

September 5, 2007

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, DC

The Honorable Howard McKeon
Ranking Member
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

On behalf of the National Association of State Directors of Special Education and our members, the state directors of special education in the states, territories, federal entities and the Freely Associated States, I am writing to provide you with feedback on your draft measure to reauthorize the No Child Left Behind Act (NCLB).

I want to thank you and your staffs for the effort that has been put into this draft. We know that you received many comments – in the committee hearings, through staff meetings with organizations and through your travels throughout the country. It is understandable and appreciated that you tried to address many of the concerns and suggestions that you received. However, in your attempt to be inclusive, we are extremely concerned that this draft bill is so convoluted and so full of new requirements that it fails to achieve the express goals articulated by Chairman Miller, i.e., to make the bill more flexible and to address the concern that there is insufficient funding to satisfactorily address all of the requirements of the bill.

NASDSE's members have strongly supported the current requirements in NCLB that shine a spotlight on accountability for students with disabilities. The law has helped schools and school districts take important steps to more fully include students with disabilities in the general curriculum and to improve their educational outcomes. At the same time, we remain concerned that neither the bill drafters nor the U.S. Department of Education fully understand the range of disabilities that some students have. We want **all** students with disabilities to be held to high standards, but the plain language of the bill and the Department must recognize that even with all the best educational supports and services, some students with disabilities will not achieve grade-level proficiency. That is why we urged the Committee to codify the 1% and 2% groups of students and we are extremely pleased to see that this step was taken in this draft.

Our overarching concern is that this draft fails to see the forest for the trees and fails to put the focus where it belongs: **on teaching and learning to improve outcomes for all students**. The draft bill adds new requirements, even though Chairman Miller has publicly commented that there is insufficient funding to accomplish what is in current law.

Our members feel very strongly that all students with disabilities be assessed appropriately. Under current regulations, which have been adopted into this draft, all students, including those falling into the 2% category, must be assessed against grade level standards. The ban on out-of-level testing is simply incongruous with the acknowledgement that a category of 2% of students exists. The question remains, if it is clear that these students will not reach grade-level proficiency in a given year, yet move onto the next grade level, when will they learn the remainder of the content from the previous year? They can't learn it in their current grade because that would not be consistent with the grade-level content standards that the law requires these students be taught to. It is this failure to recognize the reality that continues to frustrate educators across the country and the draft bill fails to acknowledge this reality or address it.

In general, the draft bill, like current law, fails to fully comprehend the nature of very small and very rural school districts. While many strategies contained in the bill may make good sense for large, urban school districts, they are simply not feasible for small school districts. These include assignment of teachers, the highly qualified teacher provisions, implementation of all required school improvement activities. These issues may spill over into charter schools, many of which function as an LEA (not all charter schools are exempt from the Title I provisions). We are frankly surprised that the Committee has not taken a closer look at the capacity of small and rural school districts to meet all of the requirements of this law and addressed these issues in a substantial and meaningful way.

We have some comments on specific sections of the bill that follow.

Section	Page Number	Comments
1005(b)(2)	7-8	We would like to see language added that would address professional development in the areas of universal design for learning and response-to-intervention and the use of positive behavior supports.
1006(b)(4)	10	Please see our comments under Section 1124 regarding the definition of graduation. In general, we support the addition of the Graduation Promise Fund, so long as its funding does not detract from funding made available elsewhere to support required activities under the law.
1006(b)(i)(5)(B)	19	We suggest that language be added after "programs:" "including response to intervention..."
1006(i)(5)(c)	20	We appreciate the inclusion of this language. We suggest that additional language be added that makes reference to the use of positive behavior supports
1111(a)(3)	22	We suggest that the U.S. Department of Education also be required to post state plans on its website.
1111(b)(1)(G)	25	We strongly support the inclusion of this section in the law.
1111(b)(1)(H)	26	We strongly support the inclusion of this section in the law. However, we remain concerned that the language of (i) may serve to prohibit out-of-level testing. While out-of-level testing is not appropriate in most situations, it may be appropriate for some students. Please see our comments above.

