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February 21, 2015

The Honorable John Kline
Chair, House Education and Workforce Committee
455 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Robert C. Scott
Ranking Member, House Education and Workforce Committee
2101 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kline and Ranking Member Scott:

The Center for Law and Education (CLE) is pleased to submit the attached set of comments on Committee Markup of the Student Success Act of 2015, amending the Elementary and Secondary Education Act (ESEA). CLE is a national support organization whose mission is to improve the quality of public education for all students and to help enable communities to address their own public education problems effectively, with an emphasis on low-income students and their families.

We have actively participated in various reauthorizations of the ESEA, placing serious emphasis on changes designed to boost the quality of the program, to include all students while helping to ensure they receive the elements of a quality education, and improve the responsiveness to families. We have worked in the field, assisting schools and educational agencies, educators, parents, and advocates to address problems and implement the program successfully.

In this package of comments, after an overview of our overall perspective, our specific proposed amendments are focused on issues that we believe have not often been the focus of discussion and advocacy from many others. As such, we hope you will find them helpful rather than repetitive.

We very much appreciate this opportunity to comment on the proposed bill and look forward to working with you and the other members of the Committee.

Yours truly,



Paul Weckstein
Co-Director



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COMMENTS ON THE STUDENT SUCCESS ACT (H.R. 5)

Rules Committee Print 114-8, as reported by Committee on Education and the Workforce

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I. Overview

As a voice for the rights of low-income children and families to high-quality education, the Center for Law and Education has focused on Title I throughout its forty-year history. We have actively participated in its various reauthorizations, with a heavy emphasis on changes designed to boost the quality of the program as well as to improve its responsiveness to families. And we have worked in the field, assisting schools and educational agencies, educators, parents, and advocates to address problems and implement the program successfully.

We look at the provisions of the law through the lens of whether they concretely advance and effectuate the right of every child (and low-income children in particular) to a high-quality education. To best do so, we devote much of our focus here to **reconceptualizing a framework for “accountability”** that is both strong and constructive, with three overarching and interrelated components:

- (A) On the one hand, **hold on to (and indeed enhance) a tight definition of adequate yearly progress (AYP, or whatever term replaces it)**¹ – one that ensures that no child is being left behind and subjected to lower expectations or less attention when they are not on an expeditious path to proficient and advanced levels of achievement. The chief task for the Committee in this regard is to make sure that the terms for determining adequate progress do not, in operation, allow any student to be ignored who is not on that path. Toward that end, we do not view this as inconsistent with a “growth” model, and indeed certain versions of a growth model can actually help ensure this, but only if that model is effectively built around triggering attention whenever children are not on a path to quickly reaching proficient and advanced levels of achievement; variations that substitute lesser forms of gains for that target are unacceptable.
- (B) On the other hand, **dramatically change the *meaning* and consequences of gaps in AYP (or whatever replaces it) to a more constructive and less punitive approach**, consistent with continuous improvement in which the shift to making higher standards real means that, rather than emphasizing a demarcation between schools in and out of improvement, virtually all schools will need to work on improving some areas in relation to some indicator -- so that, in both rhetoric and reality, needing improvement is not treated as a badge of dishonor and the primary motivation for improvement is not fear. This is a far preferable approach to abandoning – either through wholesale departure or a thousand cuts – the goal for each child of proficient and advanced levels of achievement. This will allow us to hold on to, and make sense

¹ We recognize that the term “adequate yearly progress,” or “AYP,” may disappear in the reauthorized law and that the determination of sufficient progress, however termed, will be the subject of considerable attention in the reauthorization process. Indeed, as will be seen, we very much share the view that a continuous improvement model calls for something other than a single, composite measure creating an in/out division of schools that are in need of improvement and schools that are not. But whatever the term (and its definition and usage), we can safely assume that the notion of determining whether students are making enough progress to achieve our goals for them will remain central to the Act. For simplicity sake, we use the term AYP in this document both to refer to the current term and definition and whatever replaces it.

of, a tight AYP definition – as indicating which students and programs need additional help and attention, not as a “grade” of the school.

- (C) **Shift the balance of attention so that Title I** is not so predominantly conceived of as little more than state assessment, determination of AYP, and consequences for inadequate progress. Title I already has a lot to say **about what schools need to do (together with parents) to develop and provide the key elements of a high-quality academic program** (e.g., enriched and accelerated curriculum, effective instruction, timely and effective individual attention) **that will enable children to achieve in the first place** (in sections 1114, 1115, and 1118), along with what districts and states need to do both to facilitate and to ensure schools’ carrying out of those obligations. That is the heart of real school reform. And that is what the vast bulk of the billions in Title I funds are for – program – but it is as almost as if those provisions did not exist. And these sections provide enormous flexibility for schools to figure out the best way to provide those key elements of quality while ensuring that they do so in a participatory and collaborative way. While there may be improvements in those provisions that could be made, the main attention they should receive in reauthorization is in how to get them implemented.

Most important, that attention is central to the real improvement of the quality of education our children receive. Secondly, it will help to right the balance in dealing with the “accountability” structure.² The state assessment/AYP/intervention structure of the law should be understood as a check on the system of reform, not as the system of reform. This re-balancing of attention to these other parts of the Act will promote that understanding. After all, it is children, not schools and school systems, that “achieve.” The obligation of schools and school systems is to provide to each child with the elements of a high-quality education that will enable the child to achieve. True accountability, including accountability to the family of that child, lies in meeting that obligation.

These three pieces fit together. If it becomes clear that when some students are not on a sufficient path to the desired high-level achievement, the responses are non-punitive and focused on better attention to those students and improvement in their instruction, then we can eliminate the pressure to create loopholes in the identification system or counter-productive measures to get past the adequate progress bar that do not really result in the deep, long-term learning we want for students. And if we focus on the programmatic provisions of the law aimed at ensuring that schools are providing the key elements of high-quality education in the first place, then we can transcend the current dilemma in which weakness in the grasp of good practice first produces poor results and then stymies the ability to respond constructively and effectively to those results in the intervention system on the back end. (The connections

² It is worth noting that the common understanding of the law is precisely backwards in this regard. AYP and the goal of 100% proficiency by 2014 are treated as if they were legal requirements when they are not. They are targets, and failure to reach them does not constitute non-compliance. At the same time, the key provisions that are legal requirements that do demand compliance are not even recognized. These include the school obligations to provide key elements of a high quality education, and the district and state obligations to ensure and support implementation of those school-level obligations (along with the obligation to develop effectively designed improvements when targets are not met).

among these pieces, and the ways in which our approach to one area helps resolve problems in another, become clearer below.)

In short, we believe that in addressing the controversies and concerns that have emerged since 2001, it is important to (I) hold on to a tight definition of adequate yearly progress (AYP), one that is consistent with the law's premise that no child should be left behind and that we should be seeking to enable every child to graduate college- and career-ready, while (II) revisiting the actions that flow from gaps in AYP in order to foster a continuous improvement approach that minimizes punitive responses from above and defensive responses from below (rather than creating holes in the definition of AYP for fear of "punishing" the wrong folks), and arguably, most important, because these critical provisions continue to be overlooked and not implemented (III) bring to the fore the critical but ignored parts of the law that are central to ensuring that schools provide the elements of a high-quality education, which every child deserves and needs in order to reach high levels of achievement in the first place.

