



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

May 4, 2005

Honorable Margaret Spellings
Secretary of Education
U.S. Department of Education
Washington, DC

Dear Secretary Spellings:

The undersigned members of the Consortium for Citizens with Disabilities' Education Task Force write to express our grave concerns about new policies that the Department of Education has proposed regarding the assessment of special education students under No Child Left Behind (NCLB). Specifically, we refer to the opportunity for states to develop modified academic achievement standards and use alternate assessment based on those standards for certain students with disabilities. Based on the Department's estimates, this policy, combined with the regulation for students with the most significant cognitive disabilities, has the potential of moving a minimum of 1.7 million students with disabilities into some form of alternate assessment for purposes of determining adequate yearly progress under NCLB.

This policy and the timeline proposed for implementation greatly compromise both the philosophical and practical promise of No Child Left Behind. As currently described, this policy should not, and indeed, cannot be implemented in the 2005-2006 school year.

It was with great hope that the special education and disability community greeted the explicit and emphatic inclusion of students with disabilities in the accountability features of No Child Left Behind. President Bush's leadership and his conviction that every child counts was a welcome change. For the first time in our country's history, the quality of instruction in the general education curriculum and the academic achievement of special education students would be assured.

Many states and school districts continue to raise concerns as they fail to meet adequate yearly progress goals for students with disabilities. The Department's latest response to these complaints should have focused on increased and improved access to the general curriculum, an investment in training highly qualified special education teachers, the development of valid and reliable universally designed assessments, and a rededication to scientifically-based instruction. Instead, the Department chose to create a new alternate assessment for some special education students. The term used to describe these students, "persistent academic disabilities," is inappropriate, demeaning and is not defined. It should be discarded.

In October 2004, representatives of the Education Task Force met with Secretary Paige and staff of the U.S. Department of Education. A major discussion point was the need for the Department to do more to address appropriate assessment for certain special education students. This same issue was raised with Department staff again in January 2005. Even with the mandate for challenging instruction based on high standards, there are still not appropriate means to measure the progress of a small number of special education students. While we appreciate the Department's effort to address our concerns, the latest response does not provide the appropriate solution.

Attached is a document that outlines our concerns in greater detail. We have several specific requests.

- 1) Representatives of our Task Force would like to meet with you personally to explain our concerns and to make recommendations for addressing them.
- 2) We would like to participate on any working group or task force that might consider growth models or other changes in assessment or accountability mechanisms.
- 3) We would like to be involved in the development of the notice of proposed rulemaking for this new policy.
- 4) Assuming that a final policy is sound, we would like to be integrally involved in the provision of training and technical assistance to parents and professionals.

Thank you for considering our views and we look forward to meeting with you soon.

Sincerely,

Alexander Graham Bell Association for the Deaf and Hard of Hearing
American Association on Mental Retardation
American Council of the Blind
American Counseling Association
American Dance Therapy Association
American Foundation of the Blind
American Occupational Therapy Association
American Society for Deaf Children
Association of University Centers on Disabilities
Children and Adults with Attention Deficit/Hyperactivity Disorders
Council of Parent Attorneys and Advocates
Disability Rights Education and Defense Fund
Easter Seals
Helen Keller National Center
Higher Education Consortium for Special Education
International Dyslexia Association
Learning Disabilities Association of America
National Association of Councils on Developmental Disabilities
National Association of Protection and Advocacy Systems
National Center for Learning Disabilities
National Coalition on Deaf-Blindness
National Down Syndrome Congress
National Down Syndrome Society

National Mental Health Association

TASH

The Arc of the US

The Teacher Education Division of the Council for Exceptional Children

United Cerebral Palsy

CC: Ray Simon, Assistant Secretary for Elementary and Secondary Education

John Hager, Assistant Secretary for Special Education and Rehabilitative Services

Troy Justeson, Deputy Commissioner, Rehabilitation Services Administration

David Dunn, Chief of Staff, Office of the Secretary

Consortium for Citizens with Disabilities
Education Task Force Comments on
The Department of Education's
Raising Achievement Policy

1. **STAKEHOLDER INPUT:** The Secretary announced that regulations would be developed on this new policy. Given this circumstance, states should not implement the policy prior to the publication of final regulations. Rather, the typical process of publishing a notice of proposed rulemaking, followed by a public comment period, and then the issuance of final regulations should go forward before any state begins the implementation phase. The Department should make this clear to all state and local education agencies.

2. **TIMING:** The time-frame presented to implement this policy -- by the 2005-2006 school year or (at the latest) 2006-07 -- is unrealistic and impractical for numerous reasons.

To our knowledge, no state or school district in the nation has the expertise, capacity or tools to carry out this policy during the coming four months leading up to the next school year. Even with the \$8 million the Department promises will be available for technical assistance and support, money alone will not be sufficient to implement a policy as complex as this one -- a policy that is not likely to be fully developed for several months yet. Processes for determining qualified states, developing practical materials and training that effectively guide implementation; finalizing state and local policies and procedures; training state, local and building administrators; determining modified standards; preparing IEP teams; and similar tasks will require much more than the available 4 months.

