

Commission on No Child Left Behind

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Over three decades ago my son, Jon Will, was born with Down syndrome. Since this was before IDEA, there were no academic expectations for children with intellectual disabilities. Even after the EHA P.L. 94-142 had passed and he progressed through the education system, I found I had to persuade a surprising number of his teachers that he could benefit from reading instruction. Today children with Down syndrome are reading and meeting other academic goals that once were inconceivable. They are even going to postsecondary education programs at more than 100 colleges around the country. The high expectations of parents have been the driving force behind these achievements. It is time for the educational institutions in this country to have the same high expectations.

It is fitting, therefore, that NCLB is based on the premise that all children can be proficient on their State content standard. A very limited percentage of students with disabilities may need alternate or modified achievement standards to determine the breadth, depth and complexity of their knowledge, but they are all expected to receive instruction aligned to the State content standard for the grade in which they are enrolled. This premise makes NCLB more than an accountability statute; it is the institutional embodiment of the high expectations that students with disabilities need to succeed. You may hear people testify that NCLB has a negative impact on children with disabilities. On the contrary, with its focus on accountability and the requirement to disaggregate data by subgroup, it is one of the best things to have happened in a very long time. The negative impact comes from scape-goating and low expectations perpetrated by those who do not want to be held accountable for children with disabilities or engage in the hard work that it will take to implement this law properly.

Parents who are in the position to be strong advocates have been able to ensure that their children receive access to the general education curriculum in the least restrictive environment (LRE) under IDEA. However, IDEA does not change the system for the children whose parents do not have the time, money and education to understand these rights or the complex due process procedures. Since the enactment of NCLB, we have finally started to see the systems change that is necessary for IDEA to be fully implemented for all children with disabilities, regardless of race, ethnicity or socioeconomic status. NCLB must remain strong or this momentum will be lost. Therefore, NDSS does not recommend major changes to the law.

Most of the problems blamed on the statutory provisions of NCLB are a product of the poor implementation of both IDEA and NCLB, and do not require statutory changes to correct. NDSS will support any recommendation that helps schools, districts and States make AYP by improving instruction and assessments. However, we urge the Commission to reject any recommendation that, under the guise of "flexibility", would improve AYP by lowering standards or otherwise diminishing accountability. The Commission should also consider the negative effect that State flexibility has on the comparability of data across the States and the transparency of AYP results. School, district and State report cards are meaningless if parents are not given a clear explanation

the numerous complex variables (such as N size, confidence intervals) that are factored into AYP calculations.

NDSS's view on key NCLB provisions

It is critically important that NCLB maintain the separate AYP, reporting and 95% participation requirements for the disability subgroup, with the same State content standard and annual measurable objectives for proficiency as all other students. The IEP should not be the basis for any aspect of AYP because IEP goals do not constitute all the curricula objectives for a child. IEP goals only state the objectives necessary to support progress in the general education curriculum. In fact, AYP should not be based on any subjective data determined by IEP teams. This includes allowing IEP teams to determine projected growth rates for individual children to be used in growth models or for any other purpose. There is a huge variance in the capacity of IEP teams to make appropriate decisions, in general. In addition, it has been shown that the low expectations of some teachers lead them to make inaccurate predictions about the abilities of students with cognitive disabilities.¹ That is why proficiency should be objectively measured by an assessment designed for that purpose.

The minimum subgroup size selected by States should be limited, as currently required by the statute, to the smallest number that is necessary for confidentiality and statistical reliability purposes. States should not be permitted to have a larger minimum subgroup size for districts or base minimum subgroup size on the enrollment at the school. These recommendations would further diminish accountability and are unnecessary for confidentiality or statistical reliability. Students who fit into the disability subgroup, as well as any other subgroup(s) should continue to count fully in each subgroup, so the data is not skewed. You may hear recommendations that a student should count partially in each group or only count for one group, but this would not reflect the proper data for each subgroup and would create additional problems with minimum subgroup size.

All teachers should be held to the rigorous standards in the highly qualified teacher provisions in the statute. NDSS opposes recommendations that permit lower subject matter knowledge standards for special education teachers, unless they are consulting or co-teaching with a general education teacher.

The safe harbor should be maintained in the statute as a way to allow growth to factor into the AYP calculation. However, the required reduction in non-proficient scores should remain at 10% and not be lowered. As it is, the current safe harbor provision will allow AYP to be met by 2014 without ever actually reaching 100% proficiency. Other recommendations for growth models present a myriad of concerns about validity and low expectations that the experts are not close to resolving.

NDSS's view on the implementation of NCLB

The concerns NDSS has about NCLB implementation involve "flexibility" that has resulted in lower standards and diminished accountability for students with disabilities.

¹ McGrew, K. S., & Evans, J. (2003). *Expectations for students with cognitive disabilities: Is the cup half empty or half full? Can the cup flow over?* (Synthesis Report 55). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes. Retrieved July 7, 2006, from the World Wide Web: <http://education.umn.edu/NCEO/OnlinePubs/Synthesis55.html>.

