

**NO CHILD LEFT BEHIND: ENSURING  
HIGH ACADEMIC ACHIEVEMENT FOR  
LIMITED ENGLISH PROFICIENT STUDENTS  
AND STUDENTS WITH DISABILITIES**

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**HEARING**

BEFORE THE

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

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

July 12, 2006

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STUDENTS WITH DISABILITIES**

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**Wednesday, July 12, 2006  
U.S. House of Representatives  
Committee on Education and the Workforce  
Washington, DC**

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The committee met, pursuant to call, at 10:30 a.m., in room 2175, Rayburn House Office Building, Hon. Howard McKeon [chairman of the committee] presiding.

Present: Representatives McKeon, Petri, Castle, Ehlers, Biggert, Platts, Osborne, Kline, Musgrave, Inglis, Fortuno, Boustany, Foxx, Kuhl, Miller, Kildee, Andrews, Woolsey, Tierney, Kucinich, Wu, Holt, McCollum, Davis of Illinois, Grijalva, Van Hollen, and Bishop.

Staff Present: Amanda Farris, Professional Staff Member; Ray Grangoff, Legislative Assistant; Richard Hoar, Professional Staff Member; Lindsey Mask, Press Secretary; Chad Miller, Coalitions Director for Education Policy; and Deborah L. Samantar, Committee Clerk/Intern Coordinator; Toyin Alli, Minority Staff Assistant; Alice Cain, Minority Legislative Associate/Education; Gabriella Gomez, Minority Legislative Associate/Education; Lauren Gibbs, Minority Legislative Associate/Education; David Hartzler, Minority Junior Technology Assistant; Lloyd Horwich, Minority Legislative Associate/Education; Ricardo Martinez, Minority Legislative Associate/Education; Joe Novotny, Minority Legislative Assistant/Education, Clerk; and Mark Zuckerman, Minority Staff Director/General Counsel.

Chairman MCKEON. A quorum being present, the Committee on Education and the Workforce will come to order. We are holding this hearing today to hear testimony on the No Child Left Behind Act, ensuring high academic achievement for limited English proficient students and students with disabilities. For that I ask unanimous consent for the hearing record to remain open 14 days to allow members' statements and other extraneous material referenced during the hearing to be submitted in the official hearing record.

Without objection, so ordered.

Good morning. I would like to thank my colleagues for joining me here today for the latest in our series of hearings on the No Child

Left Behind Act. As always, I would like to extend a special thank-you to our committee senior Democrat, Mr. Miller, and the Education Reform Subcommittee Chairman, Mr. Castle, and the Ranking Member, Miss Woolsey, for joining us—I am sure she will be here later—for joining us and helping to lead this effort.

We are really trying to get a head start on this whole program because we have heard so many things about No Child Left Behind, and that is why we are moving this year to hold these hearings, to give us a head start moving into next year with authorization.

Today's hearing will focus on how well students with disabilities and limited English proficient students are excelling in public schools. Additionally, we will examine how these student are evaluated, how effective those evaluation measures are, and whether or not there is enough flexibility granted to States and school districts by the Department of Education with regard to these student subgroups.

First, let us not lose sight of the fact that No Child Left Behind was crafted under the guiding principle that all students can learn. Disabled, special needs, and LEP students are no exception. Because of that, under No Child Left Behind, schools are held to higher standards and held accountable for the academic achievement of all of the children, including special education and LEP students. Indeed, the evaluation of these two student subgroups is an essential component of our discussions on No Child Left Behind and a window into the effectiveness of our current systems of education and accountability.

With regard to disabled students, No Child Left Behind affirms our belief that a child should not be discounted simply because he or she doesn't learn at the same rate or in the same manner as other students. Moreover, the Individuals with Disabilities Education Act, which Congress renewed in 2004, also requires that all students with disabilities be appropriately assessed on State assessments and within the context of a student's individualized education program allowing for enhanced flexibility and personalization within the student's learning experiences. And for limited English proficient students, No Child Left Behind also demonstrates our belief that these children too can learn. The law makes it clear that LEP students should be tested in reading, language, arts and math as well as English language acquisition.

At the same time, the law provides States and local school districts the flexibility to test these students in their native language for up to 3 years, with an additional 2 years of native language assessment provided on a case-by-case basis.

Today we will be hearing testimony on how our latest accountability standards are working at the State and local level. School administrators and other expert witnesses are with us to discuss the impact of higher accountability standards on their respective school systems and on education overall.

I am certain this hearing will build upon the previous hearings in this series. I am eager to hear the unique perspective of our witnesses, and I extend a warm welcome to them.

I now yield to my friend Mr. Miller for his opening statement.  
[The prepared statement of Mr. McKeon follows:]

**Prepared Statement of Hon. Howard P. “Buck” McKeon, Chairman,  
Committee on Education and the Workforce**

Hearing on “No Child Left Behind: Ensuring High Academic Achievement for Limited English Proficient Students and Students with Disabilities”

Good morning. I’d like to thank my colleagues for joining me here today for the latest in our series of hearings on the No Child Left Behind Act. As always, I’d like to extend a special thank you to our Committee’s senior Democrat, Mr. Miller, and the Education Reform Subcommittee’s Chairman, Mr. Castle, and ranking Member, Ms. Woolsey, for joining us and helping to lead this effort.

Today’s hearing will focus on how well students with disabilities and limited English proficient (or LEP) students are excelling in public school. Additionally, we will examine how these students are evaluated, how effective those evaluation measures are, and whether or not there is enough flexibility granted to states and school districts by the Department of Education with regard to these student subgroups.

First, let’s not lose sight of the fact that No Child Left Behind was crafted under the guiding principle that all students can learn. Disabled, special needs, and LEP students are no exception. Because of that, under No Child Left Behind, schools are held to higher standards and held accountable for the academic achievement of all the children—including special education and LEP students. Indeed, the evaluation of these two student subgroups is an essential component of our discussions on No Child Left Behind and a window into the effectiveness of our current systems of evaluation and accountability.

With regard to disabled students, No Child Left Behind affirms our belief that a child should not be discounted simply because he or she doesn’t learn at the same rate or in the same manner as other students. Moreover, the Individuals with Disabilities Education Act—which Congress renewed in 2004—also requires that all students with disabilities be appropriately assessed on state assessments and within the context of a student’s Individualized Education Program, allowing for enhanced flexibility and personalization within the student’s learning experiences.

And for limited English proficient students, No Child Left Behind also demonstrates our belief that these children, too, can learn. The law makes it clear that LEP students should be tested in reading, language arts, and math, as well as English language acquisition. At the same time, the law provides states and local school districts the flexibility to test these students in their native language for up to three years, with an additional two years of native language assessment provided on a case-by-case basis.

Today, we will be hearing testimony on how our latest accountability standards are working at the local and state level. School administrators and other expert witnesses are with us to discuss the impact of higher accountability standards on their respective school systems and on education overall.

I’m certain this hearing will build upon the previous hearings in this series, and I am eager to hear the unique perspectives of our witnesses—and I extend a warm welcome to them. And with that, I now yield to my friend, Mr. Miller for his opening statement.