Consequently, our comments and proposed amendments primarily, though not exclusively, focus on these school-level provisions that are the heart of Title I. We have also attempted to highlight and amend HR 5 so as to ensure that the civil rights of all student members within the protected subgroups are safeguarded so as to ensure they receive the benefits of a high quality education provided all other students.

We look forward to continued opportunity during the course of reauthorization to also work on the complex issues of accountability, school and student identification, accountability and improvement.

II. Parental and Public Involvement

A. Parent, Student, and Public Involvement at the State Level [Sec. 1111(a)(1), p. 22]

1. **Parents and Students.** On state-level parent involvement, there has long been a general requirement that the State plan be developed “in consultation with” a range of parties (LEAs, teachers, principals, etc.), including parents, though not students. [Sec. 1111(a)(1)(A).] Just as requirements for “consultation” at the local level, without more, were not adequate to secure the benefits of real parent involvement (and so were replaced with much stronger provisions in 1994 and carried forward in 2001 in section 1118), they are not adequate at the state level. Thus, we propose provisions for the state to develop procedures for parent and secondary student involvement in significant state-level program decisions, developed with parents, students, and organizations representing them, and addressing certain key dimensions of effective involvement. Substantial family involvement in State decisions affecting families and their children would be important in any event. To the extent that States will now be gaining additional authority and discretion over certain kinds of decisions, the need for strong State-level family and student involvement becomes even greater. Here is a draft of suggested language:

“() For any State desiring to receive a grant under this part, activities carried out by the State education agency shall be planned, implemented, and evaluated with full and informed involvement of parents and secondary school students. The State shall develop, disseminate, and implement procedures to ensure such involvement. Such procedures shall:

“(1) Be developed in full partnership with a broad range of parents, secondary school students, and organizations representing parents and students, including students with disabilities and English language learners;

“(2) Be published in draft form, with adequate notice, dissemination, and opportunity for comments, which shall be reviewed and considered through the process described in paragraph (1) before final approval;

“(3) Apply to program activities, policies, and other decisions by the State education agency which significantly affect children served under this program and their parents, including but not limited to the State plan under this section, improvement and assistance activities under sections [1116 and 1117], and teacher and paraprofessional qualifications and professional development under [section 1119];

“(4) Provide access to these opportunities for involvement to all parents of students eligible for or participating in programs under this part and all secondary students eligible for or participating in such programs;

“(5) Address in terms specific and comprehensive enough to ensure their effectiveness,---

“(A) the nature and scope of the participation in decision-making;

“(B) representation in numbers sufficient to play a meaningful role in decisions;

- “(C) parent and student selection of their own representatives;
- “(D) opportunities for ongoing communication by those representatives with the parents and students they represent;
- “(E) full inclusion of students, and their parents, who have disabilities or are English language learners;
- “(F) decision-making methods that ensure that the programs have the active and informed support of, and reflect the needs articulated by, such parents and students; and
- “(G) provision of all information and assistance needed to be effective participants;

“(6) Be included in the State plan under this section, except that such procedures shall be developed in advance of the remainder of such plan and shall be followed in developing the other components of the plan;

“(7) Include provisions for annual review, with full involvement of parents, students, and organizations representing them, of the effectiveness of these procedures, which shall then be used as appropriate to amend and improve the procedures, through a process consistent with this subsection.” [note: section references correspond to current law]

2. **Public Role.** While States typically hold at least one public hearing on their State plan, the Act makes no reference to them.³ However, they often occur in a manner that is inadequate in the task – for example, with little notice and sometimes as little as a single day’s opportunity to review the draft plan before commenting. To be meaningful, language on this issue should provide for comment during at least two stages – early on, when there is still some considerable openness in approaches to developing the plan, and after a draft has been formulated, when there is something concrete for reactions; and should ensure adequate opportunity for comment in terms of the adequacy of the dissemination of notice, access to relevant information, sufficient time to review that information and prepare comment, and adequate opportunity (in person or in writing) to present the comments. We suggest the following draft language [added to Section 1111(a), p. 21-22]:

“() The State board shall conduct public hearings in the State, after appropriate notice sufficient to reach and inform all segments of the public and interested organizations and groups, for the purpose of affording all such parties an opportunity to present their views and make recommendations regarding the State plan at the hearings and through written submissions. A summary of such recommendations and the State board's response shall be included with the State plan. Such hearings shall be held both for purposes of initial input into the plan prior to drafting and for purposes of reviewing and commenting on a draft plan. Notice shall include notice of, and facilitate effective access (including on-line access) to, relevant documents, including (in the case

³They needed to be treated separately from parent involvement, because they are both broader (in allowing other members of the general public, beyond parents and school staff, to comment) and narrower (in providing only for comment on the plan, as opposed to ongoing, deeper involvement).

of initial input) program assessments and evaluations, student assessment data, and other documents that may be used in drafting the plan and (in the case of commenting on a draft plan) the draft, and shall provide sufficient time for review of such documents before the hearing.”

B. Involvement in School Review and Improvement [Section 1118(a)(2)(A), page 77]

Section 1118(a)(2)(A) of current law requires that the LEA’s parental involvement policy describe how the agency will “involve parents in the joint development of the plan under section 1112, *and the process of school review and improvement under section 1116.*” [emphasis added]

H.R. 5, at page 77, lines 12-14, clause (2)(A)(i) of the bill, strikes the italicized language above, thereby removing parent involvement in the school review and improvement process. We certainly hope that this was an inadvertent result of the bill’s deletion of section 1116. Deletion of that section does not, of course, delete school review and improvement from the Act. The bill treats it instead within section 1111, largely in (b)(3), the accountability provisions. Parent involvement in school improvement is important both for parents and for effective improvement efforts. Thus:

On page 77, lines 12-14, after “by” DELETE “striking ‘, and’ and all that follows through ‘1116’” and ADD “striking ‘1116’ and inserting ‘1111’”.

C. Information Provided to Parents

1. Expected Proficiency Levels [Section 1118(c)(4)(B),

Under Section 1118(c)(4)(8) of current law, the school is to provide parents of participating children with “a description and explanation of the curriculum in use at the school, the forms of academic assessment used to measure student progress, *and the proficiency levels students are expected to meet.*” [emphasis added]

On page 78, lines 21-25, H.R. 5 deletes the italicized phrase. We do not understand why parents should no longer receive and understand the levels their children are expected to meet. Therefore:

On page 78, STRIKE paragraph (3), lines 21-25.

2. Information on Teacher Qualifications [Section 1111(h)(4), Page 52, lines 3-16]

Under the Parents Right-to-Know provisions of current law, section 1111(h)(6), parents are provided with information about the qualifications of the staff teaching their children. The Parents-Right-to-Know language in (h)(4) of H.R. 5 would delete this information about teacher qualifications. It instead information on the child’s level of achievement in the State’s academic assessments and other indicators, and requires that the information be in uniform, understandable format and, to the extent practicable, language that the parent can understand. While we understand the value of these new provisions, we do not understand why parents would no longer have access to information about the qualifications of their children’s teachers. Thus, restore the existing language:

At page 52, after line 3, ADD the following subparagraph (and renumber succeeding parents accordingly):

“(A) QUALIFICATIONS- At the beginning of each school year, a local educational agency that receives funds under this part shall notify the parents of each student attending any school receiving funds under this part that the parents may request, and the agency will provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following:

“(i) Whether the teacher has met State qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.