This flexibility has often been granted by the U.S. Department of Education through guidance and the approval of various elements in State accountability plans. Many of these decisions involved statutory interpretation that should have been subject to the regulatory process. Instead, parents have found out about most of these decisions after the fact when there was no longer an opportunity for input. The transparency that is essential to a democratic process has been missing in the implementation of NCLB.

Minimum subgroup size and other flexibility:

NDSS is particularly concerned about the cumulative effect of various types of flexibility that States have requested with respect to calculating AYP, especially for the subgroups.² The Commission's staff report on the effect of minimum subgroup (N) size shows that most States are using N sizes that greatly diminish and in some cases eliminate school accountability for students with disabilities. The fact that the students may still be counted towards AYP at the district level is not sufficient. The States should only receive approval for the lowest N size needed for confidentiality and statistical reliability and should be required to submit an impact study on the combined effect of its minimum subgroup size, confidence intervals and any other flexibility that has been granted or is proposed.

Alternate and modified achievement standards:

The alternate achievement standard and the proposed regulations for the modified achievement standard also raise significant implementation concerns. The 1% and 2% caps, which equate to 10% and 20% of students with disabilities, respectively, should be reevaluated. Statistics provided by the U.S. Department of Education for the original Notice of Proposed Rulemaking on the 1% regulation indicated that the incidence of students with this level of disability was less than .5%. Unless the percentage of students with the most significant cognitive disabilities has radically increased in the past few years, the cap should be lowered rather than raised, as some groups recommend. In addition, the studies used to support the proposed regulations on the modified achievement standard are being applied to students in age and disability groups that were outside the scope of the studies. Therefore, the appropriateness of the 2% cap should also be reevaluated.

Other than the size of the cap, most of the language from the current regulations on the alternate achievement standard reflect high expectations, if read in concert with the discussion in the preamble. If these regulations are codified, some of the preamble description of the alternate achievement standard should be included. Alternate and modified achievement standards must be closely aligned to grade-level content standards (core objectives from the content standard for the modified and core objectives that are extended down to prerequisite skills for the alternate). All students, including those assessed on the alternate achievement standard, must be educated by teachers who have subject matter knowledge for the grade-level in which their students are enrolled in order to ensure this alignment.

² See Carey, Kevin; *Hot Air: How States Inflate Their Educational Progress Under NCLB*; Education Sector (May 2006) for an analysis of the cumulative effect of AYP flexibility.

There are also implementation concerns about how eligibility should be determined for the alternate and modified achievement standards. Some problems that NDSS has identified are; insufficient technical assistance from the U.S. Department of Education, poorly written State eligibility guidelines, little or no training for the IEP teams about how to apply the guidelines and little or no monitoring to ensure that students are being given the appropriate assessments. All of these problems must be addressed in the reauthorization. The use of federal eligibility guidelines or a requirement that State guidelines must receive federal approval should be considered. These guidelines should emphasize that a student must not be considered eligible for the alternate or modified achievement standard without verifiable evidence that his/her IEP has been properly implemented in the LRE and that universally designed curriculum, materials, instruction and assessments have first been provided. The term “universally designed” in this context refers to the principle that all four of these educational elements must be developed *from the start* to be inclusive of a wide range of individuals and abilities.³

NDSS Recommendations

NDSS has submitted written testimony with detailed recommendations for nearly every hearing held by the Commission. In addition, Ricki Sabia, Associate Director of the NDSS Policy Center, testified at the Commission’s roundtable on special education issues. We urge you to review and consider all of this prior testimony. For the purpose of today’s hearing, I will limit my remarks to three key recommendations.

- Improve instruction and assessments for students with disabilities by adding provisions to NCLB that support the full implementation of the Least Restrictive Environment (LRE) provisions of IDEA and Universal Design for Learning (UDL). UDL refers to the universal design of curriculum, materials, instruction and assessments as described at the roundtable by Ricki Sabia and David Rose. Detailed discussion and recommendations on these issues can be found in the NDSS written testimony for the June 9th hearing.
- Expand the “highly qualified” definition to require that all teachers must have extensive training on instructional methods that are universally designed to provide access to the grade-level general education curriculum for diverse learners. Also, clarify that all teachers must have subject matter knowledge for the grade-level in which their students are enrolled in order to align instruction to the grade-level State content standard.
- Add provisions that will ensure meaningful accountability for students with disabilities. States should be required to submit an impact study on the combined effect of its minimum subgroup size and any other flexibility that has been granted (or is proposed) and to adjust their accountability plans if school level accountability for students with disabilities and other subgroups is not meaningful. Also, the excessive size of the caps related to the alternate and modified achievement standards should be reconsidered in light of appropriate data and safeguards must be added to ensure that eligibility determinations for these assessments are handled properly

³ For more information on Universal Design for Learning see www.cast.org