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Mr. MILLER. Thank you, Mr. Chairman. I want to thank you for scheduling today’s hearings on how No Child Left Behind laws are affecting two groups of students we had in the forefront of our mind when we wrote No Child Left Behind: Students with disabilities and English language learners. It is imperative that we look closely at how the law has affected these students.

However, I believe we would have been better able to explore these important issues had we devoted one hearing to focus solely on children who are English language learners and devoted a separate hearing to focus on children with special needs. There are numerous issues that need to be explored in involving both groups of children, including different sets of regulations that mandate how States are held accountable for these children and how these children are tested. I hope that we will have additional opportunities to delve more deeply into these issues as they relate to two important but distinct groups of children.

That said, I would like to point out two things that subgroups have in common. First, children who are English language learners and children with special needs are anecdotally least or most often unfairly blamed for the reason why schools did not make adequate yearly progress, known as AYP. I can't tell you how many times I have heard the complaints of the particular school that would have made AYP except for just one special education student or except for just one English language learner. I hear it over and over and over. It is interesting now that we see new research that comes from the Aspen Institute report that I would like to submit for the record, if it is all right, Mr. Chairman, and as part of the record of this hearing.

This report shows the subgroups' size in some States such as my home State of California is so large that many schools are not held accountable for subgroups of either students with disabilities or English language learners. For example, the report found in California's 9,410 schools, only 839 had a subgroup of children with disability. While about half of these schools did not make AYP, only 28 of those schools did not make AYP exclusively because of the disabilities subgroup.

An awful lot of responsibility and blame has been offloaded onto these children as to why they have made AYP, but it doesn't hold up under the data. And again I want to make part of the record of this hearing this report, because they deal with, I think, Georgia, Pennsylvania, several other States. I think it is going to be available for all States, but the fact of the matter is this is becoming an urban legend: But for this one student, our schools is just doing great.

And now this is—you know, I recognize that California is very large in size, but it is interesting that it is very similar in States with sizes of 40 and 30 in terms of that. And I think it is important that we understand that going into this hearing.

Second, the challenges and struggles that these two groups of students face has been made worse by inadequate funding levels. No Child Left Behind has been underfunded to date by over \$55 billion. Next year's budget as passed by the Appropriation's Committee would cut No Child Left Behind by nearly 500 million as compared to fiscal year 2006, by 1.5 billion compared to 2005. The bill falls over \$16 billion short that was promised for 2007 creating a cumulative funding shortfall of \$56.7 billion since the law was enacted. Think of the problems that could be solved if you had those kinds of resources available to them. Not everything would be right with No Child Left Behind, but many of the difficulties the school districts and States are encountering would certainly be somewhat simpler.

The underfunding of IDEA also puts a squeeze on school districts. We are asking them to do more than ever for all students. I am extremely concerned that the funding for the share of education for children with disabilities continues to drop from 18.26 percent in 2005 to 17 percent in 2007, continuing the breaking of the promise that Congress made to pay 40 percent of the cost of educating 6.9 million students with disabilities. As a result, an additional \$1 billion would be needed to restore the Federal share to its 2005 level.

Finally, as one of the original authors of No Child Left Behind, I get asked a lot about the future of the law. With the access for reauthorization next year, one of the challenges will be to maintain the core values of the law while still being responsive to legitimate concern. The core value I hold dear is closing the achievement gap in helping all children, including students with disabilities and English language learners. We have an obligation to help these students become proficient in the knowledge and skills they need to fulfill their potential.

A second challenge will be to analyze the problems with the law to determine which are due to the problems with the students themselves and which are due to chronic underfunding of law and which are due to problems with the Department of Education's implementation of the law.

I am disappointed that the DOE is not represented here today to help us understand the rationale behind of some of the regulatory policies and which are related to the accountability for testing for both children who are English language learners and children with disabilities. Nothing is more important than ensuring that we live up to the No Child Left Behind promise to provide the opportunity for quality education for every child in our country, and I look forward from hearing from the panelists. And again, I want to thank the Chairman for calling these hearings.

I made in the middle of my testimony, but I would like to make a request that the Aspen Institute report be made part of the record of this hearing.

Mr. CASTLE [presiding]. Yes, of course. Without objection, the Aspen Institute report will be made a part of this hearing. Thank you, Mr. Miller. We appreciate your opening statement.

[The information referred to follows:]

Commission on No Child Left Behind—The Aspen Institute

**Commission Staff Research Report—Children With Disabilities and LEP Students: Their Impact on the AYP Determinations of Schools**

As part of the No Child Left Behind Act (NCLB), states must set annual targets that will lead to the goal of all students reaching proficiency in reading and mathematics by the 2013-2014 academic school year. For each measure of school performance, states must include absolute targets that must be met by key subgroups of students. These subgroups include major racial/ethnic groups, low-income students, children with disabilities, and limited English proficient (LEP) students. Schools and districts must meet annual targets<sup>1</sup> for each student subgroup in the school and must test 95% of students in each subgroup in order to make "adequate yearly progress" (AYP).

In order for a subgroup to be included for accountability purposes, it must meet the necessary "N-size." Under NCLB, N-size is the minimum number of students required in a subgroup in order for an AYP determination to be made. Each state has the flexibility to decide what the N-size will be for the schools in their state. Some states have certain minimums such as 30 students and/or require a percentage of the total student population. The law originally created this exemption so that students' privacy would not be compromised and that a small number of students would not have a significant impact on the AYP decision of a school.

However, larger N-sizes can have a considerable impact on the AYP status for a school. These N-sizes can make a significant difference in how many subgroups factor into a school's AYP status. The trend since the initial year after the enactment of NCLB has been for states to enlarge their N-sizes. Due to this state trend, increasing numbers of students, including children with disabilities and LEP children, have not been included in state accountability systems. Coupling large N-sizes with

<sup>1</sup>Annual targets may be met through averaging of up to three years of achievement data.

a diverse population can create an environment where very few, if any subgroups are included in the AYP decision of a school.

One common complaint of No Child Left Behind is that schools are not making AYP solely because of children with disabilities or LEP students. The analysis done for this report raises questions about this claim due to the large numbers of schools in states that do not have to report for these subgroups. Furthermore, even when these subgroups do not meet their annual targets, they are very often not the sole reason a school is identified as not making AYP.

This case study analyzes student achievement data from the 2004-2005 academic school year in five states: California, Florida, Michigan, Georgia, and Pennsylvania. This study observes: 1) the number of schools that have to report for children with disabilities and LEP students, as well as the percentage of students that these populations represent, 2) the number of schools for which the students in these two subgroups did not make AYP, and 3) whether or not these schools missed AYP solely based on these two subgroups.

For this case study student achievement data was collected for each and every school in these five states. The data used was acquired from information posted on each state's Department of Education website or from data personnel of the state. Those seeking this data can obtain it from the Commission website at [www.nclbcommission.org](http://www.nclbcommission.org).

#### *California*

In California, an AYP determination is required if the school has 100 or more students enrolled in a particular subgroup OR 50 or more students enrolled who make up at least 15% of the total enrollment.

##### *Children With Disabilities Subgroup*

Of the 9,410 schools in California, 839 schools reported an AYP determination for at least one category for children with disabilities, including proficiency and participation in math and reading. This is 9% of the total number of schools within the state.

