



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

February 8, 2012

Daniel P. Mulhollan
Director
Congressional Research Service
Library of Congress
101 Independence Avenue SE
Washington, D.C. 20540

Dear Mr. Mulhollan:

This letter pertains to a recent report prepared by the Congressional Research Service, *The Education of Students with Disabilities: Alignment Between the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act*, dated October 31, 2011.

We generally find CRS reports on federal education laws to be accurate and helpful and we rely on them to be balanced and comprehensive, reflecting the purpose of the CRS stated mission to approach complex topics from a variety of perspectives and examine all sides of an issue.

This report, however, has raised serious concern among the members of the Consortium with Disabilities Education Task Force. While we disagree with many of the recommendations put forward in the report, we do not write to you to discuss our disagreement. Rather, we write to point out serious shortcomings with the contents of the report, in many cases a failure of the authors to provide critical information that impacts the discussion and recommendations put forward.

A compilation of our comments is attached. We would welcome the opportunity to discuss these comments with you at your convenience and look forward to your response.

Sincerely,

American Dance Therapy Association
Association of University Centers on Disabilities
Council of Parent Attorneys and Advocates
Disability Rights Education and Defense Fund
Easter Seals
Higher Education Consortium for Special Education
Learning Disabilities Association of America
National Center for Learning Disabilities
National Center on Independent Living
National Disability Rights Network

National Down Syndrome Congress
National Down Syndrome Society
School Social Work Association of America
Teacher Education Division of the Council for Exceptional Children
The Advocacy Institute
The Arc
The National Alliance on Mental Illness, NAMI
National PTA
United Cerebral Palsy

The Consortium for Citizens with Disabilities is a coalition national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society. For additional information, please contact:

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Comments to the Congressional Research Service report: The Education of Students with Disabilities: Alignment Between the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act, dated October 31, 2011

Note: Specific areas of concern are indicated by highlighted text.

SECTION: Summary

CRS REPORT: “**Standards.** Under the ESEA, students with disabilities are taught to state academic content standards that apply to all children in the state. Under the IDEA, academic goals are established for each child in an individualized education program (IEP).” (bullet 1)

COMMENT: The academic goals established in a child’s IEP are not substitutes for state academic content standards. The child’s annual goals, including academic and functional goals, are designed to address the child’s disability related needs so as to enable the child to participate in and make progress in the general education curriculum aligned with state’s academic content standards established for all students. 34 C.F.R. §300.39. Through special education and related services (as outlined in the IEP) students with disabilities are enabled to become proficient and advanced in the state’s academic content standards. 20 U.S.C. §1401(9)(B); 20 U.S.C. § 6311(B); 34 C.F.R. §200.1(a),(b),(c). See also 29 U.S.C. § 794, 34 C.F.R. § 104.4.

SECTION: Introduction

CRS REPORT: “The IDEA accountability system also requires states to report on various performance indicators that pertain to the academic progress of students with disabilities, but, unlike the ESEA, **uniform levels of achievement are not expected.**” (pg. 1, para 2)

COMMENT: A central component of the IDEA accountability system incorporates the State Performance Plan (SPP) and Annual Performance Review (APR) that includes targets for the performance of students with disabilities as measured by the State’s general assessment system, as well as other measures of performance such as graduation and dropout rates. However, despite the language of the statute United States Department of Education (ED) does not use a state’s performance on the “performance” indicators of its SPP for determining the state’s compliance with IDEA. Thus, ED does not hold schools, districts, or states accountable for the academic performance of students with disabilities.

The SPP/APR does, in fact, expect “uniform levels of achievement”- i.e, the targets for the percent of students with disabilities expected to score proficient or advanced on state assessments - reflect the proficiency targets (known as annual measurable objectives or AMOs) established by the state for all students. 20 U.S.C §1412(a)(15)(A)(ii). In fact, under ESEA, states are not permitted to have different AMOs for different groups of students. Moreover, , Section 1406(15) of the IDEA requires that, as a requirement for state eligibility, states have “established goals for the performance of children with disabilities in the State that -- ... (ii) are the same as the State’s definition of adequate yearly progress, including the State’s objectives for

progress by children with disabilities, under section 111(b)(2)(C) of the Elementary and Secondary Education Act of 1965.”