Practically speaking, if states were to implement this new policy now, those individualized education programs (IEPs) already developed for the 2005-2006 school year would have to be revised, and revised absent final regulations. Moreover, states and districts are still struggling to fully implement the IDEA 1997 requirements that all students have access to the general curriculum and students who cannot participate in the regular assessment have access to an alternate assessment. Moreover, states have yet to fully implement the 1% NCLB assessment policy for students with significant cognitive disabilities. States and districts also are challenged to meet the new requirements for highly qualified special education teachers in the face of a critical shortage of special education teachers.

The bottom line is: the time, the resources, the expertise, and the necessary knowledge base are not in place to support rapid implementation of this policy.

3. **RESEARCH BASE.** The research and resulting data cited as the basis for this policy do not align with the students who will be most impacted by its implementation.

The research cited by the Department of Education consists of prevention studies on students in the general education population and remedial studies conducted on students identified as having "specific learning disabilities" under IDEA. All of these studies are focused entirely on preventing or remediating reading difficulty at the decoding level.

None of the studies cited included IDEA-eligible students other than those eligible in the “specific learning disability” category. Yet, the new policy specifically applies to students in any of the 13 categories of IDEA and does not apply to ANY non IDEA-eligible students. Additionally, none of the studies investigated the rate of inadequate response to intense, research-based intervention in the area of mathematics, an area of focus in NCLB assessment equal to that of reading.

Additionally, the research studies cited were conducted under ideal conditions, with abundant resources and highly trained teachers. Such conditions are rarely found among today’s schools, particularly those schools receiving Title I funding.

The Department’s rationale fails to consider that students can be provided accommodations and universally-designed materials to overcome barriers of poor decoding and/or computational skills, so that they can be taught and master grade-level skills. Recent research has documented that a continued focus on standards, access to the grade-level curriculum, and high expectations is most likely to result in improved performance among students with disabilities (See Donahue Institute, 2004; Ford Foundation, 2004). Additionally, instruction that is rich and connected to other experiences results in increased test results, improved self-esteem and finishing school with a regular diploma (See Langer, J.A. (2001). *Beating The Odds: Teaching Middle and High School Student to Read and Write Well. American Educational Research Journal*, 38 (4), 837-880)

The research provided by the Department of Education is insufficient justification for creating a huge category of students who will be given a new label. The rationale for the new group allows districts and states that may not have been providing instruction in the general education curriculum, to avoid “needs improvement” label. This unfairly shifts the responsibility away from the schools – which were unwilling to put scientifically based instruction in place -- to students who have not been given the tools to succeed.

Finally, we would like to see the research findings upon which the 2 % target is based. To date, none of the Department’s materials on the new policy provide this information.

4. STATE PARTICIPATION CRITERIA. States showing success in implementing NCLB should be encouraged to stay the course rather than be provided an incentive to exclude more students from access to the general curriculum and regular assessment. States must continue to work to develop and implement valid and reliable universally designed regular and alternate assessments, both on grade level and alternate achievement standards, and provide quality instruction on the general education curriculum for all its students with disabilities.

From an individual student perspective, it makes no sense to disqualify a student from participating in the modified assessment because the child’s state and/or local education agency did not meet the criteria established by the Department of Education. All states should participate as appropriate under this new policy. To do otherwise would discriminate against those students who should be tested under the new policy but have the wrong zip code. In addition, the policy seems to imply that states may trade off one subgroup for another. For example, if a state is effectively reducing the achievement gap for low income students, why should they be rewarded with permission to lower the standards for an additional 20 percent of students with disabilities?

5. STATE CAPACITY. States do not have access, nor have they developed a baseline synthesis of the research related to alternate assessments based on alternate and modified academic achievement standards.

If technical assistance for this policy is to begin immediately, what will be its basis? What is known about modified assessments? What is known about modified achievement standards? A synthesis of our current knowledge base is an essential requirement before any technical assistance could begin to be delivered. Without it, how would we know that the technical assistance is grounded in scientifically based research? We understand that \$6 million will be dedicated to research in this area, and we wholeheartedly support this research; however, the results of this research will not be available prior to the implementation of the new policy.

Despite the IDEA 97 requirement for students with disabilities to be assessed, the science on alternate assessments continues to be woefully incomplete. The 1% rule called for a study after 2 years of implementation. Additionally, the Department of Education recently funded a Center on Alternate Assessment that has only begun to provide valuable guidance on how to align alternate assessments with grade-level academic content standards. Additionally, no state currently has an alternate assessment scored against grade-level standards, which would be a valuable alternate for many students with disabilities, including those who may be inappropriately assigned to the modified standards pool due to the lack of valid alternate assessments based on grade-level standards.