1111(b)(2)(A)	27	<p>We have several concerns with this section. We note that the use of the word “ensuring” in line 4 would be impossible to achieve. An SEA can develop the best statewide accountability system but it cannot “ensure” that schools make AYP. The accountability system can and should serve as a framework for guiding and assessing the work of schools toward making AYP, but simply cannot “ensure” that this will happen.</p> <p>We also have significant concerns about the proposed longitudinal data system in section 1123 that is referenced here. Please see our comments under that section.</p>
1111(b)(2)(A)(iii)	28	<p>Again, we question the use of the word “ensure” in lines 10-11. It is the academic content standards that students will be held to that should be rigorous; the accountability system simply measures what students have learned against the standards.</p>
1111(b)(2)(C)(v) (II)(cc)	30	<p>We strongly support the inclusion of this language that would allow students who are no longer considered a student with a disability to be counted in this category for three years. This reflects that the school and its teachers have done a good job of supporting these students who have made significant progress and the schools (as well as the students) should be recognized for their accomplishments.</p>
1111(b)(2)(E)	32	<p>We had tremendous difficulty understanding the use of multiple measurements throughout the bill. It was extremely difficult to tell what measures could be counted when and when states and school districts would get credit for what. We think that the confusion is due to the fact that the bill drafters had mixed emotions about the use of multiple measures and were trying to address opposing views. We support the use of multiple measures, suggest that they be listed in their entirety in one place and they all be available to give credit to schools and school districts for improving outcomes for students.</p>
1111(b)(2)(D)(ii) and (E)	32-33	<p>We strongly urge that this entire paragraph be deleted. Chairman Miller expressly indicated in public comments that he supported multiple measurements. This paragraph states that multiple measures can only be used if they decrease the number of schools making AYP. What would be the point of this? Either the bill should allow for multiple indicators (which we believe it should) that will either identify more <i>or fewer</i> schools making AYP or it should not allow additional indicators. The draft is attempting to appease both sides of this issue – the result is that it has satisfied no one and leaves us confused as to what the intent of this section is.</p>
1111(b)(2)(E)(i) (III)	34	<p>We believe that this could be an appropriate indicator to use; however, no state would be currently able to use it because the requirements are not in place in every high</p>

		school in the country. Therefore, it is disingenuous to hold it out as an perceived option for states.
1111(b)(2)(E)(i) (IV)	35	We are concerned that this paragraph leaves out those students who successfully transition to the world of work upon leaving high school, which would include many students with disabilities. Students who enter apprenticeship programs, the military, or other work environments are excluded from this calculation. We urge that language be added to this section to recognize these positive transitions to post-secondary outcomes.
1111(b)(2)(F)	42 et seq	<p>While we strongly support the inclusion of growth models as a means of measuring student proficiency, we are very concerned that the proposed language does not adequately take students with disabilities into account. The draft bill has essentially included language from the Department’s pilot program for growth models. However, the parameters placed around the pilot models require that students with disabilities make more growth progress than students without disabilities in a given year, particularly if they are working below grade level (e.g., the 1% and 2% students). You are undoubtedly aware that the pilot states have for the most part excluded students with disabilities from their programs for this very reason. Therefore, we are opposed to the language on p. 43, line 2, that would require <i>all</i> students to “be on trajectory to meet or exceed within 3 years, the State’s proficient level.” The growth model language, while requiring the demonstration of growth, must reflect that for some students with disabilities, growth may come at a slower rate. Otherwise, the perhaps unintended consequence of the language will be to discourage use of growth models, something that is currently supported by many who are responsible for implementing this law.</p> <p>We highly recommend that the staff review the article on growth models that can be found at http://www.cse.ucla.edu/products/policy/cresst_policy9.pdf. This article does an excellent job of describing what a real growth model looks like without the limiting parameters currently put in place by the Department of Education that have been incorporated into this draft.</p>
1111(b)(2)(O)	52	While it may be interesting to note the number of students who have changed schools, we question how this section will help improve teaching and learning (provisions elsewhere in the law recognize the need to address specific issues related to homeless students). School systems can have little impact on decisions made regarding the movement of children from foster home to foster home nor can school systems alleviate homelessness. Schools <i>do</i> need to recognize the impact of repeated school transfers on children’s ability to make