CRS REPORT: “Both the ESEA and the IDEA affect the education of students with disabilities and aim to improve educational outcomes for these students. While the goals of the two laws may be similar, the ESEA and the IDEA support students with disabilities differently. In particular, some tension exists with regard to expectations for student learning. Under ESEA, the emphasis is placed on holding all students and all subgroups of students (i.e., “students with disabilities”) to the same academic standards, closing gaps between subgroups of students, and expecting 100% proficiency on assessments of reading and mathematics. **Under IDEA, the emphasis is placed on assessing individual students, establishing individualized learning goals, and monitoring progress toward meeting these goals.**”

When the underlying concepts or legislative language of the ESEA and IDEA are not clearly aligned, it can be difficult for educators to plan and execute an appropriate education for students with disabilities. One example of possible misalignment concerns *what* to teach students with disabilities. Under ESEA, general education teachers are expected to teach to grade-level standards to students with disabilities. Under IDEA, special education teachers are expected to teach to individualized goals developed for each student with a disability. The individualized goals developed under the IDEA may not be aligned with the grade-level standards under ESEA. Another example of potential misalignment concerns high school graduation rates. While both ESEA and IDEA require states to report graduation rates for students with disabilities, IDEA allows for a longer period of time to complete high school graduation requirements than is generally allowed under the “four-year” graduation rate reported under the ESEA. Introduction.” (pg. 2, para 2-3)

COMMENT: The IEP mechanism in IDEA does not replace the expectation that students with disabilities shall be taught the same academic standards as their non-disabled peers. Rather, the IDEA, through its IEP process, identifies a set of individually designed goals achieved via “specially designed instruction” to enable the student with a disability to learn effectively and to progress in the general education curriculum aligned with the same state standards set for all students with their non-disabled peers to the maximum extent appropriate. 20

U.S.C. §1414(d)(1)(A)(i)(II)-(IV). IDEA defines special education as “specially designed instruction” which is defined by regulation as “adapting, as appropriate to the child’s needs, the content, methodology, or delivery of instruction:

- to address the unique needs of the child that result from the child’s disability
- to ensure access of the child to the general education curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” 34 C.F.R. §300.39(b)(3)

This definition makes clear that specially designed instruction, supports and services are to be provided so that each child with a disability can access the same general education curriculum that is aligned with the State’s academic standards. Moreover, the specially designed instruction must be delivered, as outlined in the student’s IEP, in a manner that advances the student’s

performance relative to the academic content standards adopted for his or her age appropriate grade. 34 C.F.R. §300.39(b)(iii); See also 34 C.F.R. §104.4(b).

Stating that “Under IDEA, the emphasis is placed on assessing individual students, establishing individualized learning goals, and monitoring progress toward meeting these goals” serves to undermine IDEA’s requirement that State performance goals for children with disabilities “are the same as the State’s definition of adequately yearly progress {under ESEA} including the State’s objectives for progress by children with disabilities.” 20 U.S.C. § 1412(a)(15)(A)(ii). A state’s indicators for measuring must include “measurable annual objectives for progress by children with disabilities “ under ESEA that are designed to enable them through access to the general education curriculum to make adequate yearly progress (AYP) so as to attain the State defined standard of proficiency and goal of all other students. 20 U.S.C. § 1412(a)(15)(B).

SECTION: Standards

CRS REPORT: “In addition to the state academic content and achievement standards, students with disabilities are taught the individualized skills and goals outlined by their IEP as required by the IDEA. In a broad sense, IEP goals can be viewed as a set of individualized “standards” for a student with a disability.” (page 4)

COMMENT: This statement is entirely inaccurate and not in keeping with the statutory language or intent of IDEA. 20 U.S.C. §§ 1400(d); 1412(a)(1)(A),(2); 1414(d)(1)(A)(i)(II)-(IV). To characterize IEP goals as “individualized standards” for students with disabilities strongly implies that such goals could (and perhaps should) be used for student performance and growth (or both) and to evaluate teacher effectiveness. In fact, the CRS report correctly points out ED’s guidance regarding use of IEP goals for accountability purposes (page 22, bullet 1).

