

CENTER FOR LAW AND EDUCATION

www.cleweb.org

99 Chauncy Street, Suite 716
Boston, MA 02111
(617) 451-0855
kboundy@cleweb.org

7101 Holly Avenue
Takoma Park, MD 20912
(202) 986-3000
pweckstein@cleweb.org

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The Honorable Lamar Alexander
Chair, Senate Health Education, Labor and Pensions Committee
455 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Alexander:

The Center for Law and Education (CLE) and the Advocacy Institute are pleased to submit the attached set of comments on the Every Child Ready for College or Career Act of 2015 (ECRCCA), 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. The Advocacy Institute, also a non-profit, tax-exempt organization, is dedicated to the development of products, projects and services that work to improve the lives of people with disabilities. For many years our organizations have collaborated in advocating for improving educational outcomes for all students.

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.

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 HELP Committee.

Yours truly,



Paul Weckstein
Kathleen Boundy
Co-Directors CLE

Candace Cortiella
Director, The Advocacy Institute

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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 a path to proficient and advanced levels of achievement.² 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.

- (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.

² We do not view this as inconsistent with a “growth” model, and indeed certain versions of a growth model could 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.

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. [We are very concerned, though, that the discussion draft would delete significant provisions that are part of that up-front structure.]

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.³ 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

³ 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).

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 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 (III) at the same time, 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.

Below, we provide some additional detail for each of these 3 interrelated areas of accountability. Our comments appear in the same order as the discussion draft.

II. Statement of Purpose [Sec. 1001, p. 2]

The amendment to this section weakens the purpose and intent of this statute and sends a clear message that the focus is no longer on ensuring that students who are not on track to attain proficiency in the standards set for all receive effective interventions and that schools and districts that are not meeting the needs of all their students demonstrate improvement.

The amendment identifies the purpose of the statute as twofold: to “ensure that all children have a fair, equal, and significant opportunity to receive [deletes: “obtain”] a high-quality education that prepares them for postsecondary education or the workforce without the need for remediation, and to close the achievement gap between high-and low-performing children...” Without clear language that what is minimally sought for all children to attain such an education is that all children “reach, at a minimum, proficiency on challenging State academic achievement standards as determined through multiple measures, including state academic assessments” the amended purposes may well have the effect of undercutting the expectations that schools, districts and the State are accountable to students, their parents, and school community, and that their teachers and administrators will be provided the resources and technical assistance to help meet their needs, including through providing students with an enriched and accelerated curriculum, effective instruction, timely and effective individual attention.

At pp. 1-2, l. 3, after “remediation” ADD: “to reach, at a minimum, proficiency on challenging State academic achievement standards, as determined through multiple measures, including state academic assessments,”

Without reference to attaining proficiency on challenging State academic achievement standards, the draft bill is silent on what constitutes an education that is of high-quality and that prepares students “for postsecondary education or the workforce, without the need for remediation.” Closing a gap has little meaning if the ceiling is undefined and standards are low. This is an issue of particular concern for students with disabilities.

III. State Plans

A. Coordination with Other Federal Programs [Sec. 1111(a), p. 6]

For students with disabilities, the ESEA in conjunction with the Individuals with Disabilities Education Act [IDEA] has, over the last decade, undoubtedly lifted expectations for learning and has underscored the rights of these students to be effectively taught by highly qualified teachers, to be provided an opportunity to learn to the same high standards as their peers without disabilities, and to be included in the same state and districtwide assessments –allowing them, their teachers, and their parents to determine whether and how well they were learning, being taught, and presumably if different educational interventions were needed. The draft bill eliminates the requirement under current law requiring any State plan to be “coordinated with other programs under this chapter, the Individuals with Disabilities Education Act, the Carl D. Perkins Career and Technical Education Act of 2006, the Head Start Act, the Adult Education and Family Literacy Act, and the McKinney-Vento Homeless Assistance Act.”

At p. 6, l. 6, after “this section.” STRIKE: “.” ADD: “, and that is coordinated with other programs under this chapter, the Individuals with Disabilities Education Act, the Carl D. Perkins Career and

Technical Education Act of 2006, the Head Start Act, the Adult Education and Family Literacy Act, and the McKinney-Vento Homeless Assistance Act.”

At p. 6, l. 4, after “administrators,” STRIKE: “;” ADD: (including administrators of programs described in other parts of this subchapter),”

It would seem to defy logic for SEAs submitting a State plan under this part not to develop the plan in consultation with administrators of programs specifically governed by provisions of this Act and in coordination with the State’s other federally funded program through which they have collaborative and joint obligations to students, e.g., IDEA, Perkins, Head Start, and McKinney-Vento.

B. Peer Review [Sec. 1111(a)(3), p. 6]

1. Under the draft bill, the purpose of the Peer Review is similarly limited, providing no role for critical review or consideration, so as to be less than rigorous in ensuring that all students will have an opportunity to be provided a high-quality education and to attain meaningful and challenging state standards. Rather, the draft bill proposes at subparagraph (B) Purposes of Peer Review that the peer review process “shall be designed to – (i) promote effective implementation of the challenging State academic standards through [*only*] State and local innovation; and (ii) provide transparent feedback to States designed to strengthen the States’ plans.”

At p. 8, l. 7, after “standards” ADD: “, assessments, accountability measures, and provisions for ensuring effective support and assistance to meet the needs of districts, schools, and students”

After “through” ADD: “a range of effective research-based strategies and interventions, and”

Under section 1111(a)(3)(C) **Standards and Nature of Review**, the draft bill provides that the peer reviewers are required to conduct a “good faith review of State plans in their totality and in deference to State and local judgments, with the goal of supporting State-and local-led innovation.” The language requiring “deference” by the peer reviewers undermines the purpose of a good faith yet rigorous review of a State plan.

At p. 8, ll. 14-15, STRIKE: “and in deference to State and local judgments,”

To make this peer review process meaningful, informed, and participatory, we **recommend** that the Secretary be required in making a determination about a State’s plan to consider and be informed by the peer review.

At Sec. 1111(a)(4), p. 8, l. 19, [State Plan Determination, Demonstration, and Revision] after “If the Secretary” ADD: “, informed by the Peer Review Process,”

2. The draft bill eliminates parents (and their representatives) from being part of peer review teams. They need to be restored.

C. Standards

1. In General [Sec. 1111(b)(1)(A), p. 13]

Throughout this section of the bill concerning the State plan, each State is required to provide an assurance that the State has adopted challenging academic standards that shall be the same for all public schools in mathematics, reading or language arts, and science, and any other subjects determined by the State and the levels of achievement expected of all; at the State standards are aligned with entrance requirements, without the need for academic remediation, for an institution of higher education; and State performance measures identified in the Perkins Career and Technical Education Act; that the State has adopted English language proficiency standards aligned with the challenging State academic standards. Similarly assurances are also required to with respect to the State Designed Academic Assessment. It is not sufficient for States to provide only “assurances”; for greater clarity and understanding, the State should be required to “demonstrate” or “describe” the information requested.