Of these 839 schools, 410 reported not making AYP in one of these categories for children with disabilities. Therefore, nearly 50% of schools reporting for a subgroup made up of children with disabilities did not make AYP. These 410 schools, however, only make up 4% of the total number of schools within the state.

Of the 410 schools, 28 schools did not make AYP solely because of the children with disabilities subgroup. This is a little less than 1% of the total 3,618 schools in California that did NOT make AYP or approximately .3% of the total schools in California.

The total number of children with disabilities tested in the 9,410 schools is approximately 380,586. Only one third of these students (104,884) are enrolled in the 839 schools that actually reported an AYP determination for the subgroup.

##### *Limited English Proficiency (LEP) Subgroup*

Of the 9,410 schools in California, 4,140 reported an AYP determination for at least one category for LEP students, including proficiency and participation in math and reading. This is approximately 44% of the total number of schools.

Of these 4,140 schools, 2,101 reported not making AYP in at least one of these categories for LEP students. Therefore nearly 51% of schools reporting for the LEP subgroup did not make AYP. However, those 2,101 schools make up only 22% of the total number of schools within the state.

In California, 443 schools did not make AYP solely because of the LEP subgroup. This is approximately 12% of the total 3,618 schools in California that did NOT make AYP or nearly 5% of the total schools in California.

The total number of LEP students tested in the 9,410 schools is approximately 1,273,848. Approximately 87%, (1,113,826) are enrolled in the 2,101 schools that actually reported an AYP determination for the subgroup.

#### *Florida*

In Florida, an AYP determination is required if a subgroup is comprised of 30 students AND at least 15% of a school's total enrollment. This was recently changed from previous years where the N-size requirement was just 30 students.

##### *Children With Disabilities Subgroup*

Of the 3,106 schools in Florida, 1,813 reported an AYP determination for at least one category for children with disabilities, including only proficiency in math and reading. This is approximately 58% of the total number of schools.

Of these 1,813 schools, 1,333 reported not making AYP in one of these categories for children with disabilities. However, due to special flexibilities, 588 of these

schools have been reported by Florida as making AYP provisionally and 70 were classified as making AYP. As a result, only 675 schools which did not make AYP for the children with disabilities subgroup have been reported as missing their AYP goals overall. Florida was granted a one-year flexibility to count more of its special education students with moderate disabilities as proficient on state tests.

In Florida only 23 schools did not make AYP solely because of the children with disabilities subgroup. This is approximately 2% of the total 1,162 schools that did not make AYP.

The total number of children with disabilities tested in the 3,106 schools is approximately 216,065. Approximately 83% (181,120) are enrolled in the 1813 schools that actually reported an AYP determination for the subgroup.

#### *Limited English Proficiency (LEP) Subgroup*

Of the 3,106 schools in Florida, 724 reported an AYP determination for at least one category for LEP students, including only proficiency in math and reading. This is 23% of the total number of schools.

Of these 724 schools, 427 reported not making AYP in at least one of these categories for LEP students. However due to special flexibilities, only 247 of these schools have been reported by Florida as NOT making AYP. In addition, 171 made AYP provisionally, and 9 still made AYP. Florida factors in its own state accountability system into its AYP determinations. This allows schools to make AYP if they score an "A" or "B" in the state system. The U.S. Department of Education has not approved Florida's use of its own state accountability system in this manner.

In Florida only 10 schools did not make AYP solely because of the LEP subgroup. This is approximately 1% of the total 1,162 schools that did not make AYP.

The total number of students enrolled in testing for the LEP subgroup in the 3,106 schools is approximately 136,997. Nearly 80% (107,061) are enrolled in the 724 schools that actually reported an AYP determination for the subgroup.

#### *Georgia*

In Georgia, an AYP determination is required if the subgroup size is 40 or 10% of the students enrolled in AYP grades, whichever is greater (with a 75 student cap).

#### *Children With Disabilities Subgroup*

Of the 2,030 schools in Georgia, 1048 reported an AYP determination for at least one category for children with disabilities including proficiency and participation in math and reading. This is approximately 53% of the total number of schools.

Of these 1,078 schools, 192 reported not making AYP in any children with disabilities category. Therefore nearly 18% of reporting schools did not make AYP, however those 192 schools only make up 10% of the total number of schools.

Of the 192 schools, 140 schools did not make AYP solely because of the children with disabilities subgroup. This is approximately 7% of the total number of schools in Georgia.

The total number of students enrolled in testing for the children with disabilities subgroup in the 2,030 schools is approximately 108,316. Almost 80% (85,117) are enrolled in the 1,078 schools that actually reported an AYP determination for the subgroup.

#### *Limited English Proficiency (LEP) Subgroup*

Of the 2,030 schools in Georgia, 209 schools reported an AYP determination for at least one category for LEP students including proficiency and participation in math and reading. This is approximately 10% of the total number of schools.

Of these 209 schools, 23 reported not making AYP in at least one of these LEP categories. Therefore about 11% of reporting schools did not make AYP, however those 23 schools only make up 1% of the total school population. Six schools did not make AYP solely because of the LEP subgroup. This is about .003% of the total number of schools in Georgia.

The total number of students enrolled in testing for the LEP subgroup in the 2,030 schools is approximately 28,607. Over two-thirds of these students (19,279) are enrolled in the 209 schools that actually reported an AYP determination for the LEP subgroup.

#### *Michigan*

In Michigan, an AYP determination is required if a subgroup has 30 or more students enrolled. Information from subgroups that do not meet this criterion will be reported to the individual school but not used for accountability purposes.

*Children With Disabilities Subgroup*

Of the 3,566 schools in Michigan, 2,118 schools reported an AYP determination for at least one category for children with disabilities including only proficiency in math and reading. This is nearly 60% of the total number of schools.

Of these 2,118 schools, 98 reported not making AYP in at least one of these categories for children with disabilities. Therefore, nearly 5% of schools reporting did not make AYP. These 98 schools, however, only make up 3% of the total number of schools within the state.

In Michigan, only 54 schools did not make AYP solely because of the children with disabilities subgroup. This is approximately 12% of the total 436 schools in Michigan that did not make AYP.

The total number of children with disabilities tested in the 3,566 schools is approximately 53,015. Nearly 70% (36,439) are enrolled in the 2118 schools that actually reported an AYP determination for the subgroup. (In grades 4 and 7, the total number of students tested was calculated by averaging ELA and Math figures.)

*Limited English Proficiency (LEP) Subgroup*

Of the 3566 schools in Michigan, 318 reported an AYP determination for at least one category for LEP students including only proficiency in math and reading. This is 9% of the total number of schools.

Of these 318 schools, 10 reported not making AYP in at least one of these categories for LEP students. Therefore 3% of reporting schools did not make AYP. However, these 10 schools make up less than 1% of the total school population within the state of Michigan.

In Michigan, only 10 schools did not make AYP solely because of the LEP subgroup. This is approximately 2% of the total 436 schools that did not make AYP.

The total number of students enrolled in testing for the LEP subgroup in the 2,030 schools is approximately 28,607. Approximately two-thirds of these students (19,279) are enrolled in the 209 schools that actually reported an AYP determination for the LEP subgroup.

The total number of LEP students tested in the 3,566 schools is approximately 14,422. Nearly 45% (6,424) are enrolled in the 318 schools that actually reported an AYP determination for the subgroup. (In grades 4 and 7, the total number of students tested was calculated by averaging ELA and Math figures.)

