



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

September 5, 2007

Dear Chairman Miller and Ranking Member McKeon:

Thank you for this opportunity to provide recommendations and changes to the draft ESEA Title I A bill. 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 and we appreciate that you have included us in the reauthorization process.

We are pleased that the use of the Individualized Education Program (IEP) is not included as a means of determining accountability for students with disabilities. We thank you for listening to the advocacy and research community about the devastating impact this would have for students with disabilities. Additionally, we are pleased with a number of additions and changes to current law that will directly benefit students with disabilities including:

- Maintenance of the requirement for disaggregation of performance and participation data by student groups and AYP to be based primarily on academic assessments;
- Addition of graduation rate as factor in adequate yearly progress;
- Addition of student growth as an allowable factor to be incorporated into AYP (with specific criteria);
- Requirement that the number of students in groups for disaggregation not exceed 30 (with allowable exception not to exceed 40);
- Requirement for each state to have an accommodations policy;
- Requirement for SEAs to provide assurance of the development of a comprehensive plan to address implementation of universal design for learning (UDL).

As advocates for best practices and policies that increase access to the general curriculum and promote and support setting high expectations for all students, we remain gravely concerned that the draft bill includes a provision to codify the 2 Percent Regulation as well as allow for a waiver to expand that number to 3 Percent. As we have stated before (and has been documented before the Committee), although there are students with disabilities who are not achieving grade-level proficiency, there is no empirical evidence to demonstrate that exempting a significant number of students from 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 to justify the new policy, 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. Nationally recognized experts have questioned how a policy – that will require alternate assessments and modified curriculum for as many as 2 million students – can be justified when the 1 Percent regulation effectively covers the number of students whose IEPs would deem them eligible for an alternate assessment.

While we appreciate that the bill allows for the Secretary to reexamine and re-promulgate regulations as appropriate, we believe it is disconcerting that Congress would place into law a provision that clearly continues to be experimental. Committing this provision into statute does substantially limit the Secretary’s ability to use regulatory powers when findings indicate significant changes.

Again, we appreciate the opportunity to contribute to the NCLB discussion. Thank you for considering our views.

American Association on Intellectual and Developmental Disabilities (formerly AAMR)  
American Music Therapy Association  
Assistive Technology Act Programs  
Association of University Centers on Disabilities  
Bazelon Center for Mental Health Law  
Disability Rights Education and Defense Fund  
Easter Seals  
Higher Education Consortium for Special Education  
Learning Disabilities Association of America  
National Alliance on Mental Illness  
National Center for Learning Disabilities  
TASH  
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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