At p. 13, l. 2, after “provide an” STRIKE: “assurance” ADD: “demonstrate”

At p. 13, l. 20-21, after “provide an” STRIKE: “assurance” ADD: “demonstrate”

At p. 15, l. 5, after “provide an” STRIKE: “an assurance” ADD: “demonstrate”

2. Reading and Language Arts [Sec. 1111(b)(1)(C), p. 13]

Reading, which is defined under the law as decoding text, is a barrier for significant numbers of students with disabilities, e.g., severe dyslexia or visual impairments, who should not be denied access to higher learning and critical thinking skills because, as a result of their disability, they are unable to decode text. These students access information differently and should be provided necessary accommodations to learn and to demonstrate what they have learned. All references to the required State academic standards in the subject of “reading or language arts” should say “reading **and** language arts.” Such a change would require States and LEAs to develop academic content and achievement standards not only in reading (presumably with an emphasis on the early grades) but also in language arts.

While a few states have assessments that differentiate the construct being measured (e.g., reading for grades 3-5 and language arts for grades 6-12), many states assess all students, regardless of grade based only on reading/decoding and comprehension based on reading/decoding (i.e., comprehension of decoded text). To the degree that states limit their assessments to ‘reading’ instead of assessing students on the broader academic standards comprising language arts those assessments deny student with dyslexia and other print disabilities from fully and fairly participating in their state assessments and accountability systems. This exclusion can be harmful to the extent that information and inaccurate inferences based on state assessments is used to make school/district decisions about curricula choices, teaching and instruction, or placement and programs (e.g., college prep, advanced placement, vocational) for students.

Subsection (C) **Subjects** – at p. 13, l. 14, after “reading” STRIKE: “or” ADD: “and”.

Subsection (2) **State-Designed Academic Assessment System** –Option 1: (A)(i), at p. 17, ll. 4-5, after “reading” STRIKE: “or” ADD: “and”.

Subsection (2) Option 2: (B)(iv) at p. 25, l. 21, after “reading” STRIKE: “or” ADD: “and”

3. **Other Subjects** [Current Law Sec. 1111(b)(1)(D) , p. 13]

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 discussion draft:

- 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 plan shall describe a strategy for if an LEA serves students under subpart in subjects for which a State has not developed academic standards, 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)(C) 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 sates should base required to identify and take steps to address gaps in meeting standards in any subject which the state has determined all students should master.

4. **Alignment**

- a. **Alignment of standards with entrance requirements of Institutions of Higher Education** [Sec. 1111(b)(1)(D)(i), p. 13]

This is an important addition. However, its significance is undermined by the actual wording, which calls for alignment with “entrance requirements, without the need for academic remediation, for an institution of higher education in the State.” That standard would be met by finding the IHE with the very lowest entry requirements in the State, and aligning with it. The standards, which shape curriculum starting in the early elementary grades, must be ones that, if students meet them, do not cut off their options for higher education or consign them, unbeknownst to them to only the lowest tier of postsecondary quality and rigor. In order to ensure that students who meet the State’s standards do not have limited options, we suggest the following:

Change “an institution of higher education in the State” to “the full range of institutions of higher education in the State”

b. Other Alignment Issues

A serious concern for all students, in particular those with disabilities for whom there are historically low expectations, is that the State academic standards for preparing students to do college-level work without remediation –become the ceiling as well as the floor. This is especially worrisome because the provision under current law encouraging the teaching of advanced skills [20 U.S.C. § 6311(b)(1)(D)(i)(III)] and requiring challenging student achievement standards that describe two levels of high achievement (proficient and advanced) that determine how well children are mastering the material in the State academic content standards have been deleted from the draft bill. [20 U.S.C. § 6311(b)(1)(D)(ii)].

It is important to provide for the full and informed involvement of teachers, parents, and students (not just in the peer review of the standards and assessments, but in the process of developing them), a transparent and deliberative process with multiple opportunities for input at every stage, and processes for ensuring that the standards are being effectively disseminated and understood. It is also important to ensure that issues and concerns of cultural competency and consistency with Universal Design for Learning (“UDL”) principles are being considered.

Standards should be evidence-based and developed based on research connected to improved learning. The draft bill does not adequately define what constitutes the knowledge and skills necessary to be workforce or career-ready or describe how such standards would be established, including with the full and informed participation of students with disabilities, their educators, parents, and persons with specialized knowledge and experience in different occupations. “Career-ready” standards should, at a minimum, be consistent with the Carl D. Perkins Vocational and Technical Education Act requirements, including the need for all students to develop a strong understanding of all aspects of an industry (e.g., planning, finance, management, labor and community issues, and principles of technology) (*see generally* 20 U.S.C 2301 *et seq.*).

5. **Attention to Advanced Levels of Achievement** [Current law Sec. 1111(b)(1)(D)(ii), not found in discussion draft]

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. This is an important area, but there is a serious problem with current law. The discussion draft eliminates the language altogether, which only makes matters worse.

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 suggest the following:

- a. If a less punitive, more continuous improvement model of attention and intervention is adopted, 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.
- b. There should be a variety of other provisions supporting this focus – building this focus into the sections 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.)

6. Alternate Academic Achievement Standards for certain students with disabilities

[Sec. 1111(b)(1)(F), p. 14]

This provision of the draft bill provides that a State *may*, but is not required to adopt alternate academic achievement standards for students with the most significant cognitive disabilities. The effect of not having such standards means that these particular students are constructively excluded from learning the knowledge and skills that are aligned with the challenging State academic standards under subparagraph (A) of the draft bill. Consequently, and especially since we are describing more authentic skills (workforce ready), CLE and the Advocacy Institute believe that each State ought to be required to adopt alternate academic achievement standards for students with the most significant cognitive disabilities. Based on the requirements set forth in the draft bill, those standards must be aligned with the challenging state academic standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards attainable, and are designated in the student’s IEP. Sec. 1111(b)(1)(E)(i)-(iv). The requirement for alignment with the academic content standards set for all is critical to ensure that students with the most significant cognitive disabilities are actually being taught content that is aligned with the content standards set for all and not merely channeled into a program offering minimal, low-level preparation for unpaid employment.

At p. 14, l. 9, after “State” STRIKE: “may” ADD: “shall”

At p. 14, l. 18, after “general curriculum” ADD: “for the grade in which the student is enrolled;”

Although the draft bill provides for the alternate academic achievement standards for students with the most significant cognitive disabilities to be developed through a “documented and validated standards-setting process,” CLE and the Advocacy Institute urge that additional language clarify that this process include broad stakeholder participation, in particular, persons knowledgeable about the academic content standards adopted by the State, experienced in standards setting, and development of curriculum and assessments consistent with UDL principles, educators and parents of students with significant cognitive disabilities.

D. State-Designed Academic Assessment System [Sec. 1111(b)(2), p. 16]

1. General Comments on Option 1 versus Option 2

We share the concerns of many about an over-emphasis on testing. As we noted in our overview, this is not simply about the amount of testing but also about the degree to which what is supposed to be a back-end check on the system – assessment of whether students are learning and identifying and responding to areas where improvement is needed – is instead viewed as the system, ignoring attention to what is truly the system of front-end work to ensure that students get the elements of high-quality education that will enable them to learn. *However*, we very much agree with the witnesses at the recently convened HELP Committee hearing and others that there is no substitute for a system that provides valid assessment of every student’s achievement annually, not merely grade bands. It is central to the notion of not allowing our educational system to leave any child behind, and to looking at students’ growth, which cannot be done with only a single grade level and comparing this year’s fifth grade to last year’s.

There is also a major additional equity problem with relying on grade bands – it will lead to a large increase in the number of disaggregated subgroups whose achievement will not be reported and acted upon because assessing only one grade in a school rather than all grades will dramatically reduce the numbers in subgroups and will be viewed as not statistically significant. As we discuss elsewhere, the use of n-sizes and confidence intervals has been misapplied under current law and needs a major fix, but the problem will only grow with age-band assessment.