*Pennsylvania*

In Pennsylvania, a school is required to make an AYP determination if a subgroup has 40 or more students enrolled. For schools with an N-size below 40, the department will use two to three years of data in making AYP calculations if available, and will consider using a confidence interval. Therefore, all schools within the state must meet the same accountability requirements.

*Children With Disabilities Subgroup*

Of the 3,025 schools in Pennsylvania, 341 reported an AYP determination for at least one category for children with disabilities, including proficiency and participation in math and reading. This is 11% of the total number of schools within the state.

Of these 341 schools, 187 reported not making AYP in at least one of these categories for children with disabilities. Therefore, nearly 55% of reporting schools did not make AYP. These 187 schools, however, only make up 6% of the total number of schools within the state.

Of the 187 schools, 109 schools did not make AYP solely because of the children with disabilities subgroup. This is approximately 19% of the total 583 schools in Pennsylvania that did not make AYP.

The total number of students enrolled in testing for the children with disabilities subgroup in the 3,025 schools is approximately 58,753. Nearly 41% (23,987) are enrolled in the 1,078 schools that actually reported an AYP determination for the subgroup.

*Limited English Proficiency (LEP) Subgroup*

Of the 3025 schools in Pennsylvania, 36 schools reported an AYP determination for at least one category for LEP students, including proficiency and participation in math and reading. This is approximately 1% of the total number of schools.

Of these 36 schools, 6 reported not making AYP in at least one of these categories for LEP students. Therefore over 16% of reporting schools did not make AYP, however those 6 schools make up less than 1% of the total school population.

There were no schools that did not make AYP solely because of the LEP subgroup.

The total number of students enrolled in testing for the LEP subgroup in the 3,025 schools is approximately 6,337. Nearly 20% (1,188) are enrolled in the 36 schools that actually reported an AYP determination for the subgroup.

The Commission on No Child Left Behind is funded by the Bill & Melinda Gates Foundation, the Ewing Marion Kauffman Foundation, the Joyce Foundation, the John D. and Catherine T. MacArthur Foundation, Carnegie Corporation of New York, and the Spencer Foundation. This document is published to communicate the results of the Commission's work. The findings, interpretations, and conclusions expressed in the Commission's documents are entirely those of the author(s) and should not be attributed in any manner to the donors.

*Appendix—Supplemental Data Tables and Graphs*

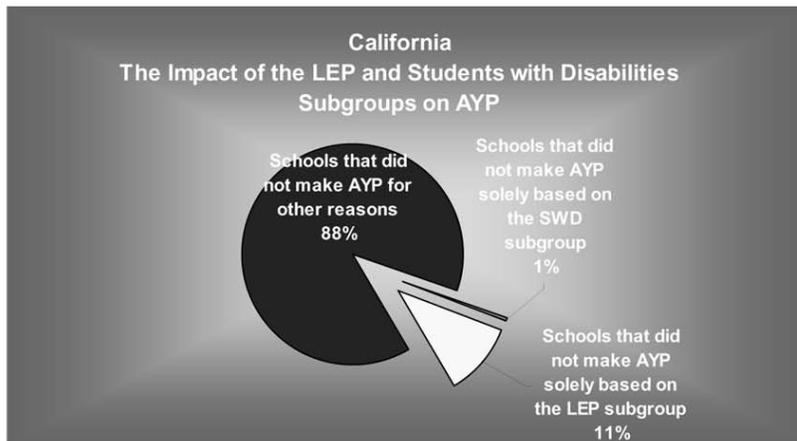
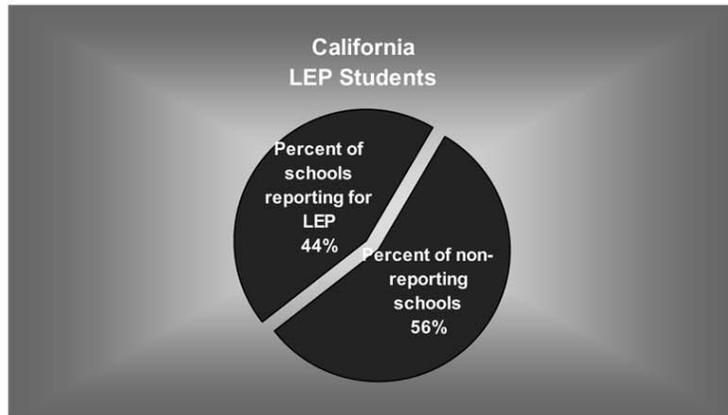
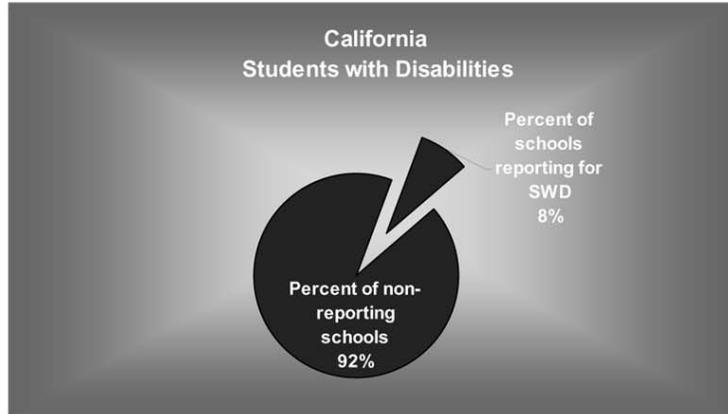
IMPACT OF STUDENTS WITH DISABILITIES ON AYP

State	Schools reporting AYP for subgroup	Schools that missed AYP in subgroup	AYP missed solely because of subgroup	Students in reporting schools represented in subgroup
California .....	9%	4%	1%	28%
Florida .....	58%	22%	2%	83%
Georgia .....	53%	10%	38%	80%
Michigan .....	60%	3%	12%	70%
Pennsylvania .....	11%	6%	19%	41%

