



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

December 22, 2011

Arne Duncan  
Secretary  
U.S. Department of Education  
400 Maryland, Ave, SW  
Washington, DC 20202

Dear Secretary Duncan:

The undersigned organizations of the Consortium for Citizens with Disabilities Education Taskforce are writing to provide the U.S. Department of Education with observations drawn from review of the November submissions of ESEA Flexibility Requests. We offer these comments in hopes that they might be used to provide additional direction to those States that submitted requests in November 2011 as well as feedback to States that have indicated their intent to submit requests in February 2012.

While we understand the Department's rationale for offering to provide State educational agencies (SEA) with flexibility regarding several of the current provisions in the Elementary and Secondary Education Act (ESEA), we hope that the significant advances regarding the accountability of the academic performance of our nation's 5.8 million school-age students with disabilities made under No Child Left Behind will not be diminished in the process. To that end, we respectfully request that the Department ensures that ESEA Flexibility Requests provide meaningful information about how students with disabilities will be included in new State-developed plans as the process moves forward.

More specifically, we wish to address the following:

**Consultation**

The ESEA Flexibility Request FAQ document, and its addendum, makes clear that an SEA developing a request for ESEA flexibility must "meaningfully engage and solicit input from diverse stakeholders, such as students, parents, community-based organizations, civil rights organizations, organizations representing students with disabilities and English Learners, business organizations, and Indian tribes." However, after reviewing the 11 Flexibility Requests submitted in November, it is clear that states

need additional guidance from the Department about how to meaningfully engage and solicit input from these stakeholders.

When describing how an SEA fulfilled this requirement, most relied heavily on input solicited in prior years about some components of the Flexibility Request with much less detail about soliciting input directly on the Request itself. In addition, few states indicated they provided a draft upon which to provide input. It is not reasonable to expect stakeholders, especially parents, to provide comments based on a brief summary that omits key details affecting accountability for students with disabilities. Even those few states that provided a draft did not request public input until the final week, at most 2 weeks, prior to the submission deadline and gave stakeholders only 7 days to analyze the submission (many of which were hundreds of pages long) and submit comments. In addition, the stakeholder lists provided by the states often refer to only one or two disability organizations that represent parents and children. It is also not sufficient to get input from the state's advisory panel on special education or other similar entity without broader disability outreach. These committees are not necessarily representative of all the disability interests in the state.

We urge the Department to provide the following guidelines for meaningfully engaging and soliciting input from parents of students with disabilities and disability organizations:

- A draft of the Flexibility Request should be posted on the SEA website along with an explanation of how the accountability changes would affect students with disabilities.
- Notices of this posting should be distributed to the disability organizations in the state that represent families of children with a full range of disabilities. LEAs should be expected to distribute the notice to local disability organizations and to parents of students with disabilities. Such efforts could also be assisted by the state's parent training and information centers, parent community resource centers, and protection and advocacy agencies.
- States should allow at least 2-3 weeks for public comments and at least an additional week for the state to review the comments and make the necessary changes to the draft.
- The SEA should meet personally with key state disability organizations beyond the state advisory panel, including representatives from the parent information and training center, parent community resource centers, the protection and advocacy organization and disability organizations that represent children with the various categories of disabilities under IDEA.
- Information provided by the SEA, either in public formats or via electronic deliveries should meet the required ADA accessible documentation laws and be available in multiple languages.
- The accessibility needs of the community for public meetings should be determined in advance. Based on the needs of the community, information should be provided in multiple languages and in accessible formats, including but not limited to large print, Braille, and audio recording where needed. In addition, American Sign Language (ASL) translation and Communication Access Realtime Language Translation (CART) should be provided where needed.

## Assessments

States submitting ESEA Flexibility Requests must select from one of three options pertaining to the SEA's development and administration of annual, statewide, aligned, high-quality assessments that provides an accurate measure of student achievement and student growth. Two issues arise regarding assessments for some students with disabilities (IDEA-eligible) in our review of the 11 States that submitted requests in November 2011, as follows:

- **Alternate Assessment on Modified Academic Achievement Standards (AA-MAS)** States that currently administer an AA-MAS as allowed by ESEA regulations (Georgia, Indiana, Minnesota, Oklahoma, and Tennessee) and have indicated that they are participating in one of the two Race to the Top (RTTT) Assessment State consortia should be required to provide the Department with a comprehensive plan to transition students with disabilities currently taking AA-MAS into the general assessments.

Since the RTTT Assessment consortia are not developing an AA-MAS based on the Common Core State Standards (CCSS) and given the Department's clear commitment to no longer allow use of AA-MAS for accountability under ESEA, it is critical that those States currently administering this alternate assessment begin planning a responsible phase-out process that protects students from abrupt changes in assessment as well as guarantees these students will be provided instruction in the CCSS curriculum at their enrolled grade level. Such planning should also provide guidance for IEP teams, including parents, on how to achieve a smooth transition for students.

While the current federal regulation governing the use of AA-MAS seeks to limit its use by way of a cap on the percentage of proficient or advanced scores that can be used in AYP determinations, it is increasing evident that many States are vastly exceeding the percentage of students with disabilities that should be assigned to an AA-MAS. As a consequence of this overuse, significant numbers of students with disabilities will be impacted by the shift away from use of AA-MAS.

- **Alternate Assessment on Alternate Academic Achievement Standards (AA-AAS)**  
All States currently administer an AA-AAS for students with the most significant cognitive disabilities. Under current ESEA regulations, this alternate assessment must provide results on student achievement that can be aggregated into the performance of the subgroup of all students with disabilities, any other applicable subgroup to which those students being assessed by an AA-AAS belong, as well as the performance for all students. ["To serve the purposes of assessment under title I, an alternate assessment must be aligned with the State's content standards, must yield results separately in both reading/ language arts and mathematics, and must be designed and implemented in a manner that supports use of the results as an indicator of AYP." Federal Register, Vol. 68, No. 236, Tuesday, December 9, 2003, Rules and Regulations, page 68699] Furthermore, the IDEA requires that all students with disabilities be included in State and district-wide assessment programs.

As measures of student growth become part of accountability systems, it is essential that such models include student performance on its AA-AAS. To leave students with disabilities being assessed by AA-AAS out of the growth component of the assessment and accountability program would be a violation of IDEA.

We appreciate your consideration of our comments and stand ready to assist the Department in the ESEA Flexibility process.

Sincerely,

Association of Assistive Technology Act Programs  
Bazelon Center for Mental Health Law  
Council of Parent Attorneys and Advocates  
Council for Learning Disabilities  
Disability Rights Education & Defense Fund  
Easter Seals  
Epilepsy Foundation  
Mental Health America  
National Alliance on Mental Illness  
National Association of Councils on Developmental Disabilities  
National Association of School Psychologists  
National Down Syndrome Congress  
National Down Syndrome Society  
National Parent Teacher Association  
The Advocacy Institute  
The National Center for Learning Disabilities  
The National Council on Independent Living  
The National Disability Rights Network  
United Cerebral Palsy

The Consortium for Citizens with Disabilities is a coalition national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society. For additional information, please contact:

Katy Beh Neas, Easter Seals <a href="mailto:kneas@easterseals.com">kneas@easterseals.com</a>	202.347.3066
Laura Kaloi, National Center for Learning Disabilities <a href="mailto:lkaloi@nclcd.org">lkaloi@nclcd.org</a>	703.476.4894
Cindy Smith, National Disability Rights Network <a href="mailto:cindy.smith@ndrn.org">cindy.smith@ndrn.org</a>	202-408-9514 ext. 101