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NO CHILD LEFT BEHIND: IMPROVING RESULTS FOR CHILDREN WITH DISABILITIES

HEARING

BEFORE THE

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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NO CHILD LEFT BEHIND: IMPROVING RESULTS FOR CHILDREN WITH DISABILITIES

Wednesday, March 3, 2004

U.S. House of Representatives

Committee on Education and the Workforce

Washington, DC

The Committee met, pursuant to notice, at 10:20 a.m., in room 2175, Rayburn House Office Building, Hon. John Boehner (Chairman of the Committee) presiding.

Present: Representatives Boehner, McKeon, Johnson, Norwood, Ehlers, Biggert, Platts, Tiberi, Osborne, Kline, Carter, Blackburn, Gingrey, Burns, Miller, Kildee, Payne, Andrews, Tierney, Kind, Wu, Holt, McCollum, Grijalva, Majette, Van Hollen, and Bishop.

Staff present: David Cleary, Professional Staff Member; Amanda Farris, Professional Staff Member; Kevin Frank, Professional Staff Member; Melanie Looney, Professional Staff Member; Sally Lovejoy, Director of Education and Human Resources Policy; Krisann Pearce, Deputy Director of Education and Human Resources Policy; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Jo-Marie St. Martin, General Counsel; Liz Wheel, Legislative Assistant; Alice Cain, Minority Legislative Associate/Education; Tom Kiley, Minority Press Secretary; John Lawrence, Minority Staff Director; Alex Nock, Minority Legislative Associate/Education; and Joe Novotny, Minority Legislative Staff/Education.

Chairman BOEHNER. A quorum being present, the Committee on Education and the Workforce will come to order. We're having problems with our chairs. We got new chairs over the break, and we're still trying to figure out how to adjust them. So if you see us disappear, it's by accident.

[Laughter.]

Chairman BOEHNER. We're holding this hearing today to hear testimony on "No Child Left Behind: Improving Results for Children with Disabilities." Under Committee Rule 12(b), opening statements are limited to the Chairman and Ranking Member. If other Members have written statements, they may be included in the hearing record. And with that, I ask unanimous consent for the hearing record to remain open for 14 days to allow Member statements and other extraneous material referred to today during this hearing to be submitted in the official record.

Without objection, so ordered.

STATEMENT OF HON. JOHN A. BOEHNER, CHAIRMAN, COMMITTEE ON EDUCATION AND THE WORKFORCE

Chairman BOEHNER. Good morning, everyone. I'm pleased to welcome our guests, witnesses, and Members to this morning's hearing. We're looking forward to the comments from our witnesses and the insight that you'll provide on the importance of including students with disabilities in state accountability systems under No Child Left Behind legislation.

I'm also pleased to announce that this morning's full Committee hearing is another in the continuing series we are holding to examine state and local progress in implementing No Child Left Behind.

I want to thank Mr. Miller and his staff for agreeing to work in a bipartisan manner on this hearing. I'm certain that if we continue to work together, we can ensure improved educational opportunities for all of our nation's students.

As many of you know, No Child Left Behind plays a vital role in ensuring that children with special needs receive the high quality education that they deserve, while providing states and local school districts significant flexibility to achieve this goal. Working in conjunction with IDEA, NCLB represents a truly monumental shift in the way we perceive students with disabilities and how they fit into state accountability and assessment systems to ensure that all students are learning.

The question of whether to include students with disabilities in state-developed accountability systems received significant attention during the congressional consideration of NCLB. After a great deal of discussion, we reached a bipartisan consensus that NCLB should ensure that all students can learn and schools should be held accountable for the academic progress of all children. A student with disabilities should not be discounted simply because he or she does not learn at the same rate or in the same manner as other students.

Among the greatest benefits of NCLB are increased expectations. For the first time in history, we are holding school districts accountable for the annual progress of all of their students, including students with disabilities. Disability does not mean inability, and through NCLB we are confronting the misconception that students with disabilities cannot learn.

While this is truly a victory for students with disabilities, it is also a challenge for states and schools. And we recognize there are significant pressures surrounding the inclusion of students with disabilities in state accountability systems. To rise to meet this challenge, we must ensure states, districts, schools and the Federal Government are working together to provide students with disabilities increased opportunities for academic achievement.

And I'm pleased by the efforts of the Department of Education and what they have done in the past months to provide states and school districts with needed flexibility to appropriately include all students with disabilities in state accountability systems. The new regulation allows 1 percent of all students—roughly 10 percent of students nationwide in special ed—to take an alternative assessment aligned to alternate standards. This is an important step in ensuring that states and local districts have the necessary flexi-

bility to respond to a child's individualized education program while still meeting the requirements of No Child Left Behind.

In addition, I'm also encouraged by Secretary Paige's recent letter to state officials outlining the procedure for states and local districts to apply for additional flexibility under the regulation. And I'm optimistic that the department's efforts will ensure that students with disabilities are appropriately included in state-developed assessment systems.

Finally, I think it's important to point out that a child's individualized education program dictates how a child is assessed, and not whether a child is assessed. Since 1997, IDEA has required that students with disabilities be included in general education system and the assessment system as appropriate for the individual child. NCLB works in unison with the requirements of IDEA by ensuring students with disabilities are included in these assessment systems.

We remain committed to the importance of including students with disabilities in the accountability and assessment systems of No Child Left Behind, while continuing to ensure that the system works fairly for all involved. And the testimony we expect today is vital to that task, and we look forward to hearing from each of our witnesses today.

Let me yield to my friend and colleague and partner in this effort, George Miller.

[The statement of Chairman Boehner follows:]

Statement of Hon. John A. Boehner, Chairman, Committee on Education and the Workforce

Good morning. I'm pleased to welcome our guests, witnesses, and members to this morning's hearing. We are looking forward to your comments, and the insight you will provide on the importance of including students with disabilities in state accountability systems under the historic No Child Left Behind (NCLB) legislation.

I'm also pleased to announce that this morning's full committee hearing is another in the continuing series we are holding to examine state and local progress in implementing NCLB. I would like to thank Mr. Miller and his staff for agreeing to work in a bipartisan manner on this hearing. I'm certain that if we continue to work together we can ensure improved educational opportunities for all of our nation's students.

As many of you know, NCLB plays a vital role in ensuring children with special needs receive the high-quality education they deserve, while providing states and local school districts significant flexibility to achieve this goal. Working in conjunction with the Individuals with Disabilities Education Act (IDEA), NCLB represents a truly monumental shift in the way we perceive students with disabilities and how they fit into state accountability and assessment systems to ensure all students are learning.

The question of whether to include students with disabilities in state-developed accountability systems received significant attention during congressional consideration of NCLB. After a great deal of discussion, we reached a bipartisan consensus that NCLB should ensure that all students can learn, and schools should be held accountable for the academic progress of all children. A student with disabilities should not be discounted simply because he or she does not learn at the same rate or in the same manner as other students.

Among the greatest benefits of NCLB are increased expectations—for the first time in history, we are now holding school districts accountable for the annual progress of all their students, including students with disabilities. Disability does not mean inability. Through NCLB, we are confronting the misperception that students with disabilities can not learn.

While this is truly a victory for students with disabilities, it is also a challenge for states and schools. We recognize there are significant pressures surrounding the inclusion of students with disabilities in state accountability systems. To rise to meet this challenge, we must ensure states, districts, schools, and the federal gov-

ernment are working together to provide students with disabilities increased opportunities for academic achievement.

I'm pleased by the efforts the U.S. Department of Education has taken in past months to provide states and school districts with needed flexibility to appropriately include all students with disabilities in state accountability systems. The new regulation allows one percent of all students—roughly ten percent of students nationwide in special education—to take an alternate assessment aligned to alternate standards. This is an important step in ensuring states and local districts have the necessary flexibility to respond to a child's individualized education program (IEP) while still meeting the requirements of NCLB.

In addition, I'm also encouraged by Secretary Paige's recent letter to state officials outlining the procedure for states and local school to apply for additional flexibility under this regulation. I'm optimistic that the Department's efforts will ensure students with disabilities are appropriately included in state-developed assessment systems.

Finally, I think it is important to point out that a child's individualized education program dictates how a child is assessed—not whether a child is assessed. Since 1997, IDEA has required that students with disabilities be included in the general education system and the assessment system, as appropriate for the individual child. NCLB works in unison with the requirements of IDEA, by ensuring students with disabilities are included in state accountability systems.

We remain committed to the importance of including students with disabilities in the accountability and assessment systems of NCLB, while continuing to ensure that the system works fairly for all involved. Your testimony is vital to that task, and we look forward to hearing from each of you today.

With that, I yield to my colleague from California, Mr. Miller.

STATEMENT OF HON. GEORGE MILLER, RANKING MEMBER, COMMITTEE ON EDUCATION AND THE WORKFORCE

Mr. MILLER. Thank you, Mr. Chairman. I'm looking forward to today's hearing because it gets at the heart of what No Child Left Behind is about—making sure that children have a real opportunity to succeed to their full potential. Our witnesses have great expertise in working with children with disabilities, and I'm eager to hear from them about how the law is working for these children so far.

No Child Left Behind tried to address a number of problems that plague children with disabilities over the years, problems like dropout rate that was twice that for children without disabilities, a low enrollment rate of students with disabilities in higher education, and the poor reading levels of children with disabilities.

I have two basic questions about the impact of No Child Left Behind for our witnesses today. What is the impact of high expectations for students with disabilities on these students so far? And how are schools and teachers changing how they identify and teach children with disabilities? I'm particularly interested in how No Child Left Behind is affecting the longstanding problem of misidentification of children for special education.

It is of great concern that children who may have different learning styles or simply need additional attention are labeled, or mislabeled, and may spend many years or even their whole lives achieving below their full potential. This problem is particularly severe for students of color who all too often are inappropriately identified as special education and placed in segregated settings rather than mainstream. The Harvard Civil Rights Project found that black students are more than twice as likely as white students to be labeled with an emotional or behavioral disorder in 29 states

and twice as likely to be labeled mentally retarded in 39 states. This is not a problem of our children; it's a problem for our system.

I am also interested in your feedback on the regulations that the Department of Education issued last December. What is the impact of the regulations that allow school districts to count alternative assessment scores of 1 percent of the students with the most severe cognitive disabilities toward AYP?

Experts have pushed us for years on the importance of setting high expectations for children with disabilities, and that is exactly what No Child Left Behind did. It sent a message to our nation that every child counts. As the New York Times editorial reiterated the importance of this yesterday, stating that although the program needs more funds and better administration, No Child Left Behind is tackling one of the nation's most critical problems—the substandard educational opportunities offered to poor and minority children, and I would add in many instances to disabled children. But the Times also mentioned that some in Congress are eager to jump ship on No Child Left Behind. I believe that that would be a huge mistake for poor and minority children, and I think it would be a huge mistake for the best interests of the disabled community.

Now is not the time to turn our backs on children with disabilities. No Child Left Behind makes the achievement of these children an essential component of the success of our schools. We can and we must do everything we can to ensure that no child with disabilities is ever again left behind.

Thank you, Mr. Chairman.

Chairman BOEHNER. Thank you, Mr. Miller. Let me introduce our witnesses. Our first witness today will be Ms. Ricki Sabia. Ms. Sabia is the mother of David and Stephen Sabia and knows firsthand the issues involved with raising a child with a disability. Additionally, she is the Associate Director of Public Policy for the National Down Syndrome Society, and prior to her current position, she served as the intake coordinator for the Maryland Coalition for Inclusive Education.

Ms. Sabia is also the co-chair for the Montgomery County Public Schools Continuous Improvement Team, whose mission is to assist in improving the quality of instruction in education of students with disabilities.

Welcome.

The next witness will be Dr. Jane Rhyne. And Dr. Rhyne serves as the Assistant Superintendent for Programs for Exceptional Children for the Charlotte-Mecklenburg School system. And prior to her current position, she served in this district in various capacities as assistant principal, principal, and the Coordinating Director for Programs for Exceptional Children.

Dr. Rhyne has also been an adjunct professor at Queens College and Appalachian State University.

She will be followed by Dr. Pia Durkin. Dr. Durkin is currently the superintendent of the Narragansett School System. Previously she served as the Assistant Superintendent for Unified Student Services at Boston Public Schools. Additionally, Dr. Durkin has worked as a special ed director at Boston Public Schools and Providence Public Schools. She is a member of various organizations, in-

cluding the American Association of School Administrators and Urban Special Education Collaborative.

And our last witness will be Ms. Martha Thurlow. Dr. Thurlow is the Director of the National Center on Educational Outcomes at the University of Minnesota, where she evaluates and addresses the implications of U.S. policy for students with disabilities.

For the past 25 years, she has conducted research on special ed on a variety of topics, including assessment and decisionmaking, learning disabilities and early childhood education.

Dr. Thurlow is the author of numerous articles, book chapters, and books, and is the co-editor of Exceptional Children, a research journal by the Council for Exceptional Children.

We're going to hear from all four of our witnesses, and Members will then ask questions. And with that, Ms. Sabia, you may begin.

STATEMENT OF RICKI SABIA, ASSOCIATE DIRECTOR OF PUBLIC POLICY, NATIONAL DOWN SYNDROME SOCIETY AND CO-CHAIR, SPECIAL EDUCATION CONTINUOUS IMPROVEMENT TEAM, MONTGOMERY COUNTY, MARYLAND

Ms. SABIA. Thank you. Good morning, Chairman Boehner, Congressman Miller, and Members of the Committee. As you said, I am here wearing three hats, first and foremost as the mother of David and Stephen Sabia. I am also here as Associate Director of Public Policy for the National Down Syndrome Society, and as the Co-Chair of the Special Education Continuous Improvement Team in Montgomery County.

My son, Stephen, the handsome young man sitting behind us over there with my husband, is a fifth grade student at Cloverly Elementary School in Silver Spring, Maryland. He also happens to have Down Syndrome. After some initial battles and with persistent advocacy, we have been able to keep Stephen fully included in the regular education classes since kindergarten. He has always taken the regular assessments with accommodations and has surprised everyone by doing quite well.

The gift that NCLB has given students with disabilities is the expectation that they can all learn and achieve. IDEA is also very important because it gives individual parents the right to advocate on behalf of their child through the IEP and due process provisions.

Fortunately, my husband and I were in the position to successfully advocate for access to the general education curriculum, highly qualified teachers and high expectations prior to NCLB. But what about the children whose parents weren't in a similar position? Now NCLB mandates all these things for every child. Students with disabilities will finally be able to live up to their full potential when IDEA and the accountability provisions of NCLB are fully implemented and working in concert.

This is what we all want for our children: The tools to maximize their potential and the opportunities that come with that achievement.

Next year Stephen transitions to middle school. Based on the past experiences of others, we expected to have resistance to keeping him fully included in regular classes. Much to our surprise, attitudes really had changed considerably since NCLB.

In my job as Associate Director of Public Policy for the National Down Syndrome Society, I have been helping parents and others to distinguish between the myths and facts related to NCLB. The two most prevalent myths are that NCLB requires a one-size-fits-all assessment and that students with disabilities cannot be expected to demonstrate proficiency on the assessment.

In response to the "one-size-fits-all" myth, I want to point out that there are many different assessment options available under NCLB. There are the regular grade level assessments taken with or without a variety of accommodations. There are assessments on grade level content that can be delivered in many formats. In addition, increased flexibility has been provided by the regulations for students with the most significant cognitive disabilities which permit alternate assessments on one or more alternate achievement standards.

The development of universally designed assessments will further expand the range of students whose achievements can be accurately measured on any given assessment.

A big obstacle in the implementation of NCLB is that many states and districts are focusing more resources on their efforts to weaken the accountability in NCLB than they are on promoting the development of a range of appropriate assessments that are allowed under NCLB. If the law seems one-size-fits-all, it's not a problem with NCLB; it's the failure to design and develop appropriate assessments. The variety of possible assessments is the reason why it is also a myth to say that students with disabilities cannot be expected to demonstrate proficiency under NCLB. Many students with disabilities are on a diploma track and should be expected to be proficient at grade level. This is true for students without cognitive disabilities, but it is also true for students with mild cognitive disabilities. As we said already, the students with more significant cognitive disabilities can demonstrate proficiency on alternate standards.

When I became co-chair of the Special Ed Continuous Improvement Team in Montgomery County in 1999, we found that most of the data was not disaggreated for students with disabilities. It was a struggle to collect any data at all on some of our quality indicators. Since NCLB and its mandate for data disaggregation, the work of our Committee has been greatly facilitated.

Clearly, there will be many struggles as school systems grapple with the requirements of NCLB, and it is important that we ensure adequate funding. Curriculum, instructional materials and assessments will need to be universally designed for use by the broadest range of students. Access to the general ed curriculum will need to be improved. Data systems will need redesigning, and to allow for disaggregation as well as additional data collection for example on post-secondary outcomes. As a result of struggling with these growing pains, we will have a more effective, efficient and equitable educational system. I think it's worth the struggle.

In closing, I urge you to preserve the accountability for students with disabilities in NCLB and to focus your efforts on the issues related to improved implementation.

Thank you for the opportunity to speak here today.

[The prepared statement of Ms. Sabia follows:]

Statement of Ricki Sabia, Parent and Associate Director of Public Policy, National Down Syndrome Society

My name is Ricki Sabia and I am wearing three hats today. First and foremost I am here as the mother of David and Stephen Sabia. I am also here as the Associate Director of Public Policy for the National Down Syndrome Society (NDSS) and as the co-chair of the Special Education Continuous Improvement Team in Montgomery County, Maryland.

