

CENTER FOR LAW AND EDUCATION

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October 21, 2010

Alexa Posny, Assistant Secretary
Office of Special Education and Rehabilitative Services
400 Maryland Avenue, S.W.
Washington, DC 20202-7100

Re: Comments of the Center for Law and Education to IDEA-ESEA Alignment Statement

Dear Ms. Posny:

The Center for Law and Education (CLE) is most appreciative of the opportunity to comment upon the IDEA-ESEA Alignment document that you recently circulated setting forth a vision and rationale for education reform. CLE is a national advocacy and resource support organization whose mission is to improve the quality of public education for all students, including those with disabilities, and to help enable communities to address their own public education problems effectively, with an emphasis on low-income students and their families.

CLE continues to believe that there is a critical need to renew focus on implementation and enforcement of Title I of ESEA and IDEA in conjunction with the civil rights statutes, Section 504, ADA, Title VI, and EEOA to ensure that *all* students with disabilities receive a high quality public education. Our comments to each of the proposed precepts set forth in the IDEA-ESEA Alignment document are set forth below. Should you have any questions with respect to our comments, please feel free to contact me directly or Attorney Joanne Karger of this office. We appreciate your consideration and look forward to working with you and other members of the Department of Education during the reauthorization of Title I of the ESEA and IDEA.

Yours truly,

Kathleen B. Boundy
Co-Director

Attachment

Comments of the CENTER FOR LAW AND EDUCATION

ESEA /IDEA Alignment

To ensure that the needs of students with disabilities are met seamlessly in the general education classroom, ESEA should incorporate the following **precepts**:

- Assessments that take into account progress of students with a range of disabilities that hold them to the same standards as all students.

Both the ESEA and IDEA currently require the inclusion of *all* students with disabilities in State and districtwide assessments. Clarify with respect to the above precept that all students, including those with a range of disabilities, shall participate in age/grade level appropriate assessments that hold all students to the same academic content standards (e.g., common core standards). The reference to the phrase “take into account progress of” [toward proficiency] suggests use of a growth model which may be considered for all students but NOT as a substitute for students, including students with the most significant cognitive disabilities (<1%) who may be assessed based on alternative achievement standards, participating in a State assessment based on the State adopted academic content and achievement standards.

This precept requires USED to revisit as inconsistent with the mandate of Title I/NCLB, and the Fourteenth Amendment of the U.S. Constitution and Section 504 and the ADA, the regulations promulgated under Title I of the ESEA pertaining to the 2% policy that allow certain students with disabilities, who cannot be defined and delineated without error, to be assessed on the basis of “modified” achievement standards.

- Accountability measures that ensure the inclusion of students with disabilities.

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). This requirement is connected to ensuring valid and reliable determinations in a number of ways – first, by addressing the fact that a single test, even a good one, typically does not allow precise enough judgments (i.e., at this score the student is proficient, but just below this score the student is not) to be validly and reliably made; second, that some measures are often better than others at enabling different students to demonstrate what they know and can do; and third, 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 test represents mastery of the broader range of skills and knowledge it was designed to represent. But this requirement has been first ignored by USED and then rendered meaningless through regulations.

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. Attention also needs to be paid to the challenging task of how to integrate multiple measures of those skills and knowledge into a valid determination of the student’s proficiency.

In the effort to reduce labeling schools as falling short, states have: (1) set minimum subgroup sizes [“n”] below which their progress toward proficiency is not counted and (2) established confidence intervals which significantly reduce the proficiency rate required to be making

adequate progress. The rationale for these practices – that a group’s size is too small to make judgments about the larger population from which it is drawn or that, given the group’s size, we can with confidence translate the group’s rate only into a wider band of possible values for the larger population’s rate above and below the group’s rate – does not apply to Title I because under Title I all students, not a sample of students, are assessed. In using these techniques/practices, the State is essentially saying that “our assessment system doesn’t allow us validly and reliably to determine whether an individual student is proficient (since if it did, we would accurately know the proficiency rate of groups of various sizes as well),” a position contrary to the most basic requirements in the ESEA for having a valid and reliable system of doing so, and again underscoring the importance of using multiple measures instead of relying on a single test. (Ironically, at the same time, many States are making use of that same test to determine whether an individual student can be promoted or graduated, and are thereby vouching, under both professional testing standards and law, that the tests are capable of validly and reliably determining the proficiency rate of a subgroup of only *one* student.)