		progress and should have plans in place to address this concern. An audit, which would be extremely difficult to collect valid and reliable data, will not accomplish this. We recommend that this section be deleted.
1111(b)(2)(P)	53	We support the proposed limit on “N” size.
1111(b)(2)(R)	54 et seq	<p>We are generally supportive of the inclusion of this language. We question whether the Secretary of Education should have to review each and every waiver granted by an SEA to an LEA to increase the percent of students included in the 2% category. We also question the inclusion of language from IDEA in paragraph (II) regarding presenting evidence as to why a student with a disability is performing below grade level. This language is included in IDEA as part of the determination as to whether or not a student has a disability. Once this determination has been made, the student should be held to the highest level of achievement possible for that student, but it is inappropriate for the IEP team to have to reconsider the same evidence regarding what kind of assessment the student should take. Elsewhere in this draft, states have been told to develop guidelines for IEP teams to use in making decisions about the appropriate assessment. This proposed section seems to be doing that very same thing, e.g., establishing guidelines for making this decision. We encourage you to leave the setting of the guidelines to the SEAs to develop and to delete this section from the bill.</p> <p>We also take exception to the language in paragraph (vii), which eliminates the ability for SEAs to grant waivers after the 2009-10 school year. We are curious as to rationale for this cap. There is no evidence to suggest that the number of students with disabilities will decline by 2009-10. We cannot understand where the bill drafters think these students will go after the 2009-10 school year. Is the assumption that their disability will have improved to the point that they will no longer be included in the 2% category? We urge that this section be deleted because we believe that the decision as to what is the most appropriate assessment for a student to take should be made by the IEP team, as is recognized elsewhere in the law, and not in Washington, DC by individuals who have no knowledge of the children being assessed.</p>
1111(b)(2)(S)	61	We support the inclusion of the language for the IES studies
1111(b)(3)(D)(xi)(IV)(dd)	69	We have concerns about the lack of clarity of this provision. If this will require SEAs to go back and re-develop new assessments, we would be opposed to the language. It is not clear what kind of “evidence” the bill drafters are looking for.

1111(b)(3)(E)	74	We support the language that gives SEAs the responsibility to provide IEP teams with guidance for making determinations about what is the appropriate assessment for a student with disabilities to take.
1111(b)(11)(C)	86	We question what authority an SEA has to assign teachers to specific schools as SEAs do not hire or assign teachers (except in those instances where the SEA operates a school, e.g., a school for the blind or deaf). Therefore, while SEAs may provide professional development or perhaps use its Title I funds to establish an incentive fund, SEAs cannot “ensure” that “poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.” We recommend deleting this language.
1111(c)(15)	93	Line 15. We thank the Committee for including this language on universal design for learning (UDL). Please note that NASDSE is a member of the UDL workgroup that is submitting recommendations (under separate cover) on the inclusion of additional UDL language in the bill.
1112(b)(1)(F)(ii)	122 and elsewhere	We support the inclusion of the references to early intervening services (EIS) under IDEA here and as noted elsewhere in the bill.
1114(b)(1)(B)(ii)	153	We thank the Committee for inserting this language in this paragraph, which is essentially the definition of response to intervention (RtI). We strongly believe that RtI can be a key strategy to help improve outcomes for all students and encourage the insertion of this language throughout the bill.
1116(b)(4)(A)	180	We are supportive of this change in approach in the law that would designate schools as “high priority” or “priority.”
1116(d)(2)(B)(v)	201	We appreciate the inclusion of language on RtI, but believe that this paragraph is incorrectly written and restates the same thing three times. We suggest that the paragraph be re-written to state: “...such as response to intervention approaches that involve a sequential series...”
1117(a)(5)	260	We suggest that this section make explicit reference to special education teachers; otherwise they will be left out of the process. (The section references specialized instructional support personnel, which includes school social workers, psychologists, etc., but not teachers.)
1117(b)(4)(E)(iv)	268	We recommend adding a new paragraph (iv) that would state: “strategies such as response to intervention approaches that involve a sequential series of instructional approaches, tiered instructional interventions, or differentiated instruction activities based on the recognized differences among students in the classroom...”
1117(b)(4)(G)	269	We support the reference to community-based programming, assuming this is intended to be a reference

