

October 18, 2011

Dear Chairman Harkin and Ranking Member Enzi:

On behalf of the 2.5 million students with learning disabilities, we are writing to comment on your bill that seeks to reauthorize the Elementary and Secondary Education Act (ESEA). The National Center for Learning Disabilities (NCLD) appreciates your acknowledgment of the value of best practice, and we share your commitment to providing high quality instruction and instructional intervention to the most disadvantaged students in our nation's schools. While we do want to thank you for the provisions that support learning opportunities for students with disabilities in the bill and for your joint efforts to find bipartisan agreement, we unfortunately cannot support the bill at this time.

NCLD's leadership did not come to this decision lightly because we know of your deep commitment to advocating for individuals with disabilities. In fact, NCLD honored Senator Harkin in 2009 for his great, historic and significant work as a legislator, as a leader and as a champion for the rights of children and adults with learning disabilities (LD). However, we do believe that your bill, if it became law, would significantly limit the learning opportunities and reduce both expectations and academic achievement for our most disadvantaged students -- especially those with LD -- representing nearly half the students receiving special education in our nation's public schools today. As such, we'd like to share our comments on several main provisions of the bill and urge you to reconsider the key provisions we raise concerns about in light of what is at stake for so many students.

Accountability

Comment: While the bill includes critical elements that would be essential for ensuring the progress of students with disabilities and other disadvantaged students, our major concern is with the bill's narrowed accountability focus on the bottom 5% of schools and dropout factories, which will negatively impact students with disabilities. The bill does not include any goals or performance targets that states, districts and schools would have to meet in order to assure progressive academic achievement for all students. Based on this approach to reform, NCLD cannot support your bill at this time.

Students with disabilities *are not clustered in the bottom tier schools* but are spread throughout our country's schools – urban, rural, and suburban— since disability is part of the human condition and most students attend their neighborhood schools. The Act would limit the requirement to actively intervene in schools with low achievement to the bottom 5 percent of schools, including high schools with extremely low graduation rates. While these schools should certainly receive additional focus in ESEA, this would leave millions of students with disabilities in schools with little, if any, focus on their academic performance.

Recommendation: NCLD strongly believes that ESEA should require all schools to be held accountable for the academic performance of all subgroups in both closing achievement gaps and raising graduation rates. The law should set goals and/or performance targets to help assure that all students are making steady progress toward college and career ready standards and graduation goals. The law should also require States and school districts to intervene in *all* schools where subgroups, including students with disabilities, are not meeting these standards and goals. We must have an expectation that all of America's students graduate college and career ready and that an accountability system will hold all schools accountable for the academic performance and graduation rate of all groups of historically underperforming students. Without this, we will lose a critical focus on the academic achievement and graduation rate of students with disabilities – many of whom are poor and minority. As this legislation moves through Committee markup and consideration in the full Senate, NCLD urges you to reconsider this approach and apply more rigorous requirements for use of taxpayer dollars targeted toward supporting the most disadvantaged students in all schools in the country.

Multi-Tier System of Supports

Comment: NCLD would like to thank you for including Multi-Tier System of Supports (MTSS), frequently referred to as Response to Intervention, as an allowable use of funds. This will encourage the systemic use of best practices so that more

students are provided the instruction and interventions that will help them achieve in school. Because the Elementary and Secondary Education Reauthorization Act specifically permits school districts to use Title I funding in targeted and schoolwide programs to support Multi-Tier System of Supports (MTSS), as well as part of grant programs in the Act focused on literacy rates and other professional development in high need areas, the inclusion of MTSS in Title I will improve access to early intervention, early identification and improved academic and behavior outcomes. It will ensure resources are targeted to serve all struggling learners as early as possible. Its inclusion will also allow millions of children served in Title I programs to learn, succeed, and become college and career ready.

Recommendation: We do, however, want to urge the Committee to include a definition of MTSS in the Act's general definition section in Title IX. Successful MTSS efforts include a comprehensive and inclusive approach to helping struggling learners. A definition would ensure that those using Title I and literacy related funds under the Act are maximizing the tools that MTSS can provide to schools and the students they serve.