At the same time, while strengthening rather than abandoning annual assessment of all children, we believe that some of the ideas behind Option 1 can be integrated with current law and Option 2 to create a more valid, more educationally sound assessment system that supports rather than detracts from the provision of high-quality instruction aimed at deeper more meaningful learning, teaching to the standards rather than teaching /prepping to a test. For example, performance-based assessments referred to in Option 1, when done well, can constructively integrate assessment into teaching and learning.

Central to doing so is taking much more seriously the law’s requirements to use multiple measures of achievement and to ensure that the assessments result in valid, fine-grain determinations of students’

achievement of the various skills and knowledge embodied in the standards, at both individual and aggregate levels.

2. Assurances Not Enough

As noted above under C, it is not adequate for each State’s plan to provide an “assurance” that the SEA, in consultation with LEAs, has implemented a State-designed academic assessment system that meets the designated minimum requirements set forth in subsection (B) of Section 1111(b)(2). It is essential that each State plan demonstrate or describe how it meets the specific requirements that are key to effective and fair implementation of the State assessment system.

At p. 16, l. 24, “**In General.** --- Each State plan shall” STRIKE: “provide an assurance” ADD: “demonstrate”

At p. 25, l. 19, [Same change]

3. Lack of Federal Oversight

Under either Option 1 or Option 2, the draft bill allows for no Federal oversight of State assessments, including through a peer review process, which is critical to ensure that all school age children have fair and equitable opportunities to learn and are learning. This determination is based on assessments, ideally relying upon multiple measures, and reflecting expectations of high academic achievement standards –standards that are not limited or camouflaged based on student zip code, level of state and district school funding, fear of failure and sanctions based on test outcomes, and parental privilege. This oversight is critical, for many existing State assessments lack validity and the reliability evidence necessary to support an inference that a particular student with a disability is precluded by the nature of that disability from achieving grade-level proficiency. A student’s performance on the State assessment may as likely reflect that the student has not received adequate or effective instruction by a highly qualified teacher in the core subject area being assessed or the obstacle to achievement may be the assessment instrument. This same point applies to educationally disadvantaged students and to students with limited English proficiency.

Consistent with this position, we recommend that the subsection (B) **Requirements** for the assessment system set forth under both Option 1 and Option 2, **ADD** a safeguard found in current law that any such assessment:

“shall –be used only if the State educational agency provides to the Secretary evidence from the test publisher or other relevant sources that the assessments used are of adequate technical quality for each purpose required under this chapter and are consistent with the requirements of this section, and such evidence is made public by the Secretary upon request.”

4. Multiple Measures of Student Achievement

[Sec. 1111(b)(2)(B)(iii) – Option 1, page 17; 1111(b)(2)(B)(v) – Option 2, p. 26]

Both Option 1 and Option 2 retain current law’s requirement that the system of assessment use multiple measures of student academic achievement. 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, current interpretation of the provision has made the term essentially meaningless. To correct this problem, explained below, the following change is needed (whether under Option 1 or Option 2 or a replacement):

Add to the provision that the assessment system shall provide multiple ways of measuring 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, by addressing 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;
- 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 it represents mastery of the broader range of skills and knowledge it was designed to represent.

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.⁴

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.⁵

The various forms of assessment of proficiency identified in the draft’s Option 1 could potentially contribute multiple measures of the student’s achievement. Again, that presupposes a system using multiple measures, not, as currently contemplate, that a State could simply choose one.

⁴ 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. Suspension and expulsion rates are different indicators. Multiple indicators are addressed below, since this section is about the system for assessing student achievement.

⁵ The Center for Law and Education has more detailed material on the issues with “multiple measures,” which it is happy to provide.

An explicit provision should be added to the draft bill that requires states to undertake a serious program of technical assistance to ensure development and use of valid systems of multiple measures for all students to be able to demonstrate their knowledge and skills differently. For example, a student might demonstrate proficiency through a performance based model that unlike a standardized assessment, which too often results in a narrowing of the curriculum with students being taught to the test, would require the student to construct knowledge and use sustained, disciplined inquiry and higher order critical thinking skills. The use of multiple measures is especially relevant for students with disabilities, including those students who, because of their disabilities, are unable to participate meaningfully on a standardized assessment but, who would, if provided an alternate assessment, e.g., a portfolio assessment, based on the same grade level standards set for all other students, be able to demonstrate that she has attained the State academic standards.

Furthermore, to ensure that all students with disabilities are able to participate in the State assessments, each State must establish an alternate assessment *aligned with grade-level academic standards* in addition to an alternate assessment aligned with alternate academic achievement standards for those limited number of students with the most significant cognitive disabilities. To serve the full range of students with disabilities under Title I and IDEA, States must develop alternate assessments, as described above, in addition to ensuring that students with disabilities, who require accommodations, are provided them. Failure to ensure that all students with disabilities are able to participate in the State accountability system through State assessments violates Section 504 and the Americans with Disabilities Act. Students with disabilities, who are unable to take the regular assessment, even with accommodations and adaptations, are being constructively denied the opportunity to demonstrate what they know and can do based on regular grade level standards.

At pp. 18, ll. 1-18, CLE supports with the proposed modification, provisions (I) – (IV) under Subsection (B)(iv) that provide for the participation of all students in State assessments; the reasonable adaptations and accommodations for children with disabilities “necessary to measure the academic achievement of such children relative to the challenging State academic standards”; “alternate assessments aligned with grade-level academic standards” **STRIKE:** “unless the State develops” **ADD:** “;” before “alternate assessments...”

At p. 27, ll. 3, after “State academic standards,” **STRIKE:** “unless the State” **ADD:** “;” before “alternate assessments aligned...”

At p. 27, l. 9, after “disabilities;” **STRIKE** “or” **ADD:** “and”

5. Measures of Student Growth

The draft bill provides under both Options 1 and 2 that the state assessment system “may” include a measure of student academic growth over a designated period of time that is different than a determination of whether or not the student has attained proficiency or a targeted goal toward proficiency. As discussed elsewhere in these comments, CLE is supportive of states using growth models as an additional indicator, provided, however, that attention remains on those students who, despite having made ‘gains,’ are not on an expeditious path for quickly attaining proficiency and graduating th a regular high school diploma, and continue to require focused and effective interventions to do so.

6. Including All Students in the Assessments and Reporting

[Sec. 1111(b)(2)(B)(iv)(I) and (vii) and (b)(2)(C), pp. 18-22, for Option 1;

[Sec. 1111(b)(2)(B)(vi)(I) and (ix), pp. 26 and 29 for Option 2;]

[Sec. 1111(d)(1)(C)(i), page 40, for State report cards]

a. Students Ignored Because of N-Size and Confidence Interval Problems -- Exception to Disaggregation

Under the current accountability system, States have sought to reduce labeling schools as by (1) setting minimum subgroup sizes below which their progress toward proficiency is not counted and (2) confidence intervals which significantly reduce the proficiency rate required to be making adequate progress. The minimum subgroup size approach is authorized by current law, and carried forward into the discussion draft. The use of confidence intervals is not in the law but has been authorized by the Department. As indicated below, both of these approaches and concepts have been misapplied under Title I, to the detriment of disadvantaged students.

