

December 21, 2011

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

Subject: Requests for Flexibility To Improve Student Academic Achievement And Increase The Quality Of Instruction

Dear Secretary Duncan:

The National Center for Learning Disabilities (NCLD) is providing the U.S. Department of Education with specific comments regarding the November submissions of ESEA Flexibility Requests. We offer these comments in hopes that they might be used to provide feedback to the States that submitted these requests as well as direction to States that have indicated their intent to submit requests in February 2012.

We would be remiss however, if we did not point out our concern with the Department's general approach to flexibility for States under ESEA. Important reforms such as college and career ready standards, higher quality assessments (including a clear signal to eliminate alternative assessments based on modified academic achievement standards) and a focus on sound teacher and principal evaluation systems are being driven by the Department's guidelines for States seeking flexibility. Unfortunately, these reforms are being exchanged for a significant departure from accountability for achievement *by all schools and for all students*. NCLD remains disappointed that the Department has sought to trade away the focus on accountability in exchange for flexibility rather than reforming what has made the difference for students with disabilities over the past decade.

As the Department reviews the present applications and those yet to be submitted, NCLD strongly requests that the specific provisions we list below, as well as our overall concern of a lack of focus on accountability, be given due consideration.

After our review of the submitted applications -- with a specific focus on the impact these applications would have on students with disabilities -- we believe there is an overall need to ensure the following provisions are strengthened:

1. Lack of specificity across State requests regarding differentiated interventions to address achievement gaps for all subgroups, as required*.

The requests provide little if any details about how low student achievement and graduation rates for student subgroups will be addressed with differentiated interventions and support. In fact, the new features of several states' proposed accountability systems create a new student group (e.g., gap group, high needs group) that may blur the specific learning needs of students such as those with disabilities or limited English proficiency.

NCLD encourages the Department to require States to provide more detailed information on how the needs of specific subgroups of students will be met as part of the interventions.

**“An SEA’s system of differentiated recognition, accountability, and support must create incentives and include differentiated interventions and support to improve student achievement and graduation rates and to close achievement gaps for all subgroups, including interventions specifically focused on improving the performance of English Learners and students with disabilities. “ (ESEA Flexibility, USED, page 4)*

2. Lack of detail regarding plans to end use of Alternate Assessment on Modified Academic Achievement Standards (AA-MAS) in states currently administering such assessments for students with IEPs.

None of the applying States that are currently administering an AA-MAS (Georgia, Indiana, Minnesota, Oklahoma, and Tennessee) have provided any information regarding how the State will transition students out of this alternate assessment.

It is NCLD’s understanding that States indicating that they plan to adopt the Common Core State Standards (CCSS) and implement assessments aligned to CCSS (such as those developed by the RTTT Assessment grantees) will be required to eliminate use of AA-MAS. Among the applying States, Oklahoma is of particular concern. According to assessment data available at https://www.ideadata.org/arc_toc12.asp#partbAssess the state of Oklahoma is assigning 58% of its students with IEPs in grades assessed to one of the two alternate assessments. This far exceeds the intended amount of students with IEPs for whom the general assessment (with accommodations as appropriate) is not the appropriate assessment.

NCLD requests the Department to require States currently administering an AA-MAS to provide details regarding a phase-out process that protects students from abrupt changes in assessment as well as guarantees these students will be provided instruction in the CCSS curriculum at their enrolled grade level. Such planning should also provide guidance for IEP teams, including parents, on how to achieve a smooth transition for students.

3. Lack of accountability for student subgroups.

Some proposed accountability plans are certain to reduce accountability for student subgroups—a provision in current law that has provided much needed attention to the academic performance of students with disabilities.

For example, Kentucky has proposed a school/district accountability model that relies on calculation of a Student Gap Group—an aggregate count of student groups that have historically had achievement gaps. Student groups combined into the Student Gap Group include ethnicity/race (African American, Hispanic, Native American), Special Education, Poverty (free/reduced-price meals) and Limited English Proficiency that score at proficient or higher. (page 28 of KY Request). According to NCLD’s analysis, KY’s plan to address subgroup gaps in any school where a subgroup performs more than 3 standard deviations below the school mean would result in few if any schools being identified. Based on NAEP

data, subgroup means are rarely more than 1 SD away from the all students mean, therefore it appears highly doubtful that any subgroup will fall 3 SDs below the total mean.

4. Lack of attention to professional development.

Requests generally reflect little details regarding the professional development (PD) that will be provided as part of school turnaround efforts, as required* (see below). Many of the PD proposed is antiquated and not reflective of our best knowledge regarding the most effective ways to deliver PD.

**...“ensuring that teachers are effective and able to improve instruction by: (1) reviewing the quality of all staff and retaining only those who are determined to be effective and have the ability to be successful in the turnaround effort; (2) preventing ineffective teachers from transferring to these schools; and (3) providing job-embedded, ongoing professional development informed by the teacher evaluation and support systems and tied to teacher and student needs;” (ESEA Flexibility, USED, page 9)*

NCLD requests that the Department require PD plans to reflect most effective, current, evidence-based practices.

5. Lack of specificity regarding special educators in teacher and principal evaluation and support systems.

We recognize that many States are in the beginning stages of formulating plans for teacher and principal evaluation systems. However, at this formative stage it is critical to consider how teachers in non-tested subjects, such as special educators, will be appropriately included in the system.

NCLD urges the Department to engage States in a collaborative process that allows cross-state learning and sharing as States move forward with evaluation systems. This will allow opportunities for those States further along in the process to provide valuable “lessons learned” as newer systems are developed.

We appreciate the opportunity to share our concerns. Please let us know if we can assist in any way as you provide further guidance to states on ESEA flexibility.

Sincerely,



James H. Wendorf
Executive Director

NCLD's mission is to ensure success for all individuals with learning disabilities in school, at work and in life. We:

- Connect parents and others with resources, guidance and support so they can advocate effectively for their children.
- Deliver evidence-based tools, resources and professional development to educators to improve student outcomes.
- Develop policies and engage advocates to strengthen educational rights and opportunities.

NATIONAL CENTER FOR LEARNING DISABILITIES, INC.

PUBLIC POLICY OFFICE

1101 Vermont Avenue #400 • Washington, D.C. 20002 • TEL 703.476.4894 • www.LD.org

[NEW YORK CITY OFFICE](#)

[381 Park Avenue, South #1401](#) • NYC, NY 10016 • TEL 212-545-7510