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Testimony of Katy Beh Neas  
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On the Reauthorization of  
the Elementary and Secondary Education Act

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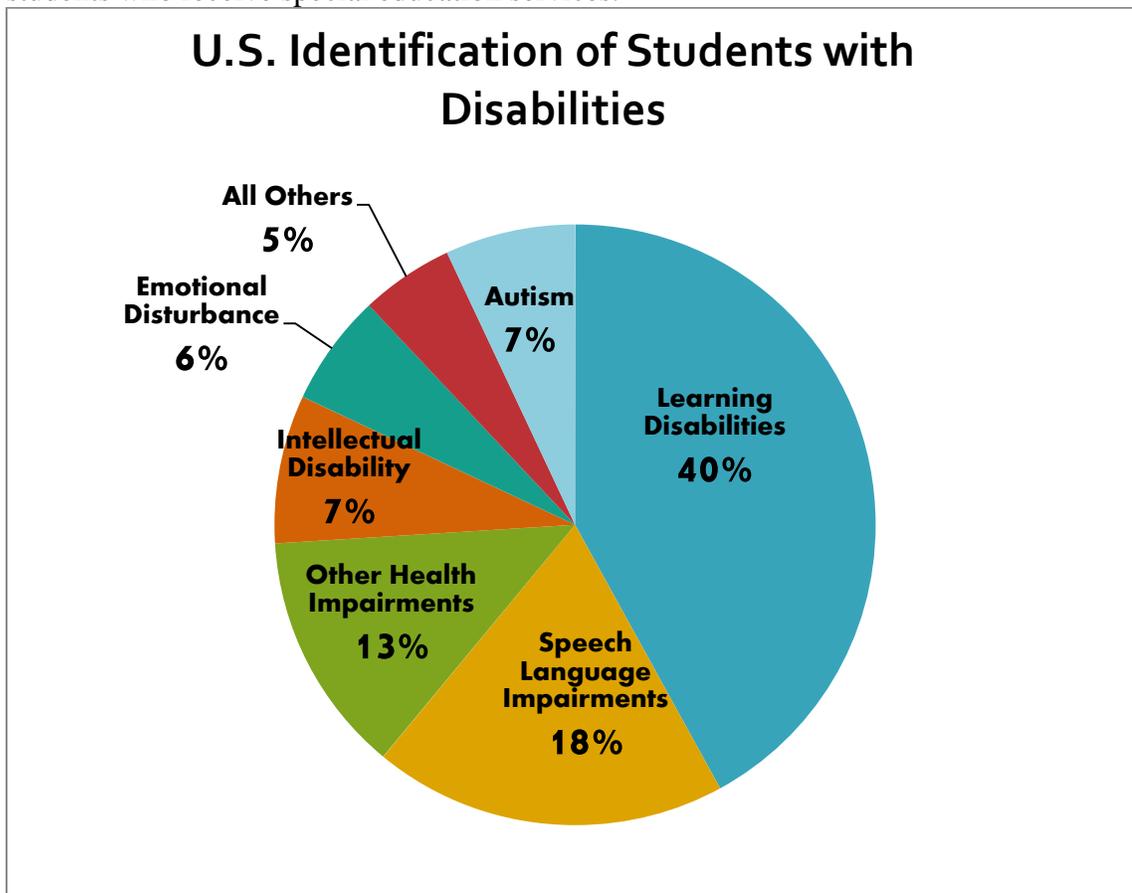
Good morning. I am Katy Beh Neas, Executive Vice President for Public Affairs at Easter Seals. Easter Seals is working to build a better world where all people with disabilities and their families are equal in every way, and can realize their goals, dreams and aspirations. My remarks today will address the academic achievement of students with disabilities within the policies of the Elementary and Secondary Education Act. I'd like to start with a brief history on federal education policy for students with disabilities.

### **The Individuals with Disabilities Education Act**

The Individuals with Disabilities Education Act (IDEA) was first enacted in 1975, as a result of two federal court cases that ruled that children with disabilities had a constitutional right to a public education. Families of children with intellectual disabilities led this effort because they viewed their children with disabilities as their children, with the same value as their children who did not have disabilities. These court decisions were groundbreaking because in many communities, children with disabilities were not allowed to even enter public schools, and were grossly uneducated, if they received any education at all.