“(ii) Whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived.

“(iii) The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.

“(iv) Whether the child is provided services by paraprofessionals and, if so, their qualifications.”

III. Standards

A. In General – Challenging Standards? [Sec. 1111(b)(1)(A), p. 23]

Throughout the Act, starting with this paragraph, H.R. 5 deletes the references to “challenging” academic content and achievement standards. That deletion sends the wrong message about the goals under the Act and feeds the notion that a rewrite will result in lower standards. The reference to “challenging” should be restored in this paragraph, with conforming changes to restore it where it appears elsewhere in current law.

The law does not, of course, attempt to define “challenging” standards. In the process of States developing or adopting their own standards, however, it remains an important and useful concept for those in the field, particularly educators and parents, as they engage in State-level development, discussion, and debate about what the standards should be and whether they are challenging enough. (As discussed elsewhere, the role of parent involvement and public involvement in the State plan, including in the standards, has gotten far too little attention under NCLB and needs much strengthening.)

At p. 23, l. 12, after “adopted” ADD “challenging”.

Make conforming changes elsewhere wherever “challenging” in current law has been dropped.

B. Other Subjects [Current Law Sec. 1111(b)(1)(E) , p. 23]

Educators, parents, and students have all been concerned that, in seeking to boost achievement in the subjects for which Title I requires standards, assessments, and

accountability, schools and districts sometimes adopt strategies that narrow curriculum and result in Title I students not getting the same rich education in other subjects that other students receive. Pulling Title I students out of history class, or reducing social studies for all students in a Title I school below what is provided in other schools are but two examples. There are actually two provisions in current law (one in statute, one in regulations) that are designed to address this problem, though they get too little attention by USED and hence by the States, districts, and schools. Unfortunately neither has been included in the Student Success Act.

Section 1111(b)(1)(E) of current law provides:

“(E) INFORMATION- For the subjects in which students will be served under this part, but for which a State is not required by subparagraphs (A), (B), and (C) to develop, and has not otherwise developed, such academic standards, the State plan shall describe a strategy for ensuring that students are taught the same knowledge and skills in such subjects and held to the same expectations as are all children.”

The Department’s regulations provide very useful clarification because they also recognize that if the State must have a strategy for ensuring that Title I students are taught the same knowledge and skills in subjects for which there are no standards, then surely they must be taught to the standards in those subjects for which there *are* standards that the State has chosen to develop:

- a. Subjects for which the State has not established standards. Restore the provisions of current law to provide that for those subjects in which the State has not developed standards but which are taught, the State must describe in its State plan a strategy for ensuring that students served under subpart A are taught the same knowledge and skills and held to the same expectation as are all other students. [See current law, section 1111(b)(1)(E) and 34 C.F.R. Sec. 200.1(g).]
- b. Other subjects with standards. Codify current regulation in 34 C.F.R. Sec. 200.1(h): If a State has developed standards in other subjects for all students, the State must apply those standards to students participating under subpart A of this part. To operationalize this, schools, districts, and States should be required to identify and take steps to address gaps in meeting standards in any subject which the state has determined all students should master.

Thus, in order to ensure that the same full range of expectations that the State has set for all students are effectively applied to the education of Title I students, we propose the following:

In section 1111(b)(1)(B):

On page 23, line 11, after “(B) SUBJECTS---“ ADD “(i)”.

On page 23, after line 16, ADD:

“(2) For the subjects in which students will be served under this part, but for which a State is not required by subparagraph (A) to develop, and has not otherwise developed, such academic standards, the State plan shall describe a strategy for ensuring that students are taught the same knowledge and skills in such subjects and held to the same expectations as are all children;

“(3) If a State has developed standards in other subjects for all students, the State shall apply those standards to students participating under this part, and shall ensure that the State together with participating local educational agencies and schools identify and take steps to address gaps in meeting such standards for all students.

Additionally, codify the conforming provision on assessments found in 200.2(a)(2)(ii) (ii) If a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments:

Section 1111(b)(2)(B)(ii) of H.R. 5 provides, on page 26, that the assessments shall “be the same academic assessments used to measure the academic achievement of all public school students in the State.” A clarifying amendment should be added as follows:

In section 1111(b)(2)(B)(ii), on line 10, before the semi-colon ADD “, including any assessments which the State has chosen to adopt in other subjects”.

C. **Attention to Advanced Levels of Achievement** [Current law Sec. 1111(b)(1)(D)(ii), not found in H.R. 5, p. 23]

Current law requires States to develop challenging academic achievement standards that describe two levels of high achievement, “proficient” and “advanced,” as well as a third “basic” to provide complete information about the progress of lower-achieving students toward mastering the proficient and advanced levels. H.R. 5 unfortunately eliminates this important provision, which should be restored.

However, there is also a big gap in current law as well, which needs to be addressed. While current law makes constant reference to getting all students to proficient and advanced levels, there is virtually nothing to operationalize the latter, beyond reporting. The only thing that matters, in operational terms, is getting students to proficiency. This is an equity problem especially for minority families with high aspirations. When they look at the achievement results in many schools (even schools designated as magnets for high achievement), they can see that their own children have virtually no chance in that school of reaching advanced levels, even where the school has made significant efforts to bring children to proficiency. Nothing in the current law or in the draft bill provides them any handles for or reassurances about changing that. Indeed the focus on proficiency alone cuts the other way. It is also a problem that cuts across race and class and has exacerbated the overall sense that NCLB is sacrificing educational excellence for narrow forms of achievement, feeding a false dichotomy between excellence and equity.

To remedy these problems, we recommend:

(1) Restoring to this portion the current law language of Sec. 1111(b)(1)(D)(ii) for including the three levels of achievement standards:

In section 1111(b)(1)(C):

At p. 24, l. 2, after “with respect to academic achievement standards” STRIKE “,” and ADD “(I); and”;

At p. 24, l. 5, STRIKE “.” and ADD “;” and the following two subclauses:

“(II) describe two levels of high achievement (proficient and advanced) that determine how well children are mastering the material in the State academic content standards; and

“(III) describe a third level of achievement (basic) to provide complete information about the progress of the lower-achieving children toward mastering the proficient and advanced levels of achievement.”