My son Stephen Sabia is a fifth grade student at Cloverly ES in Silver Spring Maryland. He also has Down syndrome. After some initial battles and with persistent advocacy, we have been able to keep Stephen fully included in his neighborhood school since kindergarten. He has always taken the regular assessments with accommodations and has surprised everyone by doing quite well.

The gift that NCLB has given students with disabilities is the expectation that they can all learn and achieve. IDEA is also very important because it gives individual parents the right to advocate on behalf of their child through the IEP and due process provisions. Fortunately, we were in the position to successfully advocate for access to the general education curriculum, highly qualified teachers and high expectations before NCLB, but what about the children whose parents were not in a similar position.

Now, NCLB mandates all these things for every child. Students with disabilities will finally be able to live up to their potential when IDEA and the accountability provisions of NCLB are fully implemented and working in concert. This is what we all want for our children, the tools to maximize their potential and the opportunities that come with that achievement.

Next year Stephen transitions to middle school. Based on the past experiences of others, we expected to face resistance to keeping him fully included in regular education classes. Much to our surprise, attitudes really had changed considerably since NCLB.

In my job as Associate Director of Public Policy for the National Down Syndrome Society, I have been helping parents, and others, to distinguish between the myths and facts related to NCLB. I have attached a copy of the NDSS press release and the Myths and Facts document to this testimony. The two most prevalent myths are that NCLB requires a "one size fits all assessment" and that students with disabilities can not be expected to demonstrate proficiency on the assessments.

In response to the "one size fits all" myth, I want to point out that there are many different assessment options available under NCLB. There are the regular grade level assessments taken with or without a variety of accommodations, there are assessments on grade level content that can be given in alternate formats. In addition, increased flexibility has been provided by the regulations for students with the most significant cognitive disabilities, which permit alternate assessments on one or more alternate achievement standards. The development of universally designed assessments will further expand the range of students whose achievement can be accurately measured on any given assessment.

A big obstacle right now in the implementation of NCLB, is that many states and districts are focusing more resources on efforts to weaken the accountability in NCLB than they are on promoting the development of a range of appropriate assessment options. If NCLB seems "one size fits all" it is not a problem with the law, it is a failure to design and develop appropriate assessments.

The variety of possible assessments is the reason why it is also a myth to say that students with disabilities can not be expected to demonstrate proficiency under NCLB. The fact that a child has a disability does not mean that he or she can not demonstrate grade level proficiency with the appropriate accommodations or with an alternate means of administering the assessment. Many students with disabilities are on a diploma track and should be expected to be proficient at grade level. This is true for students without cognitive disabilities, as well as for students with mild cognitive disabilities. Students with significant cognitive disabilities are permitted to demonstrate proficiency using an alternate achievement standard. Without high expectations we condemn these students to the self-fulfilling prophecy of low achievement.

When I became co-chair of the Continuous Improvement Team in 1999, we found that most of the data was not disaggregated for students with disabilities. It was a struggle to collect any data at all on some of our quality indicators. Since NCLB and its mandate for data disaggregation, the work of our committee has been greatly facilitated. Now we can acquire the data we need to monitor for continuous improvement.

Clearly there will be many struggles as school systems grapple with the requirements of NCLB and it will be important to ensure that there is adequate funding.

Curriculum, instructional materials and assessments will have to be universally designed for use by the broadest possible range of students. Access to the general education curriculum will need to be improved. Data systems will have to be redesigned for disaggregation of data and for the collection of additional data like post-secondary outcomes. As a result of struggling with these growing pains, we will have a more effective, efficient and equitable education system. I think it is worth the struggle.

In closing, I urge you to preserve the accountability for students with disabilities in NCLB and to focus your efforts on the issues related to improved implementation.

PARENTS URGE CONGRESS NOT TO LEAVE BEHIND STUDENTS WITH DISABILITIES

ACCOUNTABILITY WILL IMPROVE EDUCATIONAL OUTCOMES FOR THESE STUDENTS

February 25, 2004

New York, NY—The National Down Syndrome Society (NDSS) continues to support accountability for students with disabilities under NCLB. It is critical that the accountability in both NCLB and the Individuals with Disabilities Education Act (IDEA) be preserved in order to improve educational outcomes for students with disabilities.

Students with disabilities have a right to the "systemic" accountability required by NCLB. IDEA focuses on the individual and NCLB focuses on group accountability. Together these laws provide the full range of accountability that students with disabilities need. Families can use the Individualized Education Program (IEP) to improve their child's education. This is why NDSS has expressed significant concern about provisions we believe would weaken the IEP, due process and discipline provisions in the IDEA reauthorization bills. However IDEA does not provide a mechanism for accountability at the state, district and school level for students with disabilities as a subgroup. NCLB requires this "systemic" accountability. It is important to make changes child by child through the IEP process. However, there are many reforms that need to happen for all students with disabilities and this can be achieved more efficiently through the systemic accountability in NCLB.

NCLB is not "one size fits all." Opponents of NCLB suggest that it requires proficiency on a "one size fits all" assessment. "To the contrary, there are many different assessment options available under NCLB," responds Ricki Sabia, Associate Director of Public Policy NDSS. "In fact, additional flexibility has been provided by the regulations for students with the most significant cognitive disabilities, which were released on December 9, 2003." The development of universally designed assessments is critical.

Students with disabilities can demonstrate proficiency under NCLB. The fact that a child has a disability does not mean that he or she can not demonstrate grade level proficiency with the appropriate accommodations or with an alternate means of administering the assessment. Many students with disabilities are on a diploma track and should be expected to be proficient at grade level. This is true for students without cognitive disabilities and for students whose cognitive disabilities are mild. Students with significant cognitive disabilities are permitted to demonstrate proficiency on assessments based on an alternate achievement standard.

Both NCLB and IDEA must remain strong. NDSS asserts that the best way to improve Adequate Yearly Progress (AYP) for students with disabilities is to fully implement IDEA. In addition, the "best practices" identified b y NCLB's assessments will improve the quality of the services delivered through the IEP. NDSS urges Congress to preserve accountability in both NCLB and IDEA. Children with disabilities and their families are counting on you.

NCLB - MYTHS AND FACTS

- Myth: NCLB punishes "failing schools."
  Facts: Schools that do not make AYP for two consecutive years are identified as "needing improvement" and are given help, not punishment. NCLB never labels schools as "failing." A school may have a great reputation because most of its students are achieving at a high level. However, if one subgroup at the school does not make AYP it is fair to say that even a great school "needs improvement." These schools do not lose federal funding; in fact they are eligible for additional support. If a school continuously does not meet AYP there eventually is a possibility that the state will take over the operation of the school, but that is only one of a number of possible alternatives.

- Myth: Students with disabilities can't be expected to attain proficiency.
  Facts: This myth represents the low expectations that NCLB is trying to extinguish. Most students with disabilities are on a diploma track and with appropriate accommodations and instruction should be able to attain proficiency on grade level assessments. In addition, students with the most significant cognitive disabilities can take alternate assessments based on alternate achievement standards and should be able to attain proficiency as measured in this manner. In order to help more students reach proficiency there will need to be greater access to the general education curriculum in the least restrictive environment. The teachers must be qualified in the subject areas they are expected to teach. It will also be important to develop universally designed assessments that are not invalidated by accommodations and are appropriate for widest possible range of students.I21
- Myth: NCLB requires proficiency on a "one size fits all assessment."
  Facts: Under NCLB, students with disabilities can take the regular assessments, with or without accommodations, or they can take an alternate assessment based on grade level achievement standards or alternate achievement standards. States have the flexibility to have a number of different alternate assessments and a number of different alternate achievement standards. This is not a "one size fits all" situation.

- Myth: High performing schools are not making AYP because of the scores of a few students with disabilities.
  Facts: It takes more than the scores of a few students with disabilities to cause a school not to make AYP. In fact, the accommodations on the grade-level assessments and the availability of for students with the most significant cognitive disabilities level the playing field so many of these students receive proficient scores. Even if students with disabilities are doing poorly the "n" factor" and the safe rule will often prevent these scores from affecting AYP, at least at the school level. If a large subgroup of students with disabilities does not meet AYP it may mean the school will be identified as needing improvement, even if all the other students are proficient. That is the point of NO Child Left Behind; a school has to help all its students get an education.

- Myth: All students with cognitive disabilities should take an alternate assessment based on alternate achievement standards.
  Facts: The regulation permitting proficient and advanced scores from these alternate assessments to be used to calculate AYP refers to students with the most significant cognitive disabilities. This clearly doesn't mean all students with cognitive disabilities. With the appropriate accommodations, many students with cognitive disabilities should be able to take a universally designed grade-level assessment or a grade-level alternate assessment. Since the 1% rule is generous enough to allow most states to place all students with cognitive disabilities in an assessment based on an alternate standard, it is left up to parents to ensure that the IEP team places their child in the appropriate assessment.

- Myth: NCLB causes excessive federal intrusion into state education policy.
  Facts: There is a tremendous amount of state flexibility built into NCLB. Except for the general requirement of a state accountability plan that measures AYP and the requirement for highly qualified teachers, most of NCLB applies only to schools receiving Title I funds. Otherwise, the provisions in state plans define accountability requirements. The diversity among the approved state plans is evidence of state flexibility.
  At http://www.ed.gov/news/pressreleases/2004/01/01142004.html there is a ten page document discussing the many options each state can choose under NCLB.

Chairman BOEHNER. I'm sure someone explained all the lights to you, but that's just a general guide. We're pretty nice here, so.

[Laughter.]

Chairman BOEHNER. As long as you don't get too carried away. If you do, I'll let you know.

Dr. Rhyne?

STATEMENT OF JANE RHYNE, ASSISTANT SUPERINTENDENT, PROGRAMS FOR EXCEPTIONAL CHILDREN, CHARLOTTE-MECKLENBURG PUBLIC SCHOOLS, CHARLOTTE, NORTH CAROLINA

Dr. RHYNE. Good morning, Mr. Chairman, Congressman Miller, and Members of the Committee. I am Jane Rhyne, Assistant Superintendent for Exceptional Children in the Charlotte-Mecklenburg Schools.

I am pleased to testify today on the inclusion of children with disabilities in the NCLB assessment and accountability system on behalf of our Superintendent Pughsley and the Charlotte-Mecklenburg Board of Education and the Council of Great City Schools.

In our school district, I am responsible for over 13,000 students with disabilities, and I provide leadership for them in program planning and implementation, curriculum and instruction, professional development for staff, and compliance with IDEA.

It seemed almost natural for the Charlotte-Mecklenburg Schools to be a supporter of No Child Left Behind. From top to bottom, our school district prides itself on delivering a quality education for all of our students and measuring our achievement results.

Our district enrolls 114,000 students grades K through 12. Forty-one percent of them are low income; 43 percent African American; 9 percent Hispanic; 4 percent Asian; 41 percent Caucasian; 8 percent limited English proficient; and 12 percent children with disabilities.

Over the last decade, Charlotte-Mecklenburg, in collaboration with the state of North Carolina, implemented many of the cornerstone concepts embodied in NCLB, including disaggregated performance data, data-based decisionmaking, quality professional development and support, interventions in low performing schools, and accountability for subgroup as well as overall achievement. We were providing research-based instruction before the term was defined in Federal legislation.

To validate and cross-check our state-tested academic progress, Charlotte-Mecklenburg volunteered, along with eight other urban school districts, to participate in the NAEP Trial Urban District Assessment, providing school district level NAEP results using a representative sample of students from each volunteering district. The Charlotte-Mecklenburg Schools students outperformed every other urban counterpart and also outperformed the national NAEP average in reading and math at the fourth and eighth grade levels.

Though we had an early start on NCLB-type approaches, the Act provided us with a new set of challenges and truly, truly helped us refine and deepen our academic focus for all of our students. For students with disabilities, Charlotte-Mecklenburg has a multiyear strategic plan for implementing inclusive practices. I have seen firsthand in Charlotte-Mecklenburg and on technical assistance and site visits to other school districts that instructional attention to students with disabilities has been clearly heightened. Standards-based curriculum is being provided more often to a broader range of special education students. Teachers and principals are finding that many, many more children than they may have anticipated can make significant progress in the general curriculum

when given the chance and provided with solid instructional approaches.

As a result of NCLB, expectations have increased, and services are planned and delivered with greater care and inclusiveness, even in a progressive system like Charlotte-Mecklenburg. Principals and teachers are far more focused on the academic progress of their exceptional students and the gains needed to make or maintain adequate yearly progress.

Charlotte-Mecklenburg's data system supports our principals and teachers with up-to-date information and quarterly assessment of academic progress. Diagnostic information for each individual student helps the teacher select appropriate structured interventions based on identified student needs.

This type of systematic attention to disadvantaged and disabled students is precisely what No Child Left Behind is helping to articulate. Special educators and parents welcome this instructional attention to students with disabilities. And I have seen the same reaction among teachers of English language learners and other disadvantaged children.

One of the most recent revisions in our local accountability program has been to refine our bonus pay system for principals and all building staff to include not only academic performance of all children, but also NCLB Adequate Yearly Progress. With data provided to them, principals can gauge the progress of their schools, subgroups, classrooms and individual students to ensure focus on the achievement of all of the subgroups of students.

Operationally, the recent Department of Education regulation on assessment of significantly cognitively disabled children will be helpful. However, the state of alternate assessment, including off-level assessment, continues to evolve. Because of the focused attention on students with disabilities resulting from NCLB, our schools, with district staff support, have reviewed assessments of all of our exceptional ed students. The result through IEP teams has been to appropriately reassign many students to their inclusion in on-grade level state-required assessments. Yet approximately 1.5 percent of our special ed students have disabilities that prevent them from doing the same level of academic work as their age mates. These students should be assessed with some form of alternate academic assessment aligned with the North Carolina academic standards. As the district, state and nation continue to work through the challenges of NCLB, we are confident that the special needs of these students will also be met.

Inclusion in accountability systems, however, is undermined in states proposing and being approved for minimum subgroup sizes for students with disabilities that are substantially larger than for low-income students, African-American students and others. It invites the manipulation of the NCLB accountability system and operationally allows some schools and some school districts to escape portions of subgroup accountability. As an urban educator and as a special educator, equity for our students is extremely important.

For those of us in Charlotte-Mecklenburg and for our Great City School colleagues, No Child Left Behind is focused on the right children—those in greatest need of instructional attention and ad-

ditional resources. For students with disabilities, the attention and accountability for results may be the most significant addition to Federal law in the last decade, and an appropriate complement to Section 504, IDEA and ADA.

Thank you.

[The statement of Dr. Rhyne follows:]

Statement of Jane Rhyne, Ph.D., Assistant Superintendent, Programs for Exceptional Children, Charlotte–Mecklenburg Public Schools

Good Morning Mr. Chairman, Congressman Miller and Members of the Committee.

I am Jane Rhyne, Assistant Superintendent for Exceptional Children in the Charlotte–Mecklenburg Schools. I am pleased to testify today on the inclusion of children with disabilities in the NCLB assessment and accountability system on behalf of Superintendent Pughsley and the Charlotte–Mecklenburg Board of Education and the Council of the Great City Schools. In our school district, I am responsible for over 13,000 students with disabilities and provide leadership for them in program planning and implementation, curriculum and instruction, professional development for school staff, and compliance with IDEA.

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As a result of NCLB, expectations have increased, and services are planned and delivered with greater care and inclusiveness, even in a progressive system like Charlotte–Mecklenburg. Principals and teachers are far more focused on the academic progress of their exceptional students and the gains needed to make or maintain adequate yearly progress. Charlotte–Mecklenburg's data system supports our principals and teachers with up-to-date information and quarterly assessments of academic progress. Diagnostic information for each individual student helps the teacher select appropriate structured interventions based on identified student needs. This type of systematic attention to disadvantaged and disabled students is precisely what No Child Left Behind is helping to articulate. Special educators and parents welcome this instructional attention to students with disabilities. And, I have seen much the same reaction among teachers of English language learners and other disadvantaged children.

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For those of us in Charlotte–Mecklenburg and for our Great City School colleagues, No Child Left Behind is focused on the right children—those in greatest need of instructional attention and additional resources. For students with disabilities, this attention and accountability for results may be the most significant addition to federal law in the last decade, and an appropriate complement to Sec. 504, IDEA, and the ADA.

Chairman BOEHNER. Thank you, Dr. Rhyne.

Dr. Durkin?

STATEMENT OF PIA DURKIN, SUPERINTENDENT, THE NARRAGANSETT PUBLIC SCHOOLS, NARRAGANSETT, RHODE ISLAND

Dr. DURKIN. Good morning, Mr. Chairman, Congressman Miller, and Members of the Committee. Thank you for the privilege of offering testimony today on the critical work with students with disabilities and the impact of No Child Left Behind.

I am Pia Durkin, Superintendent of Narragansett Public Schools, a small, suburban, upper income community on the coast of Rhode Island. I bring to the superintendency, however, over 25 years of special education experience in both leadership and classroom positions in New York City, in Providence, Rhode Island and in Boston, Massachusetts most recently.

I'd like to frame my remarks under the context of simply saying stay the course with including students with disabilities in all the accountability standards.

As the pressure toward accountability for progress mounts, the reaction of some is to question those students who are not making fast enough gains, most notably, students with disabilities. Why include them in accountability standards? I offer four reasons.

First, in 1997, this country took both an equity and educational leap forward for the rights of students with disabilities by mandating not only was it the law that students enter our classroom door with their peers, but that access to the general education curriculum was critical for success of our students. Access so students with disabilities would have the same opportunities as their nondisabled peers.

