

September 28, 2007

The Honorable George Miller
Chairman
Committee on Education and Labor
US House of Representatives
Washington, DC 20510

The Honorable Howard "Buck" McKeon
Ranking Member
Committee on Education and Labor
US House of Representatives
Washington, DC 20510

Re: No Child Left Behind: Protecting the Rights of Children with Disabilities

Dear Chairman Miller and Ranking Member McKeon:

The Council of Parent Attorneys and Advocates (COPAA) is a nonprofit organization of over 1100 attorneys, advocates, and parents whose primary mission is to secure appropriate and adequate educational services for children with disabilities. As Congress has long recognized in the Individuals with Disabilities Education Act, "Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." These same goals should guide the Committee as it considers the No Child Left Behind draft bill.

There are many provisions in the draft that advance the goal of providing appropriate education to children with disabilities. We express our gratitude for the provisions that protect the rights of children with disabilities, as detailed in the September 5, 2007 letter from the Consortium of Citizens with Disabilities.¹ COPAA also endorses the September 14, 2007 comments from the Consortium of Citizens with Disabilities regarding Titles II-XI of the Elementary and Secondary Education Act. Due to time constraints, COPAA was unable to sign on to these comments.

COPAA is grateful that the bill does not permit IEPs to be used to measure school-wide or district-wide accountability for children with disabilities. Aggregate performance data is impossible to obtain at a school, district, or state level from the use of IEPs.

Yet, COPAA is concerned that provisions allowing up to 40 percent of students with disabilities to be assessed against modified or alternative achievement standards will result in students with disabilities receiving inferior educations.² Millions of students would be assessed against these modified standards. When the Department of Education enacted the "1 percent" regulations, permitting 10 percent of children with disabilities to be assessed against alternative achievement standards, advocates for children were concerned. This exemption alone applies to approximately 700,000 students. The 40 percent exemption proposed here only heightens similar concerns.

Many children with disabilities can perform grade-level work if provided with high-quality instruction, qualified teachers, and appropriate accommodations. A child may fail to demonstrate grade-level proficiency not because his/her disability prevents it, but because the school district did not provide an appropriate education. A child with a disability may require a particular kind of program or a more intense program than the school district is providing. Without proper education and support, this child can be trapped in the cycle of never being grade-proficient and always assessed with a modified achievement test, falling further and further behind each year. In turn, the school district may teach only what the child needs to pass the modified assessment, perpetuating the cycle.

Much of the research used to justify the current 20 percent modified achievement standard consists of studies on reading intervention for early elementary age students performing at the lowest percentile in reading, finding that about two to five percent of children did not respond to intensive reading interventions. However, only one of these studies included IDEA-eligible students. These studies may really simply demonstrate that children who should be receiving special education for reading were not, or perhaps that these particular children will need intensive special-education services for a long period of time due to the extent of apparent disabilities.

Children with disabilities should receive the same equal educational opportunity as all other children. All children, regardless of whether they have a disability, deserve a good education--not one that merely provides some meaningful education benefit. This is the underlying premise of NCLB and IDEA. The answer to the lack of achievement is not to permit a large number of students to take alternative assessments. Rather, it is to require that children with disabilities receive a high-quality education and the services and programs they need to learn. As Chairman Miller explained during the IDEA reauthorization:

there are a huge number of school districts that make it very difficult for parents to get the free and appropriate education . . . [causing children to] run the risk that they are going to fall further and further behind, and then you need additional services to have them catch up.

Correcting this inequity, through NCLB and IDEA, will ensure that children with disabilities grow up and look forward to maximum independence, along with appropriate post-secondary education and employment. Society will be better for it. Thank you for considering COPAA's comments regarding amendments to the No Child Left Behind Act.

Sincerely,

Jessica Butler
Chair, COPAA Board of Directors

Robert Berlow
Government Relations Chair

¹ These include maintaining the requirement for disaggregating performance and participation data by student groups and for AYP to be based primarily on academic assessments; adding graduation rate as a factor in adequate yearly progress; adding student growth as an allowable factor to be incorporated into AYP with specific criteria; requiring that the number of students in groups for disaggregation not exceed 30, with allowable exceptions not to exceed 40; requiring each state to have an accommodations policy; and requiring State Education Agencies to provide assurance of the development of a comprehensive plan to address implementation of universal design for learning.

² The discussion draft would codify the current "1%" regulations permitting roughly 10% of children with disabilities to be given alternative assessments based on alternative achievement standards and the "2%" regulations permitting alternative assessments against modified grade-level standards for another approximately 20% of students with disabilities. In addition, the draft would permit states with high numbers of students with disabilities to receive permission to add another 10% in the second group. Even if this waiver provision were removed, COPAA remains concerned about the application of alternative and modified achievement standards for 30% of the population of children with disabilities.