The end result is that many groups of students, in particular, racial minorities and students with disabilities are deemed to be making adequate progress when in fact they are not. The solution lies in: (a) developing a system of valid and reliable multiple measures capable of determining a student’s (and thus each subgroup’s) proficiency, as the law requires; and (b) adopting the less punitive, continuous improvement model so that the goal in practice becomes making sure that schools are identifying and attending to all students who are not making adequate progress, rather than looking for ways not to identify and to be accountable for them.

- Common definitions, integrated performance measures and same indicators for all students (e.g., same graduation data, dropout data, and suspension and expulsion data, same timelines).

Clarify that this precept refers to performance measures and indicators for all students under Title I of the ESEA that, under current law, apply to all students, and that performance measures required to be met by LEAs under IDEA are not subsumed as they are only applicable to measures established for educating students with disabilities under IDEA for which states and USED are legally mandated to monitor and enforce.

- Highly effective teacher performance evaluation framework and indicators that reward general education teachers and special education teachers for teaching students with disabilities in the general education classroom (working conditions, professional development).

Clarify that the evaluation framework for highly effective teacher performance and indicators that reward general and special education teachers for teaching students with disabilities in the general education classrooms applies as well to special education teachers of students with disabilities being educated in separate and substantially separate special education classrooms as well as to general and special education teachers teaching students with disabilities in alternative schools/programs. The evaluation framework and indicators should be placement neutral.

- Preparation programs that integrate general and special educators’ courses.

This is an area in which greater direction and specificity is needed, for too often these courses are superficial and ineffective in preparing both special educators and general education teachers to educate all students with disabilities to high standards. Provide direction for such teacher

preparation programs to include courses on child development and adolescent psychology, understanding and addressing challenging behavior, cultural competence, and effectively teaching diverse students with different learning needs.

- Recruitment and retention programs targeted to alleviate the greatest educator shortage areas in the US; e.g., special educators and related services personnel.

Specify the need for effective recruitment and retention programs to target highly qualified special educators with knowledge of research-based best practices for low-income rural and urban districts.

- Ongoing professional development for special educators on serving students with disabilities with intensive needs.

The meaning of the phrase “students with disabilities with intensive needs” is unclear. If the intent is for this precept to apply to those students who are in the top tier of RTI and have been identified as in need of special education and related services, it is important to clarify that professional development is necessary to improve the instruction of all students who demonstrate learning challenges, including those who may be struggling as a result of economic disadvantage, lack of effective instruction, lack of meaningful opportunities to learn, or because they have limited English proficiency. If the phrase “students with disabilities with intensive needs” is intended to apply *only* to those students with disabilities who have “intensive needs,” it is important to clarify that such differentiation among students with disabilities is not appropriate or constructive. Ongoing professional development is critical for educators serving not only students with disabilities with intensive needs, but also students with moderate disabilities as well as those students manifesting behavioral challenges.

- Ongoing professional development for general educators on effectively working with students with disabilities.

Specify that such professional development is of high quality and is provided by highly qualified personnel with research based knowledge and authentic experience. Include criteria for effective professional development sessions such as facilitating the connection between research and actual classroom practice as well as providing additional and ongoing opportunities for teachers to implement what they have learned. Clarify the importance of joint professional development opportunities for general and special education personnel.

- The provision of incentives for IHEs to partner with LEAs as part of clinical practicums and teacher residencies.

Clarify that such collaborations shall ensure that school personnel are provided on-going technical assistance and support from research based higher education programs that can inform best practices with the goal of developing effective, in-house models for ongoing implementation and support of best practices. Identify the need for such collaborative partnerships to be created in low-income urban and rural districts.

- Collaborative technical assistance that links IDEA Part D projects and IES research initiatives within ESEA.

