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ESEA Recommendations

The National Down Syndrome Society (NDSS) and the National Down Syndrome Congress (NDSC) submit the following recommendations to ensure strong accountability and high expectations for students with disabilities in the reauthorized ESEA.

The rights and protections in IDEA have been complemented and supported by ESEA accountability. Many students with disabilities, including students with intellectual disabilities, are receiving challenging curriculum, instruction and assessments for the first time. We are just beginning to see the positive effect these changes will have on their academic achievement and post-school outcomes. Unfortunately, there are still many places where these students are not receiving the instruction they deserve because of provisions in the law and regulations, as well as implementation issues, that allow their scores to be hidden or low expectations to persist. Also, many educators do not know how to design instruction and assessment for diverse learners.

We urge Congress to stand firm on the provisions in this law that have provided these important academic opportunities for students with disabilities, close the loopholes that diminish accountability for their achievement and support innovations like Universal Design for Learning to ensure that all students receive quality instruction and accurate assessment.

In addition, we ask Congress to consider whether proposed changes in accountability measures ensure that all students are part of the overall accountability system and do not inadvertently mask situations where certain students are not getting the education they deserve. A school that has a high percentage of students passing AP tests or graduating should not be permitted to use that data to cancel out inadequate achievement by other students at the school. There must be accountability for ALL students.

The term “college and career ready” is used frequently in references to ESEA reauthorization. These goals will not be meaningful to many students, with and without disabilities, unless there is comprehensive implementation of Universal Design for Learning. Students need multiple ways to be presented with information, to demonstrate their knowledge and to be motivated to learn.

It is essential that the college and career ready standards apply to all students, including students with intellectual disabilities. There are over 250 postsecondary programs for

students with intellectual disabilities in colleges and universities across the country. (See www.thinkcollege.net) Many more will be developed, thanks to the provisions in the Higher Education Opportunity Act, which relate to these programs. In addition, there is growing recognition that students with intellectual disabilities should be prepared for competitive long term employment; a career, not merely menial jobs that come and go. Until this happens the astounding unemployment rate for these individuals will not improve.

We have heard educators and administrators say that students with disabilities are unable to achieve at the level expected by current law. However, there is an important distinction between being innately unable to achieve at a certain level and being unable to do it because the knowledge or skills were never taught. Before considering any changes to assessments or accountability measures that affect students with disabilities, we urge you to apply the “criterion of the least dangerous assumption for these students.”¹

This criterion holds that in the absence of conclusive data, educational decisions ought to be based on assumptions which, if incorrect, will have the least dangerous effect. Therefore, assumptions must be avoided that will result in inferior instruction, a segregated education, and fewer opportunities as an adult. Using the IEP as a measure of accountability for ESEA would violate this criterion. IEP goals do not represent the general education curriculum, but merely the goals that allow students to access that curriculum. ESEA accountability based on IEP goals would perpetuate dangerously limited academic expectations.

At the March 18, 2009 subcommittee hearing on diverse learners, Dr. Kearns stated very clearly that the IEP is not an accountability tool, that IEP teams do not necessarily make good standards based decisions for students with intellectual disabilities and that students with intellectual disabilities can succeed at an unprecedented level if they are given the benefit of instruction and assessment based on the content standards for the grade in which they are enrolled. The importance of using the general education curriculum as the basis for ESEA accountability (not the IEP goals) and ensuring that students who take assessments on alternate academic achievement standards are provided access to the general education curriculum for the grade in which they are enrolled can not be understated. The implementation of Universal Design for Learning will give teachers the supports to provide this instruction and assessment developers the means to accurately measure performance.

In the opening statement to the Administration’s Blueprint for Reform, President Obama states: “We will not be able to keep the American promise of equal opportunity if we fail to provide a world-class education to every child.” Please consider the following recommendations for ESEA reauthorization. There are many important issues we discuss in these recommendations, but until the problems related to the current “1%” rule are fixed, children with Down syndrome will not be provided with the high quality education that the President has promised to every child.