The mandate was issued that students with disabilities would be counted, as all other students, in state and local assessment systems. If access infers being counted, then not being counted infers not being cared for. From the historical perspective, I urge you that we must continue to ensure that all students are counted and cared for.

Second, being counted and having access demands and ensures a share of the resources for schools to succeed. Without accountability, quality curricula, state-of-the-art classroom materials and technology and solid effective professional development do not become the domain of the special education teacher, who then becomes further disengaged from effective practice. The cycle continues with administrators demanding less rigor in classrooms serving special education students, and students falling further behind because of lackluster, low expectations.

Third, given that nearly 80 percent of the six million students served through IDEA have learning issues, and those predominately are related to literacy—reading and writing—we must have a laser-like focus on increasing proficiency of literate learners. The significance of so many of our students with poor reading skills has been documented well in the literature. This research is not unrelated to the overidentification issues facing our school systems—large and small, urban and rural, rich and poor.

For years, Boston had the highest proportion of special education students served in this country—23 percent of its population. The school system I now lead, Narragansett, on the other end of the economic spectrum, has nearly 25 percent of students identified. Two school districts, one large, one small, one largely serving the poor, the other serving families of considerable means, both inadequate in providing effective, systemic literacy instruction, and both using special education as the escape valve for students with different needs. Both developed separate systems of accountability. Now Boston has reduced its high proportion to a respectable 16 percent, due in large part to broad-based, unified literacy instructional methods. And Narragansett has begun its first steps toward that same end.

Without accountability, data has shown that referrals to special education increase significantly the year before the test is given. The sorting process begins by sifting through those who have learned and those who have not, moving the issue away from its source and its place of intervention.

Without accountability, the urgency to create conditions for students to make progress is merely reduced to a simmer level. When schools and the adults working in them are held accountable, the teaching and learning conversation becomes more of where is the student reading? Where was she reading 3 months ago? How much progress has she made? Rather than a discussion of labels, excuses, or reasons focused on the student as to why he or she is not making progress.

These conversations must continue, and No Child Left Behind provides the context for those discussions to continue.

As a superintendent, I grapple with my colleagues across the country with the pressures of meeting the NCLB mandates—targeting resources to meet the needs of those who have already been

left behind; challenging the culture of accepted low performance for some, and collecting data not only on those who have met the bar, but those who are making progress toward that bar.

Booker T. Washington once said, "It is not where you have reached, but rather, how far you have come." In 1975, with the passage of IDEA, this country allowed millions of children with disabilities to enter the doors of public schools. The continued impact of No Child Left Behind to count, consider, review, and demand progress of our students with disabilities must not waiver, so that the students who enter our doors can leave them with the assurances they need to succeed as well as, if not better than, their non-disabled peers.

Thank you for this opportunity.

[The statement of Dr. Durkin follows:]

Statement of Pia Durkin, Superintendent, Narragansett Public Schools

Good morning Mr. Chairman, Congressman Miller, and members of the Committee. Thank you for the privilege of offering testimony today on the critical work with students with disabilities and the impact of the No Child Left Behind Act on that work. I am Pia Durkin, Superintendent of the Narragansett Public Schools, a small suburban upper income community on the coast of Rhode Island. I bring to the Superintendency over 25 years of special education experience—in both leadership and classroom positions—in New York City, Providence, and Boston, most recently serving as an Assistant Superintendent there for five years.

I will would like to frame my remarks under the context of "staying the course" with including students with disabilities in all accountability standards.

Students with disabilities must remain part of—and succeed with—the standards-based reform movement. Standards have brought schools clear and focused high expectations–the "what" our students need to learn, the "how" of challenging and rigorous curriculum, and the "where" of ensuring that all students make sustained progress toward reaching those standards.

As the pressure toward accountability for progress mounts, the reaction of some is to question those students who are not making fast enough gains—students with disabilities being one major group. Why include them in accountability standards? I offer four reasons.

First, in 1997, this country took both an equity and educational leap forward for the rights of students with disabilities by mandating that not only was it the law that students enter the classroom door with their peers but that access to the general education curriculum was critical for success of these students—access so that students with disabilities would have the same opportunities as their non-disabled peers. The mandate was issued that students with disabilities would be "counted," as all other students, in state and local accountability systems. If access infers "being counted," then "not being counted" infers not being cared for. From the historical perspective, we must continue to ensure that all students are counted and cared for.

Second, being "counted" and "having access" demands and ensures a share of the resources for schools to succeed. Without accountability, quality curricula, state of the art classroom materials and technology, and solid effective professional development do not become the domain of the special education teacher who then becomes further disengaged from effective practice. The cycle continues with administrators demanding less rigor in classrooms serving special education students and students falling further behind because of lackluster low expectations.

Third, given that nearly 80% of the six million students served through IDEA have learning issues—and those predominantly are related to literacy—reading and writing—we must have a laser-like focus on increasing proficiency of literate learners. The significance of so many of our students with poor reading skills has been documented well in the literature. This research is not unrelated to the overidentification issues facing our school systems—large and small, urban and rural, rich and poor. For years, Boston had the highest proportion of special education students served in the country—23% of its population. The school system I now lead, Narragansett, on the other end of the economic spectrum has nearly 25% so identified. Two school districts—one large, one small, one largely serving the poor, the other serving families of considerable means—both inadequate in providing effective systemic literacy instruction and both using special education as the "escape valve" for

students with different needs. Both developed separate systems of serving students because of different accountability standards. Now Boston has reduced it high proportion to a respectable 16% due, in large part, to broad-based unified literacy efforts. And Narragansett has begun the first steps toward that same end.

Without accountability, data has shown that referrals to special education increase significantly the year before the test is given—the sorting process begins by sifting through those who have learned and those who have not—moving the issue away from its source and its place of intervention.

Without accountability, the urgency to create conditions for students to make progress is reduced to merely a "simmer level." When schools and the adults working in them are held accountable, the teaching and learning conversation becomes "Where is she reading at? Where was she reading three months ago? How much progress has she made?" rather than a discussion of labels/reasons/excuses focused on the student as to why she is not making progress. These conversations must continue and No Child Left Behind provides the context for these discussions.

As a Superintendent, I grapple, as my colleagues across the country, with the pressures of meeting the NCLB mandates—targeting resources to meet the needs of those who have already been left behind—challenging the culture of "accepted" low performance for some—and collecting data on, not only on those who have met the bar, but those who are making progress toward the bar.

Booker T. Washington once said "It is not where you have reached, but rather how far you have come." In 1975 with the passage of IDEA, this country allowed millions of children with disabilities to enter the doors of public schools. The continued impact of NCLB to count, consider, review, and demand progress of our students with disabilities must not waver so that the students who enter our doors can leave them with the assurances they need to succeed as well, if not better, than their non-disabled peers.

Thank you for this opportunity.

Chairman BOEHNER. Thank you, Dr. Durkin.

Dr. Thurlow?

STATEMENT OF MARTHA L. THURLOW, DIRECTOR, NATIONAL CENTER ON EDUCATIONAL OUTCOMES, UNIVERSITY OF MINNESOTA

Dr. THURLOW. Mr. Chairman, Mr. Miller, and other Members of the Committee, thank you for inviting me to speak today, as well.

At the National Center on Educational Outcomes, a center that provides assistance to states on the inclusion of students with disabilities in state and district assessments, my staff and I are closely involved with states as they implement their No Child Left Behind plans.

Because of our many years in working on the inclusion of students with disabilities in assessments, I think that we have been able to see the forest as well as the trees, a perspective that not everyone has these days. It is because of this view and the evidence we see about the effects of including students with disabilities that I so strongly support their inclusion in the assessment and accountability provisions of the No Child Left Behind Act.

I want to make four points today that confirm the importance of including students with disabilities in assessment and accountability. They show I think that it is not unreasonable to hold schools accountable for these students; in fact, that it is important to do so.

First, we are already beginning to see the benefits of the inclusion of students with disabilities. Stopping now would be terrible. More students with disabilities are participating in assessments than ever before, and the increased participation is translating into

improved performance in states where they have implemented reforms.

I have given the Committee graphs showing data from New York and Massachusetts. The New York data show that more students with disabilities took and passed the rigorous Regent's Exam in recent years than have ever taken them before, indicating access to the curriculum as well as to the standards—or standards and to the assessments.

The Massachusetts data show the steady increase in passing rates of students with disabilities and the fact that they were not doing very well when the exams were first administered. That's where we are in a lot of the states at the beginning. Over time, with training for the educators, support for the students, the stuff that NCLB is about, the scores improved.

Kansas has posted data that show increasing percentages of students with disabilities who are proficient. Twenty-six percent in 2000; 50 percent in 2003 in reading. As will other states when they emphasize and implement reforms. These data show what can be.

My second point is that being in special education, having a disability does not mean that students cannot meet standards. It should be obvious I think from the above examples and from what we've heard today. But I still so often hear educators and others say something like how can you expect special education students to perform well on these tests? If they could do that, they wouldn't be in special education. Statements like that are outrageous to me. Special education is supposed to provide the services and supports that enable students to be successful so that students can achieve proficiency. Special education eligibility should not be an excuse to expect little from a child or to provide little for the child. Low expectations is a pervasive problem. No Child Left Behind is shining a very bright light on low expectations, and that is a very important outcome.

The third point I want to make today is about where the adjustments are in fact needed. Well, I think there are some ways in which assessments can be improved, for example, by making them more accessible through use of universal design principles. The bigger work that needs to be done is in providing students with disabilities greater access to the curriculum, making sure that they have appropriate accommodations and supports that they need.

States that have done this have seen improved results. There are many states and districts on the road to these improved results. Ohio, for example, has a very strong plan for reform and improvement that is bound to produce subgroup gains. I've looked at districts within California. They're exploring their data in ways that are going to help them identify successful programs, programs and practices that meet the needs of their students with disabilities. These approaches are popping up all over the country. The adjustments that are needed are emerging.

My last point is to emphasize the importance of staying the course. Complaints and controversy are a natural reaction to the increased pressure of ratcheting up of accountability. This doesn't mean that it is bad or that there should be a change. It does mean that people are paying attention. It means that students with dis-

abilities are not just the concern of special educators anymore. They are the concern of all educators, and this is good.

Where we are now is a sea change from where we were 10 years ago. Some of this started before NCLB. The Individuals with Disabilities Education Act of 1997 required that students with disabilities participate in state and district assessments and that their results be reported publicly in the same way and with the same frequency as those of other students. While this happened in some states, not until No Child Left Behind did all states really pay attention to the requirements.

NCLB has given us data on students with disabilities that we only had sporadically before. These data can help educators know where to devote resources. NCLB has given the impetus for special educators and general educators to work together in a way that never seemed to rise to the level of importance to make it happen before.

Making students with disabilities one of the subgroups of No Child Left Behind truly has been a very important and positive event in the education history of students with disabilities.

Thank you.

[The statement of Dr. Thurlow follows:]

Statement of Martha L. Thurlow, Ph.D., Director, National Center on Educational Outcomes

Thank you for inviting me to speak today. I am the Director of the National Center on Educational Outcomes, a technical assistance center that provides assistance to states on the inclusion of students with disabilities in state and district assessments, and on important related topics such as standards-based reform, accommodations, alternate assessments, graduation requirements, universally designed assessments and accessible testing. We support our technical assistance with policy research on states" current policies and practices in these and other areas. We also conduct other research to move the field forward in its thinking, in areas such as how to develop universally-designed assessments that are accessible for students with disabilities without changing the content or level of challenge of the test, and how to most appropriately assess students with disabilities who are English language learners.

The focus of our organization results in our close involvement with states as they implement their No Child Left Behind plans. Yet, because of our many years of working on these issues, I think that we can see the forest as well as the trees. It is because of this view, and the evidence we see about the effects of including students with disabilities that I so strongly support the inclusion of students with disabilities in the assessment and accountability provisions of the No Child Left Behind Act.

I want to make four points today. These points confirm the importance of including students with disabilities in assessment and accountability. They show that it is not unreasonable to hold schools accountable for these students.

First, we are already beginning to see the benefits of the inclusion of students with disabilities in assessments and accountability systems. As a result of having actual assessment data for these students, we know that more students with disabilities are participating in assessments now than were tested a mere three to five years ago. We see these data in every state. Participation rates have gone up dramatically. Think of New York's Regents exams, some of the most rigorous exams in the country. The state released data showing that more students with disabilities took and passed those tests in recent years than had ever taken them before—and to take them, students had to first be enrolled in Regents courses. This means that they had to have access to a curriculum that they had not had access to before, and they are achieving success.

Massachusetts also has data showing the passing rates for students with disabilities on its high stakes graduation exam. Many students did not pass when the exams were first administered. People started to pay attention when that happened, including the students. Attention was devoted to what was happening in the classrooms for all students, including students with disabilities. Training was provided

to make sure that all educators including special educators knew WHAT all children were to know and be able to do—the content standards—and how to teach them. Massachusetts's data show where the passing rates for students with disabilities have steadily climbed from one year to the next. Graphs showing the data from both of these states are attached to the end of this testimony (Figure 1 shows New York's Regent's Exam in across four years; Figure 2 shows Massachusetts's graduation test results for the class of 2003).

Kansas, as a result of its emphasis on reform, has reported that the overall percentage of students with disabilities who are proficient in reading has increased from 26% in 2000 to 50% in 2003. The percentage who are proficient in math has increased from 36% in 2000 to 58% in 2003.

These data show what can be. Staff at NCEO talk to state directors nearly every day, and they tell us that they are seeing positive changes. Of course, they also tell us about the challenges. The challenges are not necessarily due to the assessment or the accountability system, however. The assessment system and its results serve as a warning flag. They tell us when we need to do something about our instruction, our resources and supports. Making changes to the assessment or accountability system is not the answer.

My second point is that being in special education—having a disability—does not mean that students cannot meet standards. I know that it is terrible to speak in double negatives, but I so often hear educators say something like: "How can you expect special education students to perform well on these tests? If they could do that, they wouldn't be in special education." Those statements are outrageous to me. Special education eligibility should result in an identified student receiving the services and supports needed so that the student can be successful—so that the student can achieve proficiency. Special education eligibility should NOT be an excuse to expect little from a child, and to provide little for the child. The assessment and accountability provisions of NCLB have helped us recognize this for what it is, a problem of low expectations.

Low expectations is a pervasive problem—one that our colleague Kevin McGrew, who is one of the authors of the Woodcock–Johnson III tests of cognitive ability and achievement, has examined by looking at the academic achievement of students of varying IQs, often used for eligibility for special education services. He has found: "It is not possible to predict which children will be in the upper half of the achievement distribution based on any given level of general intelligence. For most children with cognitive disabilities (those with below average IQ scores), it is NOT possible to predict individual levels of expected achievement with the degree of accuracy that would be required to deny a child the right to high standards/expectations."

One of the bedrock principles of No Child Left Behind is that all students can learn to high standards. I believe that No Child Left Behind is shining a very bright light on low expectations, and that is an important outcome.

The third point that I want to make today is about where adjustments are in fact needed. First we should look at accommodations, supports, and instruction. These are where the issues that are causing low student achievement are most likely to lie, not in the assessment. While there are some ways in which assessments can be improved, for example by making the assessments more accessible through the use of universal design principles, the real work that needs to be done is in providing students with disabilities greater access to the curriculum, making sure that they have the appropriate accommodations and other supports they need. States that have done this have seen the improved results that are the goal of No Child Left Behind, as shown in the data from New York, Massachusetts, and Kansas.

We know how to educate all children, including those with disabilities, if we have the will to do so. The discussion should not be about whether students with disabilities can learn to proficiency—and thus, it should not be about whether they should be included in assessment and accountability measures—it must be about whether we have the will and commitment to make it happen.

Finally, my last point is to emphasize the importance of staying the course. Complaints and controversy are a natural reaction to the increased pressure of the racheting-up of accountability. This does not mean that it is bad, or that there should be a change. It does mean that people are paying attention! It means that students with disabilities are not just the concern of special educators anymore. They are the concern of all educators, and this is good. Everyone needs to take responsibility for the learning of students with disabilities. Recent research has shown that schools where there is shared responsibility and collaboration among staff have students scoring higher on their district assessments.

Where we are now is a sea change from where we were 10 years ago. Some of this started before No Child Left Behind. The Individuals with Disabilities Education Act of 1997 required that students with disabilities participate in state and

district assessments and that their results be reported publicly in the same way and with the same frequency as those of other students. While this happened in some states, not until No Child Left Behind did all states really pay attention to the requirements. The assessment and accountability requirements of No Child Left Behind have given us data on students with disabilities that we only had sporadically before. These data can help educators know where to devote resources. No Child Left Behind has given the impetus for special educators and general educators to work together in a way that in many places never seemed to rise to the level of importance to make it happen before. Making students with disabilities one of the subgroups of No Child Left Behind truly has been a very important and positive event in the education history of children with disabilities.

