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July 12, 2011

The Honorable Arne Duncan  
U.S. Secretary of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

RE: ESEA/NCLB Waivers

Dear Secretary Duncan:

On behalf of the 40,000 special education teachers, special education administrators, higher education faculty, related service personnel and other professionals who are members of the Council for Exceptional Children, I am writing to express our concern regarding the process and content of the Elementary and Secondary Education Act/No Child Left Behind (ESEA/NCLB) conditional waiver proposal roughly outlined last month.

CEC, like the Department, would prefer that Congress address the issues our nation faces and reauthorize ESEA. But, as you have pointed out, the legislative process appears to be stalled and congress may not complete the reauthorization for some time. If the Department is forced to proceed with approving additional waiver requests, CEC urges the Department to ensure that it upholds critical elements of the law which reinforce equity of educational opportunity, particularly for populations of students whose needs have been traditionally unmet, such as students with disabilities.

CEC believes that certain protections, transparency, and accountability provisions within NCLB must not be included in or waived by any waiver or other regulatory relief granted. Such non-negotiable provisions include 1) maintaining disaggregation of data, 2) subgroup accountability for students with disabilities, and 3) upholding highly qualified teacher provisions, all of which are critical to the educational success of students with disabilities.

These provisions have enabled stakeholders – including parents, teachers, and school leaders – to access benchmarked data and gauge how the educational system serves children and youth with disabilities. Although the academic achievement of students with disabilities is still far below the desired level, the availability of this data has increased expectations for the academic performance of students with disabilities and this good work must remain. Information about achievement of students with disabilities was largely unavailable prior to NCLB and, therefore, masked our system's challenges and provided little guidance for improvement. While other requirements of NCLB may need to be waived, it is critical to note the positive impact that this data has had on improving transparency in our educational system and helping it better serve our nation's six million students with disabilities. Thus, CEC urges you to uphold the following critical provisions of the law for the following reasons:

- **Maintain the Requirement to Disaggregate Data:** NCLB’s requirement of a 95% participation rate in state assessments, disaggregated by subgroup population has reinforced that students with disabilities can and should be included in state assessment systems, something required by IDEA since 1997. According to the 2008 National Council on Disability report *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report*, “the real push for inclusion [for students with disabilities] came with the NCLB rule that 95 percent of all students had to participate in state assessments<sup>1</sup>.”

NCLB provisions which support disaggregation of data reinforce transparency, increase expectations for students with disabilities and have led to a shift in culture among education stakeholders and policymakers drawing increased attention on the needs of this population of students.

- **Maintain Subgroup Accountability for Students with Disabilities:** NCLB’s requirement that holds school districts and states accountable for the performance of students with disabilities has increased attention on the academic performance of students with disabilities. In fact, the 2008 National Council on Disability report *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report*, found that “the most important result of NCLB and IDEA appears to be that students with disabilities are no longer ignored... Teachers, administrators, and the community are becoming aware of what students with disabilities are capable of achieving if they are held to high standards and expectations.<sup>2</sup>”

Moreover, a 2008 report by National Center on Educational Outcomes, demonstrated that the average percentage of students with disabilities who are proficient on the regular assessment moderately increased across a four year span (2001-02 to 2004-05) for both reading and math in elementary and middle schools<sup>3</sup>.

While, it is important to note that the performance of students with disabilities still lags far behind the performance of students without disabilities, it is critical to acknowledge that NCLB’s accountability measures have enabled stakeholders to make this comparison and advocate for better policies that support increased academic achievement of students with disabilities.

- **Uphold Highly Qualified Provisions:** NCLB’s requirement – and IDEA’s complementary statutory and regulatory provisions – ensure that all special education teachers are highly qualified in special education, as well as any content area in which they provide direct instruction. Research has demonstrated that special education teachers with more preparation secure better

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<sup>1</sup> National Council on Disability. (January 2008). *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report*. Washington, DC.

<sup>2</sup> Ibid.

<sup>3</sup> Altman, J., Thurlow, M., & Quenemoen, R. (2008 November). *NCEO brief: Trends in the participation and performance of students with disabilities*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.



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student gains<sup>4</sup>. Furthermore, special education personnel shortages reported in every state and as the U.S. Department of Labor projects a 17% increase in the number of special education teachers that will be needed over the next decade.<sup>5</sup> Thus, it will continue to be essential that students with disabilities have access to educators who are best prepared to meet their diverse educational needs.

Therefore, CEC strongly urges the Department to uphold all three of these essential provisions. As the data demonstrates, each of them have led to greater transparency within the system and greater focus on students with disabilities.. Weakening any of these will eliminate a decade worth of progress and achievement for a student population plagued by low expectations.

Finally, as an Administration that promotes transparency, CEC urges you to conduct a waiver process that seeks public comment on the process itself, the provisions up for consideration and any new reform requirements that will be connected to receiving a waiver.

CEC applauds your efforts to support the reauthorization of the Elementary and Secondary Education Act and looks forward to working with you to ensure the next iteration of the law emphasizes high expectations for students with disabilities and ensures that all educators are prepared to meet their needs.

Sincerely,

A handwritten signature in cursive script that reads "Deborah A. Ziegler".

Deborah A. Ziegler, Ed.D  
Associate Executive Director  
Policy and Advocacy Services

Cc: Dr. Alexa Posny, Assistant Secretary for Special Education and Rehabilitative Services  
Dr. Melody Musgrove, Director, Office of Special Education Programs

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<sup>4</sup> Feng, L., Sass, T. (2010). *Special education teacher quality and student achievement*. Retrieved from the National Center for Analysis of Longitudinal Data in Education Research. Retrieved on January 4, 2011 at <http://www.caldercenter.org/>

<sup>5</sup> U.S. Department of Labor. Special Education Personnel Summary