The minimum subgroup size exception has resulted in a lack of reporting on certain subgroups, particularly students with disabilities and English language learners in large numbers of schools. This has been exacerbating by allowing states to set different minimum sizes, with some states setting it as large as 100 [CA], compared to Maryland, which sets it at 5 students. The additional use of confidence intervals does not further diminish the number of schools reporting subgroups, but it does result in reporting a much higher portion of the students in the subgroup as proficient than their actual assessment results.

In other contexts, there is a statistical rationale for the use of minimum size and confidence intervals. But the usual reason for these practices does not apply to Title I. In other contexts, (1) the minimum group size limit is normally used when a group's size is too small to make judgments about the larger population from which it is drawn; and (2), similarly confidence intervals are used when, 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. Both of these approaches are used when trying to make inferences about a larger group based on assessment of a sample. But this simply does not apply to Title I, where *all* students, not a sample, is assessed.⁶

It would of course be absurd to make judgments about the proficiency of an entire student body based on the results of three students, just as it would be absurd to make judgments about the incidence of strep throat in a neighborhood by taking throat cultures from three members of a single family. But if what we are trying to find out is whether a group of students in the school are proficient or making enough progress toward proficiency, in order to address their needs, the size does not matter, just as it is fine to draw an inference about strep throat concerning the three members of the family from their three tests.

So the only reason for use of these techniques is a judgment that the results aren't valid or reliable or precise enough even for the group itself – i.e., from the test results, we don't actually know the real proficiency of the students being assessed. In other words, the state is saying our assessment system

⁶ These concepts would come into play if judgments were based on comparing this year's 5th graders against last year's 5th graders. But that is not the case under the current statute (which compares students against an absolute proficiency rate) or under growth models that have been allowed by USED.

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). But this is contrary to most basic requirements in the Act for having a valid and reliable system for doing so, and it is directly tied to the failure to make good use of multiple measures instead of relying on a single test. (Yet, at the very 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 only one student.) The end result is that many groups of students are deemed to be making adequate progress when in fact they are not.⁷

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 we call for so that the goal in practice becomes making sure we're identifying and attending to all students not making adequate progress, rather than looking for ways not to identify them. Meanwhile this inappropriate use of n-size and confidence intervals should be eliminated from the law and barred from regulations and waivers. The data should always be reported (except where it runs afoul of the other provision for not revealing individually identifiable data). It is a question of not making inferences from the data which the data does not support – as noted above, inferences about the performance of the students assessed are not inappropriate regardless of size, inferences about trends or comparisons with other students may be.

The draft bill provides that the disaggregated results of assessments under subsection 1111(b)(2)(B)(vii) shall not be required if the number of students in any category “is insufficient to yield statistically reliable information; or “the results would reveal personally identifiable information about an individual student.” As has been discussed above, CLE and the Advocacy Institute believe that the reference to any “n” of students being “insufficient to yield statistically reliable information” is misplaced in the context of reporting student assessment data under Title I, including participation and outcomes, to be disaggregated by subpopulation groups. We propose that this provision be eliminated..

At p. 22, ll. 1-4, STRIKE: “the numberreliable information; or”

At p. 40, ll. 11-13, STRIKE: “the number....reliable information or”

Data reporting the number of students in the aggregate and disaggregated by subgroup should reflect the *actual numbers* of such students who participated in the assessment(s) barring such data being personally identifiable. As noted above, this provision referencing “statistically reliable information” has historically been misused by many States to avoid reporting school and district assessment outcomes, in particular, for students with disabilities and racial minorities. We recognize that States have a responsibility to protect students' personally identifiable information in reporting assessment outcomes when disaggregated by subgroup, and this number is typically set between 7 and 10.

In the context of the framework in Title I, this use of statistical significance is out of place and has consistently been misused. The relevant inquiry is what portion of the students in a group within the

⁷ The problem is compounded in the case of confidence intervals, because the states after setting a confidence interval above and below the tested rate, invariably then choose to base adequate progress on reaching the bottom of the interval. This maximizes the likelihood that students are being deemed proficient who are not.

school are proficient or have met the state academic standards, and under Title I we assess the proficiency of all such students, rather than a sample – so the traditional use of statistical significance [or confidence intervals] seem out of place. Even reducing the threshold “n” size down to the low end does not resolve the problem and continues to abandon in practice the notion that no child should be left behind. An “n” size says, for example, that even if a school is doing nothing meaningful to address the particular needs of one group of students (for example, students with disabilities), there is no need to pay attention if the number of students in that group is small enough –i.e., below the arbitrary and indefensible number set by the state.

b. Including the entire cohort -- students who have dropped out or retained in grade.

Schools’ proficiency rates are artificially inflated when students who are struggling academically drop out or are retained in grade are not counted in determining the proportion of the cohort that has become proficient. This practice creates an inaccurate picture and also reduces the likelihood that schools will make efforts to help these students catch up and remain in school with their peers. A student who is struggling academically is treated as a “liability” if s/he remains in school and fails to show proficiency on the state assessments. If, instead, that student leaves, the liability is taken off the books -- i.e., the school's proficiency rate looks better, even though the real proportion of the class that has demonstrated proficiency has not changed. Meanwhile all efforts to help the student become proficient cease. Similarly, if a student is left back, s/he no longer counts in determination of how many of his/her original cohort attained proficiency, likewise creating an inaccurate picture and an incentive for the practice of grade retention, which is associated with continued low achievement and eventually dropping out. In contrast, counting the entire cohort, including those who have left school or been left behind, provides a more accurate picture of real proficiency rates, removes incentives to push students out, and creates positive incentives to attend to the achievement of those students most in need of attention.⁸

7. Alternate Assessments for Students with Disabilities [Sec.1111(b)(2)(F), p. 30]

At p. 30, l. 2, after “Students with” ADD: “the Most Significant Cognitive”

Amending the heading for subsection (F) to read: “Alternate Assessments for Students with *the Most Significant Cognitive* Disabilities” removes any ambiguity about this draft bill’s authorizing use of an alternate assessment, other than an alternate assessment based on alternate achievement standards (AA-AAS), that is based on a standard that is *different from (lower than) the regular grade level standards* that are expected to be met by all other students. With the sole exception of this small number of students who are properly determined to have significant cognitive disabilities, all other students with disabilities, as all other students, must, consistent with Section 504 and the ADA, be taught and be assessed based on grade level academic achievement standards.

⁸ While we also support a strong, improved separate indicator for graduation rates (so long as they are not used to counterbalance lack of adequate achievement – see above), even the most ambitious of the proposals for doing so will still allow schools to be deemed to be making AYP on graduation rates even though large numbers of students are dropping out. Thus, unlike anything that can be done with the graduation rate alone, the recommendation here on including in the proficiency rates the entire cohort, including those who have dropped out (or been retained in grade), will truly mean leaving no child behind. (Note also, under current law this approach would not necessarily cause a dramatic increase in the number of identified schools -- on average the true proficiency rates will be lowered by including these children, but so will the annual targets, which are based on the state's starting point.)

At p. 20, l. 2, after “A State” STRIKE: “may” ADD: “shall”

At p. 20, l. 6, after “disabilities,” STRIKE: “if the State” ADD: “and shall --”

We have proposed that the State be required to adopt an AA-AAS for only the limited number of eligible students with the most significant cognitive disabilities because the effect of a State not having an alternate assessment based on alternate achievement standards, is that these particular students are constructively excluded from receiving instruction that targets knowledge and skills that, as for all other students, are aligned with the State academic content standards.