(2) Making constructive use of the advanced level in other sections through the following:

a. Adding “attainment of and growth toward advanced levels of achievement” as indicators in subsection (c) on accountability. If a less punitive, more continuous improvement model of attention and intervention is adopted as we recommend, then it should be easier to require that meaningful benchmarks be set for achievement at advanced levels in all student groups, with improvement activities to include a focus on reaching those benchmarks as well as the benchmarks for proficiency. [See discussion in the accountability section below of using a range of important indicators in the accountability section in a way that allows needs related to each one to be identified and addressed without triggering an in/out set of labeled schools.]

b. There should be a variety of other provisions supporting this focus – building this focus into the Title I provisions on (A) school, district, and state plans, (B) individual student attention, and (C) federal technical assistance and support.

c. Such provisions should place an emphasis on defining “advanced” skills and knowledge in terms of enrichment, depth, and complexity – not simply acceleration (for students who have already mastered current grade level standards) to get to the next grade level’s standards sooner. This emphasis is needed because it is typically far easier for schools and districts to concentrate on the latter, which in turn exacerbates the sense that coverage and going faster is substituting for in-depth engagement of students.

d. Such provisions should also require implementation in ways that do not require the identification and segregation of students deemed “capable” of advanced levels, but instead should be accessible to all. (This is another area where bright-line approaches –

in this case, applying a general label of “advanced” students, distinguished from others – should be abandoned in favor of curriculum, instruction, and staff development that allow teachers to always be ready to take students to a deeper and more challenging level in any particular area of instruction.)

IV. Academic Assessments [Sec. 1111(b)(2), p. 25]

A. Multiple Measures of Student Achievement [Sec. 1111(b)(2)(B)(viii), p. 27; current law Sec. 1112(b)(3)(C)(vi)]

H.R. 5 has eliminated one of the most important assessment requirements in current law, namely that the assessments involve multiple measures of student achievement.⁴ This provision is critical to the validity of the determination of whether students have mastered the skills and knowledge in the State standards, to the judgments made about the need for school improvement, and to the quality of the assessment system and the extent to which it supports high-quality instruction. However, not only does the provision need to be restored, but current interpretation of the provision has made the term essentially meaningless. To correct this problem, explained below, the following clarification is needed:

Restore the provision for multiple measures, but clarify that they be multiple measures of achievement of “the *same* knowledge and skills.”

Current law requires – not simply permits – that the state’s system of assessment be based on multiple measures of the students’ achievement (rather than on a single test). The requirement for multiple measures (rather than relying on a single test) is connected to ensuring valid and reliable determinations in a number of ways –

- First, it addresses the fact that a single test, even a good one, typically doesn’t allow precise enough judgments (i.e., at this score the student is proficient, but just below it not) to be validly and reliably made. This is particularly a problem where a cut-score must be established for differentiating performance – as in Title I, where students above the cut-score are deemed as proficient/meeting standards and those below it not. Even when a test is generally a good measure of the requisite skills and knowledge, the claim that the students who are above

⁴ In current law, this requirement is in the same paragraph as the provision for assessing higher-order thinking skills and understanding: “include multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding.” H.R. 5, Sec. 1111(b)(2)(B)(vii), p. 28, includes only the latter clause, not the lead clause.

the single cut-score have mastered them and those below it have not cannot be validated as the basis for important high-stakes judgments.⁵

- Second, it recognizes that some measures are often better than others at enabling different students to demonstrate what they know and can do. Providing different ways for students to demonstrate mastery takes that into account.
- Third, it recognizes that reliance on a single test tends to encourage teaching to it, which then undermines the validity of that test in measuring whether performance on the necessarily limited number of test items represents mastery of the broader range of skills and knowledge they were designed to represent. Using multiple measures reduces that danger.

But this requirement has been first ignored and then rendered meaningless. After years of lack of attention to this provision (thereby adding to the criticism that NCLB has led to focus on a single test, when it in fact required the opposite), the Department of Education issued regulations on the subject in 2008 (and which were allowed to stand in 2009) that called attention to the issue only to define multiple measures in a way that was meaningless, basically telling states that it meant virtually anything. (For example, a test that has questions in more than one area within a subject, such as a math test that includes both algebra and geometry, passes muster. Indeed, in issuing the regulations, the Department said they required no changes in *any* State's current assessment system.) At a minimum, it must be understood that the main purpose of using multiple measures is to enhance the validity of judgments about the proficiency of the students being assessed by providing multiple ways of measuring the same knowledge and skills.⁶

To both restore the multiple measures requirement and provide the necessary clarification:

On page 27, line 23, STRIKE "include measures" and ADD "involve multiple measures of the same knowledge and skills, including".

In addition, clause (vii) its current form does not obviate the need for restoring this multiple measures requirement and indeed in current form appears to conflict with it. As such clause (vii) should be deleted or amended. It provides the State with discretion to administer the

⁵ Keep in mind that one of the required uses of the assessment results is for making, reporting, and using judgments about an individual child's achievement. At the level of the individual, the validity of judgments drawn from a single measure is at its weakest.

⁶ In this regard, multiple "*measures*" needs to be distinguished from, rather than conflated with, "multiple *indicators*," which are a separate issue. Multiple indicators are indeed measures of different things. For example, graduation rates are a different indicator, as are attendance rates and suspension or expulsion rates are different indicators. Multiple indicators are addressed in the accountability provisions in (b)(3), whereas this section is about the system for assessing student achievement.

assessments either through a single annual summative assessment or through multiple assessments during the course of the academic year. The first option would appear to allow reliance on a single test and, to the extent that someone might read “assessments” as the same as “measures,” to make making multiple measures merely an option. Finally, it is important to note that multiple measures involve more than just administering the same test at multiple times – while that may be useful, it does not address the problems listed above that multiple measures are designed to address.

To remedy this problem, we propose:

On page 27, STRIKE clause (vii), lines 12-22 [or STRIKE all text from line 12 after “(vii) through “(II)” on line 16]

Alternatively, remedy the conflict by amending clause (vii) and modifying the proposed clause (viii) on restoring multiple measures as follows:

On page 27, clause (vi), STRIKE “a single annual summative assessment” and ADD “summative assessments”.

On page 27, line 23, STRIKE “include measures” and ADD “notwithstanding clause (vii), involve multiple measures of the same knowledge and skills, including”.

B. Measures of Student Growth [Sec. 1111(b)(2)(B)(vi), p. 27] [INCLUDE?]

At p. 27, ll. 10-11, STRIKE “, at the State’s discretion,”.

Make a conforming change to subsection (b)(3)(B)(i) on elements of accountability: At p. 36, l. 24, STRIKE “which may include” and ADD “including”.

Clause (vi) of H.R. 5 provides that the assessments shall “measure individual student academic proficiency and, at the State’s discretion, growth.” As discussed elsewhere in these comments, CLE is supportive of states using growth models, *provided*, however, that attention remains on those students who, despite having made some ‘gains,’ are not on an expeditious path for closing the gap and attaining grade-level proficiency and who thus continue to require focused and effective interventions to do so. Because looking at individual growth in achievement is key to keeping a focus on every child, we support deleting “, at the State’s discretion,” providing that it is keyed in this way to achievement of the overarching goals for every child. The latter issue of benchmarks for growth is addressed in the accountability section, below.