Figure 1. New York Regents Examination in English (Trends in Number Tested and Number Scoring 55-100)

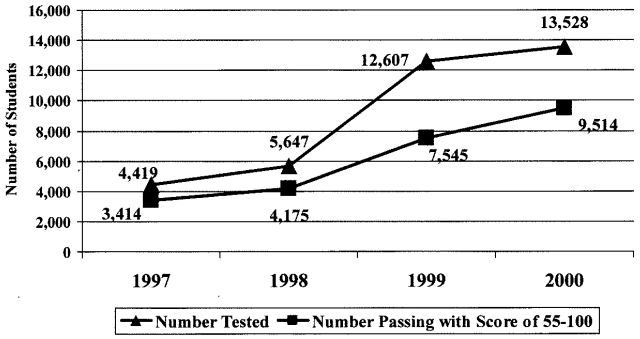
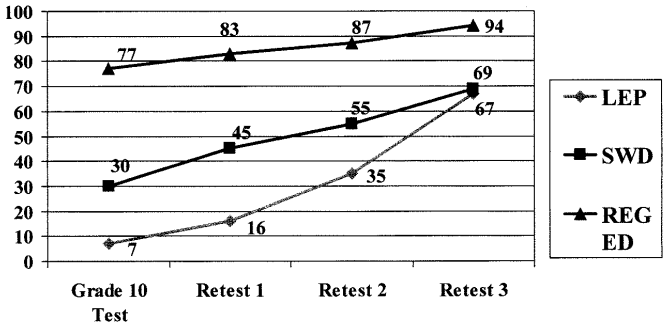


Figure 2. Massachusetts Graduation Test Results Across Years (Percentage of Students Reaching "Competency Determination" for the Class of 2003)



Chairman BOEHNER. We thank all of our witnesses for your testimony and your insight into the effect that No Child Left Behind is having on students with special needs. And I guess I particularly appreciate your strong support of the fact that No Child Left Behind really means no child left behind. I don't know why some in America don't quite understand this, but they will.

Dr. Thurlow, in 1997, when we last reauthorized IDEA, states were required not only to assess children with disabilities and to publish those test scores, but they were also required under the '97 act to develop alternative assessments for students with severe cognitive disabilities. No Child Left Behind comes along 4 years later, and it's been 2 years since then, so now we're talking about 6 years. How many states still don't have alternative assessments for those very special needs children?

Dr. THURLOW. All states have alternate assessments now for their special needs children—those with the most significant cognitive disabilities. The development of those assessments has been quite a challenge for states, and it's been an evolving process for states as they've come to understand who that population is. These are children in some states that they were outside of their vision, literally outside of their vision. And so it has been a dramatic change, a sea change, for people to realize we do mean all students. All students means all students.

So figuring out how do we really assess these students with the most significant cognitive disabilities has been a challenge. All states now do have an alternate assessment for those students, but they are still evolving. Because when they started in 1997, and some were slower to start than others, when they started, perhaps they started falsely and they went back and had to revise. So even now, states are evolving. And as they now have to go from an assessment that they perhaps did in grades 4, 8 and 12, and now are going to need to do that in every grade, they are also rethinking, can we continue to use the procedure that we used in only a few grades to do it?

Chairman BOEHNER. Dr. Durkin, you brought up the troublesome subject of overidentification. And while there are some that are concerned that the 1 percent rule issued by the department doesn't go far enough, if in fact we can begin to address the overidentification issue, that would in effect provide even more flexibility to local districts.

What's happening in the real world with regard to reducing the incidence of overidentification, especially of poor minority children?

Dr. DURKIN. I think your question, Mr. Chairman, is an excellent one, because it points to the type of preventive work we need to do as educators before a referral is made to special education. Referrals to special education should be one of the last steps when we're talking about students with learning disabilities and learning issues.

In some instances, we need to look to what has been the level of instruction. Many states are now working on a response to intervention model—what has been done, and how has that student responded to the instructional supports that have been targeted for that child's needs, particularly in the pre-K through 3 arena? We're seeing in our own school district the more effort we are putting in

those areas, the fewer students that are moving out of third grade where the shift comes from learning to read to reading to learn, that we can be able to see fewer students needing that targeted needs between fourth and then eighth grade.

Right now I believe school systems are grappling with a great deal of work at the ninth grade level. Students who are coming into high school who are poor learners and through that. I think our identification systems must merit questions not only regarding individual testing but how has the environment in that classroom changed. What has been done with that student, so that we can ensure that when we do make a referral and then a definition of eligibility comes into play, what has been done. And to my satisfaction, we attempts have not answered that question of what has been done with that student prior to that.

Mr. MILLER. If I just might piggyback on that question, and you may have just answered it, but let me give it to you how I'm hearing it in some anecdotal fashion. And that is that some parents and even some educators are suggesting to me because of the disaggregation of the data and the need essentially for the school district progressing to take a second look at some of these children, and they're putting them through some additional assessments. They are finding out that in many instances this is a reading problem that can be addressed as opposed to then deciding to push the child along with some other label that would suggest that they be in special education. Is that anecdotal—is that happening or not happening?

Dr. DURKIN. I think the issue of disaggregated data propels us to look at students individually as well as a subgroup. Your point about noting progress of students rather than wait till the year end standardized high stakes testing that so many of our states have developed, we need to develop and ensure that we're seeing progress along the way.

It is very difficult in May to see a student who has failed, and my first question to my staff is why? What didn't we catch back in November, back in January and back in March? And those are the issues that we need to hold accountable for both general and special education and put systems in place where we're monitoring the progress as we move toward the high stakes involvement.

So your point is a good one in terms of not only do we have to make sure that responses and interventions are made, but that we need to have a targeted, timely response in school systems to ensure as students are moving that we are tracking progress, and that we are ensuring they are moving. And that progress may differentiate depending on the child, the disability and the areas. But progress has to be made.

Chairman BOEHNER. Dr. Rhyne, let's stay on the same subject. You've got a model district when it comes to dealing with students with special needs. How does your district deal with identifying and appropriately identifying children with special needs that qualify for IDEA, and where do you draw the line, and how do you deal with the overidentification question?

Dr. RHYNE. It's an excellent question, and I think an area that Charlotte-Mecklenburg schools has done exceptionally well in. We have implemented a comprehensive reading model within the dis-

trict, and within that model there is a universal access piece of it where most of the children are going to do well on the universal access piece. For those children who are falling out of the universal access, we are looking at targeted and intensive interventions. And we have set targeted and intensive interventions in place. We're seeing great improvement in our reading scores as suggested in our NAEP trial urban school district scores.

Another thing that we're doing that Dr. Durkin referred to, we have in our district a very systematic way of keeping track of where students, classrooms and schools are. As a principal in the Charlotte-Mecklenburg schools, I am provided with quarterly data. We have developed quarterly tests that align with our end-of-grade and end-of-course tests. And the principals get that data, and we have instructed every principal on how to sit down, use that data, tear it apart by classroom and down to the individual students.

We're now dealing with individual students in the Charlotte-Mecklenburg Schools. And we're looking at what does that child need. We're looking at specific items that they missed on the test. Do they need to be regrouped? Can we pull this group to the side and do a different intervention with them?

So we have quarterly assessments and then we have what are called mini-assessments, and these assessments are like the quarterly except they occur every approximately six to 7 days. And so with that type of very intense data and using data to make instructional decisions, we feel that we are more on target with where individual children are. And by doing that as a district, we are affecting special education.

Chairman BOEHNER. Well, I want to congratulate you and others who take the assessment data, actually use it as a management tool to look at your own systems, your own curriculum, your own teachers, and relate that to the needs of children. There's a nearby state that I've met with yesterday that the assessment data goes to the state. It never comes back to the school. It just flabbergasts me. They don't—the principal, the teachers, all they know is that their kids passed or failed or they need improvement or they're somewhere on the list, but they don't know what the test scores are.

So, congratulations. Mr. Miller?

Mr. MILLER. Thank you. Once again, I'm going to piggyback on Chairman Boehner's question here. First of all, I want to say that I was at a meeting on Monday with some foundation people in California and all they kept talking about was Charlotte-Mecklenburg. So apparently there's much to envy here.

But first of all—second of all, one of the little secrets, maybe it's of legislative intent, but we think it's also in the bill rather clearly that when we were talking about assessments, very often we were talking about diagnostic tools. The Governors got wrapped up in high stakes testing long before we ever wrote this law.

But what we were hoping for was that in real time, every six or 7 days or quarterly or monthly, we could pass on real information to teachers, to principals, to students and to their families about what might be done and what adjustments could be made so that these children could continue to progress. That seems to have been lost in most of this. When I meet with many of the curriculum com-

panies, who are also now becoming assessment companies, they tell me that this can be embedded and you can do this for a vast number of students which would be helpful because then we could again focus down on others. I don't know if that's the case or not. But it would seem to me especially with this population of special ed children that diagnostic tools are really what you would be looking for here, both to convey information to the teacher and to the—about the student. But also we want to see whether or not the teachers are teaching in a manner that's appropriate to that student. Is that correct?

Dr. RHYNE. That's absolutely correct. That's why we established these mini-assessments and quarterly assessments. We did not want to wait till the end of the year and be surprised. We wanted to know as we progressed through the year what children were proficient in what was being taught, the specific objectives, and who needed help. And we used that data. We used that data on a daily basis. We are down to looking at individual students and looking at what objectives children know, what they don't know, and then providing targeted intervention.

Another way we use it, which I think is quite interesting, in Charlotte-Mecklenburg, as you know, in a large urban district, the issue of hiring certified special education teachers is often difficult. And so we hire sometimes lateral entry teachers who are not certified. They are college graduates. They may have an undergraduate degree, for example, in psychology. And this data is used also to target those teachers in how well they are instructing their students.

And when we find that they are really struggling because they don't have the educational preparation that a certified teacher might have, then we send out to the school instructional support in that we have special education staff out of my office who go and work with that teacher. When I say work, I mean get your hands dirty work. They are in the classroom sometimes 13 solid days co-teaching, teaching, modeling, showing them the standard course of study, rearranging their classroom, helping them set up behavior management. And that has proved to be very, very effective for our lateral entry teachers.

We want to increase these teachers' skills, and we don't want them to leave, because then we're in a vicious cycle. If they leave at the end of the year, we start all over again. So we're trying to grow our staff, and by growing our staff, we can ensure better instruction for our students with disabilities.

Mr. MILLER. Thank you very much. Let me just ask you, in your general curriculum, do you use the same reading program across the entire district?

Dr. RHYNE. Yes, we do. Our universal curriculum is a specific reading series that is used across the district in both regular education and special education.

Mr. MILLER. So as the child moves from one school to another—

Dr. RHYNE. Same, exact—

Mr. MILLER. You would have, again, you would have real time information about that child when they go into the new school?

Dr. RHYNE. Absolutely. And our district has written pacing guides so that on any given day, we know what is being instructed

in all of our schools, all 140 schools across the district. For those children who then are having difficulty with that textbook, with that series, we have established another set of materials that is used for targeted intervention with any student. It just doesn't have to be a special education student. And the targeted intervention is a research-based intervention. And we group students, find time in the schedule to provide that targeted intervention and then move students back into the universal text as they make improvement.

Mr. MILLER. Thank you. Thank you, Mr. Chairman.

Chairman BOEHNER. The chair recognizes the gentleman from Nebraska, Mr. Osborne, for 5 minutes.

Mr. OSBORNE. Thank you, Mr. Chairman. Thank you for being here today. We appreciate it. I'm somewhat interested in maybe the interface of early learning programs with special ed, and so I'm going to ask kind of a broad question of all of you.

Let's say we took a random student population and we subjected them to a fairly rigorous early learning program such as Head Start, and we took another random group and didn't assign them to Head Start, would you see—do you think that you'd see a reduction in special ed students who, if they were exposed to early learning experiences? And how does that relate to overidentification?

Dr. RHYNE. I'd like to respond to that. In the Charlotte-Mecklenburg schools, we have an early childhood education program, and it's called Bright Beginnings. It is for 4-year-old children who are disadvantaged educationally.

We have studied—the program has been in effect probably for about 5 years, 6 years, and we have studied the groups of children who have gone through this Bright Beginnings program, which is very literacy based, and there's a high level of parent involvement that's required as part of being in the program. We've studied these children at the third grade level, and these children are right on target and exceeding the success and progress of control group type children. So we feel that Bright Beginnings, that Bright Beginnings program with the attention on early literacy is absolutely critical.

Dr. THURLOW. I'll jump in on top of that one, because I think there is some research basis for preschool and early programs. But I think we need that focus on the early literacy, and, you know, we really need to know what is going on in those programs. So I wouldn't just say Head Start. I would say what is going on in those programs? What's the target of the instruction and the nature of what's going inside them? Before I'd say—

Mr. OSBORNE. So you're not just saying a blanket approach.

Dr. THURLOW. Yes. Right.

Mr. OSBORNE. But as long as it's targeted and it's headed toward literacy, it's important. Yes, ma'am?

Dr. DURKIN. Congressman, I would just like to add that my colleagues are correct in what is going on, but we have found with children who do come to school with significant stressors from urban settings and with lack of language skills, because we know language is tied very much with literacy, is they need more time. And they need more intensive supports. It doesn't mean they cannot achieve that same standard. But we must put into place either additional home components.

We've had a great deal of success with family literacy programs, working with families in conjunction with students on how to encourage reading and writing at home, as well as developing Saturday programs, after-school programs. These are the merits of what really helps our children catch up and give them a fair level field, level playing field, which is what No Child Left Behind is about.

Ms. SABIA. I just want to make a comment about high expectations in this area, because many times we have children with cognitive disabilities. The ones that are identified early because they have Down Syndrome or something that you know from birth, there are not high expectations when it comes to these children, and a lot of time is wasted until they can show you what they can do because they can't speak early on. And we went ahead and did our own early intervention for reading and other things, and my son went into kindergarten being able to read. And I think it shows that, if given the opportunity, and with the high expectations, that you don't wait until you find out how well they can speak or other things they can do. They can start learning early and they will, by the time those kids get to all these assessments you're talking about, really be amazing and be able to surprise people. But those high expectations have to start from the very beginning or you lose all those years.

Thank you.

Mr. OSBORNE. Thank you. I gather you're in favor of early learning programs, from your response. One last question. Dr. Rhyne, in your testimony, you mention that your bonus pay system for principals and building staff include not only academic performance of all children but also No Child Left Behind adequate yearly progress. And one of the complaints we often hear is, well, you know, you're going to have teachers teach to the test, and when you throw in additional economic incentives, I imagine that there may be even more grounds for that complaint. And I just wondered if you would care to comment on how you see that working in your system.

Dr. RHYNE. We just did this about 2 weeks ago. We realized—we've had a local bonus for a long time, and our local bonus was tied to achievement of our state scores. We realized that with AYP coming in and No Child Left Behind that principals were paying more attention to the state scores than they were to this whole AYP issue. So we had to get their attention.

And we said that not only did you have to make achievement on the state scores but also you had to make your AYP goals. And so for the first time this year at the end of this school year, all staff at a school includes all levels of staff, will receive a bonus if they make both.

Mr. OSBORNE. Thank you. That sounds a little bit like merit pay or something like that, but I appreciate it very much and I yield back, Mr. Chairman.

Mrs. BIGGERT. [presiding] Thank you. The gentleman from Michigan, Mr. Kildee, is recognized for 5 minutes.

Mr. KILDEE. Thank you, Madam Chair. I'll direct this to Dr. Rhyne first, but the others are welcome to join in. What are the advantages or disadvantages, benefits or problems with the alternative tests based upon alternative achievement standards? The

Secretary has said 1 percent can be assessed using an alternative test. What are the advantages or disadvantages of that, the problems or benefits? And might states be tempted to seek an exception to the 1 percent limitation, which the Secretary has indicated could be given?

Dr. RHYNE. I think there are definitely advantages to the alternative assessment. If we did not have alternative assessment, then when said that No Child Left Behind was dealing with all children, we'd be leaving out a group of children. And so "all" would not mean all.

In the state of North Carolina, we have had a very successful alternative assessment. It's a portfolio assessment for our students. We had the good fortune of receiving a Federal grant and working with colleagues from the University of North Carolina at Charlotte on alternative assessment for our students, and we in Charlotte have done very well with our alternate assessment, and we feel like with the alternate assessment, we have really been able to show teachers how to use data. Again, it gets back to data and how to use data to make instructional decisions on a daily basis.

So I'm very much in favor of the alternate assessments, because it allows us to include all children.

Mr. KILDEE. Do you see much of a problem of, in the alternative assessment, the temptation to bring the assessment down rather than to bring the child up?

Dr. RHYNE. What we've done in Charlotte, we have another—our alternate assessment is one level, and then kind of the next level up of assessment is called an alternate academic inventory, and it's an assessment for students who are being instructed off grade level. So, for example, a child who may be in the fifth grade but is instructed on the second grade level.

For that group of children, we have special education children on the alternate assessment, and we felt like perhaps across the district there might be children on that assessment who really could be on a standard assessment with modifications. So we went to every school. We went to all 140 schools and met with the special education staff in those 140 schools talking about and encouraging staff and IEP teams to really take a look and see if they had children who instead of going down to the portfolio, which would not be an appropriate move, who really could be on the end-of-grade standard assessment with modification.

And I'm happy to report, we just got the data. We, through the IEP team process changed 27 percent of those assessments and put those children on standard assessment with accommodations.

Mr. KILDEE. Dr. Thurlow?

Dr. THURLOW. I would like to make two points about the alternate assessment. One, I'd like to just comment briefly about what I see as the benefits that we've seen across the country in the alternate assessments, and then I'd like to second address your point about the concern that people might or states might sort of make things easier for these kids, kind of that concern there.

So first, the benefits. And this has been—I think the alternate assessment has been one of the most dramatic sort of enlightened things that has been done in No Child Left Behind for recognizing a very small group of students who receive special education serv-

ices who have very significant cognitive disabilities who most of population in the United States doesn't even realize are in our schools today, but who are. These are students with very significant cognitive disabilities.

These are students who are taught by educators who for many years have viewed themselves as babysitters. And we have gone out now and have talked to many of these teachers, and they tell us they no longer see themselves as babysitters. They see themselves as professionals. They now know what their state standards are, because they are required to know their state standards because they have to work on an alternate assessment that is aligned to the state standards, and how can do that if they don't know the state standards?