Alternate Assessments

Comment: We thank you for striving to limit the use of alternate assessments on alternate academic achievement standards (AA-AAS) to students with the most significant cognitive disabilities. This type of alternate assessment is intended for a very small number of students – those with only the most significant cognitive disabilities.

Recommendation: We urge you to place a more rigid restriction on the administration of AA-AAS. Specifically, use of this assessment should be limited to no more than 1% of all *students* assessed rather than limited to the scores of those students who take an AA-AAS who are on track. Since the current ESEA regulation regarding administration of AA-AAS was formulated within the construct of current law, including the AYP accountability system, it worked to limit administration. However, your bill removes accountability for most schools, thus opening the door for widespread abuse of AA-AAS. Equally important, in schools facing action via your bill's accountability structure, students with disabilities may be excessively administered an AA-AAS to reduce their impact on the school's performance. For these reasons, we urge you to reconsider the bill's current provision regarding administration of AA-AAS.

Recommendation: We also urge you to modify the requirement that report cards include the number and percentage of students taking an AA-AAS. This information is necessary to monitor administration and guard against overuse. Rather than include this requirement in the report card section, it should be incorporated into annual reporting at the state level.

Comment: Your bill also recognizes that students with disabilities (and specifically students with learning disabilities) can achieve academically alongside their peers. We appreciate that your bill does not cite or statutorily authorize the existing regulatory authority to assess students with disabilities with alternate assessments based on modified academic achievement standards -- commonly referred to as the 2% regulation. We appreciate that we share a goal to ensure that all students with disabilities are held to high expectations and are not inappropriately assessed against less challenging academic standards, which we know restricts their opportunity to be college and career ready, or worse yet, not able to graduate from high school with a regular diploma. Recently we have seen mounting evidence that States with the AA-MAS are dramatically overusing it. For example, in Austin, TX, 91% of students with IEPs were assessed using one of two alternate assessments – a practice never envisioned by USED.

With only fourteen states now implementing a modified assessment in the past five years, analysis of state data now show us how states have abused this policy to:

- Place thousands of poor, Black students in a modified track that may not support graduating with a regular diploma
- Place students who are proficient on the general assessment into the modified assessment for no apparent reason other than the fact they are students with disabilities
- Place high numbers of students with learning disabilities, attention deficit disorder, speech/language disorders and other disabilities into the modified test when such disabilities should not warrant the need to be placed into these assessments

- Reduce student access to the regular classroom and general curriculum, thus segregating more students and reducing opportunities to achieve with their peers.

Recent studies on students who *persistently fail state assessments in reading and math* also reveal that such students are as likely to be poor and minority as to be students with disabilities. Yet there is no federal policy effort to allow States to develop and administer different assessments for these groups of students.

Recommendation: Given the lack of evidence on which this regulation was based, the clear abuses that have surfaced to date, and the express violation of student rights, we strongly believe that the 2% regulation does not belong in either regulatory or statutory law and urge you to include a specific clause to sunset the 2% regulation. We also urge you to oppose any amendments during Committee consideration or on the Senate floor which would statutorily authorize the 2% regulation or seek to further expand its application to additional students with disabilities.

Universal Design for Learning

Comment: NCLD appreciates the incorporation of Universal Design for Learning (UDL) into several aspects of the bill including the promotion of universally designed assessments.

Recommendation: UDL instructional methods are invaluable and must also be reflected in Title II to maximize access to the broadest range of diverse learners and ensure professional development is strengthened.

Thank you again for your leadership and belief in the potential of all students. We welcome the opportunity to work with you as the Elementary and Secondary Education Reauthorization Act moves forward.

Sincerely



James H. Wendorf
Executive Director

NCLD's mission is to ensure success for all individuals with learning disabilities in school, at work and in life. We:

- Connect parents and others with resources, guidance and support so they can advocate effectively for their children.
- Deliver evidence-based tools, resources and professional development to educators to improve student outcomes.
- Develop policies and engage advocates to strengthen educational rights and opportunities.

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