



August 28, 2009

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington D. C. 20202

Docket ID: ED-2009-OESE-0006

Attention: Race To The Top Comments of Council of Exceptional Children

The Council for Exceptional Children, the largest professional organization of teachers, administrators, higher education faculty, researchers and others concerned with the education of children with disabilities, gifts and talents or both, appreciates the opportunity to comment on the Department's July 29, 2009 Federal Register Notice regarding State Incentive Grants, known as the Race To The Top (RTTT).

CEC shares the Administration's goal to improve education for all students. CEC supports the American Recovery and Reinvestment Act's statement of this goal as embodied by the Act's four assurances: (1) improving teacher effectiveness and equitable distribution of qualified teachers for all students, particularly students who are most in need (2) improving standards to ensure that students are prepared for college and careers; (3) effectively using data to track student progress and foster continuous improvement in student outcomes; and (4) providing intensive support and effective interventions for the schools and students most in need. It is with these objectives in mind that CEC urges the Department to reduce the prescriptive elements in the application, allow for innovation and create the opportunity for real change. In so doing, CEC encourages the Department to explicitly be more inclusive of the over 10 million students with disabilities and gifts and talents.

CEC and its members appreciate the Department's thoughtful consideration of the potential impact these grants will have on exceptional children and youth and their families. We look forward to working with the Department to reach our goal.

If our comments raise any questions or concerns, please feel free to contact Deborah Ziegler, Associate Executive Director at debz@cec.sped.org or 703-264-9406 or Lindsay E. Jones, Senior Director at lindsayj@cec.sped.org or 703-264-9403.

Very Truly Yours,

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

Deborah A. Ziegler, Ed.D.
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A handwritten signature in cursive script that reads "Lindsay E. Jones".

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Council for Exceptional Children (CEC)
Comments on the Race To The Top Fund – Notice of Proposed Priorities,
Requirements, Definitions, and Selection Criteria
(Federal Register July 29, 2009)

1. **General Recommendation: Allow for Multiple Measures and Acknowledge Students' Individual Needs.**

- a. **Issue:** The proposed definitions limit “success” in tested grades and subjects to growth of one grade level or more in a year as demonstrated on standardized tests.

CEC recognizes the important role that assessments play in documenting educational accountability, and in ensuring that sound educational decisions are made. While CEC applauds the Department's efforts to ensure students with disabilities are included in subgroup reporting, and adopts a somewhat expansive definition of high quality assessment, CEC is concerned that the RTTT program contains overly prescriptive requirements which prohibit students with disabilities from demonstrating their progress at an appropriate pace.

According to the Department's proposed language, students, teachers and principals only succeed if students demonstrate, on state standardized tests, one grade level or more of growth in one academic year. For example, for tested grades and subjects, student achievement is defined only as “a student's score on the State's assessment under section 1111(b)(3) of the ESEA.” Additionally, an “effective” principal and teacher is defined as one whose students “demonstrate acceptable rates (e.g. at least one grade level in an academic year) of student growth.” In combination, these definitions define success as a prescribed level of performance on state standardized tests. Indeed, students, teachers and principals are only effective if test results demonstrate progress by one grade level in an academic year – and only highly effective if they demonstrate results of more than a grade level of growth.

CEC is pleased that the Department's definition of high quality assessment refers to and encourages the use of several methods of gathering information and explicitly requires consideration of students with disabilities. CEC also supports the priority that states have demonstrated a willingness to invest in better assessment systems. However, by limiting student success to results demonstrated on standardized tests—as they currently exist—the Department ignores the many ways in which students with disabilities and those with gifts and talents, indeed all students, can demonstrate their knowledge. Abundant evidence demonstrates that current state standardized exams are weak and fail to provide an accurate picture of a student's knowledge. Thus, in reality, students with disabilities will be subjected to the state multiple choice exams which currently fail them. All students should be encouraged to demonstrate their problem solving abilities, writing skills, analytical skills and overall creativity and inventiveness. These are the components of thinking and knowledge that employers need and which create engaged citizens; RTTT can go further to support these goals. CEC commends the Department for acknowledging the inclusion of “growth models” as a means of measurement but the Department could go much farther in this area. Given the current weak

state of assessments, by defining success primarily as results on standardized multiple choice tests, the Department misses an important opportunity to effect real change.