C. Alternate Assessments [Sec. 1111(b)(2)(C), p. 31]

N.B., by amendment to the regulations under Title I, Part A, promulgated in late 2003, the U.S. Department of Education recognized that for a very limited set of students with the most significant

cognitive disabilities, States may assess them with an alternate assessment based in alternate achievement standards. Under these regulations, States are authorized to include in AYP calculations test scores of up to 1% of all students assessed (approximately 9% of students with % of students with disabilities receiving special education) who score proficient or advanced based on their performance on an alternate assessment based on alternate achievement standards. 68 Fed. Reg. 68,698, 68,702-68,703 (Dec. 9, 2003), (codified at §§ 200.6(a)(2)(ii)(B), 200.13(c)(2)(i).]

1. Change the heading

Amend the heading for subsection (C) by adding on page 31, line 9, after “Alternate Assessments” the phrase: “for Students with the Most Significant Cognitive Disabilities.”

This additional clarifying language is consistent with the language under this section that describes alternate assessments with an explicit cross reference to their being aligned with the alternate academic standards adopted in accordance with section 1111(b)(1)(D) for students with the most significant cognitive disabilities. An expressed reference to *Alternate Assessments for Students with the Most Significant Cognitive Disabilities* will remove any ambiguity and clarify that HR 5 authorizes use of an alternate assessment based on alternate achievement, i.e., lower, standards (AA-AAS) only for those very limited number of students with the most cognitive disabilities. This underscores the requirements set forth at section 1111(b)(1)(C) in HR 5 that all other public school students, including those with disabilities, are expected to be taught and attain the academic achievement standards that “include the same knowledge, skills, and levels of achievement expected of all public school students in the State,” and be assessed based on grade-level academic achievement standards. This provision is consistent with current law, specifically, section 1111(b)(3) of Title I, 34 C.F.R. § 200.6 (a)(2)(ii)(A), and Section 504 and Title II of the ADA. This clarifying language is also consistent with the definitions section of HR 5 creating an exception to the Regular High School Diploma for “students with significant cognitive disabilities” section 6101(37).

2. Ensure that every State has a set of alternate achievement standards for students with the most significant cognitive disabilities

At p. 24, l. 12, STRIKE: “may” ADD: “shall”

At p. 24, l. 16, after “disabilities,” STRIKE: “if” ADD: “and shall ensure”

At p. 24, l. 20, after “is made separately” ADD: “after being conclusively determined”

At p. 24, l. 20, after “for each student” ADD: “by members of the student’s IEP Team, which must include persons sufficiently qualified with knowledge of teaching and assessing students with significant cognitive disabilities”

It is not enough to rely on the SEA to develop IEP team guidelines for determining when a child’s disability justifies that student being taught and assessed based on alternate achievement standards. Rather, this standard needs to be clearly defined by federal law, and to the extent possible, uniformly applied. The use of alternate standards and assessments that set lower academic goals and teach students based on those lower goals (rather than seeking to overcome the barriers students with disabilities face in achieving the same goals) is a not only an exception to the overarching Title I requirements of using the same standards and assessments for all students; it is a departure from the basic non-discrimination requirements of IDEA, Section 504, and the ADA. As such, it is essential that, in order not to become a form of

discrimination on the basis of disability, the participation of students with disabilities on the AA-AAS be expressly limited to those students with the most significant cognitive disabilities who even with the best specialized instruction from highly qualified special educators are unable to make meaningful progress toward the State's academic achievement standards.

3. Ensure that every State establishes an alternate assessment for students with the most significant cognitive disabilities and clarify when a student may be assessed on alternate standards

At p. 31, l. 12, STRIKE: "may" ADD: "shall"

At p. 31, l. 16, after "abilities," STRIKE: "if the State"; ADD: "and shall"—

Under current ESEA and IDEA requirements, all students, including those with the most significant cognitive disabilities, are expected to participate in their State's assessment system, and consequently, each State must adopt an AA-AAS as part of its State assessment system for this limited number of eligible students. The effect of a State not having an alternate assessment based on alternate achievement standards (AA-AAS) would be to constructively exclude these particular students from participation in the State assessment and accountability systems used to improve their instruction and learning; and it would preclude them from receiving instruction that targets knowledge and skills that, as for all other students, are aligned with the State academic content standards in violation of their rights under Section 504 and Title II of the ADA.

At p. 31, l. 23 before the semi-colon, ADD "and which shall be consistent with the requirements of subparagraph (1)(D) and which ensure that such assessment shall be limited to those students with the most significant cognitive disabilities who, even with the best specialized instruction and supplementary aids and services, and accommodations, are unable to make meaningful progress toward the academic achievement standards set for all."

4. Include a limit or cap of one percent (1%) of all students in the grades assessed in reading/language arts and in mathematics on the number of students with the most significant cognitive disabilities who may participate on the State's AA-AAS

At p. 32, INSERT at (ii) "ensures that for each subject, the total number of students in each grade level assessed in such subject using the alternate assessment based on alternate achievement standards under (1)(D) does not exceed 1 percent of the total number of all students in such grade level in the district and State, separately, who are assessed in such subject;"

At p. 32, l. change (ii) to (iii)

At p. 32, l. change (iii) to (iv)

At p. 32, l. change (iv) to (v)

At p. 32 l. change (v) to (vi)

The proposed bill does not include a cap on the number and percentage of students with a significant cognitive disability whose participation in a State's AA-AAS can be justified on the basis of documented evaluative evidence that they have met the criteria by their respective IEP

teams, which include by right, the student’s parents. Current federal regulations limit reporting scores as proficient and advanced based on a State’s AA-AAS at the LEA and State levels, separately, such that they do not exceed one percent (1%) of all students in the grades assessed in reading/language arts and in mathematics for accountability purposes. We **urge that HR 5 incorporate** this same 1% limit or cap on the number of students with the most significant cognitive disabilities who may participate on the AA-AAS. This 1% figure represents a liberal estimation based on actual incidence data of children who fall within the definition of those with the most significant cognitive disabilities. If this cap were to reflect the number of students *counted* as meeting the alternative achievement standards [instead of *assessed* based on the AA-AAS], this would result in a much higher number of students with disabilities than 1% of all students being assessed based on the AA-AAS because not all students will meet the standards. Furthermore, it is significant that current federal regulation [34 CFR 200.13(c)(2)] permits a State to grant an exception to an LEA permitting it to exceed the 1.0 percent cap on proficient and advanced scores based on the alternate academic achievement standards if—(A) The LEA demonstrates that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the combined grades assessed;(B) The LEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the LEA that have drawn large numbers of families of students with the most significant cognitive disabilities, or that the LEA has such a small overall student population that it would take only a few students with such disabilities to exceed the 1.0 percent cap; and(C) The LEA documents that it is implementing the State's guidelines under § 200.1(f).(ii) The State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted. A similar exception could be authorized, if warranted.

Moreover, research shows that “*what gets tested, gets taught*” and, most students with disabilities, including those with *less* severe cognitive and intellectual disabilities, *when effectively taught*, able to make meaningful progress toward attaining regular grade level standards. The 1% cap is essential to protecting their access to the same standards set for all students *without disabilities* consistent with the provisions of HR 5 at section 1111(b)(1)(C), (D), IDEA’s definition of a free appropriate public education, Section 504 and the ADA.

