



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

September 14, 2007

Dear Chairman Miller and Ranking Member McKeon:

Thank you for this opportunity to provide recommendations and changes to the ESEA Title II - Title XI discussion draft. CCD continues to support the promise of No Child Left Behind (NCLB) that every child, including a child with a disability, can achieve greatness thanks to a quality education and we appreciate that you have included us in the reauthorization process.

We are pleased with a number of additions and changes to current law that will directly benefit students with disabilities and have attached our specific recommendations for review and consideration.

Again, we appreciate the opportunity to contribute to the NCLB discussion. Thank you for considering our views.

Association of University Centers on Disabilities  
Bazelon Center for Mental Health Law  
Council for Exceptional Children  
Council for Learning Disabilities  
Easter Seals  
Learning Disabilities Association of America  
National Center for Learning Disabilities  
National Down Syndrome Congress  
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**CCD Education Task Force  
Comments on ESEA Staff Discussion Draft  
Title II – XI  
Committee on Education and Labor  
U.S. House of Representatives**

TITLE II – Teacher Excellence For All Children

**Section 2122. Improving Professional Development Opportunities-Grants.**

**Recommendation:** On Pg. 32 beginning on line 9, add the following language indicated in **bold**:

“(4) Providing training for **general education teachers in effective instructional services and classroom management strategies that address the needs of students with disabilities and students with limited English proficiency.**

**Recommendation:** On Pg. 33 beginning on line 3, the following language indicated in **bold**

“(11) Developing curricula, **which is consistent with the principles of universal design for learning.**

**Rationale:** “Mainstream teachers” should be changed to “general education teachers,” which is consistent with the terminology throughout NCLB, including a parallel provision in Section 2223. We also rearranged the wording of (4) so that the training is available for all general education teachers. The phrase “general educators that serve students with disabilities and English language learners” implies that there is a special subset of general educators who teach these students, which isn’t the case. There are sufficient numbers of students with disabilities and English language learners in general education classes to justify training all the teachers. In addition, in order to help States implement universal design for learning, these grants should have permissible activities on curricula development that are consistent with the principles of universal design for learning.

**Section 2211 Assurance of Reasonable Progress Toward Equitable Access to Teacher Quality**

**Recommendation:** Amend Section 2211(a)(2) as follows in **bold**:

(a) IN GENERAL.—The Secretary may not provide any assistance to a State educational agency under this part unless, in the State educational agency’s application for such assistance, the State educational agency—

(2) clearly articulates the measures the State educational agency is using to determine whether poor and minority students **and students with disabilities** are being taught disproportionately by teachers who are inexperienced, out-of-field, or not highly qualified;

**Rationale:** It is important to require States to determine whether students with disabilities, as well as poor and minority children, are taught at higher rates than other children by inexperienced, unqualified or out-of-field teachers. The findings of a peer review of revised State plans released August 16, 2006 shows that non-compliance with the highly qualified teacher provisions regarding special education teachers is occurring far too often.

## Section 2215 State Application

**Recommendation:** Add a new Section 2215(b)(8) as follows in **bold**:

(b) CONTENTS.—Each application shall include, at a minimum, the following:

**(8) A description of how the State educational agency will encourage the use of funds under this part to provide training in the use of teaching methods, consistent with the principles of universal design for learning.**

**Rationale:** In order for students to benefit from universal design for learning, teachers must understand how to provide multiple examples, highlight critical features, use multiple media and formats, explain background/context and provide positive behavioral supports. Training is essential to help educators develop these skills.

## Section 2216 State Use of Funds

**Recommendation:** Retain Section 2216(c)(1)(A)(ii)(II), below.

(II) strategies, that involve training educators in effectively teaching students with diverse learning needs such as students with disabilities and English language learners;

**Rationale:** This provision is important because it requires States to provide technical assistance on strategies that will help all educators become effective teaching students with diverse learning needs. This support is essential to ensure that LEAs have the capacity to develop effective staff development programs.