Additionally, by prescribing an amount of achievement necessary to equal success – improvement of one grade level or more in one year – RTTT fails to consider the learning needs and situations of students with disabilities. No evidence supports requiring one grade level of progress per academic year for students with disabilities. CEC supports high standards for all students with disabilities but more research in effectively measuring their progress is needed. Here, RTTT falsely assumes that all children learn at the same rate and bring the same tools to the learning environment. CEC is concerned that this narrow focus, which is not supported by research, will negatively impact students with disabilities, just as similar false “achievement standards” in NCLB have. Under NCLB’s similar requirements, students with disabilities and their teachers report feeling demoralized and outraged because students are forced to take exams which are not appropriate for them and do not allow them to demonstrate their progress.

This limited view of “progress” also ignores and devalues the core principals of the Individuals with Disabilities in Education Act (IDEA). IDEA entitles students with disabilities to receive specialized instruction to meet their unique needs. It logically follows from this mandate that students are also entitled to demonstrate progress and knowledge in their own unique ways and at a pace appropriate for them. Indeed, many students with disabilities will achieve a grade level of growth in an academic year. But many of them may only prove this if they are measured in ways other than multiple choice tests. At the same time, it is unreasonable to expect that certain students with disabilities will grow a grade level or more in one year due to their disability, but this should not mean they are failures. It also doesn’t mean we don’t have high expectations for these students. Rather, their complex educational situation simply doesn’t fit in a one size fits all box.

CEC is also concerned about the RTTT’s focus on what may be an unattainable standard because it may limit the number of professionals who are willing to work with students with disabilities. Under RTTT, a professional is “highly effective” only if all subgroups make more than a grade level of progress in one year. Thus, even if the students with disabilities make great gains, but fail to meet this standard, the professionals who work with them may not be deemed “highly effective” and may lose out on monetary awards. Quite simply, this may discourage them from wanting to work with students with disabilities. The recruitment and retention crisis in special education is well documented. Right now, there are at least 50,000 special education teachers across the nation that are not properly certified. By not allowing for appropriate individual considerations and measures of success, and by penalizing professionals for factors outside of their control, RTTT may continue the negative effects of NCLB.

b. Specific Recommendations

Recommendation 1:

Decrease Reliance on High Stakes State Exams for Tested Subjects and Grades

CEC recommends the Department not encourage or promote the use of a single measure for any high stakes decision for determining student, teacher or principal success. Instead, CEC recommends the Department use multiple measures, including local assessments, including teacher designed classroom assessments, progress monitoring, portfolios and other classroom data. CEC believes the proposed application begins to take strong steps in this direction by allowing this for non-tested grades and subjects and in its definition of high quality assessment (see Recommendation 2 below). But CEC urges the Department to expand the use of multiple measures beyond non-tested grades and subjects.

Recommendation 2: Research and Develop Pilots of Innovative Assessment Practices to Measure Progress of Students With Disabilities for Accountability Purposes and Require Rigorous Evaluation Components

CEC recommends that the Department fund research and development of more effective and balanced accountability systems that better meet the goal of high achievement for all children and that consider the intended and unintended consequences for student subgroups. CEC also recommends that the Department encourage and support applications which include innovative assessment systems that provide a comprehensive picture of student and school performance. CEC urges the Department to use portions of the RTTT funds to research and develop pilots of innovative assessment practices to measure the progress of students with disabilities for accountability purposes. Any such pilot should include rigorous evaluation components to ensure reliability.

One promising area for research in testing is growth models. CEC commends the Department for its support of the growth model approach. CEC considers the movement toward a “growth model” and/or “value added” approach for measuring a child’s achievement as holding great promise for addressing the needs of children with disabilities and those with gifts and talents. Yet, more research about these measures is still needed. Therefore, CEC also recommends that the Department use this opportunity to invest funds in states with plans to pilot measures of progress by using children’s indexed growth in achievement, as well as their performance in relation to pre-determined levels of academic proficiency. These measures need to take into account the unique characteristics of children with disabilities and/or gifts and talents, and any pilots must include and carefully examine the effects on all subgroups of children.