		to community schools.
1118(a)(2)(G)	271	We would hope that this section would be inclusive of all parents; the Committee’s attempt to list parents with specific characteristics has the unintended consequence of leaving some parents out. We suggest that the paragraph be rewritten to state that parent involvement should include all parents and that specific efforts be made to include parents who may have been underrepresented in school involvement in the past, which we believe is the point of this section.
1119(a)(2)(E)	282	With respect to highly qualified teachers, NASDSE members have found co-teaching to be a valuable tool to help ensure access to the general education curriculum for students with disabilities. We believe this same approach can be helpful in situations where sufficient numbers of highly qualified teachers are available. We suggest that a new paragraph be added to this section that would encourage the use of co- (or team-) teaching as a strategy to ensure access to highly qualified teachers for all students.
1123	306 et seq.	<p>We are extremely concerned about numerous provisions in this section. Beginning with (b), the Advisory Committee lists numerous people to be involved, but fails to include individuals with technological knowledge of how to construct a data management system.</p> <p>We believe that this is a huge oversight. We are extremely concerned about the proposed scope of the data system. Given very realistic concerns about security breaches, we question the capacity of school districts to protect this data. We further question whether parents would support the compilation of all of this data regarding their children and family within a school. Would parents have access to see what data has been compiled about their children? Would they have the capacity to delete information that they object to having in the database (just as they currently have some control over what is in a student’s written file). What are the time limitations for holding onto this data? Who would have access to this data? How is the data to be used? These are huge questions that remain unaddressed by this proposed section. Even more important, we believe that this is another instance where the bill has lost sight of where the emphasis of this law should be – on teaching and learning. What is the link between having all of this data and improving outcomes for individual children?</p> <p>Further, there are huge costs associated with developing such systems. We question whether funding should be taken away from teaching and learning to be used for the development of a system that has no stated connection to improving outcomes for students.</p>

		<p>We concur that there is validity to having a data system with a unique student identifier. That is the system that many states have gone to or are now in the process of constructing. However, this proposal goes far beyond that and the value of such a system in improving outcomes for students is far outweighed by the concerns that we have for the expense involved in constructing and maintaining such a system and keeping it secure.</p> <p>Finally, we object to the proposed penalties for failure to make progress on construction of the described system. The development of information system at the SEA level should be determined by the SEAs as state education agencies frequently have to share their data system (as well as their data personnel) with other state agencies. The federal government should not mandate that states construct an information system that may conflict with other state priorities for their information systems.</p>
1124	318 et seq	<p>We are concerned and deeply disappointed about the perceived conflict in this section with IDEA. IDEA is a federal law that allows students with disabilities up to age 21 to complete their high school curriculum. We deeply regret that the Committee has chosen not to recognize this in the draft bill and only recognizes an additional year for purposes of calculating AYP. We question the message that is being sent to students with disabilities. One federal law says take the additional time that you may need to complete your coursework and earn a diploma and NCLB says, "take your time, but if you take too long, you don't count." We believe that, as this section is currently written, it is saying that it is okay to leave some students behind. We don't believe that school districts should be punished for continuing to provide supports and services to those students whose IEPs allow extra time. Just as language in the draft is careful to ensure that students are afforded all the accommodations that they are entitled to for assessment purposes, so should the bill acknowledge the IEP that gives a student additional time to complete a course of study. Washington policymakers should not second-guess an IEP.</p> <p>While we recognize that the bill drafters are anxious to implement a nationwide system of uniform graduation rates, the drafting of this section demonstrates how difficult this can be. "Confirmed departure" for example – it may be difficult, if not impossible, to locate a very low-income family that is homeless, moved with in with relatives, or simply opted to move because they are in trouble with creditors or the law. These include families that may not wish to be located and therefore, it will be impossible for</p>

		an LEA to “confirm” their departure.
1124(b)(9)(B)	323	While we think it is correct to carve out an exception for the 1% students who may not be able to pass a high-stakes exit exam, we strongly urge that this exception be applied to the 2% of students as well. There are some students who fall into the 2% category that have significant disabilities and are not able to pass a high-stakes exit exam. There should be an exemption permitted under this section for these students as well.
1703(f)(2)(A)	378	While this is a noteworthy activity, we would prefer to see limited funding spent on the recruitment and retention of regular and special education teachers that are in short supply, e.g., math and science teachers, teachers for the sensory-impaired, etc. before worrying about increasing the number of teachers trained to teach AP and IB courses.
1851(e)	397	We would like to see added under this section language that would include “providing professional development in the use of the principles of universal design for learning and strategies such as response to intervention approaches that involve a sequential series of instructional approaches, tiered instructional interventions, or differentiated instruction activities
1871	399	We support the Expanded Learning Time Demonstration Program.

We thank you for this opportunity to comment. Please feel free to contact Nancy Reder, NASDSE’s director of government relations, if you have any questions regarding these comments.

Sincerely,



Bill East, Ed.D.
Executive Director