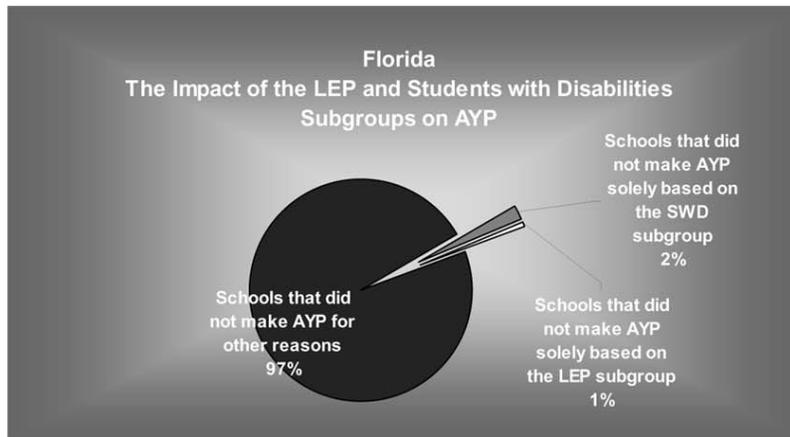
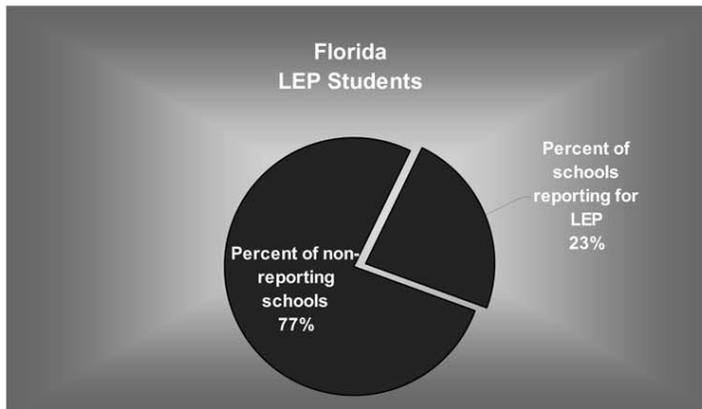
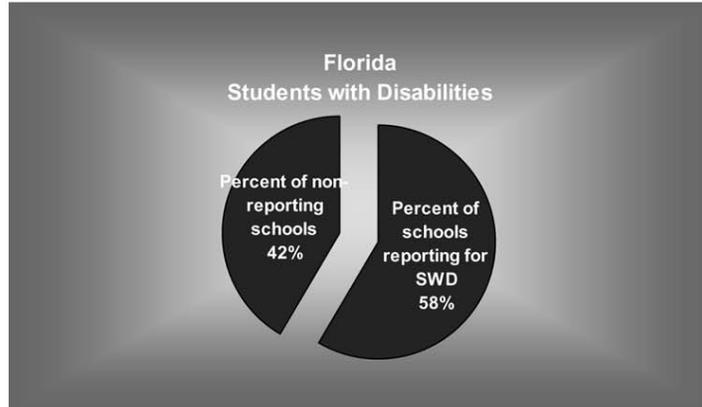
IMPACT OF STUDENTS WITH LIMITED ENGLISH PROFICIENCY ON AYP

State	Schools reporting AYP for subgroup	Schools that missed AYP in subgroup	AYP missed solely because of subgroup	Students in reporting schools represented in subgroup
California .....	44%	22%	12%	87%
Florida .....	23%	8%	1%	80%
Georgia .....	10%	1%	2%	67%
Michigan .....	9%	Less than 1%	2%	45%
Pennsylvania .....	1%	Less than 1%	0	20%

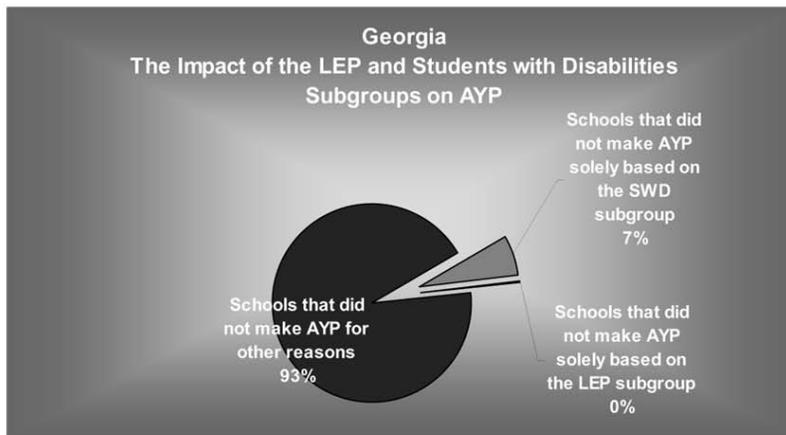
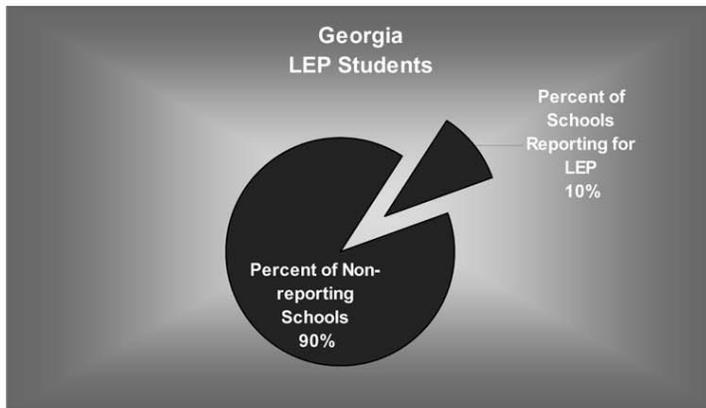
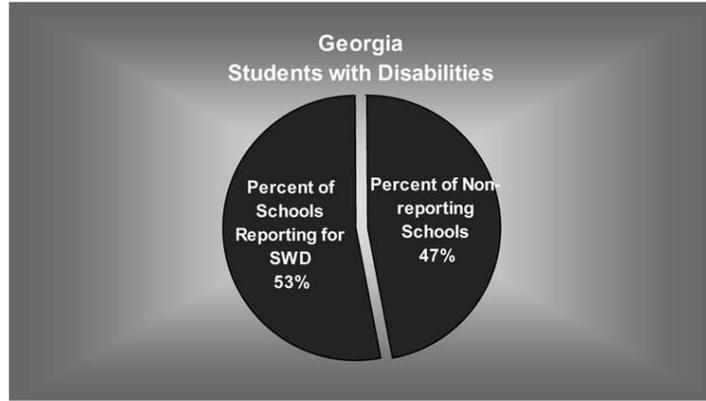
CALIFORNIA



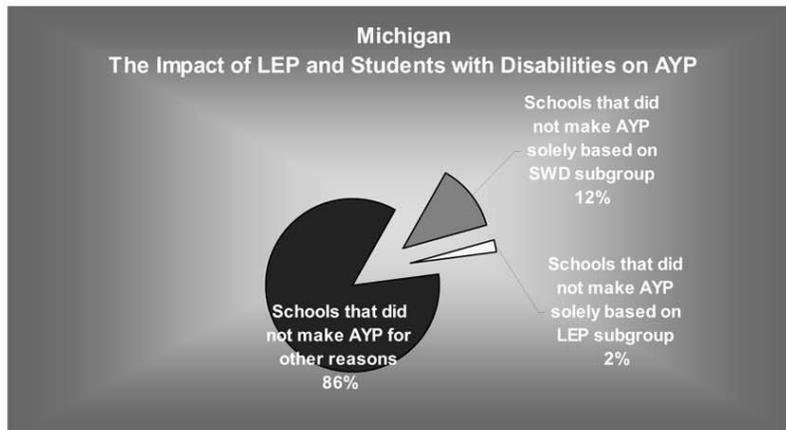
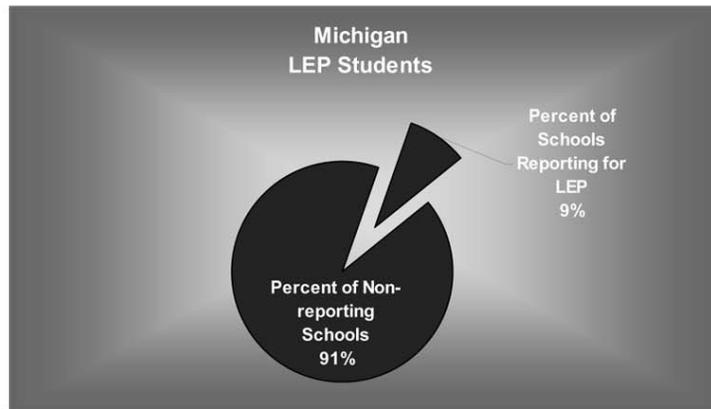
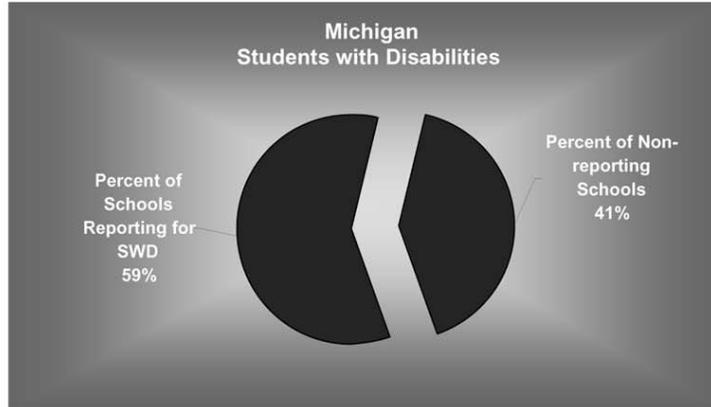
FLORIDA