Recommendation 3: Expand the Definitions of Formative Assessment and High Quality Assessment to Include Principles of Universal Design for Learning

CEC also recommends that the Department expand the definitions of formative assessment and high quality assessment to include a requirement that these assessments shall, to the extent feasible, be developed and administered in a manner consistent with the principles of universal design for learning. This would be consistent with IDEA, which requires universally designed assessments, to the extent feasible [see IDEA §1412(a)(16)(E)]. The Department could rely on and incorporate the definition of universal design for learning in the Higher Education Act of 2008 which appears in Section 103(24). Basically, that definition provides that “universal design for learning” means a scientifically valid framework for guiding educational practice that--(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.” Importantly, it ensures that assessments are accurate and accessible for all students, not just students with disabilities.

Recommendation 4: **Encourage Use of Multiple Valid and
Reliable Measures to Judge Professional
Performance, Not Just Test Scores**

In determining an individual's professional competence, CEC recommends that multiple measures—rather than a single test score—be used to enhance the validity and reliability of decisions related evaluating the performance of special education teachers. This will provide a more comprehensive picture of teacher effectiveness over time and is more accurate than the use of a single multiple choice test. Moreover, little, if any, evidence supports the link between student performance on standards-based assessments and evaluations of teachers and principals. Until more evidence is available, supporting this approach is questionable.

Therefore, CEC recommends the Department allow the use of several real and reliable measures to determine the proper method of evaluating teachers and principals. It is not impossible to create these systems, but it will take work. The RTTT is a perfect opportunity to encourage states to engage in real reform, to generate research and develop and pilot models for improvement. Thus, CEC urges the Department to remove this narrow and prescriptive requirement that all children perform in the same way and allow for more innovation at the state and local level. Only by allowing innovative pilots to occur in the states, will we develop and define workable effective performance evaluations.

2. General Recommendation: Remove the IEP as a measure of growth in definition of such measures in untested grades and subjects.

- a. **Issue:** The IEP was not intended and is not structured to serve as a measure of progress in the way the proposed application encourages.

While CEC applauds the use of multiple measures to judge students' progress in untested grades and subjects, CEC urges the Department to remove the use of an Individual Education Plan (IEP) as one such measure.

IEP's are not intended to measure progress in this manner and cannot serve this purpose. The IEP describes the educational services which are needed to appropriately meet a student's needs. Its contents are not linked to standards or curriculum. IEP's were never intended, nor have they ever been used as a high stakes measure of success for accountability purposes. No research supports the use of an IEP as a measure of academic progress for accountability purposes. Indeed, IEP teams determine whether the student is making effective and appropriate progress. Effective progress, however, is not easily translated to test scores, academic achievement, social skills or other individual or specific variables, but rather is an interrelated measure. Using IEPs as a measure of growth may lead to the unintended consequence of a reduction in rigor, and lower expectations for students with disabilities.

The Department has already acknowledged this reality. In 2005, it described the purpose and strength of IEPs as rooted in their individual nature. It stated, "IEP goals may address a broad range of individualized instructional needs, as well as behavioral and developmental needs, and might not be based on the State's academic content standards. IEP goals may cover a range of issues beyond reading/language arts and mathematics, such as behavior, social skills, or the use of adaptive equipment, and, as such, an examination of how well a student met his or her IEP goals is not synonymous with achievement ..." The Department should follow its own reasoning here.

b. Specific Recommendation

Recommendation: Remove the IEP As a Measure of Growth for Untested Grades and Subjects

CEC recommends the Department remove the IEP as a measure of growth for untested grades and subjects.

3. **General Recommendation: The Department Should Require Better Data and Planning From Charter Schools.**

a. **Issue:** Mounting evidence demonstrates charter schools are not more effective than traditional public schools and often fail to serve students with disabilities appropriately.

CEC supports innovative and accountable charter schools. But CEC is concerned with the mounting evidence that charter schools, despite their clear legal obligations, are not appropriately serving students with disabilities. The RTTT's proposed application repeatedly relies on and looks to charter schools to serve as the salve for public education's ills. Indeed, it specifically supports Increasing the supply of high-quality charter schools. (C)(D)(2). This is despite the lack of any evidence that charter schools provide a better education than traditional public schools. Recent reports have indicated, for example, that up to two-thirds of all charter schools are no more effective in producing improved achievement than public schools and may be less effective in serving students in high need areas.¹ Indeed, this appears to fly in the face of the other portions of the Department's proposal and its many public statements wherein it has repeatedly stressed the need for practices grounded in strong, evidence-based data, theories and research. Given this focus, it is at least incongruous to rely so heavily on something which does not have a sound research base. CEC encourages the Department to demand evidence of success and good data from any proposed or approved charter school.

b. Specific Recommendation

Recommendation: Require Charter Schools to Outline Plans for Educating Students with Disabilities In Applications

If a charter school is the appropriate option, CEC recommends that the Department require states, in their "high-quality plans", to consider the impact of these measures on students with disabilities. For example, Reform Plan Criteria Section (D)(3) addresses plans for turning around struggling schools. Here, CEC is concerned about two aspects of the proposed turn around plans: conversion of low performing schools to charter schools and closing schools all together.