1 Donnellan, A. (1984). The criterion of the least dangerous assumption. *Behavioral Disorders*, 9, 141-150.

We appreciate this opportunity to provide comments and would be glad to help you in any way we can as the process moves forward.

Alternate Academic Achievement Standards:

- Reconsider whether the 1% cap (10% of students with disabilities) is supported by data. During the early part of regulation process for the rule on alternate academic achievement standards, it was acknowledged that only half that number, or .5%, were students to whom the rule should apply. It was raised to 1% because States fought against the lower cap. The vast range of abilities and disabilities in this group of students is evidence that the 1% rule is overused.
- If the 1% cap remains, it should be a cap on the number of students who are permitted to take the test not on the percentage of proficient and advanced scores that can be used for accountability purposes. Also, States should be expected to use more than one alternate academic achievement standard. This is permissible under the current regulations but the flexibility is underutilized.
- Alternate assessments on alternate academic achievement standards (AA-AAS) vary greatly from State to State. An analysis of the various types of AA-AAS should be conducted to see which are challenging, aligned to grade level content, fit with a growth model and can be implemented without placing students in special education classes to collect evidence.
- To ensure access to the general education curriculum, the AA-AAS must be aligned to the State content standard for the grade in which the students are enrolled and must measure academic progress not IEP goals or functional life skills. These requirements are discussed in the Non-regulatory Guidance for Alternate Academic Achievement Standards and we oppose any weaker language.
- All achievement standards must provide access to the general education curriculum, not just promote access. The provision in current regulations ensuring that students with the most significant cognitive disabilities are, to the maximum extent possible, included in the general education curriculum, should be amended to delete the underscored limitation. We oppose the current underscored language because it should be aligned with IDEA with respect to access to the curriculum for all students with disabilities.
- As part of the effort to align with IDEA, Least Restrictive Environment should be monitored under ESEA to ensure that students aren't moved to more restrictive environments solely because they are taking the AA-AAS (or some other alternate assessment). This would be similar to the current practice of monitoring drop-out rate to discourage schools from pushing out lowering performing students
- There should be a separate AA-AAS for each subject tested so students can take it in one subject but take another assessment for the other subjects, if that is appropriate. Many students have higher achievement in certain subjects, including the students who take the AA-AAS.
- Students should have the opportunity to move from AA-AAS to other assessment options if they make sufficient academic progress, or new assessment options become available.

- Students should get the benefit of curriculum, instructional materials, teaching methods and assessments based on the principles of Universal Design for Learning before being placed in an alternate assessment.
- Eligibility guidelines for all assessments must contain detailed criteria and there must be training on using the criteria and monitoring to ensure their proper use.
- Eligibility for the AA-AAS should be determined separately for each subject.
- Students taking an AA-AAS should not be precluded from the opportunity to work towards a diploma. Currently, many children are being tracked for the AA-AAS and are precluded from an opportunity to earn a diploma when they are only 7 years old, sometimes younger.

Modified Academic Achievement Standard

- There is insufficient data on which to base assessments on modified academic achievement standards and the 2% cap.
- Phase out these assessments in the next few years or use them for students who otherwise would be given an AA-AAS but can demonstrate achievement on a standardized test. Many techniques permitted in the development of assessments on modified academic achievement standards are consistent with the principles of universal design for learning and should be used to improve the regular assessment.
- Eliminate the use of proxy calculations for accountability.
- Our recommendations for the AA-AAS must be implemented in order for the phase-out of the AA-MAS to be equitable. Currently, the AA-MAS is the only alternate assessment that provides an opportunity for students with Down syndrome to earn a diploma.

ESEA Accountability that is based on the State content standards:

- IEP goals are only the goals that are necessary to support progress in the general education curriculum—they do not represent full curriculum expectations for the child. Most IEPs have very few academic goals regardless of the level of academic performance of the child. The IEP was never intended be an accountability tool for education reform
- ESEA accountability for students with disabilities should continue to focus on academic achievement for the core subjects tested as it does for all other students. Anything less is inequitable.

