

Testimony of

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Hearing

*How NCLB Affects Students with Disabilities*

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I would like to thank the Chairman and members of the Subcommittee for this valuable opportunity to testify on *How NCLB Affects Students with Disabilities*. I am Rebecca Cort, Deputy Commissioner of the Office of Vocational and Education Services for Individuals with Disabilities (VESID) within the New York State Education Department. As such, I am in the unique position of being the state director for both preschool to Grade 12 special education services as well as for adult vocational rehabilitation.

I am submitting with my testimony a number of detailed briefings that discuss New York State's position regarding areas in NCLB where we believe there are significant opportunities for revision and improvement during the reauthorization process. However, I will focus here on several issues that have had the greatest impact on students with disabilities.

The New York Board of Regents and the New York State Education Department have been strong supporters of the high expectations set by NCLB. This focus closely parallels initiatives undertaken in New York prior to the enactment of NCLB. The Regents recognized that, within many schools and districts, the expectations for students with disabilities were far too low and that they were not being provided with the same access to rigorous course work as their non-disabled peers. Even before NCLB, the New York State Board of Regents established requirements that all students must be prepared to meet the same high level learning standards and to participate in rigorous state assessments as a condition for graduating from high school with a regular high school diploma. New York's Board of Regents remain committed to preparing all students to be educated and productive citizens in the 21<sup>st</sup> century and we believe that NCLB can play an important role in achieving that goal for the children of New York State.

However, there are a number of areas where NCLB has reduced the likelihood of meeting that goal and where it is having a disproportionately negative impact on students with disabilities. The first, and most significant, area concerns the lack of recognition of the extremely broad range of characteristics and developmental levels of students with disabilities. NCLB has not integrated into the law the elements needed to ensure consideration of those individual student differences that are at the core of the Individuals with Disabilities Education Act (IDEA). This has led to the identification of districts as needing improvement as a result of the assessment outcomes for students with disabilities when, in fact, the current system does not allow an accurate measurement of districts' and schools' cumulative impact on their performance. In many instances, students with disabilities now must be tested on what they have never been taught instead of being allowed to demonstrate what they have learned.

#### Assessments for the 2% "Gap" Students

Students with disabilities represent a broad continuum of cognitive functioning from profoundly developmentally delayed to gifted. Those with severe to profound mental retardation have been accommodated under NCLB through the allowance for 1% of students who can be counted as proficient based on an alternate assessment aligned to

alternate achievement standards. In New York, our guidance to districts indicates that students participating in the alternate assessment must have a severe cognitive disability and significant deficits in communication/language and in adaptive behavior. Most of the students who meet the criteria for the alternate assessment do not achieve higher than a first grade level. New York agrees that, in general, these students should not exceed 1% of the school district population.

However, the lack of options available for other students with disabilities is a significant problem. We welcomed the US Department of Education's (USED) promise of increased flexibility for an additional 2% of students whose disabilities prevent them from mastering the general education learning standards at the same level and rate as their non-disabled peers. However, we believe that the proposed regulations that would guide the development of "modified standards" and "modified assessments" for this group of students were not sufficiently flexible. Further, they interpreted the law as requiring modified assessments to be aligned with the general education learning standards at the grade level of non-disabled chronological peers. While the regulations indicated that modified standards could represent reduced "depth and breadth" of a state's learning standards, they could not represent a reduction in the grade level of the content of the standards for any subject area to be measured.

We agree that the large majority of students with disabilities should be receiving instruction based on the general education learning standards and should be able to master these standards given appropriate research-based instruction. But there exists a band of students (the 2% or "gap" students) who are not able to master grade-level standards at the rate and/or level of their non-disabled chronological peers even with appropriate instruction. We believe that this band includes two separate subsets of students with disabilities that require different options under NCLB.

The first subset consists of students with disabilities who, while able to make progress toward a regular diploma, learn at a slower and often inconsistent rate. Many students with disabilities require and receive one level of instruction in reading and language arts and another in mathematics or other content areas as a result of the individualized education program (IEP) recommendations that drive special education service delivery. Students who do not have the language and vocabulary or critical thinking skills necessary to benefit from instruction at the level of their non-disabled peers should participate in curriculum appropriate to their developmental levels that they can master and that can provide them with the precursor skills necessary to move to the next level.

Reducing the "depth and breadth" of 9<sup>th</sup> grade geometry or biology may appear to provide a meaningful option for some students but it will not result in the level of mastery needed to meet New York's standards for course completion, nor the readiness to move on to the subsequent grade's course work, nor the ability to successfully complete high stakes exit examinations. USED's current interpretation is that any modified set of learning standards and participation in any modified assessment that measures this reduced level of instruction must still permit the awarding of a regular high school

diploma. For states such as New York, that are not willing to compromise the rigorous standards that have been set to earn a high school diploma, there are no real options.

We ask that NCLB clearly indicate that this subset of students be allowed to proceed at a slower but equally rigorous pace as their non-disabled peers. These students require neither modified standards nor modified assessments but they do require the time to learn and an opportunity to demonstrate that learning. NCLB must permit a student whose IEP recommends instruction in the general education curriculum at a fourth grade level in mathematics and third grade level in English language arts to participate in assessments that correspond to these different levels. A school will then be held accountable for that student's learning on subject matter they have been taught rather than for the different subject matter that has been taught to the student's chronological peers in the classroom down the hall. The IEP team should determine and clearly indicate on the IEP the appropriate instructional levels and assessments for each student with a disability.

