



2900 Crystal Drive, Suite 1000 | Arlington, VA 22202-3557
(P) +1.703.620.3660 | (Toll Free) 888.232.7733 | (TTY) 866.915.5000 | (F) 703.264.9494
www.cec.sped.org

October 18, 2011

The Honorable Tom Harkin
Chair
Senate Committee on Health Education
Labor and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Michael Enzi
Ranking Member
Senate Committee on Health Education
Labor and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Harkin and Ranking Member Enzi:

The Council for Exceptional Children (CEC), the largest professional organization of educators who work on behalf of 10 million children and youth with disabilities and those with gifts and talents, commends you on your efforts to find common ground and come together to draft a bipartisan bill which attempts to address the important education issues of our day, the *Elementary and Secondary Education Amendments Act*. We appreciate your hard work and believe there are many important components of this bill. At the same time, we have concerns about its potential impact on children and youth with disabilities and those with gifts and talents and the pressure its new requirements will place on states and local school districts, especially when resources are scarce.

Increased Inclusion of SWD throughout the Legislation

As you know, 60% of students with disabilities spend more than 80% of their day in the general education. As such, this legislation is more important to students with disabilities and the professionals who serve them than ever before. CEC is pleased that this legislation reflects the integration present in our nation's schools and, as such, is interwoven with references to children and youth with disabilities throughout most of its Titles. The use of this language is a great sign to all educators and policy makers that children and youth with disabilities are an important consideration in every educational decision they make. We are also pleased to see that the draft requires charter schools to plan for and implement appropriate services and supports for students with disabilities and provides mechanisms for charters to receive technical assistance to accomplish this.

We are concerned, however, that this emphasis seems to be lacking in the sections codifying Race to the Top, Investing in Innovation and Promise Neighborhoods. While we applaud the draft's unprecedented inclusion of references to students with disabilities, that very inclusion makes their omission in the new grant programs even more pronounced. We applaud your efforts to ensure that our law accurately reflects the current state of integration in education, but we encourage you to ensure that all programs emphasize the need to appropriately include, serve and respond to children and youth with disabilities.

Continued Need for Accurate Information about Student Achievement

Adequate Yearly Progress (AYP) has proven to be an unworkable structure for our nation's schools. Just this year, Secretary Duncan testified that the U.S. Department of Education estimated that approximately 80% of schools would fail to make AYP. Despite the problems with this accountability system, the need to ensure our schools set high standards for all students remains. CEC supports the bill's requirement that

states, school districts and local schools continue to disaggregate assessment data by subgroup, and publically report this data. We are also pleased the bill does not include modified assessments, also known as the two percent assessment. Although the U.S. Department of Education promulgated regulations around these assessments, states had a difficult time implementing them, and developing guidance on exactly who should take these assessments. With the advent of new tests, the need to conserve precious resources and ensure they are directed into the classroom, CEC supports removing this category from the accountability system.

Similarly, while we understand the need to include an alternate assessment for the 1% of students with significant cognitive disabilities, we also recognize that having any separation from the general assessment system means there is a danger that students who take the alternate assessment could be segregated in other ways and therefore, must receive the access to the general curriculum that IDEA requires. We encourage you to fiercely protect the provisions which limit this 1% provision – like the requirement that IEP teams consider each student’s needs and whether they must take the alternate assessment in each subject. We were pleased to see in the manager’s amendment some changes in language that strengthened access to the general curriculum and we urge you to protect and enhance these changes throughout markup and floor debate.

Concerns about Weakened Highly Qualified Teacher Provisions

As recent research has demonstrated, for students to achieve, they must have access to fully prepared and well-trained teachers – especially in special education. Because this is essential to achieving positive student outcomes, CEC opposes the bill’s definition of Highly Qualified Teacher. As currently worded, this legislation would allow any person, regardless of whether they have any training in education, to teach in schools as long as they have enrolled in an alternate route to certification program. This lax requirement minimizes the importance of preparation and training and works to de-professionalize educators and the teaching profession. While CEC supports the need for alternate route to certification programs, especially in light of the serious personnel shortages in the field, at a minimum the statute should require these programs be rigorous and ensure that any unprepared teacher is properly supervised.