With respect to subsection (F)(i), 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. It is essential that the participation of students with disabilities on the AA-AAS be limited to those students with the most significant cognitive disabilities who even with the best instruction and supplementary aids and services are unable to make meaningful progress toward the academic achievement standards set for all.

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 alternate assessment based on alternate achievement standards (AA-AAS) can be justified on the basis of documented evaluative evidence by their respective IEP teams. Current federal regulations *limit reporting* scores as proficient and advanced based on a State’s AA-AAS at the LEA and State levels, separately, not to exceed one percent (1%) of all students in the grades assessed in reading/language arts and in mathematics for accountability purposes. Although current regulation does not limit the number of students who may *participate* in the AA-AAS, we urge that the draft bill incorporate this same limit or cap on the number of students with the most significant cognitive disabilities who meet the additional criteria –even with the best specialized instruction are unable to make meaningful progress toward the State’s academic standards – who may participate on the AA-AAS.

To the extent this bill is not amended to establish a system of reporting and counting scores on the AA-AAS for purposes of accountability, then the failure to establish a cap on the number of students who can even be considered eligible for participating on a State’s AA-AAS will completely undermine the purpose and intent of the ESEA -- to help ensure all students have the opportunity to learn what they are expected to know and be able to do. *Without such a cap grounded in incidence data, students with disabilities who do not meet the limited definition of those with the most cognitive disabilities will be at significant risk of being tested and taught based on AA-AAS in violation of Section 504 and the ADA.* Therefore, to avoid this foreseeable miscarriage of fairness and deprivation of equal educational opportunity, the State [and LEAs] must take steps to ensure that only students with the most significant cognitive disabilities are identified by their respective IEP Teams as authorized to participate on the AA-AAS. IEP Teams are not without limitations. Given the consequences of an erroneous determination, the proposed legislation should tighten the criteria for eligibility as follows:

Replace “students with the most severe cognitive disabilities” with “only that very limited portion of students with the most significant cognitive disabilities who will never be able to demonstrate progress on grade level academic achievement standards even if provided the very best possible education and

accommodations. This determination must reflect the judgment of qualified professionals based on clear, valid, documented evidence.”

Arguably with this bright line, students with cognitive disabilities who are not currently being assessed based on AA-AAS should be protected and, many more students with cognitive disabilities, who are now being inappropriately assessed based on AA-AAS, will not meet the eligibility criteria for being assessed [and taught] based on “alternate” achievement standards. This result is consistent with research findings evidencing improved and accelerated student achievement following best practice interventions.

8. **Language Assessments** [Sec. 1111(b)(2)(G), p. 31]

Restore the remainder of the language that has been deleted from the parallel provision in current law [Sec. 1112(b)(6): after “The State shall make every effort to develop such assessments” restore the following: “and may request assistance from the Secretary if linguistically accessible academic assessment measures are needed. Upon request, the Secretary shall assist with the identification of appropriate academic assessment measures in the needed languages, but shall not mandate a specific academic assessment or mode of instruction.” Many children from different language groups do not currently have linguistically accessible assessments. States should be encouraged to seek assistance and the Secretary should continue to have the responsibility to provide it.

9. **Locally-Designed Assessment System** [Sec. 1111(b)(2)(K), p. 32]

There is nothing fair or equitable about the provision in Option 1at subsection 1111(b)(2)(D), (vii) at p. 24, ll. 3-7, that creates a loophole or Subsection (K) that expressly authorizes local districts – wealthy or resource poor -- to separate themselves from their State assessment systems to develop their own district assessments without adequate oversight, technical review and scrutiny. More importantly, the concerns raised above about State assessments are greater for local assessments, which invariably would be skewed toward local norms resulting in more low performing students appearing to be performing adequately. This is an issue of particular concern with respect to students with disabilities as well as those who comprise the protected population groups. Moreover, to comply with IDEA, it must be underscored that local districts would be required to develop an alternative assessment based on alternate achievement standards (AA-AAS) for any local assessment the district developed. We do not believe that a local assessment should under any circumstances be authorized to substitute for the State required assessment. This has the effect of removing the local district from the State assessment and accountability systems and precluding comparison between local school districts within the same State.

At pp. 32-33, ll 20 - 8, STRIKE: Subsection 1111(b)(2)(K), (i) and (ii).

E. **State Accountability System** [Sec. 1111(b)(3), p. 33]
[See also VII. School Identification and Assistance]

1. **The Role of Multiple Indicators**

It is important not to conflate multiple measures of achievement of the knowledge and skills in the state standards (discussed below) with indicators of other things, though both are important. The entire premise of standards-based reform is that all students should learn the knowledge and skills we agree that they should learn. And the premise of No Child Left Behind is that no child should be

left behind – i.e., that whenever a child (or group of children) is not on an adequate road to mastering those skills and knowledge, effective attention must be paid. Allowing improvements in indicators of other things to offset lack of adequate progress in achievement would mean deeming it alright for some students not being on an expeditious path to proficiency, thereby leaving those students behind.

In regard to multiple indicators of different things, the pressure to allow one such thing to substitute for another is largely the product of the bigger problem identified above – the view of AYP, and the consequences for not attaining it, as a single, monolithic, and stigmatizing/punitive thing, based on a theory of change that relies, as the main stimulus for improving, on the desire not to be identified as in need of improvement. From that point of view, the addition of other indicators which can only result in additional identification as not making AYP but cannot compensate for the absence of AYP on the core indicators of proficiency on the standards, of course feels onerous – hence the desire to substitute, with the result that there will no longer be a requirement to pay effective attention when certain students are not on the path to achieving what we have said they should.

If, instead, we move away from this monolithic and stigmatizing framework to a more nuanced, non-punitive, continuous improvement framework, we no longer have this dilemma. We can have multiple indicators to which we are paying attention – without saying that we'll ignore certain students' lack of proficiency in one critical subject because they or their cohort have stayed in school or achieved proficiency in other subjects – because we don't get put in a monolithic category and instead both work on and get assistance on those areas where we need to improve our program, based upon a common understanding, particularly when we dramatically raise the expectations for what all our children should achieve, that of course virtually all schools and systems will need to improve in various ways. The fact that some schools have more students with more challenges and who start with bigger gaps is reason for more high-quality attention and resources, not for punishment. And it is the failure of the school, district, or state to take required steps – both up front in the core educational program that's provided and subsequently in response to gaps in achievement – that is a trigger of non-compliance, not the outcomes. Those steps are what the law "requires," not AYP. This is the lens through which we look at the provisions of current section 1116 (1114 in the discussion draft), i.e., the consequences of students not making adequate progress in some area – discussed under "School Improvement and Assistance and School Redesign" below.

It is important to recognize and affirm that the purpose of the assessment system under Title I and IDEA is, in fact, to determine whether a student with a disability has received high quality instruction in the first place. State accountability systems are expected to make schools and school districts accountable to parents and students, not subject students to reduced standards of learning when the school/school district have failed to effectively educate the student to meet grade level proficiency. Toward that end, it is important to provide greater clarity and definition about the criteria for determining whether a student, in particular, a student with a disability, a student with limited English proficiency, or an educationally disadvantaged student is ready to be graduated "prepared for postsecondary education or the workforce without remediation."