The issue of assessments based on modified achievement standards has elicited intense discussion. This signals to us that the Department needs to do a lot of explaining of how it envisions students being assessed under this policy, followed by the development and broad dissemination of acceptable and scientifically validated assessment instruments; intense training and technical assistance to all affected parties, especially families; and emphasize to the SEAs and LEAs that nothing in this new policy allows schools to limit access to the general curriculum for all students who fall within this new requirement.

6. STUDENT-CENTERED DECISION MAKING. Training teachers, parents and other IEP team members to make appropriate and responsible decisions about what type of assessment is appropriate for each student must be the highest priority for the Department of Education, states and school districts

The 1% rule requires States to promote the use of appropriate accommodations, provide guidance to IEP teams, and provide training for teachers and other staff in the administration of assessments” This training has yet to be provided. In addition, IDEA 2004 does not go into effect until July 1, 2005 and requires states and local education agencies to develop and implement guidelines for the provision of appropriate accommodations. In fact, the Council of Chief State School Officers, through its Assessing Special Education Students (ASES) initiative, is about to publish a manual for making sound accommodation determinations as well as a facilitators guide for professional development. Both of these products are being produced in order to “fill the void” of Department of Education-produced materials.

Research has shown that IEP teams currently are unprepared to make sound decisions regarding the choice of both accommodations and assessment options. (Shriner and DeStefano, 2003, DeStefano, Shriner and Lloyd, 2003)

While NCLB was intended to bring about serious consequences for schools and districts, the law expressly stated that nothing in the Act is intended to be used to make any decisions for individual students, such as graduation or promotion from grade to grade. It must be noted that distinguishing an IDEA-eligible student who may be assessed according to the new policy will be a “high-stakes” decision, as it may lead to serious consequences for the individual student. For example, it is highly likely that an IEP Team decision to apply the new policy to a student would preclude that student from satisfying a state’s exit exam requirement and, therefore, obtaining a regular high school diploma.

A recent report from the Center on Education Policy, “State High School Exit Exams” found that 19 out of 25 states surveyed reported that they are currently or are planning to use the same exam for both NCLB accountability and the awarding of diplomas. (See pages 141-143 of “State High School Exit Exams” for a further discussion of the unintended consequences and perverse incentives that can be created by using a test for both NCLB and graduation determinations.)

7. PERSISTENT ACADEMIC DISABILITIES. The term “persistent academic disabilities” is inappropriate, demeaning, ill conceived, and must be discarded.

We strongly oppose the use of this term because it implies that these students will never achieve proficiency on grade level standards. The term promotes the “soft bigotry of low expectations.” There must be safeguards to prevent low expectations with whatever term is used.

There is no evidence to support the assertion that there is any valid way to determine which IDEA-eligible students can achieve grade-level proficiency and which cannot, thereby making the decision to exclude any group of students, by virtue of their disability category, IQ, or any other characteristic, both arbitrary and discriminatory. (See e.g. Expectations for Students with Cognitive Disabilities: Is the Cup Half Empty of Half Full? Can the Cup Flow Over? NCEO Synthesis Report 55).

8. STUDENT SAFEGUARDS. The Department of Education must give clear guidance about the length of time a student will be assessed under modified achievement standards. The Department must ensure safeguards will be in place to assure that this policy does not result in students being guided into a track of low expectations.

Once a student is found eligible for modified assessment using modified standards by an IEP team, will students remain eligible, for a limited amount of time, or can access to modified standards continue throughout the student’s school experience? If so, will younger students be “tracked” into a curriculum based on modified standards and denied access to the general education curriculum? What safeguards will be in place to assure that this category does not become a dumping ground for low expectations? How will states and local education

agencies ensure that IDEA-eligible students receive educational benefits from NCLB that are equal to their non-disabled peers, and, in particular, equal to other “subgroup” populations. Other concerns include the possibility that the decision to assess a child under the new policy will influence other critical decisions such as instruction and placement, further making it a “high-stakes” decision for students.

The Department of Education must clarify that if an IEP team decides to use the new policy, they must assure that parents are fully informed and provide consent. The IEP team must develop a statement explaining why the student cannot participate in the general assessment, even with appropriate accommodations and a statement explaining how long the team feels the student needs to be assessed using an alternate assessment based on other than grade level academic achievement standards.

9. **MONITORING AND COMPLIANCE.** The Department of Education must clarify how states and districts will be monitored to ensure that the policy is being appropriately administered.

The Department of Education’s track record on monitoring federal education programs is spotty, at best. It is well documented that too many states have exhibited repeatedly that they have not been successful in monitoring IDEA implementation. (Back to School on Civil Rights, National Council on Disability) Further, the Department of Education’s difficulty in providing adequate guidance to help states implement NCLB has been noted by the GAO. (GAO_04-734, No Child Left Behind Act: Improvements Needed in Education’s Process for Tracking States’ Implementation of Key Provisions, September 2004).

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