To address these concerns, CEC recommends that the Department require that states specifically state in their "high-quality plans": (1) how they will address, serve and monitor charter school interactions with students with disabilities; and (2) how they will consider the

¹ Center for Research on Educational Outcomes (CREDO). (2009, June). *Multiple choice: Charter School performance in 16 states*. Stanford, CA: Stanford University; Betts, J. & Tang, Y. E. (2008, December) Charter schools and student achievement: A review of the evidence. In R. Lake (Ed.), *Hopes, fears, and reality: A balanced look at American charter schools in 2008*. Seattle, WA: Center on Reinventing Public Education . http://www.crpe.org/cs/crpe/view/csr_pubs/255

impact that location change and reorganization will have on students with disabilities and accommodate their needs during these processes.

4. General Recommendation: Require states to discuss how they will address the social and emotional needs of students.

- a. **Issue:** The proposed application fails to address social and emotional components of learning and does not encourage use of positive behavioral supports.

CEC notes that the overall guidelines fail to address the social and emotional components of learning and the impact these have on the whole school experience. As our Division for Children with Behavioral Disorders pointed out in its comments, the link between school safety/school discipline and improved academic outcomes is well-documented.² Simply put, students cannot learn and teachers cannot teach in unsafe or chaotic environments. Yet despite a well-developed database documenting effective strategies to improve school safety and reduce disruption, too many schools and classrooms continue to experience high levels of disruptive behavior or use strategies that have been shown to be ineffective in preventing violence and disruption.³ In particular, students of color appear to be over-represented in a range of school consequences, putting them at risk for a variety of negative outcomes, including loss of educational opportunity, school dropout, and an increased likelihood of involvement in the juvenile justice system.

The technology of positive behavior supports appears to be a highly promising evidence-based intervention that is currently being used in almost 8000 schools nationwide to improve the school disciplinary climate in order to support academic instruction;⁴ that model was in fact highlighted as a good candidate for the use of stimulus funds in earlier ARRA documents. There are in fact numerous scientifically-validated strategies, ranging from preventive strategies for all children to specialized interventions to support for students with the most challenging emotional and behavioral disorders, that can help teachers and principals become more effective in addressing issues of student behavior.⁵ Integrating evidence-based school

² Fleming, C. B., Haggerty, K. P., Catalano, R. F., Harachi, T. W., Mazza, J. J., & Gruman, D. H. (2005). Do social and behavioral characteristics targeted by preventive interventions predict standardized test scores and grades? *Journal of School Health, 75*, 342-349; Kellam, S. G., Mayer, L. S., Rebok, G. W., & Hawkins, W. E. (1998). The effects of improving achievement on aggressive behavior and of improving aggressive behavior on achievement through two preventive interventions: An investigation of causal paths. In B. Dohrenwend (Ed.), *Adversity, stress and psychopathology* (Vol. 27, pp. 486-505). New York: Oxford University Press; Nelson, J. R., Benner, G. J., Neill, S., & Stage, S. A. (2006). Interrelationships among language skills, externalizing behavior, and academic fluency and their impact on the academic skills of students with EBD. *Journal of Emotional and Behavioral Disorders, 14*, 209-216; McIntosh, K., Chard, D. J., Boland, J. B., & Horner, R. H. (2006). Demonstration of combined efforts in school-wide academic and behavioral systems and incidence of reading and behavior challenges in early elementary grades. *Journal of Positive Behavioral Interventions, 8*, 146-154.

³ American Psychological Association Zero Tolerance Task Force (Lead Author). (2008). Are zero tolerance policies effective in the schools? An evidentiary review and recommendations. *American Psychologist, 63*, 852-862.