As a result of the hard work of many dedicated and concerned parents and individuals who strongly believed that individuals with disabilities deserved an education and the right to an independent life, Congress approved Public Law 94-142 in 1975, thus guaranteeing children with disabilities the right to a free, appropriate, public education. Currently, approximately 6.4 million children receive IDEA services, representing about 13 percent of the total population of children in public education.

The following chart includes data from the most recent (2014) report to Congress from the Office of Special Education Programs. As you will see, students with specific learning disabilities make up the largest group of students who receive special education services.



Most important for our discussion today, the majority of students with disabilities are now educated alongside their non-disabled peers. Nearly 95 percent of students ages 6 through 21 served under Part B were educated in regular classrooms for at least some portion of the school day. More than 60 percent of students ages 6 through 21 served under *IDEA*, Part B, (61.5 percent) were educated *inside the regular class for 80% or more of the school day*. But this was not always the case.

In 1997, Congress made significant additions to *IDEA*. First, students with disabilities were to have access to the general curriculum. Congress found that hundreds of thousands of children with disabilities were not receiving access to educational content that would provide them with opportunities to earn a high school diploma, secure competitive jobs, and be full participants in their communities. Thus, the 1997 reauthorization emphasized that students with disabilities must be taught the same curricula taught to their non-disabled peers and have the same opportunities to achieve and graduate from high school with a regular diploma. As part of ensuring students with disabilities were being taught the same curricula as non-disabled peers, Congress said that students with disabilities must be included in state and district-wide assessments, with appropriate accommodations where necessary.

There have been significant positive outcomes as a result of these new policies. For example, graduation rates for students with disabilities exiting high school with a standard diploma are improving. In 2002, 52 percent of such students graduated with a standard high school diploma. In 2012, that number rose to 63.9 percent. You will see from the chart below that children in all categories, including students with intellectual disabilities, are graduating with a standard high school diploma. This data confirms that when students with disabilities are held to high standards, have access to skilled and knowledgeable educators and receive the necessary special education services, they can master grade level academic content.

<b>Disability Category</b>	<b>% of All Students with Disabilities</b>	<b>Standard Diploma Graduation Rate</b>
Specific Learning Disabilities	40.1	68.8
Speech or Language Impairment	18.2	74.6
Autism	7.6	64.6
Intellectual Disabilities	7.3	40

The message is clear, when we expect more from students with disabilities and provide them the supports and accommodations they need, they achieve.

### **The Elementary and Secondary Education Act**

In 2001, Congress revised the Elementary and Secondary Education Act when it passed No Child Left Behind (NCLB). This reauthorized law was hugely important for students with disabilities. First, NCLB helped reinforce that students with disabilities are general education students first and should be held to the same high expectations as all other students. By requiring students with disabilities to participate in state and district wide assessments AND to have their progress measured and reported, the academic progress of students with disabilities now mattered to people other than their parents.

Prior to the passage of No Child Left Behind (NCLB) in 2001, most parents of children with disabilities had no idea where their child’s performance stood in reading and math as compared to their child’s peers. In fact, it was not usual for many of these children to be asked to stay home on test day– their level of achievement in reading and math just didn’t matter. With the passage of NCLB and the shift in federal law, parents of children with disabilities were, for the first time, empowered with the information they needed to hold their school