Graduation rate:

- Schools should NOT be permitted to count students taking the alternate assessment on alternate academic achievement standards as if they graduated with a regular diploma unless these students at least have:
 - the opportunity to earn a regular diploma and, if they are unable to meet the requirements for the regular diploma,
 - the opportunity to earn a standards based alternate diploma (tied to meeting set objectives in the general education curriculum, not a diploma based on IEP goals)

- There should be a competitive grant to help States or LEAs develop a standards based alternate diploma as described above.

Universal Design for Learning (UDL)-an innovative framework for education that provides guidance to ensure that standards, curriculum, teaching methods, instructional materials and assessments are designed from the beginning to meet the needs of diverse learners, instead of retrofitting. Teachers and students are properly supported and students are accurately assessed using UDL. For more information on UDL see www.udlcenter.org. For information on the National UDL Task Force, 38 national organizations working to include UDL in ESEA, see www.udl4allstudents.com. The National UDL Task Force recommendations on ESEA, which we support, can be found at <http://www.advocacyinstitute.org/UDL/NCLB.shtml>. Some UDL recommendations are also below:

Include UDL in teacher preparation, content standards and statewide assessments provisions. Our specific recommendations on these issues appear later in this document.

- Include language in the Education Technology section of ESEA regarding the use of technology that is consistent with the principles of UDL and increase funding for education technology. This will support the National Education Technology Plan, which has been infused with UDL.
- Add language for States and districts regarding curriculum, instructional materials, teaching methods and district and classroom assessments that are consistent with the principles of universal design for learning.
- Require States to provide an assurance that they are developing a plan for UDL implementation with experts in the field and stakeholders.
- Create a competitive grant to support the implementation of UDL and include UDL as a permitted activity for other grants.
- Ensure that response to intervention is done in the context of UDL so schools can accurately determine when a student needs an intervention.
- Require the U.S. Department of Education to submit a comprehensive plan to Congress on the implementation of UDL.

Accessible State Content Standards

- Content standards must be accessible to all students. Therefore, any revision of standards adopted by a State or consortia of States should be undertaken in a manner consistent with the principles of UDL.
- The Center for Applied Special Technology (CAST) has submitted UDL recommendations for the introduction to the Common Core Standards and for the wording of the standards to help achieve this goal. These recommendations should be adopted.

Fair and Accurate Assessment Development:

- Assessments should be designed in accordance with the principles of UDL. Current language referring to universally designed assessments is insufficient

because it doesn't directly tie to the principles, guidelines and checkpoints of UDL that would assist a State in determining whether their assessment is universally designed.

- Funding for research on UDL assessment design and technical assistance to states should be provided.
- Great caution should be exercised with respect to adaptive testing. Although, UDL supports customization in assessments, the score must be an accurate representation of the student's knowledge. The use of computer adaptive tests in the presence of idiosyncratic knowledge patterns has been studied and results show that scoring of adaptive tests is problematic when a test taker responds to questions in an unexpected way. Results also indicate that a fairly large number of students might have test results that are influenced by idiosyncratic patterns of knowledge. ² This problem would affect many students with disabilities, as well as some of their non-disabled peers.

Effective teachers and Administrators:

- Clarify that the "needs assessments" required in Title II must involve professionals and parents who represent the interests and concerns of students with disabilities.
- Clarify that the teaching skills addressed by the "needs assessment" should be consistent with the principles of UDL.
- The application for grants for preparing, training, and recruiting high quality teachers and specialized instructional support personnel, should require a description of how the SEA will use the funds to provide training in the use of teaching methods consistent with the principles of universal design for learning.
- Add a requirement that general education teachers have the training to teach diverse learners.
- Require that special education teachers teaching secondary students who take alternate assessments on alternate academic achievement standards must have content training for the grade in which the students are enrolled.
- Support the preparation, training and recruiting of effective administrators.