They have had to talk to the general education teachers in their districts to figure out what the standards are. So they see themselves as professionals. They know what their state standards are, and they are working on their state standards. They are working on academic aligned stuff for their kids with the most significant cognitive disabilities. This is a dramatic and, you know, I get emotional trying to talk about how important this piece is.

Mr. KILDEE. And the second part of my question?

Dr. THURLOW. OK. And let me just say, because this 1 percent means that these kids who are significantly cognitively disabled can be proficient. That's what's important about this 1 percent.

OK. The safeguards are really important, and that's what the other important thing about this 1 percent regulation is, because it has built in—it has built in a requirement that states must set rigorous standards. It doesn't say you can just go and say whatever you want to is proficient.

States have to build a—have to go through a rigorous standard-setting process. They have to come up, like they do with their regular assessment, they have to come up with a process that they go through, they have to put together I would say a technical manual where they've defined what they've done. Show me why this is proficient, why this score, why this is proficient. Show me what process you've gone to.

And, you know, so they've got to do for their alternate assessment what they've done for their regular assessment, and we've got to begin to look at those. And I would think your peer review process, or the Department of Education's peer review process will be looking very carefully at those. And I would expect, given what I've seen happening, that they will be doing that. So.

Mr. KILDEE. Thank you, both of you. I appreciate your response.

Mrs. BIGGERT. The gentleman yields back. I will now yield myself 5 minutes.

Ms. Sabia, you—they've been talking about the appropriate accommodations for students with disabilities to participate in the assessment and making sure that the test is still valid. If you don't mind my asking, what types of accommodation does a child like your son need in order to be assessed on what he knows and has learned?

Ms. SABIA. Not as much as you would think, actually. For reading and language, he can read, as I said, so he does not need the verbatim reading. They do read the directions with him to make

sure that he's really paying attention to the directions. Interestingly enough, the biggest accommodation he needs is somebody to color in the circles to make sure that they're precise enough that it can be read by the computer. That is really the biggest accommodation.

He can dictate and have them write the answers when there are written answers, although he has refused that accommodation in the past by self-efficacy. Math, he uses a calculator, and that is his math accommodation.

And I did want to make one point about alternate assessments as well, because that's really, for a lot of the kids, they may end up in the alternate assessment with the 1 percent. I'm just hoping—we are all just hoping that states will take—be really reading those regulations closely and follow what they say, because the spirit in there is very strong about high standards and high expectations, and that that 1 percent is only—it's supposed to be a cap. So many students who have cognitive disabilities can, like you just asked for my son, be able to take the regular assessments either with accommodations or with the alternate format that's permissible on grade level. And for those who can't, that there still be high expectations and there are even multiple alternate achievement standards. So to make sure that there are enough of those going on so that you really are reaching the kids where they are at and challenging them and not having the problem you were speaking about.

But obviously, you know, kids vary, and there are other accommodations that need to be given. And the big thing—we had a problem where we were seeing that the test was not being validated because of accommodations. And the push with No Child Left Behind really was to find ways to work around that. And now tests that before were invalidated because they were not separating them out enough so that the accommodations only invalidated some and not all, the push of No Child Left Behind has found ways to fix that problem.

And we're hoping that states will really rise up and not do the minimum of what needs to be done. For example, in my state, Maryland, we have an N of 5 that's second to lowest in the country, of the number of kids with which you have to keep that group as a subgroup. So almost every school counts their kids with disabilities because the N is 5 and not 20 or 100.

And so that's what our hope is, that states will then take the lead that you all have started and have high expectations and not just necessarily put those kids under the 1 percent, see what they could do with those accommodations that you asked about.

Mrs. BIGGERT. Thank you. I know that you mentioned that NCLB is one of the myths is that it requires one-size-fits-all assessments, and I don't think that so many people realize that it really is so much—the flexibility to give the states to do so much, and I don't think that we've done a good job of getting that word out on how the states and the local school participate so much.

In fact, I think from my state, there's been concerns that in doing the AYP that so many of—so much of the media came out and said schools fail, and using the term "failure" because they haven't met the AYP goals for that year. And part of it was just not under-

standing I think how the system worked, and it's been unfortunate I think, but maybe all of you could help, if you have some ideas how we as Members of Congress can help get the word out to people about the real benefits.

Yes, Dr. Durkin?

Dr. DURKIN. Yes. I just want to add to that. I think one of the key things that we need to work together on is looking toward more of an academic progress standard and really noting of how much progress students make in contrast to the current proficient standard. And I think over time, that is going to mean a great deal, particularly for school systems that are finding themselves a great deal of difficulty reaching that AYP standard.

There really does need to be merit and challenge to motivate principals, staff, and teachers as well as students and families that we're moving in the right direction. We have to stay the course. And it's those kinds of looking at value-added assessments really need to merit some view of how much progress we've made as opposed to in addition to just reaching the proficiency standard.

Mrs. BIGGERT. Thank you. With that, I'll yield back and recognize the gentleman from New Jersey, Mr. Andrews.

Mr. ANDREWS. Thank you, Madam Chairman—Chairwoman. Ms. Sabia, I just wanted to say to you the reason I voted for No Child Left Behind and would again is so that Stephen and children like him have a highly qualified teacher in front of them all the time, have no artificial limits placed on our expectations of what they can achieve, and so that they are regularly measured so we can test ourselves to see whether we're meeting our commitment to Stephen and his classmates.

I think there are a lot of people out there who really don't want accountability and are using legitimate objections to problems in this law as trojan horses to try to disrupt the law and overturn it. Having said that, I think we do need to focus on some of the legitimate issues that I've identified in talking to educators, listening to educators in my area, and I wanted to ask Dr. Durkin some questions that might help me understand how she's dealing with them in Rhode Island.

I did a little bit of research on your district, Dr. Durkin, and I think you have about 1,700 students. Is that right?

Dr. DURKIN. That's correct.

Mr. ANDREWS. And so I'm—and it's a K to 12 district?

Dr. DURKIN. It's a pre-K through 12 district, yes.

Mr. ANDREWS. So I'm assuming that, just pick the third grade, for example, has maybe 140 children, 145?

Dr. DURKIN. About 134. You're close.

Mr. ANDREWS. OK. Could you be a little more specific?

[Laughter.]

Mr. ANDREWS. I notice in your testimony you say that about a quarter of the children in your district are identified IDEA. Does that hold true in the third grade roughly?

Dr. DURKIN. Generally—it's interesting. There's right now a significant bulge at the ninth grade because of students having been identified so in grades.

Mr. ANDREWS. What I'm asking is, about how many of your third graders are IDEA students?

Dr. DURKIN. I would say approximately—I would say about 10 percent at this point.

Mr. ANDREWS. So maybe 13 or 14 children?

Dr. DURKIN. Correct. Yes.

Mr. ANDREWS. What's the N in Rhode Island? What's the smallest group—what's the group that you have to disaggregate to? Ms. Sabia just said it's 5 in Maryland. It's 20 in New Jersey. What's it in Rhode Island?

Dr. DURKIN. It's 30 to 45 in those issues. And I think that's a real measure of concern, if I can elaborate on that.

Mr. ANDREWS. Well, can I just ask you a question first?

Dr. DURKIN. Yes. Sure.

Mr. ANDREWS. If I understand the regulation the Department has just put out, with respect to your third graders, and again we're using about 130 of them or so, that at most, two of them could be waived out of the assessments under No Child Left Behind, 1.5 percent, 1 percent is 1.6 children or something, so it's two kids, which means that there are 11 or 12 children in the third grade in your school district who will be subject to assessment under No Child Left Behind, which I support and agree with. How do you plan to assess them? What are you going to do?

Dr. DURKIN. We've used the regular assessments that we are using. And at this point in time, the concern that, in terms of the cell size, and I think your point is a good one, is that we need to really look at the cell size to ensure that that's not being used to minimize the impact of No Child Left Behind.

Mr. ANDREWS. If the cell size were five in Rhode Island, so you would have I assume two groups of third grade children who are IDEA, right? How would you assess those 10 or 11 children? You would assess them against the regular Rhode Island third grade assessment?

Dr. DURKIN. That's correct. With accommodations as needed, depending according to their IEPs.

Mr. ANDREWS. Without in any way disclosing any—I guess I shouldn't use a specific rate. Generically in your school system, based on your research, what percentage of the IDEA children do you think have the potential to achieve total proficiency on the regular assessment?

Dr. DURKIN. My view with progress—right now we've targeted approximately 23 percent of students who have not reached the standard at the middle school level, grades 5 through 8, and 25 percent grades 9 through 12. Interestingly enough, in that percentage point, approximately 10 to 15 percent of those students are students with IEPs. They are not all students with IEPs.

Mr. ANDREWS. I understand.

Dr. DURKIN. Which comes back to the Congressman's question about the overidentification issue.

Mr. ANDREWS. And again, without making a rhetorical statement, I would say all the children have the potential to achieve.

Dr. DURKIN. Absolutely.

Mr. ANDREWS. But looking at it in terms of passing the assessment, what do you think the optimal result is for passing the assessment? A hundred percent?

Dr. DURKIN. I would—yes, we shoot for 100 percent over time in terms of looking at the benchmarks to ensure that we're constantly increasing our level of proficiency toward that.

Mr. ANDREWS. Are you satisfied that you're being given sufficient flex ability on test accommodations that you can fairly evaluate those 10 or 11 children?

Dr. DURKIN. Yes.

Mr. ANDREWS. Are there any additional accommodations that you would ask for?

Dr. DURKIN. I would probably, in working with my IEP team, see what those additional would be needed, and we would then accommodate that individualized request for that.

I have not had issues with the accommodation issues. My IEP teams have not. In fact, we're really trying to do what my colleague, Ms. Sabia, is saying, to really look at the students who can take the standardized testing with as close to the valid procedures that are administered for that.

Mr. ANDREWS. Just very quickly I'll wrap up. There are three schools in your district?

Dr. DURKIN. Yes, there are.

Mr. ANDREWS. Are any of them on the needs improvement list?

Dr. DURKIN. There are—all three schools are considered high performing. Two are what we consider the sustaining model, one is in the improving level. So our goal is to always be high performing and improving. However, because of the cell size and the smallness, there are significant numbers of students who have not reached the standards, and because I have such a small district, I have the benefit of knowing every one of those kids.

Mr. ANDREWS. I have a lot of districts like yours in my area, that's why I'm very interested. Thank you very much.

Dr. DURKIN. Thank you.

Chairman BOEHNER. The chair recognizes the gentleman from Georgia, Mr. Gingrey, for 5 minutes.

Mr. GINGREY. Thank you, Mr. Chairman. I was in my district last week—well, actually, Monday of this week, talking about No Child Left Behind and in particular, regarding IDEA special ed students and the testing.

There seems to be some confusion, at least in my district, about the 1 percent rule. The assistant superintendents and principals that were at this meeting felt that the 1 percent rule was only applicable to 1 percent of the students being tested, not the whole student population. It's my understanding that it's the entire student population, and that when you calculate that and you apply it, then those numbers to your special ed population, that you're able to have an alternate assessment for up to 9 or 10 percent of that subgroup.

They went on to express a concern about the remaining students in that subgroup, those that are not part of that 9 or 10 percent that you're able to do alternate testing because of the 1 percent rule. And the rest of those students of course have a standard testing. And depending on their IEP, of course, you make special provision for them, whether it's vision-impaired or hearing-impaired or ADD or whatever those needs might be, to optimize their chances of succeeding on the tests.

But these teachers and these administrators felt that even given all of that, it was unlikely that this larger population of your special education students, IDEA, that they would hardly—maybe never be able to be brought up to grade level because many of them at the outset are two and 3 years behind their peers, and that the goal that this particular school system was setting was to raise them by a half a year in each full calendar year. So they felt that it was an unfair burden to expect them to take a standard test that the regular ed students are taking, and they could not make that adequate yearly progress. So that I guess basically what they're saying is you need to cut us some more slack.

And I would like to ask particularly Dr. Durkin and Dr. Rhyne about that, because I truly believe that No Child Left Behind means exactly what it says. And while these children may be a couple of years behind or more at the outset, hopefully at the end of the day, before we get to 2014, that they will be no longer being left behind. If you'll comment on that, I would appreciate it.

Dr. RHYNE. It is a challenge, and we have children who are being instructed. Their instructional level is several years below their chronological level. And the question you raise is a good one and a very legitimate one.

And that is where a district really needs to get focused from the top down and to put the message out about the need to provide intensive interventions. And it's not just special education children. There are other children as well, intensive interventions for those children where in effect they're learning more in a year than their counterparts, because if they don't learn more, they will never catch up.

And the importance of—I've said this before—using data to make those decisions, rather than guessing as to what you think might be right and what the child should be working on, but using very specific data to make those instructional decisions; by providing after school programs; by providing Saturday programs where we really, really get focused on what children need. And I do believe that they will make and pass that standard test.

Dr. DURKIN. I think the issue of leadership and aligning goals that everyone is, as Dr. Rhyne said, focused, but everyone is on the same page. There has to be a real connection between, for example, my superintendent goals, the school improvement team goals, as well, as the supervisory goals I expect from my administrators. And all those have to point to achievement, teaching and learning. And there has to be a progression to understand that it's doable, but that we're all moving toward that direction.

So I really see an alignment of having everyone understand, verbalize and speak the focus that is on literacy and numeracy.

Mr. GINGREY. Thank you very much. I am encouraged by those responses. And thank you, Mr. Chairman.

Chairman BOEHNER. The chair recognizes the gentlelady from Minnesota, Ms. McCollum, for 5 minutes.

Ms. MCCOLLUM. Thank you, Mr. Chair. If the Children's Defense Fund got a dollar for every time we said "leave no child behind," we'd have more and more children succeeding. I want to talk about just a couple of things, and that is, if someone after I'm done with my question would comment about the role of social capital in mak-

ing sure that all of our children reach their full potential, and that goes to parents' education, access to learning, sometimes due to opportunities because of limited income—I couldn't afford to take my children to the science museum—all those things are not only important to children that we talk about in the mainstream, but they're of equal importance to children with disabilities. And so the social capital and the investment in that and helping those children succeed I think is something I would like to have some comment on.

One of the challenges I think that I'm hearing very clearly is the labeling issue, and people saying OK, this child is special needs. Therefore, we don't have high expectations. It has been my experience in my school districts in Minnesota that I haven't run across parents who don't have high expectations for their children with special needs. Being a parent of a child who was in special needs labeled, you know, well, maybe because of his dyslexia, he shouldn't take any foreign languages, and now is going to get his masters degree in English as a second language and is fairly proficient in Japanese, reading and writing it, we kept those high expectations. We pushed our school districts, and I feel that the parents in Minnesota have done that.

But at the same time, we are hearing from many of our folks in Minnesota, you know, if we don't get all the resources we need in order to make all of our children successful, holding the state accountable, holding the school district accountable, puts everyone at edge with one another. And I was just recently in a high school where there was a special needs student, and his comment was he had some things he would like to see addressed in his individualized plan, but he turned around to the rest of the students in the classroom and he said, but everybody here has things that they would like to have added as value to their education.

So my question is, given the fact that Washington, D.C. right now is under a lead water alert, and we know that contributes to children not doing well, how do we as a country move forward, address the social needs, the environmental needs, and the needs of all of our children, because all of you are finding parents competing for limited resources? So what are some of the challenges you're facing in making this law work?

Dr. RHYNE. If I may address that. I think one key thing is, as we've talked about before, early childhood programs that emphasize literacy I think are critical so that children come prepared to learn in kindergarten. Where language is really stressed within that early childhood program it's critical.

I think it's critical that we have two things in a district, in a school district: one, that we provide more inclusive practices for students with disabilities, when you talk about the social capital. I think it's critical that students with disabilities be in general education classrooms and that special education teachers perhaps could be of more benefit not only to those special education children but also to general education children who are struggling.

Ms. MCCOLLUM. If I may, because my time is going to run out.

Dr. RHYNE. Yes.

Ms. MCCOLLUM. The question then becomes, and was, do you have the resources to do that? Because that costs money to do.

Dr. RHYNE. I believe we do have the resources to do that. I think if we're creative with what we have and we think outside the box and get people out of their little silos. Special educators, and I am a special education teacher, we think that only we can do it and only we can educate the students with disabilities, and it's very uncomfortable as a special educator to move out of that box and to move into general education and to be doing it a different way—for example, to be co-teaching. But I think it's critical for the students with disabilities and can potentially be very, very helpful for other students in that classroom who are struggling.

And I'd like to just make one other point. The whole issue of students and social capital and how children come to school, I think it's critical that schools establish positive behavioral interventions and support; that a whole school establishes what the rules are in the school, where everybody from the custodian to the cafeteria worker to the parents to the teachers to the children can articulate what is expected in that school.

And then for those children, 85 percent of the children should be able to behave under a universal model like that. Then another 15 percent of the children are going to have difficulty and need some group work, and schools can set that group work up where there are peer bodies, where there are small groups where the psychologist is working with a small group, maybe on anger management. And then there's another 5 percent who are going to need individual work.

A PBIS model is a research-based model, and I think as districts and the problems that public schools have with discipline, I think we need to be looking differently at how the adults do business in schools.

Ms. SABIA. I would just make a comment about the resources, just a quick example of how it doesn't always take resources. Creativity is the buzz word here, and parents can help a lot, you know, with coming up with some of these ideas. One of the ways to help kids who are disadvantaged, who are not getting what they need at home for a variety of reasons are some of the after-school activities like homework club, whatever. But if you have a child with a disability, they may not be able to access it because maybe they need some more support.