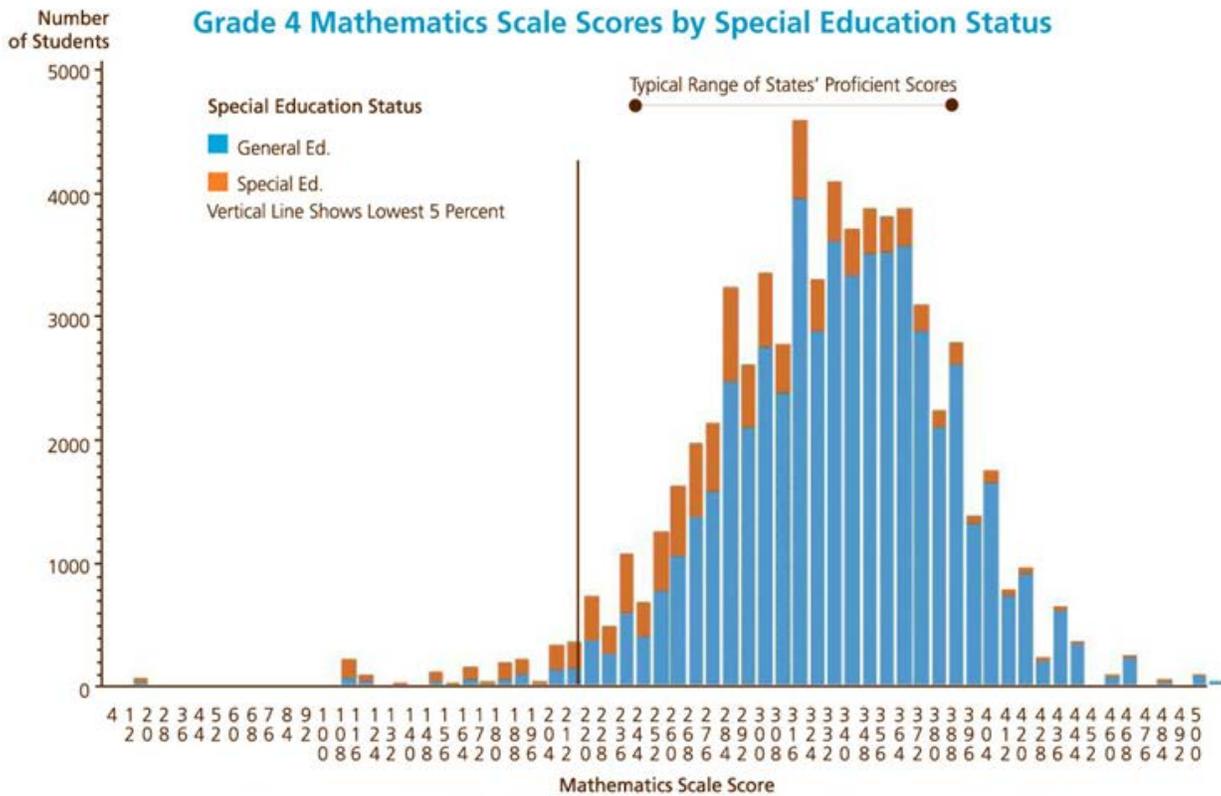
accountable for teaching their children the information they needed to be successful in life, to ensure teachers and administrators had high expectations for their children, and to provide access to the general education curriculum all other students were taught.

Five key elements of current law have been and remain essential to parents:

- Annual, statewide assessments;
- Testing at least 95% of all students;
- Limiting the use of alternate assessments on alternate achievement standards;
- Reporting the results of student and subgroup performance, including the subgroup of students with disabilities; and
- The requirement that schools must provide targeted interventions when a group of students are not making adequate gains in their academic skills.

These requirements resulted in a major shift in not only what we should expect students with disabilities to be able to achieve, but also in what they can actually accomplish. Because of these requirements, students with disabilities could no longer be excluded from public reporting or holding schools accountable for their performance.

Including students with disabilities was not part of the initial thinking of NCLB. When the disability community talked to Congressional staff and said “If you are going to have an accountability system, it must include all kids, including kids with disabilities”, the authors of the law agreed and so kids with disabilities were rightly included. Because of NCLB, for the first time EVER, there is data on the academic performance of students with disabilities that can be measured, compared to the general student population and tracked over time. The chart below provides some information from the early years after NCLB was implemented. You will see that students with disabilities perform at the same level as students in general education. At each achievement level, there are students without AND with disabilities. With this type of information, goals can be set to increase the academic performance of students with disabilities.



Source: Gong, B. & Simpson, M.A. (2005). "Kids in the Gap?": Academic Performance and Disability Characteristics of Special Education Students. Dover, NH: Center for Assessment. [www.nciea.org](http://www.nciea.org)

Despite flaws, NCLB helped solve an important problem – schools could no longer marginalize or overlook the performance of students with disabilities. The historical acceptance of setting lower standards and having lowered expectations for these students came to an appreciable end. Parents now had not only information about their child’s performance, but a renewed hope that their child’s abilities could finally be better supported and understood as a new generation of students moved onto the path toward a regular high school diploma.