CRS REPORT: “Under IDEA, a student with a disability is taught according to his or her IEP.” (page 5, para 3)

COMMENT: Students are not taught according nor is their academic progress measured by their IEPs. A student’s IEP provides only those goals **relative to the academic achievement or functional performance that is impacted by the child’s disability**, in order for the child to be involved in and make progress in the general education curriculum. To state that “under IDEA, a student ...is taught according to his or her IEP” implies that a student’s IEP covers the student’s entire educational program and is independent of the general education curriculum which each student must be provided access to, and which is aligned with each state’s standards. The IEP contains a set of goals and objectives designed to make the general education curriculum accessible to the child. It is a key tenet that children with disabilities make progress in the general education curriculum. 20 U.S.C. §1412(a)(5)(A); 20 U.S.C. §1414(d)(A)(i)(II), (IV).

CRS REPORT: “Under IDEA, a student with a disability is taught according to his or her individualized education program (IEP). IEP goals are determined annually and represent what the student may reasonably accomplish in one year.” (page 6, Table 1)

COMMENT: This table should expressly include the statement that IEP goals are designed to enable the child to be involved in and make progress in the general education curriculum. 20 U.S.C. §1411(d)(A)(i)(II) (IV)(aa)-(cc). This statement would show that standards under ESEA and IDEA are not misaligned. Further, nothing in IDEA states that IEP goals must represent “what the student may reasonably accomplish in one year.” In fact, Congress continues to find that students with disabilities are “impeded by low expectations” [20 U.S.C. §1401(c)4)], and that research has shown that their education is made more effective by ensuring their “access to the general education curriculum in the regular education classroom...in order to meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children...” 20 U.S.C. §1401(c)(5)(A)(i). The standards-based approach to IEP development emphasizes that students might need to make more than one year’s progress in a year in order to catch up to their same-grade peers.

CRS REPORT: “For example, if a student in fifth grade is reading at a second grade level, his or her IEP goal may require a special education teacher to focus on basic literacy skills that are necessary to move the student from the second grade level to the third grade level. Meanwhile, the student’s general education teacher would continue to teach the fifth grade content standards developed by the state. In this case, the education of a student with a disability may be somewhat disjointed.” (page 7, para 3)

COMMENT: The education of this student is not disjointed provided she is being taught by highly qualified teachers under IDEA and ESEA. While the student does need to continue to work on basic literacy skills, he or she cannot be kept from gaining higher order reading and comprehension skills and accessing grade-level content. 20 U.S.C. §1412(a)(1)(A),(15)(A); see also 34 C.F.R. §104.4(b)(1). With the use of Universal Design for Learning, assistive technologies, integrated specialized instruction and supportive services, if necessary, and accommodations, this student can still work on grade-level content, with decoding and comprehension supports built in to the instruction and materials. 20 U.S.C. §1414(d)(1)(A)(i)(IV)

The vast majority of students, like the child in this example, can and should be educated in the general education classroom. 20 U.S.C. §1412(a)(5)(A). The misconception that this student’s education is disjointed, as perpetuated by this example in the CRS report, is a major reason why many students with disabilities are still being denied an appropriate education consistent with their state’s adopted academic content and achievement standards in the regular education curriculum that is aligned with those standards set for all students..

CRS REPORT: “There is little federal guidance on the level of alignment that is expected between content and achievement standards in the ESEA and IEP goals in the IDEA. The only explicit connection between state standards and IEP goals refers to students who are taught to modified achievement standards. Regulations specify that if a student’s IEP includes goals for a subject assessed against modified achievement standards, “those goals must be based on the academic content standards for the grade in which the student is enrolled.” There is no analogous requirement for students with disabilities who are taught to alternate achievement standards to have IEP goals aligned with state academic content standards. Moreover, there is no requirement

for students with disabilities who are taught to grade-level state content standards to have IEP goals based on those standards.” (page 7, para 4)

COMMENT: While the authors are technically correct regarding a lack of explicit language in IDEA’s IEP section regarding alignment of standards and IEP goals (as opposed to the very explicit requirement for students being assessed via an alternate assessment based on modified achievement standards (AA-MAS), adherence to the definition of specially designed instruction would require an alignment to the academic content standards for the student’s enrolled grade. Further, ED has stated that “Accelerated growth toward, and mastery of State-approved grade-level standards are goals of special education.” (71 Fed. Reg. at page 46653).