## Section 2222 Local Needs Assessment; Local Application

**Recommendation:** Retain the specific language including special educators in Section 2222(a)(2)(B) and amend as follows in bold.

(2) REQUIREMENTS.—Such needs assessment shall be—

(B) conducted with the involvement of teachers and **a representative group of parents**, including teachers participating in programs under part A of title I, teachers of English language learners, teachers of students with disabilities, and teachers who teach Native American students in local educational agencies where there are subgroups consisting of these populations; and

**Rationale:** Special educators and parents should be involved in the development of the needs assessments since their perspective is critically important to a comprehensive plan under Title II.

**Recommendation:** Retain Section 2222(b)(2)(G)(i) and amend as follows in **bold**.

(2) CONTENTS.—Each application submitted under this subsection shall be based on the needs assessment required in subsection (a) and shall include the following:

(G) A description of how the local educational agency will provide training, **consistent with the principles of universal design for learning**, to enable teachers to teach and address the needs of students with different learning styles, particularly students with disabilities, students with special learning needs (including students who are gifted and talented), and students with limited English proficiency;

**Rationale:** Currently general educators receive inadequate training on how to address the needs of students with disabilities. As a result, there is resistance to educating these students, especially students with intellectual disabilities, in the regular classroom. This requirement for LEA training will improve compliance with the least restrictive environment provisions of IDEA and the outcomes of student with disabilities. It is imperative that LEA training be consistent with the principles for universal design for learning. Universal design for learning provides a research-based framework for teaching diverse learners.

### **SEC. 2223 Local Use of Funds**

**Recommendation:** On Pg. 71 beginning on line 1, add the following language indicated in **bold**:

“...to help **all** students meet challenging State academic achievement standards”

**Rationale:** This clarifies that subgrants to local educational agencies are meant to ensure that all students meet challenging State academic achievement standards.

**Recommendation:** Amend Section (b)(1)(C)(iv), below in **bold**.

(b) TEACHER AND PRINCIPAL PROFESSIONAL DEVELOPMENT ACTIVITIES.—In delivering the professional development described in subsection (a), the local educational agency may carry out the following activities:

(1) STATE-OF-THE-ART TEACHER INDUCTION

PROGRAMS.—A coordinated state-of-the-art teacher induction program within the local educational agency that—

(C) includes—

**(vi) training for general education teachers on effective instructional services and classroom management strategies that address the needs of students with disabilities and English language learners;**

**Rationale:** We are pleased to see this provision in the draft. Any established or new program for teachers that includes training for general educators, should address effective services and strategies for students with disabilities and English language learners. We rearranged the wording of (vi) so that the training is available for all general education teachers. As explained earlier for a similar provision, the phrase “general educators that serve students with disabilities and English language learners” implies that there is a special subset of general educators teachers who teach these students.

**Recommendation:** Amend Section 2223(b)(3)(H) and (b)(3)(Q), as follows in **bold**. Also, define “high populations.”

(b) TEACHER AND PRINCIPAL PROFESSIONAL DEVELOPMENT ACTIVITIES.—In delivering the professional development described in subsection (a), the local educational agency may carry out the following activities:

(3) HIGH-QUALITY PROFESSIONAL DEVELOPMENT.

**(H) provides training for general education teachers, as well as specialist teachers, on effective instructional services and classroom management strategies that address the needs of students with disabilities and English language learners.**

**(Q) provides specialized training for principals leading schools with high populations of students with disabilities or English language learners.**

**Rationale:** Sections 2223(b)(3)(H) and(Q) are a very important provisions that we are pleased to see in the draft. We amended Section 2223(b)(3)(H) to be consistent with the edits we made in (b)(1)(C) above. In addition, we removed the word “new” in (Q) because all principals with high populations of students with disabilities or English language learners should receive specialized training. The practice of scape-goating these populations if they don’t meet AYP requirements, demonstrates that many experienced principals don’t have the skills to improve the performance of these students. If they did, the principals would work on these strategies instead of assigning blame. The term “high populations” should be defined.