So in my school we started why not find out what middle schoolers might want community service credit, and connect the parents with those students and bring those students in to help. They did that with my son in science club. So here after school, he's getting access to something that he maybe would not be able to do as easily if the person teaching it did not have the support, and that's more time that a student who may not have opportunities at home can get those enrichment opportunities and not have it cost anything for that extra support.

So it's creativity.

Ms. MCCOLLUM. Transportation. That's the problem.

Ms. SABIA. Transportation is an issue. But I really do believe, you know, some problems can't be creatively handled, but there are enough of them to free up resources for where you can have those creative solutions.

Mrs. BIGGERT. [presiding] The gentlewoman yields back. The gentleman from Minnesota, Mr. Kline, is recognized for 5 minutes.

Mr. KLINE. Thank you, Madam Chairman, and thank all of you for being here today. Some of you have traveled far. I'm especially pleased to see Dr. Thurlow from Minnesota. It's always nice to have somebody from your home state here.

Let me just say that I know it must be horribly disconcerting to you to travel so far and see Members and coming and going from these hearings as we walk in and we walk out, and I just want to assure you that none of us mean any disrespect and none of us think that your testimony and your answers is anything but critically important. We just have a system that's almost impossible to understand much less explain, we schedule hearings here at the same time. And so in my case, I'm listening to General Abizaid from the Central Command testifying in one hearing, which seems to be fairly important, considering the 200,000 U.S. troops in his area of responsibility, and then to this panel, which is also just extremely important.

This issue has been discussed at great length, and I can't tell you how many teachers, principals, superintendents have been to my office or me to theirs to talk about No Child Left Behind and the difficulties that special education students are offering them. And I know this has been discussed. Chairman Boehner brought it up, but I want to revisit it for just a minute, and that's the 1 percent rule that the Department has just put out that allows 1 percent of students to get different assessments.

Even with that, I'm hearing from folks in Minnesota that that's not good enough; that the 1 percent number is too low, and yet I think I've heard from the panel that we should stay the course. And so maybe we'll start with Dr. Thurlow since just I'll pick on my fellow Minnesotan. And if you would just address that specific issue, the 1 percent. Is that right? Should we have any percent? Is that number too low? And then anybody else who would like to offer a thought.

Dr. THURLOW. Let me start. We collect data. We've been working with all states, so let me start with some data that we collected in 2000 and 2001 when most of the states had their alternate assessments in place and had collected the data.

Now not all states had collected the data, but we had data from most states. And we looked at their alternate assessment data at that point. And I can't right now off the top of my head recollect the exact number, but the majority of states at that point had less than 1 percent of their students, of their total population of students, taking their alternate assessment. That's a good barometer I think because that was before the accountability things were right there on top of their head.

So once you put that accountability in there, then everybody's getting really nervous and they're worried about whether their kids are going to be proficient. And so then they're looking for, I don't want to call it loopholes, but they're looking for ways to figure out how to get those numbers up.

And so I think the 1 percent number is the break number. The data that I've looked at tell me that the number is the right number. That's not to say that people are worried about their numbers

and that they think maybe, you know, there are some kids right on the borderline that maybe they really shouldn't be in the regular assessment at this point anyway, and maybe they should be in the alternate assessment, but every piece of data that I've looked at tells me that 1 percent is the right number. Some states are way below that 1 percent figure.

You know, in my mind, 1 percent is right, and there's no question in my mind.

Dr. DURKIN. With all due respect to Dr. Thurlow, and I do believe nationally when we look at this group of students, this is a group of students that are clearly identifiable at birth, and we know clearly that they're going to be eligible for IDEA services. But I will just give one piece of examples. In Boston, which has huge medical facilities—I believe our city in Houston has the same—we were at times having a large proportion of students, significant proportion of medically fragile students, simply because of our medical investments, these children were living longer and coming to school, where previously, 10, 12 years ago, they would not be.

So I ask you to caution to look at the 1 percent, but for states to be cognizant of certain things that do impact on their areas that may merit that, without going into the loophole or escape valve kind of provision. Because these students are clearly identifiable. And if anything should be asked, what are the reasons for asking for an increased percentage, not to increase or change the accountability standard but to possibly include students who really do merit that category.

Mr. MILLER. Would the gentleman yield? Oh, excuse me. Go ahead.

Mr. KLINE. Yes, I'd be happy to yield.

Mr. MILLER. I just wanted to yield, if you could incorporate in your answers this question of the LEAs being able to ask the states to increase that. I assume that would have to be based upon data.

Dr. DURKIN. Correct.

Mr. MILLER. And then the question would be whether or not the Department of Education would grant the state some leeway. Could you explain how that might play out in this consideration?

Dr. DURKIN. I could definitely foresee with the data of the area that we're in and the kinds of students we're talking about according to the criteria in IDEA that a particular LEA may be representing more students in that category that might merit more than the 1 percent. But it would have to go through either a waiver process or documentation through that, through the LEA.

Mr. MILLER. With the state?

Dr. DURKIN. Yes.

Mr. MILLER. And then that question would be what's the impact on that on the overall state?

Dr. DURKIN. I would think particular cities, though, would have, particularly in the urban cities, would have a different piece of information than you would from other cities. So I would imagine foreseeing going to the LEA to be able to look at that and then foreseeing that, again, being granted that because of the data representing in that particular location.

Mr. MILLER. You mentioned the medical facilities. You might have the same situation in Minnesota. So they could theoretically,

based upon hard data, go and get additional leeway or waiver for—in that particular school system, right?

Dr. DURKIN. But I would imagine that would be the exception rather than the rule.

Mr. MILLER. Right. Right.

Dr. DURKIN. Because the same criteria would be kept. Just the fact that I may have more students in that category than perhaps another town across the state, for that, and I think that's the issue that really needs to merited, because I do hear that if we waiver from that criteria, we could very much be having students over that 1 percent that clearly should be held to standard assessment procedures rather than alternate.

Mr. KLINE. I thank the gentleman.

Mr. MILLER. I'm sorry.

Mr. KLINE. And reclaim my time and just ask if there's anybody on the panel who disagrees with the 1 percent rule. Anyone who disagrees?

[No response.]

Mr. KLINE. OK. Thank you very much. I yield back.

Mrs. BIGGERT. Thank you. The gentleman from Massachusetts, Mr. Tierney, is recognized.

Mr. TIERNEY. Thank you, Madam Chairman. Thank all of you witnesses. And I respect your testimony and appreciate it. I think we may have all benefited if we had also had a panelist who could raise some of the issues that we keep hearing in our districts. I'm not sure I'll be able to do all of that in the short period of time that I have, but I do want to project out some of the comments that I hear and get your response on them.

One I think hear most predominately is the claim that there's not enough resources in order to accommodate all of the support systems that you talk about when you find there is something lacking in a teacher or in a school, many of you have already talked about sending resources out there to fix that situation. I'm told over and over again because of state cutbacks in funding as well as the Federal real or perceived, whichever side you want to argue on that, cut, lack of funding or whatever, that there just aren't those resources, and therefore, schools are being put into needs improvement category more and more often. Do you find that? I guess, Dr. Thurlow, you're the one that deals most often on a broader scope. The others can answer if they want. Do you find that to be the case in general?

Dr. THURLOW. We find there's a consistent complaint about it, but we also find that states are doing very innovative plans that are not necessarily requiring a lot of additional resources. So, I referred to the Ohio plan. They have put together a very, very impressive plan where they are pulling in existing resources that they now have access to. There is a wonderful array of technical assistance services that are out there available, and I'm speaking particularly from the special education side.

There is a whole host of technical assistance services available to states. Ohio has built in all of those technical assistance services and has a comprehensive plan that it is working off of.

You know, I think states being creative, filtering those resources down into their districts and down into their schools is one of the creative things that can be done.

Mr. TIERNEY. Do you think the Department of Education is doing enough to help states get that done? Because I'm not sure from what I'm hearing that that's the case. It seems to me that in a lot of instances, we're talking about people who at least feel as if that isn't getting down to their school or their classroom, and that's where a lot of this feedback is coming, that they just aren't getting that support.

Dr. THURLOW. I think there is a lot that's happening and that there's so much to be done and that people feel so much pressure. So, you know, I do think it's there. I just think that people feel like they're under so much pressure. We just need to give it more time.

Mr. TIERNEY. Well, in line with that, let me read you a statement and get your reactions for this:

"Throughout history, business and schools in America flourished as powerhouses of economic and educational opportunity. For businesses that kept up with rapid globalization, the label continuous improvement organization became an asset, an advantage that would bring technical expertise and expansion opportunities. However, the President, Congress and state policymakers chose to cast the continuous improvement of schools as a negative. Policies and regulars appear designed to impugn rather than support public schools."

What would be the panel's response to that statement?

Dr. THURLOW. Well, I think some of the media have created the impugning piece of this, and that is a tragedy, I think, because I think that the resources that are there to help the schools improve—and I guess I'll turn it over to my—

Ms. MCCOLLUM. Would the gentleman yield?

Dr. THURLOW. —to the others that are right down there in the field there.

Ms. MCCOLLUM. Would you yield?

Mr. TIERNEY. Sure. I'll yield to the gentlelady.

Ms. MCCOLLUM. Dr. Thurlow, you're familiar with the Minnesota state auditors recent report, by 2014, the overwhelming majority of our schools in Minnesota will be failing. And that's a nonpartisan report. And that I find very alarming. That is separate a little bit from what we're talking today. But that was a nonpartisan report.

Dr. THURLOW. Actually, I have to apologize, because I've been in the state so little I haven't had a chance to see the report.

Ms. MCCOLLUM. Yes, well, Mr. Jim Nobles, our esteemed state auditor, released the report, which stated under No Child Left Behind, over 80 percent of our schools will be failing in Minnesota.

Dr. THURLOW. All I can see is often—and I haven't seen that report—often those reports are based on if things stay the same. I apologize I haven't seen the report.

Mr. TIERNEY. I have to—thank you. I made a mistake here. I had promised Mr. Kildee I'd yield to him, but so many people have asked questions between that promise and the time that I almost forgot Mr. Kildee. I'll yield to you.

Mr. KILDEE. Thank you very much. I just want to thank Ms. Sabia for offering her additional response and insight to my ques-

tion on the 1 percent rule. That was very, very helpful. And also, Madam Chair, I'd ask unanimous consent to submit a statement for the record from the American Federation of Teachers.

Mrs. BIGGERT. Without objection.

Mr. KILDEE. Thank you.

[The material to be provided follows:]

Statement of the American Federation of Teachers

The AFT has long championed high standards around core academic subjects and accountability for the progress of all students, including students with disabilities. We support the use of valid and reliable assessments and the disaggregation and reporting of all mandatory state and district assessments so that we know how all students are doing and so that help can be provided to those who need it.

We are, however, concerned about how children with disabilities are being integrated into the accountability systems under the No Child Left Behind Act. For example, although the Department of Education has revised its Title I regulations pertaining to the assessment of students with disabilities, the regulations are still problematic for two reasons.

First, the revised regulations require that, except for the 1 percent of students with the most severe cognitive disabilities, the scores of students taking an alternate assessment must be measured against grade-level standards. This means that students who are performing well below grade level, but who do not fall into the one percent, will almost certainly be rated as not proficient. These are students who may be improving, but the regular grade level assessment, even with accommodations, does not accurately measure their academic progress. Typically the Individualized Education Program (IEP) team recommends that such students, often referred to as "gap students," take an out-of-level assessment because it is considered to be a better and more accurate way to measure the progress of their achievement. As the Title I regulations are written, out-of-level tests will, for Adequate Yearly Progress (AYP) purposes, only count for the significantly cognitively disabled, not the "gap" students. Districts and schools are left with no options for appropriately assessing these students for AYP purposes.

Second, the revised Title I regulations only allow the proficient scores of students held to alternate achievement standards to count for AYP purposes if they do not exceed 1 percent of all students in the grades assessed. Proficient scores that exceed the 1 percent cap may not be included in AYP calculations. Setting a cap on the scores that may be counted is extremely arbitrary, and preliminary evidence suggests that the cap may be particularly unfair for urban districts because they tend to educate more students with significant disabilities.

Mrs. BIGGERT. Do you yield back?

Mr. TIERNEY. I'll keep going if I can, but it looks like the red light is on, so I'll yield back.

Mrs. BIGGERT. Your time is up. The chair recognizes Ms. Majette, from Georgia, for 5 minutes.

Ms. MAJETTE. Thank you, Madam Chairwoman, and I thank the witnesses for being here and for the wonderful work that you all have done in this area.

I've been sitting here for almost the entire hearing, and from what I understand, the brief comment that was made regarding resources, is it the opinion of all four of you that we do have sufficient resources to meet the needs of children and their parents nationwide with respect to this particular application of leave no child behind? And I'm asking that question because in my district—I represent suburban Atlanta, Georgia's Fourth Congressional District, and in the state of Georgia, our education system is in a precarious position with respect to funding.

With the lack of funding or the underfunding of IDEA, of Head Start and of No Child Left Behind, we're really not able to meet all of the needs that we do have, and particularly in those areas

where we have large minority communities, large communities of people where English is not their first language, where there are substantial cultural differences. And I just would like to hear the panel address whether you think that we do have enough funding to do what needs to be done for all of the different segments of the population as I've described. And perhaps—well, I don't know. Dr. Thurlow?

Dr. THURLOW. I'll start it off, but I think those in the districts really are the ones that probably need to talk more about this issue. Looking only from a broad perspective, I'm not sure that I can answer that we have sufficient funds. I just, you know, what I think is, funding has always been an issue. It's not a new issue because of No Child Left Behind. So—

Ms. MAJETTE. Well, I certainly—I understand that the implementation of No Child Left Behind is going to require additional resources, whether you say it's money or something else, but it is going to require additional resources, and in terms of intensive intervention, if we already are not able to meet needs as they stand now, how do we expect to be able to do that?

Dr. THURLOW. We need to be thinking creatively and changing what we do. I mean, this is an opportunity to do that, to meet the needs of kids and do what we do differently. So we really do change things. And because what we've been doing hasn't been working. There are too many kids who have been left behind in lots of different ways. This is an opportunity.

Ms. MAJETTE. Dr. Durkin?

Dr. DURKIN. I'd like to address that, because I really do think we have not been doing a great job of using the resources we do have. I have the highest per pupil spent on students in the state of Rhode Island, and asking me here today, if you said is that money well spent, I am appalled that I am a high performing school district with still 23 percent of fifth through ninth graders not reading at standards.

So my quest as a new superintendent is really looking where the resources are going, realigning them, and targeting them to the needs we have. And that means doing things differently and maybe stop doing some things, but ensuring that they go to the services of the kids that we do need.

Ms. MAJETTE. Thank you. Dr. Rhyne?

Dr. RHYNE. I think another issue is leadership in a district and focus in a district so that from the top down, from the superintendent, every level of administration, the teacher level, cafeteria workers, custodians, that everybody knows in that district what the goals are, what you're after. I think that's critical, and I think it's critical to develop strategic plans with very specific, measurable targets so that all the consumers know where a district is at any time and if we're meeting the goals or not.

And I think, like Drs. Thurlow and Durkin have said, it's taking—we're never going to have enough money. So it's taking the money that we do have, and it's taking the resources that we do have, and doing business differently.

Ms. MAJETTE. Thank you. And Ms. Sabia?

Ms. SABIA. Well, I think first of all, I mean, IDEA needs more funding and full funding and that would take some of the weight

off of what school systems are dealing with. But I also think there are ways, and not just creative—I gave an example of a real specific creative way to deal with things—but on a larger level.

School systems have, from the beginning with IDEA, for some reason developed this two-tier approach of special education and general education, and they're working these two parallel systems, and that's very expensive. There is a lot of duplication. You're creating a whole system of something, like extracurricular activities, and then later on saying, oh, what about those kids with special needs? What do we do with them?

And we heard that sometimes transportation is an issue. Well, if those kids were in their neighborhood schools to begin with, they'd go home on the regular bus with the other kids. They wouldn't have to have some special special ed bus.

And this goes all the way up to the administration. When you're running two separate school systems, a special ed system and a general ed system, there's a lot of add on expense. So with No Child Left Behind, we are now talking about one system of accountability, one school system. They're all our kids. And if that mindset starts flowing down to how you do administration, how you do curriculum, how you run your schools, I think we're going to find ways in which we can do it as one school system and just naturally I think costs will be cut that way, and also to the extent you want access to the general ed curriculum under No Child Left Behind, that's going to help improve scores for students. There's going to be more access to LRE, Least Restrictive Environment, under IDEA, I think if IDEA is fully implemented and you have more of that general access—the access to general ed curriculum and access to least restrictive environment, that will help No Child Left Behind and it will also allow for students who are in their neighborhood schools to have the same transportation, and you'll stop duplicating some of these things.

But it's going to take time. This should have been happening in many states for a long time, and I'm afraid some of the states that are having the problems, it's partly because they weren't doing some of the things early on, and now it's catch up time, and now it counts. And so we're going to have a tough period to go through, but that doesn't mean it's not important and it isn't something we should go through. And funding has never been an issue not to do the right thing, as far as I'm concerned. And hopefully, while we work out the funding issues, people will continue to do what's right for kids with disabilities and not use that as a reason to not give them the accountability they deserve. Thank you.

Ms. MAJETTE. Thank you.

Mrs. BIGGERT. The gentlewoman yields back. The gentleman from Maryland, Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Madam Chairman, and thank all of you who are here today for this very important subject. Ms. Sabia, thank you for all you've done in Montgomery County, Maryland, as well as for the country.

