula through the use of technology, including distance learning technologies and universal design for learning.

Rationale: Universal design for learning is a research based framework for the development and utilization of innovative strategies for delivering the type of curricula described in this section.

Section 2615 Local Applications

Recommendation: Amend Section 2615(b)(1)(A) as follows in bold.

(b) COMPETITIVE GRANTS FOR SYSTEMIC SCHOOL REFORM THROUGH TECHNOLOGY INTEGRATION— In addition to components included in subsection (a), eligible local educational agencies or consortiums of local educational agencies submitting application for a grant under Section 2612(a)(3)(B) shall submit to the State educational agency an application containing the following:

(1) A description of how the applicant will use grant funds to complement systemic school reform efforts through—

(A) reform or redesign of curriculum, instruction, assessment, use of data, or other school or classroom practices, consistent with the principles of universal design for learning, using technology to increase student learning opportunity, technology literacy, access, and engagement;

Rationale: Any reform or redesign of curriculum should be done in a manner consistent with the principles of universal design for learning to ensure that the needs of all students are being addressed from the beginning.

Title VI

Section 6111. Grants for State Assessments and Related Activities

Recommendation: Amend Section 6111(5) as follows in bold.

The Secretary shall make grants to States or consortia of States to enable the States—

(5) to improve the rates of inclusion of students with disabilities and English language learners by developing universally designed assessments, as described in section 1111(b)(3)(D)(iv), and expanding the range of valid accommodations
available to students with disabilities and English language learners to allow for the maximum number of accommodations that do not impact the validity and reliability of the assessment instruments;

**Rationale:** We support this provision, which provides much needed funding for universally designed assessment. Section 6111(5) should be amended to refer back to the language in Section 111(b)(3)(D)(iv) because it describes critically important criteria for universally designed assessments.

**Title IX**

**Section 901 Definitions**

**Recommendation:** Add a new Section 901(c)(I) as follows.

(c) **FORMATIVE ASSESSMENT.**—Section 9101 (20 U.S.C. 7801) is amended by inserting after paragraph (20) the following:

FORMATIVE ASSESSMENT.—The term ‘formative assessment’ means an assessment process that—

(I) is developed in manner consistent with the principles of universal design for learning.

**Rationale:** The value of formative assessments depends on their validity. In order to be valid for all students, including students with disabilities and English language learners, formative assessments should be developed to ensure that other factors (such as the child’s disability or limited English proficiency) do not create barriers preventing them from demonstrating knowledge. The principles of universal design for learning address these issues.

**Recommendation:** Retain Section 901(m), below.

(m) **UNIVERSAL DESIGN.**—Section 9101 (20 U.S.C. 19 7801) is amended by adding at the end the following:

‘‘(44) **UNIVERSAL DESIGN.**—The term ‘universal design’, as defined in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002), means a concept or philosophy for designing and delivering products and services that are usable by people with the widest range of possible functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies.’’

**Rationale:** We support this definition of universal design that is referred to in the Individuals with Disabilities Education Act (IDEA). However, we also urge you to include the definition for universal design for learning discussed below.

**Recommendation:** Amend Section 901 to add (n), as follows.
UNIVERSAL DESIGN FOR LEARNING.—Section 9101 (20 U.S.C. 7801) is amended by adding at the end the following:

(44) UNIVERSAL DESIGN FOR LEARNING-- The term universal design for learning means a research-based framework for designing curriculum—including goals, methods, materials, and assessments—that
(i) provides curricular flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge, and in the ways students are engaged), and
(ii) reduces barriers in instruction and assessment, provides appropriate supports and challenges, and maintains high achievement standards for all students, including students with disabilities.

Rationale: The inclusion of the term universal design for learning in Section 1111(c)(15) is critically important and we have submitted comments about including this term in other places as well. It is equally important to define this term because the definition of universal design added by 901(m), discussed above, is limited to addressing the “usability of products and services.” Universal design for learning goes beyond whether the product or service is usable (e.g. a student with reading difficulties employing a computer read out loud program to be able to use a text) to whether they help students understand academic content and demonstrate their knowledge at the highest achievement level possible, which is essential to improve performance under NCLB. Universal design for learning provides students with a variety of means to learn, to demonstrate knowledge and to be engaged. As a result, barriers in instruction and assessment will be reduced, appropriate supports and challenges will be provided and high achievement standards will be maintained. There is a large body of research on universal design for learning, much of which has been funded by the U.S. Department of Education.

Section 5411(b)(9) Funds for the Improvement of Education-Programs Authorized

Recommendation: Add a new section 5411(b)(9), as follows in bold, and renumber the current (9) as (b)(10) to permit funds under this section to be used for the implementation of universal design for learning:
(b) USES OF FUNDS- Funds made available under section 5401 to carry out this subpart may be used for any of the following programs:
(9) Programs that support the implementation of universal design for learning, including the purchase and development of universally designed textbooks and other instructional materials.

Rationale: States and LEAs will be in a better position to provide universally designed textbooks and other instructional materials if they can use the funds under this part to do so.
The Reauthorization Process:

Finally, as we stated in our September 5, 2007 comments and recommendations, CEC recommends that the House Education and Labor Committee pursue a deliberate course of action during the reauthorization process of NCLB and that it take 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 comments on the draft language for the remaining titles 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 or 703-264-9406, or Dan Blair, Senior Director for Policy and Advocacy Services at danb@cec.sped.org or 703-264-9403.

Sincerely,

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Associate Executive Director
Policy and Advocacy Services