Growth Models:

- Growth models should only occur in pilot form until more data has been collected and the pilot should contain clear criteria to ensure validity, reliability and high expectations for ALL students. Currently most growth models do not include students who take an AA-AAS.
- Growth models should be used with the status model. Growth models should not be used as an alternate way of including students with disabilities in the assessment and accountability system. This would include use of a student's IEP

² Kingsbury, G.G. & Houser, R.L. (2007) ICAT: An adaptive testing procedure to allow the identification of idiosyncratic knowledge patterns. In D. J. Weiss (Ed.). *Proceedings of the 2007 GMAC Conference on Computerized Adaptive Testing*. Retrieved 12/02/09 from www.psych.umn.edu/psylabs/CATCentral/.

- for assessing progress or having the IEP team define or determine what that progress should be.
- NDSS and NDSC also support the recommendations made in the report of the Growth Model Task Force. See <http://www.ndss.org/images/stories/NDSSresources/pdfs/nclb%20growth%20model%20june%202009%20final.pdf>

General Subgroup issues:

- Maintain the requirement for disaggregation of data for subgroups, including the disability subgroup and maintain the requirement that performance and participation targets must be met for the overall student population AND each of the current subgroups.
- Continue to fully count students in each subgroup to which they belong (e.g. a student who is African-American, poor and has disabilities is counted in three subgroups). There are some complaints that these children are counted three times against the school, but if they are helped to achieve they can count three times to the benefit of the school. In our society, students in multiple subgroups still have multiple disadvantages so it is fair to count them accordingly.

Minimum Subgroup Size (N)/Confidence Intervals :

- Limit states to an N-size of 20 for accountability and participation. Currently, a minimum subgroup size of 30 or higher generally allowed an unacceptably high number of schools to make AYP without counting the proficiency rate of the disability subgroup .See the study on the effect of minimum subgroup size at http://www.nciea.org/publications/NCEOAYPReport05_SMBGMS.pdf and the related recommendation in the NCLB Commission Report.
- Limit confidence intervals (CI). to 95%, which is the CI used for most medical studies
- Require each state to submit an impact study regarding the combined effect any proposed amendments to its accountability plan will have on accountability.

Accountability measures and Differentiated consequences

- In the 2007 draft reauthorization bill, the “multiple indicators” provisions masked poor progress by certain subgroups by using measures for performance targets that are not relevant to most of that subgroup. For example, the percentage of students taking AP tests who passed them could help schools reach the overall performance target. If the school only looks at the scores of the 3 students with disabilities who took the test and all 3 passed, this indicator could mask low performance of the rest of the subgroup. If indicators like this are to be used the denominator should be all the students in the subgroup (including the students who did not take the test) to capture the true meaning of that indicator for the subgroup.
- We recommend an indicator for post-school outcomes. Since standards to prepare students to be college and career ready seem to be a major component of ESEA

- reauthorization, there should be an indicator to measure progress toward that goal. Only jobs that pay minimum wage or higher should be counted as employment.
- In implementing differentiated consequences, care must be taken not to permit schools to continually avoid the highest level of consequences because they only have one subgroup that is not meeting performance targets or because the number of students in a subgroup may not be a large percentage of the overall student population. These students deserve accountability too.

Charter Schools

- Tom Hehir provided testimony on charter schools and students with disabilities to the House Education and Labor Committee earlier this year.³ According to his testimony the research on the participation of special populations and charters demonstrates that in most places these students are under-represented. Charters generally serve a smaller percentage of children with disabilities than traditional public schools. In fact, many charters do not serve any students with more significant disabilities. The bullets below represent Tom Hehir's recommendations, which we support.
- **States should be required to proactively address issues of access involving special populations as a condition for receiving federal funds**
- **A federal technical assistance center focusing on the needs of students from special populations in charter schools should be created.**
- **Research on serving special populations in charter schools should be funded.**

³ Tom Hehir's Testimony before the House Education and Labor Committee 2/24/10
<http://edlabor.house.gov/documents/111/pdf/testimony/20100224ThomasHehirTestimony.pdf>