



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

May 4, 2007

Dear Senator:

CCD continues to support the promise of No Child Left Behind (NCLB) that every child, including a child with a disability, can achieve greatness thanks to a quality education. Because of alignment of the Individuals with Disabilities Education Act (IDEA) and NCLB, special education students are expected to have a highly qualified teacher, access to the general curriculum, and the individualized supports and assistive technology necessary to achieve high academic standards. School districts and states are required to measure and report this progress as part of the NCLB accountability system.

On April 9, 2007, the U.S. Department of Education issued final regulations regarding the NCLB accountability system for certain students with disabilities who are perceived to be unable to achieve grade-level proficiency within the same timeframe as their peers, also known as the "2 Percent Rule." The undersigned members of the CCD Education Task Force offer the following comments and recommendations on this regulation.

Although there are students with disabilities who are not achieving grade-level proficiency, there is no empirical evidence to demonstrate that exempting a significant percentage of them from the grade-level academic achievement standards is the appropriate response. Many students with disabilities can achieve grade-level work when given the right access to high quality instruction, with qualified teachers and appropriate accommodations for both instruction and assessment. Rather, the new policy is based on research that does not justify including up to twenty percent of special education students who have Individualized Education Programs (IEP) under IDEA as the focus of the regulation. In fact, in one of the major studies cited, only 11 percent of the students were special education students with an IEP and the additional studies cited did not include any special education students.

Moreover, the Institute for Educational Sciences (IES) awarded three grants in 2006 designed to address how "assessments, measures of progress, assessment standards, and accountability provisions should be designed to capture and represent growth in high priority skills among children with disabilities. The overall goal of this program is the design and implementation of assessment systems that are valid and that provide information that can be used to promote the highest levels of achievement for all children." The duration of these grants is five years. CCD is very hopeful that these studies will provide comprehensive guidance to states on how to develop and administer regular assessments that are valid for

students with disabilities and how to develop and administer alternate assessments for those students with disabilities who might still need them.

## RECOMMENDATIONS

As Congress continues to debate revisions to No Child Left Behind, CCD offers the following recommendations:

### 1. Neither the 1 Percent Rule nor the 2 Percent Rule should be codified in the statute.

Until the IES studies are completed, Congress should exercise its oversight responsibility to ensure that the 1 Percent Rule and the 2 Percent Rule are used very conservatively by schools when assessing students with disabilities. Neither policy should be codified in the statute. However, the Department should be required to amend the 1 Percent Rule to add the important safeguards that were added to the 2 Percent Rule (including standards-based IEPs and a separate annual determination about which assessment is appropriate for each subject), closely monitor compliance with the regulatory guidelines and submit an annual report to Congress that documents the following:

- the percentage of students who are assessed under each of these Rules
- the percentage of students whose proficient and advanced scores on assessments based on alternate and modified academic achievement standards are used in calculating Adequate Yearly Progress (AYP). The percentage should be reported separately for each type of assessment.
- the breakdown of information by each of the of the thirteen disability categories under IDEA.

### 2. Additional Technical Assistance is Critical.

While we are pleased that the regulations require states to establish and monitor the implementation of clear and appropriate guidelines for IEP teams to apply in developing IEPs for students who are assessed based on modified academic achievements standards, more technical assistance is necessary. Specifically, teachers, school administrators, and parents need additional guidance and research to make appropriate decisions for each child. For example, it is not sufficient to tell a parent that the IEP needs to be based on grade-level academic content standards. The IEP team must be able to demonstrate that how the IEP is based on grade-level standards. IEP teams need the tools to make these decisions.

It's important to note that this policy requires IEP teams to determine a student's proficiency (or lack thereof) for the purposes of determining which assessment is administered before the student takes the assessment. This policy sets a precedent for students with disabilities that is otherwise not required for any other student in the school. Rather than having the assessments confirm that a certain number of students are not achieving on grade level, this policy requires such determination be made before any student takes any test. Such self-fulfilling prophecy may not reflect the actual abilities of students.

3. Congress should direct the US Department of Education to provide guidance to states on assessment accommodations.

Such guidance must require states to establish policies that:

- are grounded in research
- allow for maximum number of valid accommodations
- provide evidence that any accommodation designated as non-standard has been proven through research and field-testing to compromise the target skill being assessed

Currently, there are vast differences among state accommodation guidelines. In some states, many schools are facing negative AYP consequences for utilizing accommodations that have been deemed as nonstandard by state guidelines, and which therefore invalidate a student's test results in both the performance and participation factors of AYP. There is no universally accepted method for establishing whether an accommodation is "standard" or "nonstandard" and there is currently no federal review process for state accommodation guidelines beyond the peer review process for NCLB accountability. These peer reviewers are not experts in accommodations for students with disabilities, rendering this review relatively meaningless.

Further, research on testing accommodations for students with disabilities has established that states with the most unrestricted accommodation guidelines demonstrate the highest correlations with increased participation in state assessments. There is a clear and compelling need to provide federal guidance to states regarding formulation of test accommodation guidelines as well as assistance on how to best communicate those guidelines to IEP teams, 504 teams, and test administrators.

4. Congress should direct the US Department of Education to provide guidance to states on how to implement universal design for learning (UDL) principles. Furthermore, CCD recommends adding provisions to NCLB that would define and promote implementation of UDL by states, districts and schools.

Incorporation of the UDL principles would ensure that academic standards, textbooks and materials and assessments would be accessible for all students and that general and special education teachers would be trained in the use of teaching methods consistent with UDL principles. UDL would ensure that all students who struggle have better access to grade-level instruction, materials, appropriate assistive technologies, and appropriate teaching methods and assessments. CCD continues to urge states and testing companies to develop and implement universally designed tests that will allow any student with a disability to use any accommodation included in the child's IEP.

Finally, CCD urges Congress to vigorously exercise its oversight responsibilities on these important No Child Left Behind issues for students with disabilities. Without this oversight, the struggles parents and schools currently face will only continue.

Thank you for considering our views.

American Association on Intellectual and Developmental Disabilities  
Association of University Centers on Disabilities  
Council for Learning Disabilities  
Council of Parent Attorneys and Advocates  
Easter Seals  
Epilepsy Foundation  
Helen Keller National Center  
Higher Education Consortium for Special Education  
National Center for Learning Disabilities  
National Coalition on Deaf-Blindness  
National Down Syndrome Congress  
National Down Syndrome Society  
National Disability Rights Network  
Teacher Education Division of the Council for Exceptional Children  
The Advocacy Institute  
The Arc of the United States  
United Cerebral Palsy

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