Greater clarification is needed regarding the meaning and intent of this precept. Significant

collaboration already exists between the Parent Centers under IDEA and Parent Information Resource Centers under Title I. Continue to encourage and strengthen such collaboration by building the independent capacity of parent and community organizations to assist parents in participating in implementing the programmatic components of a high quality education described above (sections 1114, 1115, 1116) consistent with the parent participation provisions (section 1118) through a plan jointly developed with the parents of the school, under a process spelled out in a jointly developed and approved parent involvement policy which also must spell out a variety of necessary components for building parents' capacity to participate effectively. Expanding and strengthening the Parent Information and Resource Centers (and local family information centers) so that they are robust, independent, parent-led, 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.

At the same time, there is concern that the proposed collaboration between Part D projects and IES research will result in the further marginalization of research targeting the specific educational needs of students with disabilities. The current lack of focus on such research is evidenced by the limited attention paid to students with disabilities in the "Blueprint for Reform" for the ESEA reauthorization. In particular, there is a strong need for research concerning models of effective teaching and learning for students with disabilities whose emotional and mental health needs pose significant challenges to classroom management and to their remaining in school and learning to high standards. There is likewise a need for greater research concerning effective strategies to address the needs of students without disabilities whose behavior creates similar challenges to their being able to remain in school and engage in meaningful learning alongside their peers.

- Reinforcement in general education of the civil rights and equity provisions that guarantee a free appropriate public education (FAPE) and LRE, and that protect FAPE with due process safeguards; inclusion of civil rights assurances that maintain an appropriate level of enforcement of the law.

CLE believes that there is a critical need to renew focus on implementation and enforcement of Title I of ESEA and IDEA in conjunction with the civil rights statutes, Section 504, ADA, Title VI, and EEOA to ensure that all students with disabilities receive a high quality public education.

However, this proposed precept is confusing and misleading in that it incorrectly meshes two distinct statutes in which different populations of students have different rights and protections. IDEA is a prescriptive civil rights statute that grants individually enforceable rights to students with disabilities in need of specialized instruction and their parents. FAPE under IDEA means teaching effectively to State education standards consistent with the ESEA. Because there is no private cause of action under the ESEA, it is important to ensure that IDEA remains intact.

In place of the proposed precept, ensure that what is required is improved implementation and enforcement of the key school level program provisions of Title I of the ESEA (§§ 1114, 1115, 1116, 1118) that are designed to ensure provision of key components of a high-quality education for *all* students (i.e., an accelerated and enriched curriculum aligned with State standards; effective instructional methods; timely and effective assistance whenever any individual student is having difficulty mastering particular standards; and highly qualified teachers who receive on-going professional development to enable every child to learn to high levels). *All* students include students with disabilities based on the language of Title I and these students have additional protections under the civil rights acts.

- Promotion of schoolwide approaches to discipline, behavior (e.g., PBIS) and academics.

Specify particular examples, in addition to PBIS, regarding effective schoolwide approaches to behavior and academics. Clarify that schoolwide approaches shall be promoted and implemented, *as appropriate*, to address and improve school climate and behavioral expectations through, e.g., PBIS, culturally responsive discipline policies and practices, use of non-exclusionary alternatives to discipline, school-based mental health support services, and the involvement of parents and students. Such approaches shall also be promoted to support high-quality academics and improved student achievement through the implementation of practices, including, but not limited to, RTI, high quality curriculum and instruction, effective interventions, use of assistive technology devices and services, UDL, use of accessible instructional materials (including digital formats) when appropriate, and literacy support for families and students, with a focus on adolescent literacy.

- Promotion of early intervening services (EIS) to provide academic and behavioral support for students who have not been identified as in need of special education.

Despite inclusion of students with disabilities within the single accountability system required by Title I of the ESEA, the significantly disproportionate identification and classification of children of color as being in need of special education continues to be a serious issue given such factors as the persistent achievement gap, abusive use of alternate assessments based on modified and even alternate achievement standards, lack of highly qualified special educators teaching in core subject areas in poor urban and rural districts, lack of professional development regarding culturally responsive teaching practices, and lack of effective interventions for struggling learners, e.g., through RTI and effective preschool programs and mandatory comprehensive early intervention services for infants and toddlers “at risk” of developmental delays based on poverty. Continue to mandate, consistent with 34 C.F.R. § 300.646, that LEAs reserve the maximum amount of IDEA Part B funds available for comprehensive coordinated early intervening services (CEIS) if there is significant disproportionality based on race and ethnicity with respect to the identification of children with disabilities; the identification of children in specific disability categories; the placement of children with disabilities in particular educational settings; or the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. At the same time, improve oversight, monitoring, and enforcement by SEAs and USED to ensure that students with disabilities who are in need of special education services are not denied eligibility and that their receipt of critical specialized instruction and necessary supportive, developmental and corrective services are not delayed.