I had one question that relates to something that came up locally that I think also is an issue nationally which I believe has been resolved, but I'd like to figure out what the cause of it was. In Montgomery County when we were taking the state assessments I

believe a year ago, the special education kids were given supports as part of taking their test, consistent with their special programs that they had. And as a result of that, those test scores were thrown out, and they were all, you know, counted as failing. Was that as a result of a state interpretation? Was that as a result of Federal law? And if it was part of the Federal law, has that been changed now? Because I think there was general agreement that people should be able to have the same supports that were available through their IEPs when they're taking the tests.

Ms. SABIA. Well, my understanding, it actually wasn't the fault of any of those things. It was actually the test development. The test was developed in such a way reading assessment where there was a decoding portion, and obviously if someone is reading to you—it was a verbatim reading accommodation that caused it to be thrown out—if someone is reading to you, that would invalidate obviously a decoding portion, because you're not reading it. But then there are other parts to that test, and they were invalidating the entire test.

And this is not new. I mean, it became a big issue last year because of AYP. This has been going on every year my child has taken this test, and it's never become a big issue because it didn't, you know, count, so to speak. And the only difference last year is for some reason they wouldn't even give you scores. That was something new.

But because of the pressure of No Child Left Behind, there was just something put out, I think it was January 24th, that this has all been cured, that they did the test in such a way now that they can separate out the score of the decoding portion and the rest of the test will be valid and will be used for AYP. So to me that's an example of how the pressure of No Child Left Behind can help creatively fix some of these problems that have been around.

So it's my understanding we're in good shape on that.

Mr. VAN HOLLEN. Good. Because that's been an issue elsewhere, as well.

Dr. THURLOW. I'd like to make one other comment, and that is one of the real benefits that has come out of that. But it's also made us aware of something else that needs to happen, and that is one of the precursors of that was that IEP teams made a decision that lots of kids needed that reading accommodation, probably too many kids, more kids than actually did need that reading accommodation, and that identifies a need for more training for IEP teams, probably more research related to some of the accommodations. So there are still some needs out there related to research, professional development, training of various groups. So there's still some needs.

Mr. VAN HOLLEN. OK. You're saying overidentifying the number of kids who need the reading supports?

Dr. THURLOW. That particular accommodation.

Mr. VAN HOLLEN. Dr. Durkin, you mentioned an issue with respect to being able to measure an academic progress standard or the value added. And I guess one question is for kids who were not meeting proficiency standards but have made lots of progress, does No Child Left Behind provide some kind of recognition of that kind of advancement, or is it dangerous to provide that kind of recogni-

tion because you want to really make sure people are absolutely proficient, even though they made a lot of progress?

I think some schools are frustrated they may make progress and still be failing with respect to proficiency with no recognition of the fact that the kids have made progress. Could you respond to that, and anybody else?

Dr. DURKIN. I think you've captured that very well. And the difference is in a balance. We absolutely must stay firm on a proficiency standard, but in leading a school district, particularly in classrooms—and I'm a small district, so I'm looking at classroom data—I've got to encourage those individuals to keep working, and those families and kids to keep working.

So I do see over time if we can move toward staying with the proficiency standard but giving some recognition, and that really comes to the state's accountability systems, of looking at progress made, and specifically targeting that progress in very objective terms, in terms of the percentage of students moving from one level to the next, the percentage of students that may have started 3 years below level and now are at—or are now moving a full year and a half progress, or have made the rate of progress much quicker because of the accelerated programs put in place.

Those are just some thoughts to really look at, not only the actual standard piece, but the morale piece that keeps you going every day when you come into work.

Mr. VAN HOLLEN. And that can be done, you think, at the state level rather than through changes at the Federal level with respect to—

Dr. DURKIN. I believe so. I'm doing that at the local level. When I do a report, I report not only my NCLB standards, but actually by grade what the progress has been made also for the community to understand.

Mr. VAN HOLLEN. OK. Thank you. Madam Chairman, I'd like if I could, with unanimous consent, to submit the testimony of a teacher from Maryland, Rosemary King Johnston, who at one point was going to be—I think there was a last minute request that could not be accommodated for time purposes with respect to her testimony. If I could submit that for the record.

Mrs. BIGGERT. Without objection, so ordered.

Mr. VAN HOLLEN. Thank you.

Mrs. BIGGERT. Yield back.

Mr. VAN HOLLEN. I have one last question. I'll pass. It's late. But I guess—

Mrs. BIGGERT. It's usually that last question that's the zinger.

Mr. VAN HOLLEN. No, no. It's just—it has to do with this issue of differences among the states between the number of children who are in a particular category for the purposes of measuring AYP. You said Maryland's got an N. We've been saying the N is 5. Some have 20. How—it's difficult enough to make sort of cross-state comparisons, because states already have different tests and different pass levels—does that just further complicate? Should we have some more consistency among states with respect to that number, or should we just leave it to the states as we have it today?

Dr. RHYNE. I believe that we should have more consistency. And let me give you an example. In a school with about 1,000 students, and we can assume that possibly out of those 1,000 students we'll have about 120 special ed students, and so with those 120 special ed students, that school will be held and will count all of their special education students in AYP.

Let's take a small school, a small school with, say, 300 students. And let's assume in that small school with 300 students that we're going to have roughly around 30 to 36 special education children. And let's say the maximum subgroup is 45 in that state. All of those children get left out of the accountability system. And if you look at the National Center of Educational Statistics data on the size of schools, in the United States, median school size is about 460.

So in a report there are approximately almost half of the schools in the United States could be left out of the accountability standards for students with disabilities. It's very disconcerting to me.

Mr. VAN HOLLEN. OK.

Ms. SABIA. And this also adds to one of the myths that's going around. When you hear that, and then also consider how you're hearing all over the country that a few kids with disabilities are causing our school not to make AYP, well, even with all that flexibility, you are still hearing that. And I do think it should be more consistent, and I congratulate my state for being the lowest, or one of the lowest. I think there's more than one that has 5. And that I hope other states step up to that plate.

But the people that are resisting this are still saying, even when they've got huge Ns for their school and are not having to count these subgroups, they're still saying, you know, this group of kids is bringing down the school. And that's a particular concern to parents of kids with disabilities, because it's making our kids the scapegoat.

Somebody else brought forward, I think you might have been the one, Mrs. Biggert, about the issue with saying that the schools are failing, that language, which is not even in No Child Left Behind, and it's needs improvement. And I think it's fair to say that a school that may be a great school, a wonderful school, is doing a lot of great things, if they've got a subgroup in that school that is not doing well, it would not be fair to say they're failing in their mission, but it would be fair to say they need improvement.

So this whole rhetoric turns around and it gets used in a negative way against kids with disabilities, and that's the part that I object to is the way in which the language and these myths keep propagating, and it's one of those myths people don't know about that in general, and they don't realize the extent to which kids are still, even with the strength of this law, kept out of the accountability system.

Dr. THURLOW. I'll just add that we've been trying to go to states' web sites and pull those datas to see if we can actually get to that question of, you know, how many, in each of the states, how many schools are in needs improvement because of their students with disabilities subgroup, how many because of other subgroups, and let's actually get the data and see what's happening.

And we can't find those data to look at. And part of it is because of the cell size issue. In too many schools, the cell size number prevents us from seeing kids with disabilities. So it is an issue I think to be able to look at the data and see really what's going on.

Right now we're, you know, having a lot of complaints, and mostly it's because of rumor, and I'm not sure it's actually true.

Mr. MILLER. Just on that point, are parents or advocacy groups organizing around this issue of whether their kids are going to become invisible in this process or not?

Ms. SABIA. Well, I'm in the process of writing this parent friendly brochure that we keep saying is an oxymoron, because it's a very difficult law to explain to anybody, and especially things like N numbers. But one of the things we're saying to parents in this is these are the things you can do at your state level, and one of them is find out what the N number is for your state and question why it is so high, and do advocacy on these specific parts, because the state does have so much flexibility. Make sure your state is using it wisely and not in ways that are going to undermine the accountability for your child.

Dr. RHYNE. One other thing I'd like to just mention is some states have petitioned to get higher subgroup numbers for students with disabilities, and so a state, for example, their N might be 30 for all other groups, but 45 for students with disabilities. Something to take into consideration.

Dr. DURKIN. I would also like to add about the backlash that we all can work together regarding the issue of penalizing and demeaning the addition of special education students in a school because it will drag down their AYP. I think that's a very important message. Students with disabilities add an incredible breadth to a school to both children who have disabilities and those who do not. And I think we need to look at that value of what that brings to our communities and ensure that there is no backlash in a public relations standpoint for that.

Mrs. BIGGERT. Thank you. I think that last question was a very important question, regardless.

But I wish to thank the witnesses for their valuable time and testimony. You have been just an outstanding panel, and you have the expertise that is so important as we go through the implementation of No Child Left Behind, so we really appreciate that you've been here, and I thank the Members for their participation.

If there is no further business, the Committee stands adjourned.

[Whereupon, at 12:25 p.m., the Committee was adjourned.]

[Additional materials submitted for the record follow:]

Statement of Hon. Charlie Norwood, a Representative in Congress from the State of Georgia

Mr. Chairman I thank you for holding today's hearing to further explore the impact of No Child Left Behind, and more specifically, the impact of including students with disabilities in the Adequate Yearly Progress (AYP) provisions of Title I. As a longtime supporter of No Child Left Behind and a firm believer that every student deserves the opportunity learn and make progress, I look forward to the testimony of our witnesses and appreciate their time in shedding light on this critical issue.

Mr. Chairman, we all know that No Child Left Behind reflects the four pillars of President Bush's education reform agenda, which includes accountability and testing, flexibility and local control, funding for what works, and expanding parental choice and educational options.

The engine that drives these important reform ideas is the ability to assess yearly progress for students in our public schools, and the Adequate Yearly Progress (AYP) provision in No Child Left Behind gives States the tools they need to help them determine if public schools are meeting the expectations of American families. Without AYP, it is impossible to determine which students are learning the critical skills and knowledge that they will need to compete in the modern workforce, and I fully support this program and the flexibility it offers to our States and local school districts.

Mr. Chairman, I further believe that we must make sure that EVERY student has the skills and knowledge necessary to compete in the modern world. That is why I strongly support the actions taken by Congress and the Administration to ensure that ALL students, including students with disabilities, were included in State Developed AYP systems. Since we all desire to improve the educational opportunities for our most vulnerable children, I believe it is critically important to continue providing States with the flexibility they need to include children with disabilities in the AYP system.

Simply put, a disabled student should not be discounted simply because he or she does not learn at the same rate or in the same manner as other students, and I believe that Congress has a responsibility to continue guaranteeing States the ability to assess the progress of students with special needs. In addition, I applaud the Administration for finalizing a regulation granting States further flexibility in measuring AYP for students with disabilities, so that they can develop and administer alternative assessments aligned to the standards for these students at the local level.

The progress that Congress and the Administration has made in regards to AYP and students with disabilities is impressive, and I look forward to continuing our work in Congress to further enhance the opportunity for EVERY student to receive a top quality education in American public schools. With that being said, more work needs to be done in order to ensure that we continue to measure progress for all American students.

I look forward to hearing our witness" thoughts on how Congress and the Administration can continue in this important endeavor.

Thank you Mr. Chairman and I yield back.

Statement of Hon. Jon Porter, a Representative in Congress form the State of Nevada

Good Morning, Mr. Chairman. Thank you for convening this hearing on the progress of No Child Left Behind Programs in providing our special needs children with the necessary resources to achieve educational advancement.

Through a greater understanding of how these students are assessed in the class room, we as legislators will gain greater comprehension of the issues facing teachers in the classroom. I thank our distinguished panel of guests for providing us the insight into this process as we assess the efficacy of the programs contained under No Child Left Behind.

As we work to ensure that the regulations of No Child Left Behind and the Individuals with Disabilities Education Act are enforced simultaneously, we must also inquire as to the actual benefit proffered to those whose challenges in the classroom are much greater than the average tasks of academic achievement. It is my hope that the flexibility of No Child Left Behind will allow our schools to maintain standards of progress and achievement that provide all students, special needs or otherwise, with the appropriate learning environment.

The announcement yesterday by the Department of Education of states" ability to exceed the 1% cap on the level of proficient scores from alternate assessments under their adequate yearly progress calculations illuminates the need, felt both by states and the federal government, to allow states substantial flexibility in determining the progress of their special needs students. This action by the federal government demonstrates the capability of No Child Left Behind to encompass the varying needs and standards of the states and their individual school districts.

As we constantly review the measures of No Child Left Behind, we must continue to recognize the importance of the states in implementing the standards created at the federal level. This hearing provides us, as Members of Congress, an excellent opportunity to understand the varying degrees of difficulty in implementing this law. Again, I applaud the chairman, and this Committee, for engendering a continued relationship between the Congress and the teachers and administrators who implement the many facets of No Child Left Behind.

Statement of American Occupational Therapy Association

The American Occupational Therapy Association (AOTA) submits this statement for the record of the March 3, 2004 hearing. We appreciate the opportunity to provide this information regarding the relationship of occupational therapy services to improving results for children with disabilities under the No Child Left Behind Act (NCLB). It is important for Congress to monitor how well the law meets its objective of holding states and schools accountable for improving educational outcomes for all students, including those with disabilities. The topic of this hearing is critical to the development of a better, clearer picture of how America's public schools should educate students with special needs.

Children's education and learning continues to receive a great deal of attention from teachers, administrators, parents and policy makers across the country. Of concern to everyone is how to best educate all students to high standards and how to appropriately measure student progress, particularly for students with disabilities and those with limited English proficiency. Embedded in NCLB is recognition of the link between improved student outcomes and well trained and qualified personnel. The law also requires school personnel to use effective instructional practices and other supports to help children learn. These and other issues have also been raised in the pending reauthorization of the Individuals with Disabilities Education Act (IDEA). NCLB and IDEA are expected to work in concert to help schools meet the learning and behavioral needs of children with disabilities. Occupational therapy services can play an important role in this effort.

Occupational Therapy Services under IDEA and NCLB

Occupational therapy is concerned about an individual's ability to do everyday activities, or occupations, so that they can participate in school, at home, at work, and in the community. Occupational therapy practitioners use purposeful activities to help children bridge the gap between their capacity to learn and full, successful participation in education, work, play, and leisure activities.

Occupational therapists look at the individual's strengths and needs with respect to daily life performance in school, home and community life, focusing on the relationship between the child and their performance abilities, the demands of the activity, and the physical and social contexts within which the activity is performed. In addition to the physical aspects, each individual's occupational performance is viewed through a psychological-social-emotional lens. This perspective helps the occupational therapist to understand what is important and meaningful to the child as well as how their roles, experiences, strengths and patterns of coping affect performance in learning and other activities.

Occupational therapy for the school-aged child is intended to help them succeed in school. Intervention strategies may focus on information-processing, academic skill development, social interactions and ability to function in the school environment. For adolescents, occupational therapy focuses on preparation for work life choices, improvement of social and work skills, and learning how to create or alter the environment to maximize productivity.

How Occupational Therapy Helps Support NCLB and IDEA

Occupational therapy intervention for children and youth is planned in consultation with parents and families, teachers, and other professionals, and is directed toward achieving desired outcomes. Children are being challenged by increasingly higher standards of educational performance and achievement. They may feel pressure from parents, peers, and others to behave in certain ways or to conform to certain expectations that may be in conflict with one another. Depending on the student's age, the presence of any learning difficulties may have debilitating effects on his or her sense of accomplishment or social competence. Difficulties with completing class assignments or in getting along with others may lead to frustration and self-isolation. Occupational therapy intervention for these students can address these stresses by identifying these psychosocial problems.

In addressing learning problems, occupational therapists identify the underlying performance skills, including motor, process, communication and interaction skills that impede the student's ability to participate in learning and other school-related activities. Intervention strategies and service models are designed to support desired educational outcomes, and may be provided individually or in small groups. The therapist also works with classroom teachers and the student's family to determine how to modify the home or classroom settings, routines and schedules to provide structured learning opportunities and experiences that support the student's emerging skills. Occupational therapists also help students participate in lunch activities in the cafeteria and to identify organizational strategies so they can attend to instruction in the classroom.

Occupational therapy can have a significant supportive role in testing under NCLB. The occupational therapists" expertise in helping students meet school activity and task demands can help teachers and IEP Teams to identify appropriate accommodations needed in the classroom or learning environment to support the student's skill level. This includes identification of and training in the use of assistive technology or other aids that will help the student complete his assignments, as well as to participate in state and district assessments. These accommodations might include simple keyboarding devices such as the Alpha Smart; low-tech solutions such as built-up pencil grips, notebook paper with raised lines and elevated writing surfaces to assist with handwriting; and carrels to limit students" peripheral vision distractibility.

Another area in which occupational therapy can help improve student results is the area of literacy. Poor or messy handwriting is a major reason for referral to occupational therapy in school settings. Many of these referrals are from general education classrooms and may be related to decreased formal instruction in the mechanics of handwriting.

Reading and handwriting are not simple learning tasks. Both require the coordination of complex cognitive, memory, visual and motor processes. Difficulties in one or more of these areas can also impact a child's view of the entire learning environment (such as learning to spell, use scissors or move through the hallways without bumping into another child), not just their ability to read and write. Even after these components are mastered, students' do not become 'writers' unless they also have the requisite language and cognitive abilities to organize ideas and express them appropriately using the rules of grammar and syntax.