The lynchpin of the State accountability system must continue to be predicated on all students making continuous improvement toward meeting the challenging state academic standards adopted by the State, and other academic indicators related to student achievement identified by the State to ensure that all students graduate from high school prepared for postsecondary education or the workforce

without the need for remediation cannot be treated as substitutes for students' proficiency on the standards. It is essential that these indicators

The State accountability system, as described in the draft bill, annually measures academic achievement of all public school students, identifies and differentiates among all public schools based on student achievement from assessments and other measures, the achievement gaps between subgroups of students, overall performance of all students in each category, secondary school graduation rates, including 4-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates, and "any other measures or indicators determined appropriate by the State that will be applied to [LEAs] consistently throughout the State". It is critical that "any other measures or indicators determined appropriate" do not become diluted substitutes for students attaining proficiency in the knowledge and skills the State has said all students should master. Local indicators should not be permitted to substitute for any State indicator applied consistently against all districts and schools.

However, the draft bill authorizes at section 1114 but does not require States to set goals or annual targets for all students (e.g. graduation). Without mandating the setting of goals and annual targets, it is not clear what mechanism is proposed for identifying and providing effective interventions to those students who are not on track, in particular, students with disabilities, or students in any of the other protected categories based on race, ethnicity, English learner, and for holding the schools or districts accountable. Moreover, without clearly stated annual measurable objectives, the achievement related indicators, proficiency in attaining standards by all student subgroups, 4 year adjusted graduation cohort rates, attendance, retention/promotion, will be diluted, regardless of the continuing gaps between population groups based on race/ethnicity, language status, disability.

The draft bill does require the State's system to provide assistance to those LEAs receiving assistance that are identified as in need of assistance in implementing strategies for improving student academic achievement and other measures determined by the State. Sec. 1111(b)(3)(C); sec. 1114.

F. **Prohibition of Regulation** [Section 1111(b)(4), p. 36]

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 draft bill prohibits regulation by the Secretary in establishing any criterion that specifies, defines, or prescribes the standards and measures that SEAs and LEAs use to establish, implement or improve State standards, assessments, State accountability systems, systems that measure student academic growth, measures of other academic indicators, teacher, principal, or other school leader evaluation, or indicators of teacher, principal or other school leader effectiveness. 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. This proposed provision is short-sighted and not in the interest of public school students, their parents, educators, or members of the broader school community.

At pp. 36-37, ll. 10-2, subparagraph (b)(4) of section 1111, STRIKE: Prohibition on Regulation [all].

G. Other State Plan Assurances [and descriptions]

[Sec. 1111(c), p. 37]

[Current law, Sec. 1111(b)(8), Requirement; (b)(9), Factors Affecting Student Achievement; (b)(10), Use of Assessment results to Improve Student Achievement; (c), Other Provisions to Support Teaching and Learning; and (d) Parent Involvement)

We strongly urge the Committee to carefully review and restore much of current law in the sub-sections above, and to use descriptions rather than assurances where they appear. Large portions have been deleted. They are designed to facilitate the implementation of the core school-level requirements, discussed in our comments in the Overview (Section I above) and in Section VI below, that are central to providing students with high-quality education but have been too neglected. They need more attention and support from the State, not less.

H. Reports

Sec. 1111(d, p. 39)

It is essential that the Annual State Report Card provide clear, cogent and complete information about the status of public education students in each state in a manner that encourages comparison and accountability to students, parents, educators, administrators, and members of the broad school community within each state and across the nation.

At p. 40, l. 3. After “Minimum Requirements. The State shall include in its annual State report card” ADD: “that shall be accessible and widely disseminated”

As described previously, when information is reported in the aggregate on student performance based on the state assessment(s) and is disaggregated by subgroup population, issues concerning statistical reliability are not raised or of concern.

At p. 40, ll. 10-13, after “except that such disaggregation shall not be required in which” STRIKE: “the number of students in a category is insufficient to yield statistically reliable information or”

The four-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates should also be disaggregated by each category of students described in subsection (b)(2)(B).

At p. 41, l. 10, after “or Career Act of 2015” ADD: “and disaggregated by each student category described in subsection (b)(2);”

Additional clarification is needed to ensure that the information identified in the State plan that must be collected includes how well students served by each LEA and school achieved based on the state academic standards assessed and other indicators of performance. This information is especially important to parents and educators of students with disabilities, and other students who have historically struggled to meet the state standards and are at risk of falling or being left behind..

At p. 41, l. 22, after “the State” ADD: “and how students enrolled in every LEA and school achieved based on the statewide academic assessments and other indicators of performance.”

At p. 42, l. 12, after “and” ADD: “(ix) the most recent available academic achievement results on the State’s NAEP reading and mathematics assessments, including the percentage of students at each achievement level reported on the NAEP in the aggregate and disaggregated for each subgroup [described in 34 CFR. § 200.13(b)(7)(ii)]; and the participation rates for students with disabilities and for students with limited English proficiency.”

At p. 42, l.13, STRIKE: “(ix)” ADD: “(x)”

Section 1111(d)(2)(C) Minimum Requirements [for Annual LEA Report Cards]

For purposes of accountability, it is important that information that shows how students served by the LEA, including by school, achieved on the State academic assessment, and that this data shall be disaggregated by student population group.

At p. 43, l. 19, after “the State as a whole” ADD: “,disaggregated by each student category described in subsection (b)(2);”

At p. 44, l. 2, after “the State as a whole” ADD: “,disaggregated by each student category described in subsection (b)(2);”

For purposes of ensuring accountability to students, their parents and members of the broader school community, it is important to require the data identified for collection in the State plan as key to the State’s accountability plan, be posted by the State and the LEAs and accessible to persons with disabilities in user friendly formats through multiple Internet sites operated by the SEA, LEA, and individual schools.

At p. 45, ll. 7: STRIKE “such as” ADD: “in a format accessible to persons with disabilities consistent with the requirements of Section 504 and the ADA,” by” after “local educational agency’s website,” ADD: “State education agency”

There should be no exception to a State, district or school making such information about student achievement outcomes publicly available via State and LEA websites.

At p. 45, ll. 12-16, STRIKE “(ii) Exception.” [ALL]

Presentation of Data -- Sec. 1111(d)(5) , p. 47

This provision highlights the problem that pervades this draft bill with respect to data collection and reporting requirements and will exacerbate the misapplication of recognized statistical concepts. This provision states without any context that an SEA or LEA “shall only include in its annual report card...data that are sufficient to yield statistically reliable information, *as determined [without context or regard for the purpose] by the State or local educational agency...*” (emphasis added).

As has been discussed previously, this wholesale reference to data “sufficient to yield statistical reliability” without context or proper foundation represents an erroneous understanding and

misapplication of the concept. To avoid making errors about schools in which small numbers of students with disabilities, for example, were perceived as causing the school/district not to meet its targeted outcomes and not to attain AYP, many States established an “n” size that had the effect of negating the existence of those students with disabilities (race, limited English) who in the aggregate do not equal the “n” size. This was inappropriate and reflects a lack of understanding of the data being collected under Title I as well as the manner in which it is being used.

At p. 47, ll. 18-21, after “data” STRIKE: “that are sufficient to yield statistically reliable information, as determined by the State or local educational agency, and”

I. Parent, Student, and Public Involvement at the State Level [missing]

1. Parents and Students. On state-level parent involvement, there has been a general requirement that the State plan be developed “in consultation with” a range of parties (LEAs, teachers principals, etc.), including parents. [Sec. 1111(a)(1)(A).] Just as requirements for “consultation” at the local level, without more (the formulation in the 1981 law, necessarily expanded in 1994), were not adequate to secure the benefits of real parent involvement, 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 be gaining additional flexibility over certain kinds of decisions, 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 i. 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 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, 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; provision of all information and assistance needed to be effective participants;(6) Be included in the State plan under this section⁹, 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 paragraph (1).” [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.¹⁰ 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 access to, relevant documents, including (in the case 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.”