#### **SEC. 2241. National Activities of Demonstrated Effectiveness.**

**Recommendation:** Amend Section 2241(a)(4)(a)(ii)(II) to **delete the word “new.”** Also, “high populations” should be defined.

(a) PARTNERSHIP GRANTS FOR PRINCIPALS AS SCHOOL LEADERS.—

(4) REQUIRED ACTIVITIES.—Funds made available under this section shall be used for the following activities:

(A) IMPROVING SCHOOL LEADER LICENSING AND CERTIFICATION PROCESSES.—

(i) MANDATORY ACTIVITIES.—The plan and pilot program under clause (i) shall include—

(II) specialized training for principals leading schools with high populations of students with disabilities or English language learners.

**Rationale:** This is an important activity that should be available to all principals with high populations of students with disabilities or English language learners. The term “high populations” should be defined.

#### **Sec. 2401 MATHEMATICS SUCCESS**

**Recommendation:** On Pg. 124, beginning on line 15, add the following language indicated in **bold:**

“(a)(2) to provide targeted help to low-income students **including students with limited English proficiency and students with disabilities** who are struggling with mathematics and whose achievement is significantly below grade level;

**Rationale:** Current research suggests that the learning of foundational skills in core areas of math lays the foundation for more advanced mathematical knowledge. All students who may be struggling with mathematics concepts need more intensive and focused instruction centered on critical mathematics content.

**Recommendation:** Retain the provisions in Section 2401(a)(4), (b)(2)C(iii), (h)(4)(D) and (h)(4)(H) that specifically refer to the mathematics success of students with disabilities. Amend Section 2401(h)(4)(D) as follows in **bold**:

(h) APPLICATIONS.—In order to receive a grant under this section, a State educational agency shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each such application shall meet the following conditions:  
(4) It shall include a program plan that contains a description of the following:

(D) How the State educational agency will help eligible local educational agencies identify appropriate and effective materials, programs, and assessments, **consistent with the principles of universal design for learning, for all students, including** students with disabilities and English language learners.

**Rationale:** The specific inclusion of students with disabilities in a section devoted to mathematics success emphasizes the essential message of NCLB, that the success of all students is the goal. In order for LEAs to identify materials, programs and assessments that are appropriate and effective for all students, including students with disabilities and English language learners, they should use the principles of universal design for learning as a framework.

### **Section 2601 Purposes and Goals of Part F Achievement through Technology and Innovation**

**Recommendation:** Add a new Section 2601(a)(4) as follows:

(4) To permit the purchase and implementation of universally designed technology; to ensure that all students, including those with disabilities, will have an opportunity to benefit from the integration of technology into the general education curriculum; to provide frequent experiences in the use of universally designed technologies that may be applied to large scale assessments and to measure the impact of universally designed technologies on the learning and achievement of all learners.

**Rationale:** Any plan to improve achievement through technology and innovation must be developed with all students in mind. In order to ensure that this happens, one of the purposes of Title II Part F should be about universally designed technology. All students need experience with technology to be ready for 21<sup>st</sup> century employment. Also, they may use it to improve access to grade-level content and as part of universally designed assessments. The academic impact of these technologies should be measured under Part F and there should be adequate funding provided for staff development and technical support so the technology is usable by the students and teachers.

### **Section 2602 Definitions**

**Recommendation:** Add a definition of universally designed technology to Section 2602, as follows:

**In this part the term “universally designed technology” means hardware and software that--**

**(A) include the features necessary for use by all learners or supports integration with the necessary assistive hardware and software technologies to ensure that they are accessible and optimized for all learners; and**

**(B) provide flexibility in the ways that information is presented, in the ways that students respond or demonstrate knowledge, and in the ways in which students are engaged in order to provide appropriate support and challenge and enhance the performance for diverse learners.**

**Rationale:** It is important to provide clear criteria for universally designed technology. It is not cost effective to create technology plans that do not work for all students, nor is it consistent with the tenets of NCLB.