The critical need to cap the number of students who are tested based on an AA-AAS is heightened by the provision in HR 5 that creates an exception to the **Regular High School Diploma**, as defined in section 6101(37)(A) for Students with Significant Cognitive Disabilities, § 6101(37)(B). The proposed exception under subsection (B) of § 6101(37) is appropriate based on IDEA (which terminates eligibility for receiving special education based on receipt of a regular high school diploma or turning 22, whichever comes first) and current regulations promulgated under the ESEA that established a 1% cap as a critical, necessary precaution on the number of students identified (based on incidence data) as having the most significant cognitive disabilities, who can be counted and reported as meeting the State’s accountability measures for proficiency/advanced levels on the State’s AA-AAS. Such a cap is essential to preventing abuse. *Without a cap* – as is currently missing in HR 5 -- *and with the continued authorization to ‘count’ students who participate in the AA-AAS as “graduating with a regular high school diploma” [exception (B) to § 6101(37)]*, the purpose and intent of Title I of the ESEA will be turned on its head. Instead of providing effective educational interventions to those struggling students within the protected subgroups so that they too are provided full and equal opportunities to attain the challenging academic standards to prepare them to be college and career-ready,

these students will be channeled into participating on the AA-AAS intended for only that 1% of all students or approximately 9% of students with disabilities under IDEA who have the most significant cognitive disabilities.

Without a cap students with less severe disabilities, who are capable of learning to the same standards set for all students, will be channeled into taking the AA-AAS. IEP Teams will be pressured by school, district and state administrators, and by anxious parents and teachers, to “fix” what we recognize is a very serious graduation gap between students with disabilities and their peers without disabilities. Moreover, the slippery slope to over-identification and misclassification will follow for those struggling Title I students, who are disproportionately students of color and students with limited English proficiency, instead of their being prepared to meet their States’ high standards and prepared for college or career.

Therefore, we recommend, that if a cap is not established as described above, then the exception to a Regular High School Diplomas for Students with the [MOST] Significant Cognitive Disabilities, as set forth in HR 5, at p. 494, subsection (B) should be DELETED.

At p. 33, l. after (vi) ADD: “(vii) applies all the requirements of paragraph (B), with the exception of subparagraph (B)(ii) [on same assessments for all students] to the alternate assessments.”

5. Other Needed Amendments on Alternate Assessment

Parent information. At p. 31, ll. 24-25, subclause (ii), after “ensure that the parents of such students are informed” **ADD:** “orally and in writing in their native language or, other mode of communication, as appropriate”

Parents as members of their child’s IEP Team under IDEA participate in any decision determining that their child is eligible and will participate in the AA-AAS. They must be provided oral and written notice in language understandable to the general public, and in the native language or other mode of communication used by the parent, that their child will be assessed based on alternative achievement standards, and the implications for the instructional program that their child will receive and the expected educational outcomes.

Inclusion in the general curriculum. At p. 32, l. 10, subclause (iii) **STRIKE:** “to the extent practicable”; **ADD/REPLACE:** “to the maximum extent appropriate” before “included in the general curriculum”

The language in HR 5 is not consistent with IDEA; our proposed substitute language is consistent with the statutory and regulatory provisions under IDEA, 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2).

Accommodations. Subclause (iv)

At p. 32, l. 15, **STRIKE:** “promotes the use of” before “appropriate accommodations”; **ADD/REPLACE:** “provides”

The obligation upon states and school districts is not merely to ‘promote’ but to ‘provide’ accommodations for students with disabilities necessary to overcome barriers to their effectively participating in the assessment system and demonstrate what they know and can do

with respect to meeting the achievement standards that are aligned with the State’s grade level academic content standards. This requirement is grounded in the ESEA, IDEA, Section 504 and Title II of the ADA.

At p. 33, l. 1-2, after “use of accommodations for students with disabilities” **STRIKE: “.”**; **ADD: “in accessing teaching and instruction in the classroom as well as participating in assessments.”**

V. **Schoolwide Programs and Targeted Assistance Schools**

Sec. 1112(b)-(d) [pp. 67-72] and Sec. 1115(c)-(f) [pp. 74-76]

As discussed in the overview, this is the real heart of Title I, the school-level provisions of the Act. This is where, and rightly so, the bulk of Title I funds are spent. Even more importantly, these are the provisions that shape the education our children get, laying out the key components of quality education they must receive in order to get the kind of teaching, learning, and attention they need in order to achieve at high levels. All the rest, testing and accountability, is not the on-the-ground education; as important as they are, they provide only a back-end check on it. We have two major concerns:

- 1) HR 5, as reported, weakens or eliminates several of the very important components of that program, which, CLE believes, ought to be reversed.
- 2) The level of implementation of these provisions has been weak, largely overshadowed by the back-end “accountability” system that HR 5 properly, in our opinion, seeks to change. They have received relatively little attention, from USED on down through the SEAs and LEAs, so schools and families have little information about what is supposed to happen and its significance, let alone solid help in making it happen. The reauthorization is an important opportunity to take steps to strengthen that implementation so that disadvantaged students get the components of high-quality education they need and deserve.

B. **Schoolwide Program Schools**

Here is a summary of *some* of the important provisions of the current schoolwide program section concerning the program components [1114(b)]:

1. The school must provide all its students with a set of elements of a quality education, including, among other things:
 - a. accelerated, enriched curriculum aligned with the standards
 - b. effective instructional methods
 - c. timely and effective assistance for students experiencing difficulty mastering the standards (not just once it has been determined that the student has fallen behind based on an annual assessment, but on a timely basis when the student is having trouble mastering something)
 - d. addressing the needs of historically underserved populations
 - e. high-quality professional development
 - f. strategies for attracting high-quality teachers⁷

⁷ It also must provide students with highly qualified teachers. Like many others, we will be happy to see the current, very limited definition of highly-qualified go, but the more qualitative concept of establishing an expectation that those teaching our children are well-qualified with the skills and knowledge to do so effectively

2. The school develops a plan for *how* each of these components will be provided.
 - a. That plan is developed collaboratively with the participation of families and is based upon the school's needs assessment that, as clarified by a helpful USED regulation, assesses not just student performance but each of the components.⁸

These provisions are entirely consistent with research demonstrating the importance of establishing a schoolwide learning community that examines its own practice in these kinds of ways and takes responsibility for improving it.

HR 5, as reported, needs strengthening in order to ensure effective implementation of this core part of the Act, in part by restoring important language in current law that has been deleted and in part by providing additional clarifications and improvements needed in light of how this core has and hasn't been implemented.

The following amendments restore some of the most important deleted components of the schoolwide plan:

(b)(1)(A) Comprehensive needs assessment of the entire school

At page 67, STRIKE lines 8-10 and ADD "(I) by striking "1309(2)" and adding "1139(2)".

These lines stricken by the amendment would delete the current law requirement to take into needs of migratory children. The amendment removes the deletion and updates the section number reference to the definition of migratory child, which may have been deleted because it refers to the definition of migrant children in section 1309(2), part of the migrant program in current law. [DON'T INCLUDE THIS SINCE THERE'S PROBABLY A SEPARATE EFFORT TO RESTORE IT AS PART OF MIGRANT AMENDMENTS?]