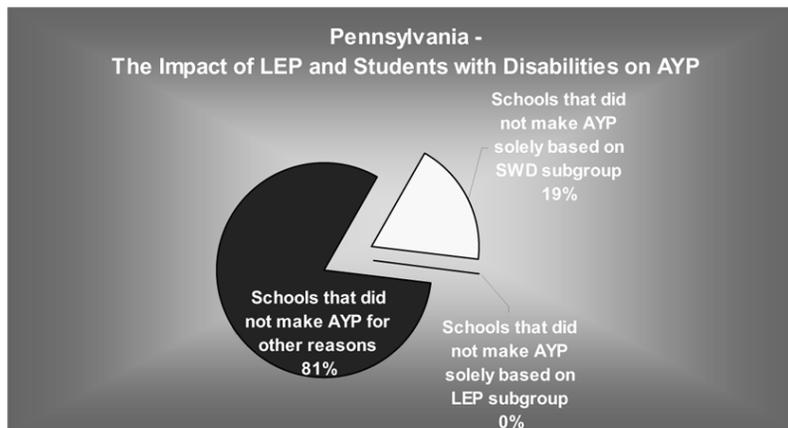
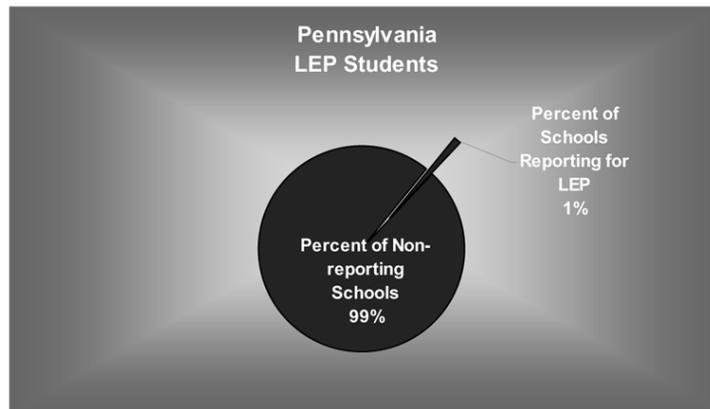
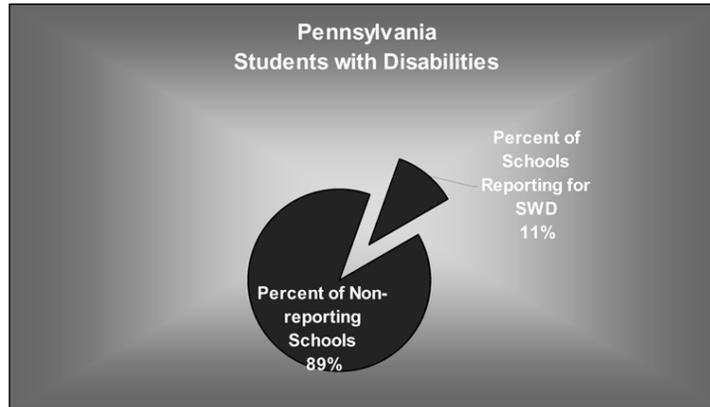
GEORGIA



MICHIGAN



PENNSYLVANIA



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[The prepared statement of Mr. Miller follows:]

**Prepared Statement of Hon. George Miller, Ranking Minority Member,  
Committee on Education and the Workforce**

Good morning. I want to thank Chairman McKeon for scheduling today's hearing on how the No Child Left Behind law is affecting two of the groups of children we had at the forefront of our minds when we wrote No Child Left Behind: students with disabilities and English language learners. It is imperative that we look closely at how the law has affected these students.

However, I believe that we would better be able to explore these important issues if we devoted one hearing to focus solely on children who are English language learners, and devoted a separate hearing to focus on children with special needs.

There are numerous issues that need to be explored involving both groups of children, including different sets of regulations that mandate how states are held accountable for these children and how these children are tested. I hope that we will have additional opportunities to delve more deeply into these issues as they relate to two important, but distinct, groups of children.

That said, I would like to point out two things that these subgroups have in common.

First, children who are English language learners and children with special needs are—anecdotally at least—most often unfairly blamed as the reason their school did not make Adequate Yearly Progress, or AYP. I can't tell you how many times I've heard the complaint that a particular school would have made AYP "except for just one special education student" or "except for just one English language learner."

The research I have seen does not back this claim, including a recent Aspen Institute Report that I would like to submit into the record. This report shows that the subgroup size in some states, such as my home state of California, is so large that many schools are not held accountable for subgroups of either students with disabilities or English language learners.

For example, the report found that California's 9,410 schools, only 839 had a subgroup of children with disabilities. While about half of these schools did not make AYP, only 28 schools did not make AYP exclusively because of the disabilities subgroup.

Second, the challenges and struggles that these two groups of students face have been made worse by inadequate funding levels. No Child Left Behind has been underfunded to date by over \$55 billion. Next year's budget, as passed by the Appropriations Committee, would cut No Child Left Behind by nearly \$500 million, as compared to FY06 and by \$1.5 billion compared to FY05.

The bill falls over \$16 billion short of the No Child Left Behind funding level promised for 2007, creating a cumulative funding shortfall of \$56.7 billion since the law was enacted in 2002.

The under funding of IDEA also puts a squeeze on school districts at the same time we are asking them to do more than ever for all children.

I am extremely concerned that the federal funding share of educating children with disabilities continues to drop—from 18.6 percent in 2005 to 17.0 percent in 2007—breaking the promise that Congress made to pay 40 percent of the costs of educating 6.9 million students with disabilities. As a result, an additional \$1 billion would be needed to restore the federal share to its 2005 level.

Finally, as one of the original authors of No Child Left Behind, I get asked a lot about the future of the law. With the Act set for reauthorization next year, one challenge will be to maintain the core values of the law while still being responsive to legitimate concerns.