### **Section 2614 State Activities**

(a) IN GENERAL.—From funds made available under section 2612(a)(1), a State educational agency—

(2) may carry out the following activities:

(A) Assisting recipients of funds under this part in the development and utilization of research-based or innovative strategies for the delivery of specialized or rigorous academic courses and curricula through the use of technology, including distance learning technologies **and universal design for learning.**

**Rationale:** Universal design for learning is a research based framework for the development and utilization of innovative strategies for delivering curricula.

### **Section 2615 Local Applications**

**Recommendation:** Amend Section 2615(b)(1)(A) as follows in **bold:**

(b) COMPETITIVE GRANTS FOR SYSTEMIC SCHOOL REFORM THROUGH TECHNOLOGY INTEGRATION— In addition to components included in subsection (a), eligible local educational agencies or consortiums of local educational agencies submitting application for a grant under Section 2612(a)(3)(B) shall submit to the State educational agency an application containing the following:

(1) A description of how the applicant will use grant funds to complement systemic school reform efforts through—

(A) reform or redesign of curriculum , instruction, assessment, use of data, or other school or classroom practices, **consistent with the principles of universal design for learning, using technology** to increase student learning opportunity, technology literacy, access, and engagement;

**Rationale:** Any reform or redesign of curriculum should be done in a manner consistent with the principles of universal design for learning to ensure that the needs of all students are being addressed from the beginning.

## **Section 5411(b)(9) Funds for the Improvement of Education-Programs Authorized**

**Recommendation:** Add a new section 5411(b)(9), as follows in **bold**, and renumber the current (9) as (b)(10) to permit funds under this section to be used for the implementation of universal design for learning:

(b) USES OF FUNDS- Funds made available under section 5401 to carry out this subpart may be used for any of the following programs:

**(9) Programs that support the implementation of universal design for learning, including the purchase and development of universally designed textbooks and other instructional materials.**

**Rationale:** States and LEAs will be in a better position to provide universally designed textbooks and other instructional materials if they can use the funds under this part to do so.

## TITLE IV – 21<sup>ST</sup> Century Schools

**Strongly support** additional language expanding focus of the Title to activities that include “bullying, harassment, and gang activity...” and the addition of implementation of “positive behavioral supports” to improve school-wide climate.

**Strongly support** additional requirements related to the disaggregation of data on suspensions of one day or more, including in-school suspensions and expulsions, by student groups defined in Title I.

**Recommendation:** On Page 19, beginning at line 20, add the following language indicated in **bold**:

“(G) Establishing and implementing a comprehensive school safety plan that incorporates input from the community, including parents, students, teachers (**including special education teachers**), principals, specialized instructional support personnel, local law enforcement (including representatives of the juvenile justice system), representatives of local public health and mental health agencies, and experts in school safety, and is reviewed at least annually.”.

**Recommendation:** On Page 21, beginning at line 21, add the following language indicated in **bold**:

“(3) INTERVENTION PLAN.—A school that is determined not to have a safe climate for academic achievement shall develop and implement an intervention plan in consultation with parents, students, teachers (**including special education teachers**), principals, specialized instructional support personnel, local law enforcement (including representatives of the juvenile justice system), representatives of local public health and mental health agencies, and experts in school safety, that is based on an analysis of the data that led to the school’s designation as a Challenge School and issues of local concern, to create a safe climate for academic achievement.

**Rationale:** Special education teachers possess a unique understanding of issues involving actions of students, particularly students with disabilities, as well as the use of positive behavioral supports and interventions. Thus, the inclusion of such teachers should be explicit in the composition of groups designated to formulate both school safety plans and intervention plans for schools designated as not having a safe climate.