Moreover, while educators are still learning the basics of the profession, parents must be accurately informed of their status and know that experienced educators are also supervising their child’s education. CEC was dismayed that this bill fails to include explicit reporting requirements, which would allow the public to know in which communities and which parts of the profession alternate route to certification teachers are teaching so the public can better understand if they are equitably distributed or if they are concentrated in certain geographic and content areas. The draft bill includes strong language around equitable distribution of teachers in other areas, but to be effective, it must ensure that teachers are fully prepared and qualified to teach.

Teacher Evaluation Systems

CEC’s members are committed to providing a high quality education to every student. As such, we support high standards for teachers and principals and believe they should have fair, accurate and rigorous evaluation systems which provide meaningful feedback to reward excellence and provide opportunities to improve where needed. But we are pleased that in the manager’s amendment you removed the requirement that – in order to receive Title II dollars – states and local education agencies must develop and implement teacher and principal evaluation systems. That requirement would have inevitably driven much needed and scarce dollars away from valuable professional development, much of which is focused

on improving instruction and school management to the creation and administration of evaluation systems. While every school needs an effective evaluation system, the potential consequence of removing these valuable Title II dollars would have been too great. Additionally, the idea that these dollars should be conditioned on the creation of these systems is an approach we disagree with.

Although teacher and principal evaluation systems are now only included for states and local districts that voluntarily apply for competitive grants under the Teacher Incentive Fund (TIF) program, CEC continues to have concerns about the language in this section around multiple measures of teacher performance and student achievement. CEC is pleased that the manager's amendment softened TIF's focus on test based measures of student achievement but the new language, although broader, still doesn't include specific examples of multiple measures such as – curriculum based measurement, progress monitoring, multiple classroom observations of student performance over a period of time, examples of student work, student performance on measures that demonstrate mastery, performance tasks, and portfolios – and other measures that are not solely based on tests. CEC urges you to consider explicitly including these measures as an example to the field and to recognize the importance of the various and complex measures needed to evaluate a teacher's practice and impact on student learning.

Concerns about Lack of Emphasis on Gifted and Talented Education and the Continued Need for Research

In addition to working with children and youth with disabilities, CEC's members support the three million students in this nation who have academic gifts and talents. For many years, the Jacob K. Javits Gifted and Talented Students Act has been the only federal legislation addressing this population. The Javits Act funded much needed research over the years and led to many improvements in the field. We are very concerned that your proposed bill eliminates the Javits Act and fails to replace it with any systematic approach to addressing the needs of this population. CEC is disappointed to see such little emphasis on this population in this draft legislation. Research confirms that our students are falling behind other industrialized nations in international math, science and reading assessments. Our nation cannot ignore this trend and cannot afford to accept it.

To reverse this course, we urge you to use this ESEA reauthorization as an opportunity develop and nurture high-levels of talent by supporting gifted education-related amendments during the ESEA markup. The TALENT Act (S.857) was introduced earlier this year and addresses many of the issues connected to the underrepresentation of minority and low-income students in gifted education programs and focuses on ensuring teachers have the training needed and the research-based strategies available to them to be able to spot and develop advanced talent in the classroom. CEC believes that the TALENT Act provides a strong base for gifted education in this nation and should be included in this legislation and urges the Committee to include its provisions in the amendments to ESEA.

Concerns about Lack of Clarity and Definitions of New Terminology

CEC was pleased to see that this draft incorporates many provisions addressing literacy including key provisions of the LEARN Act, S. 929. Literacy is an important goal for all students and providing schools and professionals the resources they need to ensure that all students are strong readers and writers is essential. But we are concerned that terms like *Multitiered System of Supports* and *Positive Behavior Supports* are not defined in the statute. We were pleased with the draft's inclusion of Universal Design for Learning and its corresponding definition. But leaving these other terms undefined will potentially lead to



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confusion and ambiguity in the field. Thus, we urge you to incorporate the definitions of these terms set forth in S. 541 and S. 929.

We thank you again for your considerable time and attention to the important educational questions facing our field. We appreciate your consideration of our comments and concerns and we look forward to continuing to work with you to ensure that all of our nation's children are well prepared to meet the demands of the 21st century.

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: Members of the Senate Health, Education, Labor and Pensions Committee