### 114<sup>th</sup> Congress Debate

Because of the increased expectations of students with disabilities and the data available, we have learned valuable lessons over these past 13 years that must inform future actions from Congress when it comes to reauthorizing ESEA. Foremost, the vast majority of students with disabilities are capable of grade level academic achievement. To attain grade level knowledge and skills, they must have:

- Access to the general curriculum;
- Access to skilled and knowledgeable educators;
- Access to appropriate tools that can measure academic performance;
- Public reporting of academic performance; and
- Triggers that require schools to better address the academic performance of groups of students achieving at the same rate as other subgroups.

Chairman Kline’s legislation contains some positive elements. This bill disaggregates data by subgroup, including the subgroup for students with disabilities. It maintains the requirement that 95 percent of students participate in assessments and it includes the policies that the House has approved that will ensure public charter school doors are open to students with disabilities.

Despite these positive elements, there are several provisions in the House bill that must be altered to ensure that students with disabilities will continue to progress.

First, it calls for schools to “promote” access to the general curriculum for students with the most significant cognitive disabilities. Students with the most significant cognitive disabilities deserve the same access to curricula as all students. Therefore school must not only promote access, they must *provide* access to the general curriculum for those students with the most significant cognitive disabilities. No student can be expected to master content he or she has not been taught.

Second, the draft does not limit the number of students whose academic progress can be measured by the alternate assessments (1% Rule). Moreover, the draft does not explicitly prohibit the use of modified assessments, the so-called 2% Rule, the regulation that allows up to 20 percent of students with disabilities to be off the general curriculum track.

After passage of NCLB, there was universal recognition that the standard assessment was inappropriate for some students with the most significant cognitive disabilities. Advocates worked closely with the Bush Administration on a policy for these students. This policy evolved into what we call the 1 percent rule, where by one percent of all students, roughly 10 percent of all students with disabilities, can be assessed using an alternate assessment and the scores of these students can be counted as proficient for purposes of the NCLB accountability system. The 1% policy is intentionally designed to allow students with the most significant cognitive disabilities to participate in state assessment so that schools and parents can gauge and understand their academic progress in ways that are more appropriate for students with significant cognitive challenges. States develop the criteria for determining who these students are and school teams, including the parents, decide together if this is an appropriate assessment.

This regulation, in my opinion, was a fair compromise and necessary policy. The 10 percent figure is the main point of controversy – most disability advocates believe it is too large, and will result in some students being held to an inappropriately low standard.

When a student takes an alternate assessment, it typically takes a student off-track for a regular diploma and often leads to instruction in a less inclusive environment. School teams are making this recommendation as early as third grade and parents must be made well aware of the implications of this decision. Additionally, evidence demonstrates no more than 1% of the total school population, which is 10% of students with disabilities, should be taking this assessment – and in fact that number might be much less than 1%. Evidence also demonstrates that certain groups are more damaged by the over-use of this assessment than others, particularly low performing students of color. (See: Ramanathan, 2008 and Hehir, 2011) Therefore, the legislation must include a 1% cap to protect against overuse.

For example, the state of Oklahoma placed 49 percent of students with a disability in a modified assessment in math and 52 percent in a modified assessment in reading. Simply put, nearly ½ of students with a disability were taken off track for a standard diploma. Without strict limits on the use of the 1 percent regulation and elimination of the 2 percent regulation, students with disabilities will face significant barriers, unrelated to their academic abilities, to achieving a standard high school diploma.

Third, the bills must require states and districts to take action to close achievement gaps for any and all subgroups. It is not sufficient to measure and report progress and then take no action to address low performance.

Fourth, states must maintain their financial commitment to Title I schools and students. The law must be explicit that states and districts maintain the approximate spending levels from one year to the next. Moreover, states and districts should not transfer funds from low income districts to higher income districts.

Fifth, prohibiting the use of restraint and only allowing the use of seclusion in cases of emergency should be addressed by including the Keeping All Kids Safe Act as part of ESEA.

Lastly, we know that learning begins at birth and that children who receive high quality early education services have better life outcomes. The ESEA should include dedicated funding to expand quality early education services for children under the age of 5.

I want to also convey my support of the recommendations made by the Consortium for Citizens with Disabilities.

Thank you for the opportunity to speak with you today.