- Promotion of universal design for learning (UDL) principles/practices to be incorporated into instruction for all students.

Affirmatively incorporate UDL principles/practices, including the definition of UDL that is specified in the Higher Education Act at 20 U.S.C. § 1003(24), into instruction for all students.

- Phased, tiered instructional interventions (e.g., RTI) for all students while ensuring intensive, clinical instruction is provided for high needs students with disabilities.

Clarify that phased, tiered instructional interventions (e.g., RTI) are utilized for all students who are struggling to learn, while ensuring: (1) that needed services and instruction are provided in a

timely manner to students who may be in need of specialized instruction under IDEA and (2) that other research based, effective interventions required by Title I are provided to eligible, economically disadvantaged students enrolled in Targeted Assistance Schools or to any struggling learner enrolled in a school operating a Title I Schoolwide program. Clarify that specialized instruction and such corrective, developmental or supportive services, as needed, are provided to children determined to be eligible students with disabilities who are in need of specialized instruction, regardless of their level of disability related needs or of academic functioning.

- Consider more capacity for greater schoolwide funding integration or funding flexibility on a pilot/limited basis in the ESEA reauthorization.

Greater clarity with clear parameters is needed for this proposed precept concerning use of limited and restricted funds for student populations who may have very different needs.

- SEA and LEA plans and applications that represent a consolidation of ESEA and IDEA requirements.

While a single Consolidated Application may incorporate SEA and LEA plans and applications that represent a consolidation of ESEA and IDEA requirements, it is essential to ensure that collected performance data is *actually used* to hold States and LEAs accountable for improvement, to identify barriers to learning, to identify and to improve effective strategies, policies and practices. The USED regulations regarding State oversight of LEAs which hold both parties accountable only for compliance and not performance indicators under IDEA are inconsistent with current law and undermine this precept.

- Family engagement provisions that reinforce the family participation requirements in IDEA.

Ensure continuation of the parent planning and participation provisions under 1118 of Title I that expressly require schools and school districts to engage parents in school level changes based on data, including student performance, observations, and review of policies and practices. Improved administrative oversight will help ensure implementation and enforcement of the critical provisions for engaging parents in educational decision-making and educational reforms.

Support similar student engagement provisions that will enable all students, including students with disabilities, to participate in meaningful ways in educational decision-making at their schools, to exercise student centered planning, and to develop self advocacy skills and responsibility as part of their transition to college and career.

Continue to support parent led, independent Parent Information Resource Centers which, as Parent Centers under IDEA, help ensure that parents are provided accurate information, support and technical assistance to enable them to be effective partners in their children's education and to be knowledgeable members of their respective schools' learning communities.

- Similar maintenance of effort provisions (supplement not supplant); more flexibility in funding across ESEA and IDEA.

Both ESEA and IDEA contain their own maintenance of effort requirements as well as supplement not supplant provisions. Lack of specificity as to what is intended by this proposed

precept with respect to allowing more flexibility in funding across the two very different statutes precludes CLE's commenting at this time. The purposes of these two Acts are quite different with respect to the intended beneficiaries, although some children fall within the protections of both laws. These are not fungible statutes.

- Same services/funds provided to serve students with disabilities in private, charter or autonomous schools to ensure students with disabilities are provided the same options as general education students.

Correct the current USED policy exempting "private schools" that serve as "publicly funded placements of students with disabilities" under IDEA from being required to meet the same standards governing "highly qualified" teachers as all other public schools responsible for educating students with disabilities. Clarify that what is intended by this proposed precept is that students with disabilities shall have the same option to enroll in a charter or autonomous school as all other general education students whether through "school choice" provisions or through fair, lawful admissions procedures. Clarify, too, that heightened monitoring and enforcement will ensure that students with disabilities in need of special education services, as general education students, not only have equal access to charter or autonomous schools, but also have meaningful opportunities and necessary supports to learn, to be able to remain in school, and to attain the same educational outcomes as students without disabilities.