A core value that I hold dear is closing the achievement gap and helping all children, including students with disabilities and English language learners. We have an obligation to help these students become proficient in the knowledge and skills they need to fulfill their potential.

A second challenge will be to analyze problems with the law to determine which are due to problems with the statute itself, which are due to chronic underfunding of the law, and which are due to problems with the Department of Education's implementation of the law.

I am disappointed that the Department of Education is not represented here today to help us understand their rationale behind some of the regulatory policies related to accountability and testing of both children who are English language learners and children with disabilities.

Nothing is more important than ensuring that we live up to No Child Left Behind's promise to provide opportunity and a quality education for every child in our country. I look forward to hearing from our panelists.

Thank you Mr. Chairman.

Mr. CASTLE. My name is Mike Castle. I am not Mr. McKeon. I am not the Chairman of the committee. I am chairman of the subcommittee that deals with No Child Left Behind and in Mr. McKeon's absence I will chair this hearing.

Before I introduce the witnesses, for a moment I want to stress the importance of the subject matter that we are dealing with, perhaps to all of us in the room. In watching No Child Left Behind over the past several years it seems to me that there has been no area that has been as—I don't necessarily want to say contentious or controversial, but has had as many questions raised about it, if you will, in terms of assessments on how we are doing. And yet there is probably no area in which Members of Congress who voted for this, or the President who first came up with the concept, at least in Washington, of taking the Elementary and Secondary Education Act and advancing it to this level are concerned about as making sure that every child is educated, that no child is left behind. And obviously when you are dealing with those children who may be perhaps more blocked than others in terms of their advance, it becomes extremely important that we learn how to educate better and how to assess better in that particular circumstance.

We have seen already a number of changes with the Department of Education. We have seen them issue a variety of opinions with respect to this area, but as we deal with disabilities in English language learners, we need to come to grips with this as soon as we can. Mr. Miller indicated this in his opening statement, which is that we intend to take this up next year in a relatively expeditious way and these hearings are for that purpose. So it is very important that we develop as much knowledge as we can. We appreciate all of you being here today.

I will go through introductions of each of you and then after that I will explain the rather scant rules that we have but we would like you to live by if you can.

I will just go in order.

Ms. Rachel Quenemoen is the technical assistant team leader for the National Center on Educational Outcomes, an organization that focuses on designing and building assessments and accountability systems that appropriately monitor educational results for all students, including students with disabilities and students with limited English proficiency. Ms. Quenemoen has worked for 25 years as an educational sociologist. She has been a multidistrict cooperative administrator in both general and special education and for the last 10 years has worked at the State and national levels on educational change processes and reform efforts related to standard-based reform with students with disabilities. She is also the mother of a daughter with Down's syndrome.

Ms. Kristine Neuber is a Ph.D. student in special education at George Mason University. She has also worked as an administrative faculty member at the College of Education and Human Development for 10 years. Ms. Neuber coordinates the Assistive Technology Initiative and provides assistive technology services for all university students and employees with disabilities. She also acts as the Web accessibility coordinator for the university.

Prior to working at George Mason University Ms. Neuber worked in the Virginia public schools as a special education teacher for 4 years. In addition to her professional qualifications, she was classified as a student with disability because she has cerebral palsy.

Mr. Don Soifer is Executive Vice President of the Lexington Institute, a public policy think-tank based near Washington, D.C. Mr. Soifer has written dozen of papers and articles on education policies relating to English language learning. He has been published on these and other education issues including school choice and charter schools and special education. He has also served as a consult for the Virginia Department of Education. He has served on the Editorial Board, the Multilingual Board, and ASP for school reform news.

Mr. Keith Buchanan has worked in Fairfax County Public Schools English for speakers of other languages, ESOL, Office since 1994. In his position as coordinator, one of his main responsibilities includes developing instructions and assessment for over 22,000 English language learners. In addition to his work with Fairfax County, Mr. Buchanan is an adjunct professor at George Mason University for bilingual education. Mr. Buchanan has worked in his field since 1977 and during his career he has helped start 14 new ESL programs throughout the schools.

Ms. Margaret McLeod is Executive Director of the Office of Bilingual Education for District of Columbia Public Schools. She has previously served as Deputy Director for the Association for Bilingual Education. From 1995 to 2001 she worked at the Department of Education as a special assistant to the Assistant Secretary for Special Education and Rehabilitating Services. In that capacity, she focused specifically on English language learners and students with disabilities. She has also worked as special education and bilingual special education teachers.

And we appreciate all of you being here. If you didn't like the description of your background, please talk to the staff when this is all said and done.

A lot of you know the basic rules here. We have your testimony here. You have 5 minutes, reflected by a green light, 4 for yellow, and 1 for red. We hope as you see the yellow and red, you begin to think about summing up, and then when each of you is done, we will go across in the same order in which I introduced you.

And then there is some awful moment where to go vote on the floor—and we have to—but we will deal with that as it comes up. But we really appreciate you being here. I can't stress that enough, and I think what we are doing here today is vitally important.

So we will start with you, Miss Quenemoen.

**STATEMENT OF RACHEL QUENEMOEN, SENIOR RESEARCH FELLOW, NATIONAL CENTER ON EDUCATIONAL OUTCOMES, UNIVERSITY OF MINNESOTA**

Ms. QUENEMOEN. Thank you, Chairman McKeon and Chairman Castle and members of the committee. Our daughter was born 31 years ago on this Friday. The year that Public Law 94142 was passed and the public schools were opened to her.

I am grateful for the opportunity to thank each and every one of you for your support and leadership of both you and your prede-

cessors to ensure that all people and other students with disabilities have a free, appropriate public education.

Although Congress has made it clear for almost a decade that this free appropriate education is to be based on high expectations and challenging standards, the IDEA 97 focus on access to and progress in the general curriculum was ignored. It took NCLB accountability to trigger profound shifts in access and an opportunity to learn for students with disabilities in some school districts and States.

I work at the National Center on Educational Outcomes, assisting States and building strong assessment and accountability systems. We have been observing the shifts in access in achievements in students with disabilities for the past 16 years. In 1990, only 10 percent of students with disabilities participated in assessments in many States, although IDEA 97 required including all in assessments. NCLB requirements finally brought participation rights up. We know the children we measure get taught, so this change is extremely important and welcome.

Since 2003 we have tried to document how States are including students with disabilities and NCLB accountability systems. The picture is not always clear. Often publicly posted State accountability plans and posted State reports do not match. Thus we have found it impossible to describe or verify State practices based on publicly available State reporting. We know from research done by colleagues using modeling approaches that, given many State accountability strategies, many students with disabilities have disappeared from school AYP calculations or public reporting.

Along with this murky view of current accountability practices, we hear grossly inaccurate statements about the purpose of IDEA, with educators and policymakers demonstrating erroneous beliefs that a student eligible for special education services could or even should be placed in a separate curriculum on a lower expectation track in the name of individualization.

Even in State offices in special education, not all leaders seem to understand that Federal IDEA requirements, strengthened through the 2004 reauthorization, focus on provisions of specialized instruction services and support so that students with disabilities achieve at highest levels in the same challenging content as their grade peers.

These erroneous assumptions underlie our discussion today. It is puzzling to hear this confusion given the plain and consistent language of IDEA and NCLB, but it is alarming, given what we understand about the effect of expectations and student learning. The literature on steeper expectations and student achievement is deep and strong. What teachers expect is typically what students can do. For many educators "special education" has become code words saying this child can't learn.