The CRS report also fails to note that a “standards-based” approach to IEP development has been developed in many states, driven in large part by the enhanced accountability for the academic performance of students with disabilities in No Child Left Behind, despite a lack of explicit requirements in IDEA. See, for example: Understanding the Standards-based IEP, National Center for Learning Disabilities at <http://www.nclld.org/publications-a-more/parent-advocacy-guides/understanding-the-standards-based-iep>, and Standards-Based IEP: Implementation Update, Project Forum at <http://projectforum.org/docs/Standards-BasedIEP-ImplementationUpdate.pdf>

CRS REPORT: “Demonstrating alignment between grade-level state standards and IEP goals for students with the most significant cognitive disabilities (i.e., students with disabilities that are taught to alternate achievement standards) may be difficult to achieve, however, because some of these students may have IEP goals that are several grade levels below the state standards or have IEP goals that cover basic, prerequisite academic skills.” (page 8, bullet 2)

COMMENT: These students are not taught to **achievement** standards, they are taught to academic **content** standards, with their assessments based on alternate academic **achievement** standards. Footnote 13 on page 4 of the CRS report explains the distinction, even though the text on page 8 seems to confuse the terms: 20 U.S.C. §6311(b)(1). A content standard specifies what all students should know and be able to do. An achievement standard is a predetermined level of performance that denotes proficiency within or mastery of a given content area.

Standards based IEP goals should not be difficult to develop for students with the most significant cognitive disabilities. The non-regulatory guidance for the alternate assessment based on alternate achievement standards (AA-AAS) states that the alternate academic achievement standard should be aligned to the State content standard for the grade in which the student is enrolled. Since the achievement standard used for students with the most significant cognitive disabilities must be aligned to grade level content standards, their IEP goals can be similarly aligned.

For example, a student with the most significant cognitive disabilities may have IEP goals covering decoding and comprehension strategies, but instruction and progress measurement for those skill should be tied to words/passages from grade-level instructional materials and to the “enduring understandings” of the grade level standards. While working on those passages to

master the decoding and comprehension strategies, the student can also be using a “text to speech” accommodation and/or a lower lexile version of the text to access more of the content. The term “enduring understandings” means concepts and skills that identify core concepts, principles, theories, and processes; serve to organize important facts, skills, or actions around central ideas; and transfer to other contexts or other disciplines.

CRS REPORT: “For students with the most significant cognitive disabilities, Congress could require IEP goals to be aligned with alternate achievement standards (i.e., not aligned with grade-level standards).” (page 8, bullet 2)

COMMENT: This sentence states that alternate academic achievement standards are not aligned with grade level standards. While it is true that alternate academic achievement standards are **different** from grade-level achievement standards, alternate academic achievement standards **are aligned to grade-level content standards**. It is critically important for the authors of the CRS report to clearly state which type of standard they are referring to instead of just referring to “standards” and to use the terms properly (based on the definitions in Footnote 13 on page 4 of the CRS report.)

SECTION: Assessments

CRS REPORT: “As mentioned above, the IDEA requires students with disabilities to participate in all district and state assessments. The IDEA statutory language also reinforces the ESEA regulatory language regarding the provision of alternate assessments for students with disabilities.⁴⁴ The IDEA, however, requires various assessments for students with disabilities that are not included in the ESEA. For example, LEAs are required to assess students to determine eligibility for special education and related services by conducting an evaluation which uses “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information” to determine whether the child is a “child with a disability” and provide information to be used in the writing of the child’s IEP” (page 10, para 2)

COMMENT: A discussion of the various assessment requirements is irrelevant to the topic of this report. The authors rationale for raising these requirements serves no purpose, particularly since they conclude there is not an issue of alignment since the assessments in IDEA are used for different purposes.

CRS REPORT: In order to remain aligned with the IDEA, the reauthorization of the ESEA must continue to include language that requires states to maintain at least one alternate assessment (e.g., AA-AAS, AA-MAS, or some other alternate assessment not currently in use). (page 15, bullet 1)

COMMENT: This statement ignores the Alternate Assessment on Grade Level Academic Achievement Standards (AA-GLAS). While the AA-MAS has received substantial criticism for violating basic principles of test validity as well as civil rights law, the lack of an AA-GLAS which excludes a population of students with disabilities from being able to demonstrate what they know and can do through participation in such a state assessment, has received minimal

scrutiny. The AA-GLAS would be more useful if it were developed according to the principles of Universal Design for Learning.