Occupational therapy has unique expertise in the areas that affect reading and writing. Children's visual and writing skills are dependent on having a stable base of postural or physical support from which their eyes and hands can do the work of reading and writing. It is difficult, for example, for a child to participate in a reading activity on the chalkboard when they can not keep their head/trunk up for long periods of time, or if they are easily visually distracted and can not "tune out" a visually "busy" classroom. Children with handwriting and visual-perception difficulties often find a way to not perform or complete reading and written assignments. Occupational therapy is an important service that can help meet the needs of children with reading and writing difficulties.

AOTA believes that occupational therapy is an underutilized service that can meet and address children's learning, social and behavioral needs. As a result, many children who could benefit from occupational therapy do not receive services. This limited access affects both IDEA-eligible students as well as students in general education. Often this limitation is due to a lack of understanding about how occupational therapy can help or because of perceptions that therapists only address "motor" issues. Occupational therapy training is comprehensive and covers physical, psychological, social and pedagogical aspects of human occupation. Occupational therapy's understanding of human performance, or "do-ing," can be invaluable in helping parents and school staff to understand the relationship between the physical and psychosocial and how these factors support or impede children's progress.

What is Occupational Therapy?

Occupational therapy is a vital health and rehabilitation service, designed to help individuals participate in important every day activities, or occupations. Occupational therapy services address underlying performance skills, including motor, process, communication and interaction skills to assist in the correction and prevention of conditions that limit an individual from fully participating in life. For children with disabling conditions and other educational needs, occupational therapy can help them to develop needed skills within the context of important learning experiences and to perform necessary daily activities such as feeding or dressing themselves and help them get along with their peers at school. Occupational therapy services can help identify strategies for teachers and families to use to facilitate appropriate reading and writing development.

Occupational therapy practitioners have the unique training to assist individuals to engage in daily life activities throughout the lifespan and across home, school, work and play environments. Services may be provided during only one period of the child's life or at several different points when the child is having difficulties engaging in his or her daily school occupations, such as when they are faced with more complex demands in the classroom resulting from increased emphasis and reliance on written output. Occupational therapy services may be provided in the family's home; at school; and in the community, such as day care and preschool programs, private clinics, and vocational programs.

Occupational therapy evaluation determines whether an individual would benefit from intervention. The evaluation looks at the individual's strengths and needs with respect to daily life function in school, home and community life, focusing on the relationship between the client and their performance abilities, the demands of the activity, and the physical and social contexts in which the activity is performed. The findings of the occupational therapy evaluation inform the team of the need for intervention. Occupational therapy practitioners use purposeful activities to help individuals bridge the gap between capacity to learn and full and successful engagement in work, play, and leisure activities.

For example, occupational therapy for infants and young children may include remediation of problem areas, development of compensatory strategies, enhancement of strengths, and creation of environments that provide opportunities for developmentally appropriate play and learning experiences. Services for the school-aged child are intended to help them be successful in school. Intervention strategies may focus on improving the child's information-processing ability, academic skill development such as handwriting, and ability to function in the school environment. For adolescents, the occupational therapy intervention focus is on preparation for occupational choice, improving social and work skills, and learning how to create or alter the environment to maximize their productivity.

Occupational therapy is a health and rehabilitation service covered by private health insurance, Medicare, Medicaid, workers' compensation, vocational programs, behavioral health programs, early intervention programs, and education programs. AOTA represents 30,000 occupational therapists, occupational therapy assistants, and students. We thank you, once again, for the opportunity to submit our comments for the record.

Statement of the National Center for Learning Disabilities, Inc.

Mr. Chairman, on behalf of the National Center for Learning Disabilities (NCLD), I would like to submit testimony to the record in conjunction with the Full Committee hearing held on March 3, 2004. NCLD is a not-for-profit organization founded in 1977 that works to increase opportunities and improve outcomes for children and adults with learning disabilities (LD) by providing accurate information to the public, developing and disseminating innovative educational programs, and advocating for more effective policies and legislation to help individuals with LD.

First, I would like to thank you and Representatives Castle, Miller, Woolsey, and Kildee for your support of The No Child Left Behind Act of 2001 (NCLB), which was signed into law by President Bush in January of 2002. Your unwavering bipartisan commitment to ensure that states and school districts intensify their efforts to improve the academic achievement of the nation's traditionally at-risk groups of public school students is historic and is deeply appreciated by parents nationwide. By protecting NCLB's new provisions for assessment and accountability that focus increased levels of attention on under-performing groups of students to help close the achievement gap for students who have long lagged behind, you are ensuring millions of students will finally be seen through the lens that allows us to really know whether they are receiving a quality education and making expected gains.

For the nation's 2.9 million students with identified learning disabilities (LD) currently receiving special education services under the Individuals with Disabilities Education Act (IDEA), the challenging new provisions of NCLB create expanded opportunities for improved academic achievement. As the IDEA definition of specific learning disabilities indicates, these students have neurological differences that are not primarily the result of mental retardation, emotional disturbance, or of environmental, cultural or economic disadvantage. Additionally, IDEA eligibility determination criteria require that students should not be determined to be a child with a specific learning disability if the determinant factor is lack of instruction in reading or math or limited English proficiency.

These definitional and qualifying criteria establish students with LD as competent to participate in general education curricula and achieve at a proficient level when provided with high quality instruction by trained professionals as well as appropriate accommodations. Thus, students identified and served under the IDEA category of Specific Learning Disabilities must be provided full participation and equal accountability in NCLB.

These additional findings serve to further support our position for full participation and accountability:

- The Twenty-fourth Annual Report to Congress on the implementation of the IDEA indicates that 45 percent of students in the SLD category spend less than

20 percent of their instructional time in special education, leaving the majority of their instruction in the hands of general education teachers.

- The majority of students served in the SLD category have their primary academic deficit in the area of reading, the same academic area at the core of NCLB improvement provisions.
- Nearly 30 percent of students with learning disabilities drop out of school (compared to 11% of the general student population). Two-thirds of high school graduates with learning disabilities were rated entirely unqualified to enter a four-year college, compared to 37% of non-disabled graduates.
- The 2003 National Longitudinal Transition Study–2 reports that grades given to secondary school students with disabilities have been found to have no correlation to real academic functioning, misleading parents about how their child is actually performing.
- Most students with learning disabilities spend the majority of their instructional time in general education classes. However, only 60 percent of students with disabilities in general education academic classes have teachers who receive any information about the needs of those students and only about half have teachers who receive any input or consultation from a special educator or other staff about how to meet those needs.
- Despite having their disabilities identified earlier (from 7.3 years of age in 1987 to 6.5 years of age in 2001) two-thirds of secondary students with learning disabilities are reading 3 or more grade levels behind. Twenty percent are reading 5 or more grade levels behind.
- A 2002 survey conducted by Public Agenda reports that 69 percent of parents of students with disabilities said many children could avoid special education if they were given help earlier.

NCLD recommends that the Committee consider the following as you make the critically important legislative decisions and seek to influence regulation and implementation of NCLB:

Access to the General Curriculum: Students with LD must have access to the general education curriculum, which must be aligned with the standards and assessments used to implement NCLB requirements, with appropriate accommodations.

Teachers must be allowed the time and provided the resources to learn the new curriculum and adjust their pedagogy, and teachers must use those instructional practices that have been proven to be effective in improving outcomes for students with LD.

Schools should effectively employ technology to enhance learning and increase student achievement by maximizing the use of universally designed technologies and assistive technology devices and services in the classroom.

High–Quality Teachers and Paraprofessionals: Students with LD must receive instruction from highly qualified personnel prepared in current, validated practices tailored to their individual needs.

Unfortunately, studies have shown that students with learning disabilities are often the victims of watered down curriculum and teaching approaches that are neither individualized nor proven to be effective.

Teachers must be given access to ongoing professional development and should be prepared to use ongoing progress monitoring using curriculum-based measurement in order to accurately identify student progress and tailor instruction accordingly.

Regular and special educators must work collaboratively as part of a coherent system in planning and delivering instruction.

Conditions of Teaching: Teachers responsible for delivery of instruction to students with LD, both general and special education, must use validated, inclusive teaching practices including:

- instructional configurations that allow teachers to implement validated teaching practices such as modeling, scaffolding, elaborated feedback, etc
- coordinated instruction of skills and strategies across teachers, grades and schools
- alignment of instructional methods with curriculum demands
- grouping practices that reflect optimal teacher/student ratios.

Access to Accommodations: Students with LD must be provided accommodations to ensure their participation in State assessments.

Decisions regarding accommodations must be made by the student's IEP team or placement team and should be made on the basis of individual student needs, not on the basis of labels.

The accommodations that students receive on State assessments should be similar to those routinely provided during classroom assessment. Neither the State Education Agency (SEA) nor the Local Education Agency (LEA) can limit the authority

of the IEP team to select individual accommodations/modifications needed by a student with LD to participate in State assessments.

Monitoring for compliance of these requirements should become part of the ongoing federal IDEA monitoring system.

Appropriate Use of Test Results: Results of tests used to hold schools accountable for student achievement as required by NCLB should not be used solely to make high stakes decisions, such as grade retention and graduation, about students with LD.

Since grade retention has been shown to contribute significantly to school dropout, administrators should ensure the use of multiple sources of information (such as coursework and portfolio assessments) about student performance for making decisions on such matters. This is particularly important given that "out-of-level" testing is not an acceptable means for meeting either the assessment or accountability requirements of NCLB for IDEA eligible students.

Fair Treatment of Subgroups: NCLB's requirements for the disaggregation of assessment results for several subgroups of students, including students with disabilities, are designed to enhance school accountability for at-risk populations. However, the state level flexibility regarding the determination of minimum group size has led to a significant range of subgroup size. One survey of subgroup size across States found that the required minimum number ranges from 3 to 200, with 10 being the most common.

The U.S. Dept. of Education should closely review the results of such a vast range in subgroup minimums with particular attention to those States that have established relatively high minimums. While the purpose for subgroup minimums—to ensure statistically reliable results and protect student identity—are appropriate, states with artificially high subgroup minimums may escape the very accountability that this provision was intended to promote.

Parent Involvement: NCLB creates an authority for funding of Parental Assistance Information Centers and Local Family Information Centers (LFICs) to provide training, information, and support to parents, and to individuals and organizations that work with parents, to implement parental involvement strategies that lead to improvements in student academic achievement. The information and training provided by these centers is critical to prepare parents to hold schools accountable for closing the achievement gap. These new centers should be monitored for their effectiveness in providing information related specifically to students with disabilities, including learning disabilities.

Full Funding of NCLB and IDEA: Policy-makers need to appropriate the authorized funding levels for both NCLB and IDEA. States and school districts need these additional funds to accomplish the aggressive improvements required by NCLB. Without adequate funding targeted to effective practices, schools might be pressured to make decisions that will harm students with learning disabilities, such as limiting access to special education eligibility.

Monitoring NCLB Implementation: The U.S. Department of Education should undertake aggressive monitoring activities to ensure full participation and equal accountability for students with disabilities, including learning disabilities, in NCLB. Additionally, studies should immediately be undertaken to track any unintended consequences of implementation that might adversely impact students with learning disabilities. Such attention can help to determine the need for additional guidance and technical assistance and minimize any negative impact resulting from implementation (e.g. reduced access to special education eligibility, lack of access to appropriate accommodation and to general curricula aligned with state standards).

The National Center for Learning Disabilities believes that the new provisions of NCLB provide substantial opportunities for students with learning disabilities. However, given the serious sanctions schools face for not delivering sufficient academic progress, NCLD also recognizes the possibility that students with learning disabilities and their parents might be subjected to numerous obstacles. Many of these obstacles have been mentioned here, while others will only be thoroughly understood and identified as NCLB implementation moves forward.

Mr. Chairman, on behalf of the millions of students and their families we represent at NCLD, I thank you for this opportunity to provide written testimony to the record on this important subject. We stand ready to assist you in any way as the discussion continues in Congress.

James H. Wendorf
Executive Director

Statement of Rosemary King Johnston, Member, National Education Association

Good Morning Chairman Boehner, Mr. Miller, Mr. Van Hollen, and distinguished members of the Committee. My name is Rosemary King Johnston and I am a proud veteran of nearly 30 years in the classroom. I taught my first class of children in 1968 - at a time we refer to as before the law. I taught primary age students with disabilities in Massachusetts for a few years and most recently taught in Harford County, Maryland for 18 years. I am a member of the National Education Association's IDEA Cadre—a group of 27 education practitioners from around the country that prepares and delivers professional development to our members specifically about instructing students with disabilities. I am also the parent of an adult with a disability and actively involved in decision making for a relative, who has multiple disabilities, including a significant cognitive disability. These experiences, both personal and professional, have given me a familiarity with the issues affecting educators, parents, and students with disabilities in the classroom and the community.

As this Committee is aware, the amendments to IDEA in 1997 resulted in about 6.5 million students with disabilities having access to the general curriculum. This corrected a practice that was happening all too often in our nation's schools - that students with disabilities were being taught in segregated settings, regardless of their individual capabilities to be included in general education classrooms. As a parent, an educator, and an advocate, I absolutely agree with the principles embodied in No Child Left Behind that move us beyond IDEA 97 and begin to focus on how we include students, including students with disabilities, in the same accountability system.

Please allow me the opportunity to commend the Department of Education for its final reg lation regarding the assessment of students with significant cognitive disabilities under No Child Left Behind. As I understand it, the final regulation allows students with disabilities to be assessed in four different ways and clarifies that the student's IEP team makes the determination regarding the most appropriate assessment instrument for the student. While this is a step in the right direction, there are additional challenges that must be addressed at the school and classroom level.

The first is reaching all educators with information explaining this final regulation. This will be no small feat, as many states have been slow to implement some of the assessment requirements of IDEA 97, let alone the requirements of NCLB for students with disabilities. Many states have still not developed alternate assessments based upon the state content standards. There is little professional development available to teachers about how to write an effective IEP that is aligned with state content standards and how to include students with disabilities in standardized tests, particularly if the child needs to be assessed in an alternate manner than the state's standardized tests. As a cadre member, I have conducted many workshops for my colleagues, but this requires a national, state, and local partnership to provide consistent and ongoing technical assistance and professional development.

To meet part of this challenge, I'd like to suggest to the Members of this Committee something that the Department of Education could do to make it easier for classroom teachers and support professionals to understand the testing regulation. The Department could issue a desktop guide for educators which looks at some sample content standards for a particular grade level and illustrates what a regular assessment of those standards looks like, what an alternate assessment based upon those standards looks like, and what an alternate assessment based upon alternate standards looks like. The desktop guide should also include an explanation of the array of accommodations that should be available for students with disabilities, based upon their individualized education program (IEP).

The second challenge we face is that many standardized tests do not include accommodations in their standard protocol, so any child that takes the regular assessment with an accommodation might not have their scores "counted" in a school's AYP measurement. For example, in many states, students who are blind had the state test read aloud to them. Their scores were invalidated because the test-maker did not include this as a protocol of the test administration. Accordingly, their scores whether they were 95, 100, or 75 were counted as zeroes in their school's AYP calculation.

I have no doubt that many schools, prior to the Department's final regulation, didn't have the opportunity to "count" scores like these in their initial AYP lists when they identified schools in need of improvement. Therefore, I'd like to suggest that you urge the Department of Education to work with states to ensure that the AYP listings are corrected retrospectively in accordance with this new final regula-

tion. Just as we seek to have students with disabilities included in the assessment programs, so should those students' scores be included in their school's calculations.

I'd also like to suggest that this Committee urge the Department of Education to convene a meeting of education stakeholders and national test developers to discuss what assessments are currently valid and reliable for students with various types of disabilities. The goal of this discussion should be to encourage test makers to update their protocols and expand their test offerings, so that the assessment options in the final regulation are a reality, not just a hope.

Finally, as the members of this Committee are aware, students with disabilities are a very diverse population, some with cognitive disabilities, some with physical disabilities, and some with behavioral issues. There are some children who are not significantly cognitively disabled, but who are currently performing well below grade level. The challenge with NCLB that is not addressed by the Department's final regulation is how to bring these students up to grade level in a way that is not punitive and does not damage the morale and reform efforts currently under way in many of our schools. NCLB gives no credit to a school that raises the level of achievement for this group of students by several grade levels, if that level doesn't meet the state's overall numerical target for all children. For example, what if a school improves the academic performance of a group of children-whether disabled or not from "below basic" to "basic?" This school may still be labeled in need of improvement, which may inadvertently stigmatize those students who didn't make the AYP target. Shouldn't the school instead be required to develop improvement plans for just the subgroups or individual students who are not proficient?

And for students with disabilities, why not incorporate a growth model into their IEPs that requires the student begin to close his own achievement gap, that is, his current performance level with grade level expectations. The House's IDEA reauthorization bill (H.R. 1350) will require IEPs to be aligned with NCLB requirements, so incorporating a growth model into the IEP will require academic progress, but at a pace that is appropriate for the individual student. This individualized approach is the cornerstone of IDEA and can be made to work together with NCLB.

In closing, I'd like to reiterate what I and my colleagues of the National Education Association believe. We believe in the goals of No Child Left Behind. We believe in holding schools accountable for improving results for all groups of children. And we believe in providing parents and communities more information about how their schools and all of their students are doing academically. But in order to make NCLB work for all students—and especially for students with disabilities—we must be able to look at growth in student performance over time, not just a snapshot from a test given on one day of the year. Each of our students deserves the most advanced and accurate determination of their achievement levels and I am concerned that the current interpretation of NCLB limits our schools' ability to document the real, every day progress made by students. Our students are more than just a test score and so are our schools. A few common sense changes to NCLB will not weaken accountability; they will make accountability work for every child. That's the goal of every educator: great public schools for every child.