## **National Resource Center for Positive Youth Development and School Success.**

**Recommendation:** On Page 29, line 5 add the following language indicated in **bold:**

- (4) provide resources, publications, and training to State and local educational agencies on the effective use of positive behavioral supports and school-wide positive behavioral intervention models. Such activities shall be coordinated with existing federally funded centers, including the National Technical Assistance Center on Positive Behavior and Intervention Supports.**

**Rationale:** We are pleased to see the provision allowing the Secretary to establish this new Center. To maximize work done in this area by the National Technical Assistance Center on Positive Behavior and Intervention Supports, funded through the IDEA, and avoid duplication of work, we strongly urge that specific language be included in the bill directing activities undertaken by this new center to be coordinated with this well established center.

## **TITLE V – Promoting Successful Education Reform and Innovative Programs**

**Strongly support** addition of a study of factors that affect students’ ability to obtain grade level proficiency ... and help determine the impact of past trauma, neglect, maltreatment and other risk factors on failure to achieve proficiency under this Act [Pg. 102, line 1].

### **Subpart 16 – Parental Assistance and Local Family Information Centers**

**Recommendation:** In section 5562(a)(1), add the following language indicated in **bold:**

“, including parents of children who are English Language Learners **and parents of students with disabilities**”;

**Recommendation:** In section 5565 (b)(1)(A) the following language indicated in **bold:**

“The number of parents (including the number of minority and limited English proficient parents **and parents of students with disabilities**) who receive information and training.

**Rationale:** While Parental Information and Resource Centers funded under this Subpart are required to provide an assurance that such centers will “network with parent training and information centers assisted under section 682 of the Individuals with Disabilities Education Act;” this provision does not ensure that parents of students with disabilities will be provided training, information, resources and support regarding the provisions under this Act that pertain specifically to students described under § 1111 (b)(2)(C)(v)(II)(cc). In fact, most parents of students with disabilities have received little if any information and support in understanding the provisions of ESEA or how its provisions intersect with provision in the IDEA. Parent Training and Information Centers funded under section 682 of the IDEA have neither the funding nor expertise to provide information regarding this Act to parents of students with disabilities. Students with disabilities represent more than 13 percent of public school enrollment and their parents need information and resources to help them understand the complexities of this Act, its relationship to IDEA and how to use these two federal laws to improve their children’s academic achievement.

## Title VI – Flexibility and Accountability

**Strongly support** new Special Rule in Sec. 6113 (Funding) requiring any State that has not had assessments approved for ...students with disabilities to use at least 16.5 percent of the allocation under this section to carry out activities required under this section.

## Title IX – General Provisions

**Recommendation:** amend the definition of a highly qualified teacher to ensure that only teachers who have successfully completed their preparation programs and are fully state certified are eligible to be considered “highly qualified.”

**Rationale:** Highly qualified teachers should be those who have demonstrated competency in teaching diverse groups of students, including those with disabilities. A highly qualified special education teacher should be one who has both knowledge and skill in special education in addition to content mastery. Special education knowledge and skill consist of the ability to continuously assess student performance, adjust the learning environment as needed, modify instructional methods, adapt curricula, use positive behavior supports and interventions and select and implement appropriate accommodations to meet the needs of students.

**Recommendation:** Retain Section 901(g), below.

(g) POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS.—Section 9101(20 U.S.C. 7801), as amended by subsection (f), is further amended by inserting after paragraph (32A) the following:

(32B) POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS.—The term ‘positive behavioral interventions and supports’ means the systematic application of evidence-based behavioral strategies to improve outcomes of children and youth by restructuring teaching and learning environments to increase appropriate behaviors, prevent the development of problem behaviors, and reduce the occurrence of existing problem behaviors.

**Rationale:** It is necessary to have clarity on the meaning of positive behavioral supports because so many strategies that are currently used for behavioral interventions are inappropriate and harmful.

**Recommendation:** Retain Section 901(m), below.

(m) UNIVERSAL DESIGN.—Section 9101 (20 U.S.C. 7801) is amended by adding at the end the following:

“(45) UNIVERSAL DESIGN.—The term ‘universal design’, as defined in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002), means a concept or philosophy for designing and delivering products and services that are usable by people with the widest range of possible functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies.”.