At page 67, after line. 14, insert a new subclause: "(III) by STRIKING '.' and INSERTING before the period 'and that assesses the needs of the school relative to each of the other components of the schoolwide program in this paragraph.'"

This clarification, codifying 34 C.F.R. Section 200.26(a)(1)(B)(ii), is *very important*. In the current context, people typically assume that a needs assessment is only about student data. To use the data to improve your practice, it is important to look at your practice. Drawing up a plan for effectively providing each of the program components, as is required in subsection (c), will not be successful if it is not based on understanding how that component is currently being provided and its strengths and weaknesses. The

remains crucial. Freed of the current definition, having schools (as well as LEAs and SEAs) collaboratively focus on what it means for teachers to be well qualified in relation to the students actually in their classes, and how to ensure it is important.

⁸ 34 C.F.R. Section 200.26(a)(1)(B)(ii). This clarification is important because in the current context, people typically assume that a needs assessment is only about student data. To use the data to improve your practice, it is important to look at your practice.

Department recognized this need in adopting this clarifying regulation in 2002. Codifying it will not only ensure its continuation but also draw more attention to it, since it is still not getting enough attention in designing and implementing schoolwide programs of sufficient quality to ensure that students are fully enabled to achieve.

(b)(1)(B) School reform strategies

Advanced levels of achievement. At p. 67, concerning clause (i) of the law, strike lines 16-20.

This amendment will retain the reference in current law to providing opportunities for all children to meet “the State’s proficient and advanced levels” of achievement. See earlier discussion, under standards, about the importance of advanced levels of achievement.

Outside entities. Strike all text from page 68, line 23, through page 69, line 4.

Those lines create a new clause (v) stating that the schoolwide strategies may be delivered by nonprofit or for-profit external providers. These strategies basically constitute the core academic program of the school. As such, this clause would essentially allow an external entity to provide the core academic program – a far cry from bringing in an outside entity to help plan or deliver a particular component or facet – and thereby putting the academic program of a public school in the hands of an outside entity. Further, it would do so independent of any State law or principles concerning delegation of public school authority. The federal government should not be creating this unnecessary and dangerous grant of authority.

(b)(1)(C) and (E) Teachers

[Concerning subparagraph (C) on instruction] At page 69, lines 6-8, before “effective” insert “high-quality” and strike “by striking ‘highly qualified and”.

[Concerning subparagraph (E) on recruitment] At page 69, delete “by striking ‘high-quality highly qualified’ and”.

Under current law, these subparagraphs provide, in (C) for instruction by “highly qualified” teachers and, in (E) for strategies to attract “high-quality highly effective teachers” to high-needs schools. H.R. 5 would replace both with “effective” teachers. We share in the widespread concern about the weakness of the current law’s definition of “highly qualified” and are anxious to see it replaced. At the same time, we believe that there is a need for a focus on “high-quality” and “highly-qualified” teachers that is not adequately captured by the use of the term “effective” alone – and in particular one that focuses on whether teachers have the qualities needed for providing high-quality, effective instruction to all the students in their classes. (This is all the more true in relation to new teachers, where ability to adequately judge their effectiveness in terms of student outcomes is limited at best.)

As has become widely recognized in similar developments concerning both teacher preparation and teacher evaluation, while assessing improvement of student outcomes is one important component of assessing teacher quality, it is also important to focus on

whether the teacher has those needed qualities (whether through demonstration of having developed those qualities and qualifications as part of obtaining credentials that truly assess them and/or through in-service evaluation through observation and other means).

The amendments above would leave in place H.R. 5's addition of "effective," while (1) adding "high-quality" to (C) and retaining it from current law, under (E) , and (2) retaining the current law references to "highly qualified," but without connecting it to current law's definition of the term. That way, the term will either remain but not defined by federal law, as H.R. 5 strikes the definition, or link to a more meaningful definition should Congress choose to create one.

(b)(1)(I) Assisting students having difficulty mastering standards

At page 70, lines 6-9, after "(viii) in subparagraph (I),

Delete all text through line 9;

Insert "by striking all text and inserting the following—

"(I) Activities to ensure that students who experience difficulty mastering any of the standards required by section 1111(b) during the course of the school year shall be provided with effective, timely additional assistance, which shall include--

(i) measures to ensure that students' difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance;

(ii) periodic training for teachers in how to identify such difficulties and to provide assistance to individual students; and

(iii) for any student who has not met such standards, teacher-parent conferences, at which time the teacher and parents shall discuss--

(I) what the school will do to help the student meet such standards;

(II) what the parents can do to help the student improve the student's performance; and

(III) additional assistance which may be available to the student at the school or elsewhere in the community."

The insertion replaces the current law provision with language drawn from the 1994 version of the law. It has the following advantages over current law:

- By focusing on students who experience difficulty mastering "*any of*" the standards "*during the course of the school year,*" it clarifies that this is not simply about students deemed not to be proficient on the standards at large based on the annual assessment but instead speaks to a more informal, but critical process of teachers identifying students having difficulty with particular skills or knowledge when they happen and adjusting instruction and attention on the spot, rather than waiting.
- This version recognizes the importance of teachers needing training and support to do this well. It has been said by experts in teacher preparation and development that a student who is, for example, two years behind grade level is often actually a half-hour behind, the half-hour in which they failed to grasp a critical concept and then went off track.

- In addition to the on-the-spot assistance with a particular unit or lessons, it provides a process during the course of the year for working with the parent to identify and address on-going problems.

Thus, while there may have been a belief that the shortened version of 2001 was merely eliminating unnecessary, duplicative verbiage, *in fact, these provisions are critical to ensuring the steps necessary to prevent kids who are struggling in one or more particular areas from falling behind.*

C. Targeted Assistance Schools [Section 1115]

Current law provides many of the same required program components targeted assistance schools (TAS) as for schoolwide programs (SWP), though they must be provided only to those students identified to receive Title I services (because they are failing or most at risk of failing to meet standards), as opposed to all students in a Schoolwide Program school. Unlike SWPs, TASs are not explicitly required to develop a plan for providing those elements, although it is hard to see how they could be consistently provided without a plan for doing so.

We propose that amendments to particular provisions in schoolwide program be carried into parallel provisions in this section, for the reasons discussed in that section:

(c)(1)(E) Teachers. In clause (vi), at page 75, lines 7-8, before “effective” insert “high-quality highly qualified” and delete “by striking ‘highly qualified and’”.

(c)(2) Advanced levels of achievement. In clause (i) at page 75, lines 22-25, strike clause (i). This will retain the current law provision for assisting students to meet “proficient and advanced levels”

(f) Outside entities. On page 76, lines 18-24, strike all text of paragraph (6). This deletes new subsection (f) authorizing the program to be delivered by outside nonprofit or for-profit entities.

D. Improving Implementation of the School-Level Program Components [INCLUDE?]

As noted above, the weaknesses with the provisions about these components are not with the provisions themselves but with lack of attention to their implementation, from USED on down. Thus, **the law should focus on improving implementation of these core school-level sections (currently 1114(b) and 1115(c), along with the parent involvement section). In part, this is a matter of focusing attention on the existing requirements in current law for SEAs and LEAs to assist and ensure implementation, discussed above.**⁹ In addition, to enhance these provisions, Congress should:

⁹ As noted there, however, the discussion draft unfortunately eliminates many of the current law SEA and LEA plan provisions in the SEA and LEA plan aimed at supporting school-level implementation.