CRS REPORT: “Under the current system, if fewer students with disabilities participated in alternate assessments, it could lead to more schools and LEAs facing consequences for failing to meet annual achievement targets. If Congress continues the use of AA-AAS but discontinues AA-MAS, one alternative may be to increase the number of assessment scores from AA-AAS that may be counted as proficient in the accountability system, which would allow a greater number of students with disabilities to participate in AA-AAS.” (page 15, bullet 1)

COMMENT: This is a speculative statement that is followed by an inappropriate recommendation that has serious legal ramifications by creating an over-inclusive subgroup of students, who by virtue of being assessed on an AA-AAS, could be expected to be taught less breadth and depth of the grade-level content standards in violation of their rights under Section 504 and the Fourteenth Amendment. Furthermore, it should be acknowledged that these data discussed in the first notice of proposed rulemaking for the development of the AA-AAS showed that only 0.5% of students have the most significant cognitive disabilities. CRS should help Congress understand that the current 1% cap is sufficiently large enough to accommodate all the students for whom the alternate assessment based on alternate standards is the appropriate assessment. CRS should not suggest that Congress consider raising the 1% cap, when the incidence of students with the most significant cognitive disabilities is known to be significantly less than 1%. These data can't be ignored; to do so would violate the legal rights of students who do not have the most significant cognitive disabilities and who should not be assessed on alternate academic achievement standards. Moreover, raising the cap to provide another alternate assessment for particular students who previously would have been assessed based on the AA-MAS, once it is eliminated, would subject schools and districts to legal challenges based on denial of these particular students constitutional and civil rights to learn to the full breadth and depth of the content standards set for all students. Data has shown that students who have been assessed based on the AA-MAS cannot be distinguished from English language learners and low-income students assessed on regular assessments. The CRS should instead be discussing use of Universal Design for Learning to ensure that assessments based on the grade-level academic achievement standard are improved so as to ensure greater access for diverse students. CRS should also discuss the AA-GLAS, which could be better utilized for students who are excluded from state assessments because they cannot take the regular assessment with accommodations.

CRS REPORT: Appropriate accommodations (pages 15-16)

COMMENT: This discussion should include information regarding the significant variance in allowable (standard) assessment accommodation across States. See, for example, *State Testing Accommodations: A Look at Their Value and Validity*, National Center for Learning Disabilities, available at <http://www.ncl.org/on-capitol-hill/policy-related-publications/state-testing-accommodations>.

CRS REPORT: “Moving forward, if common assessments are adopted, Congress could require the development of a list of “common accommodations” that are allowable.” (page 17)

COMMENT: The CRS report should note that the Race To The Top Assessment grants require the development of a set of allowable accommodations. Therefore, it should be assumed that States that implement the assessments developed by the consortia would also adhere to the accommodations developed in conjunction with those particular assessments.

CRS REPORT: “It is possible, however, that by requiring only those accommodations that do not invalidate the state assessment score, Congress would be continuing to require some students with disabilities to participate in an assessment without accommodations that are typically afforded to them in classroom instruction and assessment.” (page 16, bullet 2, con’t)

COMMENT: The CRS report should mention that if assessments were developed using the principles of Universal Design for Learning, most of the accommodations students use in the classroom could be built in to the assessment, as long as they did not affect the construct of a particular item. It is also important to keep in mind that the current paradigm of accountability based on a test score can be expected to be reformed. Moving from a punitive model to an effective intervention model should eliminate this fixation on only the test outcomes for children with disabilities who may not have been effectively taught to the standards expected for all.

SECTION: Accountability

CRS REPORT: “The IDEA “monitoring and enforcement system was designed to assess whether states are meeting a series of academic and compliance indicators to determine whether the law is being implemented as intended. For the purpose of this report, the IDEA “monitoring and enforcement” system is referred to as an “accountability” system.” (page 17)

“Based on the state’s performance on these indicators, information obtained through monitoring visits, and any other public information made available, the Secretary makes a determination of the state’s implementation of IDEA. The Secretary determines if the state meets requirements, needs assistance, needs intervention, or needs substantial intervention in implementing the requirements of Part B of IDEA.” (page 19)

COMMENT: It is critical to point out that the current process used by USED to determine states’ performance on the SPP, an annual process of assigning one of four ratings; as stated on page 19, **does not** take into account the states’ performance on the “performance” indicators of the SPP, referred to in the CRS report as “academic” indicators. Furthermore, ED has instructed States that they need not consider “performance indicator” results in their annual determinations of local education agencies.