**Rationale:** We support this definition of universal design that is referred to in the Individuals with Disabilities Education Act (IDEA). However, we also urge you to include the definition for universal design for learning discussed below.

**Recommendation:** Amend Section 901 to add (n), as follows in **bold**.

**UNIVERSAL DESIGN FOR LEARNING.—Section 9101 (20 U.S.C. 7801) is amended by adding at the end the following:**

**(44) UNIVERSAL DESIGN FOR LEARNING-- The term universal design for learning means a research-based framework for designing curriculum—including goals, methods, materials, and assessments—that**

**(i) provides curricular flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge, and in the ways students are engaged), and**

**(ii) reduces barriers in instruction and assessment, provides appropriate supports and challenges, and maintains high achievement standards for all students, including students with disabilities.**

**Rationale:** The inclusion of the term universal design for learning in Section 1111(c)(15) is critically important and we have submitted comments about including this term in other places as well. It is equally important to define this term because the definition of universal design added by 901(m), discussed above, is limited to addressing the “usability of products and services.” Universal design for learning goes beyond whether the product or service is usable (e.g. a student with reading difficulties employing a computer read out loud program to be able to use a text) to whether they help students understand academic content and demonstrate their knowledge at the highest achievement level possible, which is essential to improve performance under NCLB. Universal design for learning provides students with a variety of means to learn, to demonstrate knowledge and to be engaged. As a result, barriers in instruction and assessment will be reduced, appropriate supports and challenges will be provided and high achievement standards will be maintained. There is a large body of research on universal design for learning, much of which has been funded by the U.S. Department of Education.

**Recommendation:** Add new definition for Response to Intervention.

**“RESPONSE TO INTERVENTION – the term means any intervention model used by an LEA that includes high-quality instruction, universal screening, formative assessment, progress monitoring, research-based interventions matched to student needs, and educational decision-making using learning rate over time and level of performance.”**

**Rationale:** Research and current practice show that schools and districts engaged in aligning resources, promoting greater collaboration and striving to serve students through rigorous school wide early intervention services, frequently referred to as “Response to Intervention (RTI) ,when they first struggle academically and behaviorally leads to:

- gains in reading and math assessment scores
- decrease in inappropriate referrals to special education particularly for minority students and boys
- improved collaboration between general and special education
- corresponding cost benefits.

Our recommended definition seeks to clarify what type of program could qualify under Sec. 1116 (d)(2)(B)(v) [draft Title I, pg. 201, line 13] to ensure valid and reliable models are in place to benefit student academic performance and maximize use of local, state and federal resources.

## **Title X – Amendments to Part B (Student Reading Improvement Skills Grants) of Title I**

**Strongly support** addition of new language defining why screening assessments are a necessary component for helping children who show signs of struggle. [Section 1221 Page 219 (4):

(4) To use screening assessments to effectively identify preschool age children who may be at risk for **developmental delays that could lead to language and literacy challenges or other school difficulties and who are in need of further diagnosis of their need for language, literacy, or additional services.**

**Rationale:** We want to ensure the law supports screening assessments as a first step when assessing a child's progress. In the early years of development, research based or research valid screening assessments are appropriate tools for tracking a child's progress, helping make the case for future diagnostic assessments. This addition is in alignment with current research and best practice.

**Strongly support** the addition of professional development, instructional, and other literacy activities to enhance teaching strategies [Section 1221 Page 220 (6):

(6) **To integrate professional development, instructional materials, and other literacy activities based on scientifically based reading research and research on child development and learning in order to enhance teaching strategies and support optimal language and literacy development with existing programs of preschool, child care agencies and programs, Head Start centers, and family literacy services.**

**Rationale:** Providing targeted professional development for early education providers will enhance learning outcomes for young children by helping them choose curriculum, work with families and take the right steps if they notice a problem or potential delay.