1. Require USED to develop and implement a comprehensive plan in this regard, covering (1) distribution of information, (2) provision of technical assistance, and (3) program assessment (which involves looking at program, not just student outcomes, monitoring, and enforcement). Submit the plan to Congress and provide annual reports on its implementation.
2. Establish a grant program to strengthen state and district capacity for both school capacity-building assistance and enforcement.
3. Provide for an independent study of the extent of implementation at school level and of district, state, and federal capacity-building assistance for schools and enforcement of school-level provisions.
4. Build (through grants and other supports) independent capacity of parent and community organizations to assist parents in participating in these provisions.
5. Restore, expand, and strengthen the Parent Information and Resource Centers (and local family information centers) so that they are robust, independent, proactive, unconstrained, and highly skilled sources of assistance for enabling parents to be the real partners the law envisions in implementing these local quality provisions and for effectively bringing attention to problems in their implementation.
6. Create a private cause of action to enable parents to address non-implementation – of both provisions that go to the quality of education and assistance their children are to receive and provisions that go to the parents ability to participate.
7. Focus Congressional oversight on implementation of these school-level provisions and on district, state, and federal efforts to both assist and monitor implementation.

VI. Prohibitions and the Federal Role

While there are many times that our organizations have had and have expressed serious differences with positions and actions taken by the Department, the answer is not to try to eliminate its organizational capacity and infrastructure, or its policy making and regulatory authority --- all necessary to ensure that the laws enacted by Congress, such as the ESEA, IDEA, and Perkins, are implemented, and the intent of their various provisions, fulfilled as designed for their beneficiaries.

The Department of ED, as a collector and reviewer of State plans under Title I, IDEA and Perkins, among others, is an obvious resource for research, practical knowledge based on experience and special expertise and ought to be sharing as part of its oversight responsibilities effective practices and models of improvement for assisting struggling students, educators and state and local district leaders, and professional communities. The Department also has responsibilities for oversight, evaluation and monitoring.

There are many prohibitions of federal action in H.R. 5. We would like to draw attention to three in particular that, at least in their present form, contain language that is short-sighted and not in the

interest of public school students, their parents, educators, or members of the broader school community.

A. **Section 1111 (b)(3)(C)** [page 37, lines 15-20]

This provision in the State plan section states:

“(C) PROHIBITION.—Nothing in this section shall be construed to permit the Secretary to *establish any criteria* that specifies, defines, or prescribes any aspect of a State’s accountability system developed and implemented in accordance with this paragraph.” [emphasis added]

This provision goes well beyond prohibiting the Secretary from requiring the State to dictate the specific content of the accountability system, which is already barred by other prohibitions in the Act. Rather it forbids the Secretary from establishing any criteria for States in developing their own accountability systems under the law. Providing such criteria, so long as they do not go beyond the law but interpret its meaning, are developed through proper public processes, conform to the requirements and limitations on regulations in the Administrative Procedures Act, is a basic element of federalism, helping to avoid confusion, ensure effective implementation of the law consistent with Congress’s goals. Questions about the meaning of complex legislation such as this that cannot be fully addressed in the legislation itself or present themselves in implementation invariably arise.

On page 37, subparagraph (b)(4) of section 1111, STRIKE: lines 15-20, subparagraph (C).

B. **Section 6522(a)** [page 558, lines 3-11]

This subsection states:

“(a) GENERAL PROHIBITION.—Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government directly or indirectly, whether through a grant, contract, or cooperative agreement, to mandate, direct, or control a State, local educational agency, or school’s curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof *to spend any funds or incur any costs not paid for under this Act.*” [emphasis added]

The italicized language is quite problematic and actually invites needless litigation. It can be, and has been, interpreted by recipients to mean that if fulfilling any of the requirements of the Act would cost the recipient any money, the federal government cannot require the recipient to comply with that requirement and must continue to fund the recipient regardless of its noncompliance. Forbidding the federal government from requiring SEAs and LEAs to meet requirements of the Act, if doing so would result in expenditure of State or local funds, is entirely different from forbidding the federal government from directly demanding the expenditure of funds. But the last clause invites the former interpretation.

This actually flies in the face of the structure of federal programs and the historical move away from narrow categorical programs. In the past, Title I, as with many other federal programs, were categorical programs. Their requirements were stated in the form of what the funds for the separate federal “program” could be spent on. These were understandably criticized as creating fragmented add-on programs that were not well geared to improve schools. While there is still room for such categorical

programs for particular purposes, the major federal programs were overhauled to better integrate them into the overall school. Instead of focusing on how the federal money is spent, they tend to be far more flexible in how the federal funds are spent and instead have requirements, such as developing and implementing the SEA, LEA, and school plans that involve the entire school program and could never be carried out with federal funds alone. So instead of saying “here is what you must spend your federal funds on and the “program” is limited to the use of those funds,” the law says, “here are your federal funds, for which you are eligible if your school, LEA, and State meets the requirements; we are relatively indifferent to where within that program you spend your federal funds, how much it costs, or what the mix of federal, state, and local funds are for particular aspects, so long as you carry out the requirements.” This is similar to many other federal programs outside of education – where the federal government provides grants to recipients who can meet the grant conditions.

Title I in its current incarnation is designed to assist schools in providing and improving their entire program – curriculum, instruction, attending to individual students learning needs, etc. It sets requirements for those programs and provides supplemental funds to schools and agencies to help them do so. The interpretation that recipients can expect federal funding even if they are massive non-compliance because they will only comply with the eligibility requirements of the Act to the extent that the federal funds cover the full cost of doing so would unravel the entire Act. Any ambiguity on this point must be eliminated.

The destructive last clause of the provision must be eliminated. The more benign goal of mandating, directing, or controlling the allocation of State and local resources is already accomplished by the rest of the provision and elsewhere.

At page 558, in subsection (a), on line 9, after “local resources” STRIKE “, or mandate” through “under this Act” on line 11.

C. **Section 6522(d)** [page 559, lines 14-19]

This subsection provides:

“(d) PROHIBITION ON REQUIRING FEDERAL APPROVAL OR CERTIFICATION OF STANDARDS.— Notwithstanding any other provision of Federal law, no State shall be required to have academic standards approved or certified by the Federal Government, in order to receive assistance under this Act.”

Presumably the State plan must be in compliance with the requirements of the Act, including the provisions of section 1111(b)(1) on academic standards. It is difficult to understand the federal government’s necessary function of ensuring that States receiving funds under the Act are complying with these requirements are different from “approving” the standards for the limited purpose of ensuring compliance. And the lead-in to this subsection stating that this prohibition is notwithstanding any other provision of Federal law would appear to negate that necessary function. Thus, unless this prohibition can be restated in a way that clearly does not bar the federal government from ensuring that the standards comply with section 1111(b)(1), the subsection should be deleted:

At page 559, STRIKE subsection (d), lines 14-19