IV. **Local Educational Agency Plans**

[Sec. 1112, p. 52]

Similar to our comment (III.G. above) regarding things missing from the State plan, we urge the Committee to carefully reexamine and restore the many provisions of current for the LEA plan and

⁹Assuming that this provision is included in section 1111.

¹⁰They needed to be treated separately from parent involvement, because they are both broader (in allowing others, beyond parents and school staff, to comment) and narrower (in providing only for comment on the plan, as opposed to ongoing, deeper involvement).

assurances that are designed to have the LEA facilitate the key school-level programs discussed at greater length in our comments in the Overview (Section I above) and in Section VI below.

V. **Eligible School Attendance Areas**

Sec. 1113(a) , p. 65

Selection of Title I Schools – reduce, and ideally eliminate, two inequities

A. High poverty schools in higher poverty districts

Under the current system of distribution, there are good reasons for the long-standing requirement that districts distribute Title I funds only (to oversimplify) to schools whose poverty rate is above the district average, and to limit the number of schools funded to those that can be served with sufficient size, scope, and quality (though the latter mandate has not been treated as seriously as it should). But this produces major inequities in that a school with a poverty rate of 50% or more may get no Title I funds because it is in a district with an overall poverty rate that is even higher, while a school with only a fraction of that rate across the district line in the suburbs is a Title school because it is the highest poverty school in a wealthier district. This makes no sense from an equity or educational point of view – to base a high-poverty school’s Title I funds, and thus needed services to its children, on the poverty levels of the other schools in the district where it happens to be located.

A remedy for this problem would be to put a major part of the Title I funding on a statewide ranking basis, where schools get served in order of poverty, regardless of their district averages. (In order to avoid narrowing the political base for the program, a significant portion of the funds could remain distributed on the current method, rather than shifting everything into the new formula.) This should also be a part of (and shape the phase-in of) any move to more “fully fund Title I.”

B. High-poverty secondary schools

There is a conflict between disproportionate numbers of secondary schools not making AYP (in large part because achievement gaps grow the longer students remain in school) and the historical decision to let districts choose to concentrate Title I funds in elementary schools, regardless of poverty or achievement. A first step to remedy this was taken in 1994, when districts were prohibited from skipping any high schools with poverty rates above 75% while serving elementary schools below that. But this is not enough – many high-poverty high schools in need of Title I are not getting served while lower poverty schools are. We need to continue down the road paved by the 1994 provision, by having districts select all their schools in rank order of poverty.

The question of whether there need to be distinct program provisions in federal law for high-school reform doesn’t undermine this proposal, since (for the foreseeable future) there’s not likely to be a separate funding stream with the magnitude, similar to Title I, that would be needed to do the job; the kinds of provisions that would go into a sensible high-school reform program could be built into the provisions applicable to high schools under Title I; and anything less than we suggest would undercut the push for “full funding” of Title I – i.e., making sure the program is adequate to serve all eligible K-12 students.

As an additional matter, students from low-income families tend to sign up for free and reduced-price lunch at significantly lower rates in secondary schools than in elementary schools, which further

exacerbates the underfunding of secondary schools relative to their low-income population. The law should facilitate the use of other measures of poverty that do not have this bias.

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

[Sec. 1112(b)-(d), p. 72 (Current Law: Sec. 1114 and 1115)]

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. More importantly, these are the provisions that shape the education our children get, laying out the key components of quality education they most 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) The discussion draft weakens or eliminates several of the very important components of that program. That needs to be reversed.
- 2) The level of implementation of these provisions has been weak, largely overshadowed by the back-end “accountability” system. 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.

A. **Schoolwide Program Schools**

Here is a summary of *some* of the important provisions of the current schoolwide program section [1114]:

1. The school provides 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 teachers¹¹
2. The school develops a plan for *how* each of these components will be provided.

¹¹ 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 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.

- a. That plan is developed collaboratively with the participation of familie 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.¹²

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 adnt akes responsibility for improving it.

The discussion draft eliminates several provisions, including, for example, the provisions for individual assistance, professional development, and attracting high-quality teachers. In addition, while current law first establishes that the elements above must be provided and then calls for a plan for how they will provided, the discussion draft only re`quires a plan.

The discussion draft should maintain the provisions of current law. In addition it should codify the helpful clarification that the needs assessments “assesses the needs of the school relative to each of the components of the schoolwide program.”

Finally, the law should focus on improving implementation of this 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. In addition, to enhance these provisions, Congress should :

- A. 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.
- B. Establish a grant program to strengthen state and district capacity for both school capacity- building assistance and enforcement.
- C. 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.
- D. Build (through grants and other supports) independent capacity of parent and communityorganizations to assist parents in participating in these provisions.
- E. Expand and strengthen the Parent Information and Resource Centers (and local familyinformation centers) so that they are robust, independent, proactive, unconstrained, and highllyskilled sources of assistance for enabling parents to be the real partners the law envisions inimplementing these local quality provisions and for effectively brining attention to problems in their implementation.

¹² 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.

- F. 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.
- G. Focus Congressional oversight on implementation of these school-level provisions and on district, state, and federal efforts to both assist and monitor implementation.

B. Targeted Assistance Schools Programs Section 1112[d], p. 77] (Section 1115 of current law}

Current law provides many of the same required program elements for targeted assistance schools as for schoolwide programs, though they must be provided only to those students identified to receive Title I services, 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.

The discussion draft would require a plan, which is helpful. Unfortunately the draft also removes a number of program requirements, similar to those removed in the SWP draft. They should be restored.

VII. School Identification and Assistance [Sec. 1114 ()Sec. 1116 of current law]]

[See also III.E. State Accountability System]

Our comments here need to be read in conjunction with our comments on student progress determinations under “Multiple Indicators/Assessments” above. There is a close relationship between (a) our calling for a quite stringent approach to student progress that ensures effective attention whenever any children are veering from the path to proficient and advanced levels and (b) revising this section to ensure that this need to respond is cast within a non-punitive, continuous improvement structure that does not rely on labeling schools (in contrast to (a) needing to loosen the functional definitions of AYP in order to (b) avoid unfairly punishing or labeling schools that are not.

The purpose and meaning of identifying gaps in adequate progress must be made crystal clear – and that depends most of all how findings of lack of adequate progress are treated [under this section]. If it means identifying schools that are not up to snuff, there inevitably remains enormous pressure not only to find loopholes, and to engage in strategies for demonstrating progress that are not always in children’s long-term educational interest (such as narrowing instruction), but also to reduce the level of expected progress to something that’s viewed as more “realistic.” That too is not in children’s best interest, because it means deeming them as making adequate progress even when not on a path that will actually enable them to be fully proficient. Thus, we believe it is important to articulate a different meaning for gaps in progress, and then to make sure it is clearly maintained, with no muddying, throughout the Act. To do so, we propose a continuous improvement model that recognizes gaps in one area or another within most any school as the norm and which does not create a separate block of schools simply on the basis of such gaps (while reserving a school identification process for a narrower set of schools, using criteria that are not solely triggered by student outcomes

alone). Doing so will then allow us (with what we believe will also be a higher degree of consensus and support) to hold onto, and indeed strengthen, a rigorous definition of adequate progress that requires attention whenever any child is not on an expeditious path to proficiency, thereby fulfilling the Act’s promise to leave no child behind.