Therefore, while the SPP **includes** indicators that measure the academic performance of students with disabilities, it cannot, as currently interpreted by ED, to be considered an “accountability system.” It is, in fact, a “compliance” system.

CRS REPORT: “The second possible area of misalignment concerns the high school graduation rate calculation. ESEA regulations require states to report the four-year adjusted cohort

graduation rate. The four year adjusted cohort graduation rate is the number of students who graduate in four years with a regular high school diploma divided by the number of students who form the adjusted cohort for the graduating class. This graduation rate calculation may not fully account for the educational experiences of students with disabilities in several ways.” (page 22)

COMMENT: The CRS report should note here that the current ESEA regulation allows states to propose to the Secretary for approval an “extended-year adjusted cohort graduation rate” for purposes of counting students who may take more than four years to earn a regular diploma. 34 C.F.R. §200.19(b)(v). Further, graduation rate goals (which are not 100%) take into account the very small number of students with disabilities who leave school with alternative credentials such as certificates of completion.

CRS REPORT: “If Congress chooses to increase the role of IEPs in the ESEA accountability system, statutory language outlining the components of the ESEA system would need to be altered to incorporate the use of IEPs and possibly allow for individualized goals for students with disabilities.” (page 23, bullet 1 (con’t))

COMMENT: There is no current barrier on the use of IEPs for eligible children with disabilities under IDEA who are also entitled to the provisions under the ESEA. This discussion by CRS reflects a misunderstanding of the IDEA, the rights of all eligible children with disabilities in need of specially designed instruction to participate in Title I programs, and to receive a full and equal educational opportunity under IDEA, Title I, and section 504 to specially designed instruction, accommodations, and services so as to enable them to attain the same high standards set for all other students. Increasing the role of IEPs in ESEA accountability is not an appropriate option to mention in this report. The report provides the comments by ED on why IEP goals should not be used for ESEA accountability, but then CRS raises it as an option anyway. At the very least, the report should explain that IEP goals do not represent the curriculum for students with disabilities; they only represent the skills these students need to enable them to be involved in and make progress in the general education curriculum.

CRS REPORT: “If IEP goals are used in the ESEA accountability system, however, it may be necessary for Congress to include requirements in the IEP process under IDEA that would prevent setting lower goals for students with disabilities. For example, Congress could require an external validation of IEP goals. This external review could be a peer-review process conducted by ED, the state, or the LEA.” (page 23, footnote 85)

COMMENT: Even if there were an external validation process to keep IEP goals from being lowered, IEP goals would still not be appropriate for ESEA accountability for the reasons described in the ED comments and in our comment above. CRS should explain that if IEP goals were used in the ESEA accountability system, IEPs would be much longer than they already are. Every objective for the math English/Language Arts and Science standards covered on the statewide assessments would have to be added to the IEPs to ensure equity for students with disabilities. That would generate a huge outcry from educators who already complain that there is too much paperwork under IDEA.

SECTION: Teachers

CRS REPORT: “Teachers who teach core academic subjects exclusively to students with the most significant cognitive disabilities, whether new or not new to the profession, have several options for meeting the “highly qualified” definition: (1) teachers may meet the “highly qualified” definition of the ESEA for any elementary, middle, or secondary teacher; (2) elementary teachers may meet the requirements by demonstrating competence on HOUSSSE; and (3) middle and secondary school teachers may meet the requirements by demonstrating “subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards” (i.e., alternate achievement standards)” (page 25)

COMMENT: CRS should point out the misalignment between ESEA, which requires that the alternate academic achievement standard be aligned to the state content standards, and the IDEA definition for highly qualified teacher (HQT) as it relates to special educators in middle and high schools who exclusively teach students who take the AA-AAS. IDEA allows these educators to merely demonstrate subject matter knowledge appropriate to the level of instruction being provided, with no mention of the State content standards. Since the alternate academic achievement standards are supposed to be aligned to the state content standards these educators should be required by IDEA to have subject matter knowledge for the grade in which the students are enrolled. The HQT exception in IDEA seems to imply that instruction for these students does not have to be based on the same content standards as for all other students and that is in conflict with ESEA.