Any reauthorization of NCLB also must provide specific options for a second subset of students with disabilities within this 2% group. These students are those whose severe disabilities preclude them from meeting the high level of learning required to earn a regular New York State diploma but whose cognitive ability and developmental levels exceed the first grade level maximum designated for the 1% of students appropriate for the alternate learning standards and alternate assessment. They include those who exhibit mild to moderate mental retardation or some identified with autism spectrum disorders or severe traumatic brain injuries.

States must be permitted to develop both these modified standards and the modified assessments that will measure proficiency on these standards. These modified standards will be substantively different from the general education standards but have a range that exceeds the current alternate standards. They need to be designed to maximize the functioning level of students who need an instructional program that will allow them to leave school prepared for employment and independence, even if they cannot earn a regular high school diploma. Many students with disabilities who now leave school without either a diploma or adequate work readiness skills are more likely to remain if they were to be offered a career and technical program that was relevant and meaningful and resulted in a pathway to competitive employment. Districts and schools now have little incentive to develop innovative programs based on modified standards as they are unable to receive any recognition under NCLB for a student's mastery of such a modified curriculum, even if it reflects the annual goals and transition plans recommended on a student's IEP.

While I have not discussed the issue of growth models and value added assessments here, I have attached more detailed recommendations on this issue. We believe that all states should have the option of using these models as new assessments, including those based on modified standards, are developed. The capacity to capture the rate of growth will be especially useful in evaluating outcomes for students with disabilities who have very variable starting points.

### Four Year Graduation Standard

While these comments reflect the changes required to address the needs of what should be a very limited percentage of students, an additional change is needed for what could be a larger number of students with disabilities. The current requirements under NCLB anticipate that students will meet all high school requirements and then receive a high school diploma within four years of entering 9<sup>th</sup> grade. This is not a realistic expectation for many students with disabilities and prevents recognition of the laudable efforts of districts and schools that encourage students to remain in school for a fifth and sixth year as they move toward the completion of all course work and required assessments. In New York, many more students with disabilities graduate after five years than after four years.

States with rigorous graduation standards require an option that allows students extra time to receive the special education instruction and support services they need even though this may prohibit a full course load every semester. This option must acknowledge and award credit to districts and schools that are able to achieve success and meet NCLB's goals after a student completes five or six years in high school. For students with disabilities, the IEP should indicate the anticipated time required to meet graduation requirements and schools should be held accountable for meeting that standard, based on individual student needs.

### Differential Consequences for Different Subgroups Identified

Even with the addition of these critical elements to a reauthorized NCLB, there are schools and districts who will continue to struggle to adequately address the needs of the population of students with disabilities. We hope that the access to appropriate assessments will present a fairer measurement of schools' performance and reduce inappropriate identification of those schools and districts that are being successful. However, we know that a very substantial number of schools are being identified as in need of improvement as a result of the failure of the subgroup of students with disabilities to make AYP. (Last year in New York, 31% of schools identified failed to make AYP only for the subgroup of students with disabilities on the grades 3-8 English Language Arts exams.)

Yet the consequences of this identification are systemic and almost identical for all schools, regardless of the number or composition of the subgroups that are not achieving AYP. In fact, as currently implemented, many of the required options and reforms have the least impact on students with disabilities even if they are the only group triggering these actions. Options such as school choice are often unavailable to students with disabilities who are enrolled in unique programs that are not duplicated within other schools in the district. In addition, many supplemental educational services (SES) providers do not offer services that meet the needs of students with disabilities.

States should not be required to impose uniform NCLB mandated sanctions such as school choice and supplemental educational services on schools or districts because of the failure of one or several subgroups of students to meet AYP targets. Schools should be able to target remediation or interventions based on the nature and extent of their failure to make AYP. If only students with disabilities fail to meet AYP targets, resources and remediation should be focused on those students. In these instances, funding should be allowed to be spent on creative, targeted alternatives to school choice and SES that will address the unique needs of students with disabilities.

### Alignment with IDEA

Finally, an examination of whole group and subgroup performance data reveal a strong correlation between poor performance for students with disabilities and poor performance for students in general education. While the IDEA's reauthorization included efforts to align it with NCLB, we now urge Congress to make a similar effort to align NCLB with IDEA. A number of critical elements within IDEA are more appropriately targeted to all students and should be incorporated into NCLB in order to ensure that struggling learners' needs are met in general education settings and to reduce the inappropriate referral and over-identification of minority students.

We especially recommend that NCLB incorporate language regarding the use of Response to Intervention (RtI) systems to ensure that struggling schools understand the importance and benefit of implementing high-quality instruction and interventions to meet the needs of all students. Its inclusion in IDEA is causing RtI to be viewed as having a primary purpose of helping a district identify students with disabilities. This is not true. Rather, RtI is a method for teaching and monitoring the progress of all students that must be driven first and foremost by general education teachers in the general education classroom with the support of school building leadership and strong professional development.

NCLB's greatest potential benefit to students with disabilities may depend on its ability to ensure strong general education programs that eliminate inappropriate referrals and increase the opportunities for meaningful integration of students with disabilities into productive general education environments staffed with highly qualified teachers who have the tools to meet the needs of all students.

Attachments:

NCLB Issue Briefs:

- Assessing Students with Disabilities
- Growth Models for State Accountability
- Highly Qualified Teachers
- Targeted Interventions and Differentiated Consequences for Schools and Districts Identified as In Need of Improvement