Overall Framework. While we do not pretend to have the final answer on the full details of the best language for that shift, the basic elements should include:

- A. An obligation for all schools to respond whenever any group of students is not making adequate progress in regard to any identified indicator, with a plan for improvement that:
 - 1. Is grounded in the program plan that all schools are obligated (under current section¹³ 1114 [and 1115]) to develop and implement as a condition of receiving Title I funds – by revisiting the quality and adequacy of the required components of that plan (e.g., for providing accelerated and enriched curriculum, effective instructional methods, timely and effective assistance for any student experiencing difficulty mastering any standards, high quality ongoing professional development, etc.), the extent and quality of implementation of those steps, the comprehensive needs assessment of each of the program components that was carried out¹⁴ (and any need to for additional assessment of any of the components), and identifying needed changes in the plan for implementing any of those components, including additional, concrete steps for adequate, ongoing monitoring of the implementation – with particular attention to their impact on the students and area(s) identified for improvement.
 - a. This revision of the program plan should be jointly developed with the parents of the school, through the process identified in the school’s parent involvement policy, as is required by section 1118(c)(3) for the development of the schoolwide program plan (and the improvement planning should also identify and implement any changes needed in that joint development process in order to make it more effective).

[This focus on the program plan required for all schools has the benefits of: going to the heart of the core program elements that are central to whether the school is providing a high-quality education that enables students to attain proficiency; furthering the overall coherence of program planning, implementation, and improvement; and advancing the understanding that identifying and responding constructively to gaps, weaknesses, and problems is an accepted part of continuous planning and improvement for all schools, not a stigmatizing badge of blame.]

¹³ Note: All section references in this portion of the comment text are to current law.

¹⁴ Under current section 1114(b)(1)(A) . See also 34 C.F.R. Sec. 200.26(a) regarding the requirements for this needs assessment.

2. Includes, as one component of the improvement plan, an assistance plan that identifies the specific kinds of assistance that the school needs to effectively implement the improvements, any local resources within the school or community that can help meet those assistance needs, and the specific assistance that will be obtained from or through the local educational agency, the state, or other outside resources;
 3. Ongoing review of the implementation of the improvement plan, and annual determination of its effectiveness in a way that combines analysis of improvements in achievement with assessment of the quality and adequacy of implementation of the program components;
- B. Reinforcement of obligations of the LEA and SEA (either in this section and/or in sections 1111 and 1112) to monitor and ensure that schools effectively implement these improvement requirements, to ensure that schools have the capacity for this improvement planning and implementation, and to provide or secure the outside assistance identified as needed in the improvement plans;
1. The LEA and SEA must ensure that the response to the need for improvement – both in terms of the steps in the improvement plan and in the resources and assistance to be supplied by the LEA and/or SEA – is commensurate with, and sufficient to meet, the level of need.
- C. In addition, with a more constructive, nuanced, and less punitive system, there should still be a role in certain instances for forced interventions that are not necessarily viewed as purely supportive by the staff of the school, but that type of intervention should not be triggered by lack of AYP alone.
1. Instead, the trigger should be based on some analysis that combines a look at the data with a look at the school's response – including how the school has fulfilled its responsibilities both for development and implementation of core program plans and components under section 1114 (and 1118) and improvement plans under section 1116¹⁵ – and concludes that, without such interventions (e.g., of the types currently in school restructuring), the kinds of changes necessary to produce the level of programmatic change needed to achieve the desired outcomes are unlikely, to the detriment of children.
 - a. On the one hand, this means that the decision to move from the more consensual, continuous improvement planning and implementation process to the more top-down intervention process will not be triggered automatically even in schools that have multiple groups of students not meeting AMOs, provided that the school is demonstrating its commitment and ability to effectively implement the required program components and improvement processes;

¹⁵ Keeping in mind that failure to fulfill the planning and implementation requirements of section 1114 and 1118 or the program improvement requirements of section 1116 is a compliance issue, unlike AYP itself.

- b. On the other hand, the fact that a school AYP is not being met for only one or two groups of students or only in a single area would not prevent the imposition of such interventions (albeit tailored to the specific gaps) if they persist and the criteria above for concluding that such interventions are needed have been met.

[This revision would further reduce the sense that schools are being “sanctioned” or “punished” because of their demographics, while also ensuring that schools are not let off the hook when they fail to adequately address the needs of one subgroup of students. Note, however, that the criteria here for imposing top-down interventions are not inconsistent with using the pervasiveness of the lack of AYP, in and of itself, to recognize schools as high-need, requiring higher levels of resources, assistance, and attention. Indeed, ensuring that the resources and assistance are keyed to the extent of student need is essential to making the continuous improvement process work. (See above.)]

- 2. To the extent that the application of criteria for this type of intervention and the state system for imposing them would leave SEAs with a fair amount of discretion,¹⁶ there should be:
 - a. a negotiated process for USED approval of a detailed state plan for how and when such interventions would be instituted;
 - b. opportunity for real, ongoing involvement by advocates for students and parents (including public interest organizations) in the development, review, and approval of such plan; and
 - c. a monitoring process for ensuring that continued failure to provide students with sufficiently high-quality, effective education and assistance is not tolerated by the system.

[To the degree that the continuous improvement process that our approach would focus on is implemented, resulting in greater attention to and better implementation of the core program requirements and improvement processes that in turn will improve the quality of education, the extent to which these imposed interventions are needed will be reduced, reinforcing the sense of the shift to a predominantly non-punitive model.]

- D. Parallel provisions for continuous LEA improvement, including similarly revisiting the jointly developed LEA program plans under section 1112 in response to any gap in adequate progress; inclusion and implementation of an assistance plan; reinforcement of SEA obligations to monitor and ensure effective LEA implementation of the improvement requirements, to ensure LEA capacity to do so, and to provide or secure the outside

¹⁶ It is, however, worth noting that the current law is already somewhat more nuanced and discretionary in this regard than is often acknowledged – for instance the inclusion of hiring a consultant as one option for corrective action.

assistance needed to implement improvements; and a system for identifying and addressing persistent LEA problems.

[This overall continuous improvement approach should be sufficient to effectively end the stand-off between complaints that the accountability provisions unfairly target schools based on failures in meeting a single AMO and concerns (discussed above) that the attempts to address those complaints by loosening the AYP criteria allow certain students to be left behind.]

VIII. Maintenance of Effort

Restore requirement under current law. The proposed bill seeks to give substantial voice and control to state and local school districts, and in exchange for that enhanced voice, states and local education agencies must be prepared, in exchange for federal funding under the ESEA, to show their commitment and make good on their shared obligation to help ensure that all public school students, in particular, disadvantaged students enrolled in high poverty schools and districts, receive the resources and supports necessary to be provided the curriculum, instruction, and effective interventions they need to achieve. Eliminating the maintenance of effort standard will be at the expense of our most vulnerable students. States and districts must be held accountable for providing equitable resources and support to all public schools.

CLE and the Advocacy Institute oppose the proposed deletion of the local maintenance of effort standard.

IX. School Discipline and Climate

We fully endorse the comments of the Dignity in Schools Campaign.