⁴ Sugai, G., & Horner, R. H. (2006). A promising approach for expanding and sustaining school wide positive behavior support. *School Psychology Review, 35*, 246-259; Horner, R., Sugai, G., Smolkowski, K., Eber, L., Nakasato, J., Todd, A., & Esperanza, J., (in press). A randomized, wait-list controlled effectiveness trial assessing school-wide positive behavior support in elementary schools. *Journal of Positive Behavior Interventions*.

⁵ See e.g., Evertson, C. M. & Weinstein, C. S. (Eds.), *Handbook for Classroom Management: Research, Practice, and Contemporary Issues* (pp. 1063-1089). Mahwah, NJ: Lawrence Erlbaum Associates; Jimerson, S. R. & Furlong, M. J. (Eds.), *Handbook of School Violence and School Safety: From Research to Practice*. Mahwah, NJ: Lawrence Erlbaum Associates.

discipline and classroom-management strategies with other school reform efforts can reduce the amount of time that teachers and administrators spend in dealing with issues of disruptive behavior,⁶ allowing school personnel to allocate more of their time to academic instruction.

Finally, the Secretary has repeatedly, in testimony to Congress and in several public speeches, mentioned the importance and usefulness to learning environments influenced by positive behavioral supports. The research demonstrating the usefulness of this whole school approach justifies the Department's full support and encouragement of its use.

b. Specific Recommendation

Recommendation: Add an Invitational Priority Addressing Behavior

CEC recommends that the proposed application add an Invitational Priority: *Proposed Priority 6—Recognizing the Link between Student Behavior and Academic Outcomes, Implement Evidence-Based Measures to Improve Student Discipline.*

5. **General Recommendation:** **Retain Proposed Priority 2 - Competitive Preference Priority - Emphasis on STEM.**

a. **Issue:** The proposed application should retain its focus on STEM.

CEC supports the Department's emphasis on STEM disciplines in the proposed application, and encourages its retention in the final application requirements. Currently, there are approximately 3 million students with academic gifts and talents, many of whom have great interest in the STEM disciplines. Unfortunately, the needs of many of these students go unmet due to a lack of funding and inconsistency of services within and between states. Therefore, CEC is encouraged that the Department has sought to include STEM in the RTTT application and hopes to see STEM in future initiatives.

b. Specific Recommendation

Recommendation: Retain Proposed Priority 2

CEC recommends that the proposed application retain proposed priority 2: Competitive Preference Priority – Emphasis on Science, Technology, Engineering, and Mathematics (STEM).

6. **General Recommendation:** **Retain and Expand Proposed Priority 3 – Longitudinal Data Systems.**

a. **Issue:** It is critical to ensure data systems measure all proficiency levels.

CEC supports using longitudinal data systems to track the academic performance of students over time. While CEC recognizes the focus of Priority 3 is to determine how to best integrate students with disabilities, English language learners, and other areas into a longitudinal data system, CEC believes it is critical to ensure that data systems have the ability to measure all proficiency levels (i.e. below proficiency, at proficiency, above proficiency, and

⁶ Scott, T. M., & Barrett, S. B. (2004). Using staff and student time engaged in disciplinary procedures to evaluate the impact of school-wide PBS. *Journal of Positive Behavior Interventions*, 6(1), 21-27.

advanced) instead of merely measuring below or above proficiency. Collecting information simply as "below proficiency" or "above proficiency", without differentiating between at proficiency, above proficiency and advanced levels does not accurately reflect a student's performance. Furthermore, to require longitudinal data systems to have these proficiency categories reinforces the Department's effort to identify and recognize effective teachers and principals, highly effective teachers and principals.

b. Specific Recommendation

Recommendation: Expand and Adapt Statewide Longitudinal Data Systems to Ensure ALL Levels of Proficiency (below, at proficiency, above proficiency, advanced) Are Included.

CEC recommends the Department expand the definition of proficiency to ensure data systems have the ability to measure all proficiency levels. Thus, expand the definition of proficiency to include below proficiency, at proficiency, above proficiency, and advanced.

7. **General Recommendation: Any Panel Reviewing Applications Must Include Members with Expertise in Special Education and Gifted Education.**

CEC is pleased the Department has decided to allow an outside expert panel review the state applications. CEC urges the Department to include at least one member of the panel with expertise in special education and one in gifted education. These areas are often overlooked and yet are vital to the success of any RTTT program. CEC intends to provide names of well qualified potential panelists once the Department opens this process.