Disabilities may affect how a student learns but not dramatically affect what the student learns. We have researched and practice-tested methods to teach all children well, but we have not seen the commitment to do so in some States, districts and schools.

How can you judge whether a State, district, or school is committed to the goal of all students being successful when the system

is not transparent? Here are some questions you can pose to judge for yourself.

What does the leadership say? Blaming and excuse-making reflects a lack of commitment to the goal of success for all students. Instead, you should see and hear State leaders support, train, and expect educators at all levels to bring every learner to the content using evidence-based teaching strategies to accelerate and scaffold the student learning in order to provide access in spite of the student's disability.

What do you see and hear in your States? What does the assessment system look like? Do you see evidence of the commitment to all students in their State assessments? Testing students on the curriculum they should be taught ensures they will be taught.

What does the accountability system suggest? Why do some States require large "n" sizes and other strategies while other States protect the privacy of the student but expect the schools to be transparent in their performance? Where are the success stories, and why? Studies are showing that in schools with high achievement of students with disabilities, they are systematically supporting intensive, targeted, research-based instruction through training researchers for highly qualified teachers and their students. Is that happening in your states?

Should State districts and schools be held accountable for the learning of all students including the student with disabilities? Yes. Lowering standards for some students cannot be the solution to the challenges educators face in helping them reach proficiency.

Have schools in your State used their IDEA in Title I wisely or do they use IDEA categories to justify shunting children into a separate curriculum? How do you know? We must trust but verify public and transparent reporting of these complex issues with independent verification as an essential part of discussions about accountability systems.

We are 5 years into meaningful reform under NCLB. Many students with disabilities have just recently been given access to challenging curriculum. We need to stay the course to overcome years of low expectations and limited opportunities.

Mr. CASTLE. Thank you. We appreciate that and obviously we will be getting back to you.

[The prepared statement of Ms. Quenemoen follows:]

**Prepared Statement of Rachel Quenemoen, Senior Research Fellow,  
National Center on Educational Outcomes, University of Minnesota**

*I. Introduction*

I am the parent of a daughter who has Down syndrome, born 31 years ago this Friday, the year P.L. 94-142 was passed. In my opinion, the No Child Left Behind Act (NCLB) has done more to ensure that students like my daughter will learn the challenging and interesting content expected for all other learners than any single event in those 31 years.

Although the school door was opened in 1975 to children like mine, the Individuals with Disabilities Education Act (IDEA) reauthorization in 1997 was necessary to affirm their right to full access to the standards-based general curriculum. Unfortunately, the 1997 IDEA focus on access to the same challenging general curriculum was ignored by many educators. It took NCLB accountability provisions (for example, the requirement that all children are to be assessed on the same content, and schools are held accountable for student achievement) to trigger profound shifts in access and opportunity to learn for students with disabilities in some schools, districts, and states.

In others it has led to public displays of dismay and assertions that educators should not be held accountable for students who are perceived to be difficult to teach. In some cases, it has led to fear and confusion on the part of many parents who see their children being publicly blamed for school problems, instead of seeing strong and clear leadership to empower teachers and parents to ensure success for their children. Leaders in each state and district have direct responsibility for how these shifts to increased access and opportunity occur so that they benefit and not harm children. Not all leaders have stepped up to accept that responsibility.

My personal commitment to high achievement for all students has led me to work during most of the past decade supporting states as they build inclusive assessment and accountability systems. I do this as the team leader for national technical assistance at the National Center on Educational Outcomes (NCEO) at the University of Minnesota, which is funded by the Office of Special Education Programs (OSEP). At NCEO we have documented ways students with disabilities are included in educational assessment and accountability systems. I will summarize these briefly here.

### *II. Documentation of Inclusive Assessment Practices*

In the early 1990s, NCEO began documenting assessment practices in states, and found that most states included 10% or fewer of their students with disabilities in state assessments. Participation and accommodation policies were either non-existent or limiting. Participation rates in state assessments increased steadily during the 1990s, in part because of the light being shed on the previous practices by our studies, and the belief that if students were not included in assessments, they may not be benefiting from school reform efforts taking hold in most states. Even with IDEA 97 requirements that all students were to be assessed, we did not see the push to full inclusion in all states. Today, assessment participation rates of students with disabilities are meeting NCLB requirements. Performance on assessments has also improved over the past three years. According to our survey of state directors of special education, increased access to the general education curriculum is a critical component of the improved performance of students with disabilities on state assessments.

### *III. Documentation of Inclusive Accountability Systems: Issues and Challenges*

Just as all states did not move toward full inclusion of all students in assessment systems even though IDEA 97 required it, not all states were committed to fully including students in accountability systems as required in NCLB. In states and districts where IDEA 97 was not fully implemented, many students with disabilities had not been given access to or made progress in the general curriculum expected for all children. Students who have not been taught what is on the test generally do not perform well on those tests, and states and districts feared the consequences of reporting what they assumed would be poor performance. Some leaders suggested that students with disabilities could not learn the content, even though in many of their schools the approach of actually providing specialized instruction in that content had not as yet been tried. Thus, the shift to full accountability for all children was even more painful in some states and districts than the earlier shift to standards-based instruction and high expectations for all, which some of them had ignored.

After NCLB accountability plans were first submitted and approved in 2003, we began to document how students with disabilities were included in state plans, and to track the data over time, just as we had done in the 1990s with assessment participation. I personally worked with a graduate student for several months, trying to sort out what we saw in the posted approved plans and what we saw in the state public reporting Web sites. We found numerous contradictions and missing data. Instead of the data becoming clear and illuminated, it was clear that accountability systems were opaque when they should have been transparent, and hidden when they should have been public.

In addition we began seeing public statements by some educators and even policy-makers that the students with disabilities subgroup was the only group that blocked many, some said most, schools from achieving required adequate yearly progress (AYP). We specifically mined data in the few states where their AYP reporting was clear and found that in schools where the students with disabilities subgroup was the only subgroup that was large enough to meet minimum N requirements for public reporting, that was true. That is, predominantly white, affluent schools had only one subgroup large enough to be reported, students with disabilities. But lack of transparency frustrated our efforts to generate systematic national profiles of what the status of subgroups by schools really was, and thus it was difficult to verify or refute the argument that students with disabilities as opposed to other subgroups

were the “cause” or perhaps more aptly stated, the “indicator” of many schools’ need to improve.

Another challenge became evident in the language being used. We heard what appeared to be pervasive misconceptions about who students with disabilities are and confusion about the purpose of IDEA funding for these students. Federal IDEA requirements focus on provision of specialized instruction, services, and supports so that students with disabilities achieve at high levels in the same challenging content as their same-grade peers. That foundational understanding of IDEA was all too often missing in the public discourse. Instead, there was rhetoric based on an erroneous assumption that a student eligible for special education services could be or even should be placed in a separate curriculum on a lower expectation track in the name of “individualization.”

These erroneous assumptions underlie our discussions today. It is puzzling to hear this confusion given the plain language of IDEA and NCLB, but it is alarming given what we understand about the effects of expectations on what children learn. The literature on teacher expectations on student achievement is deep and strong: what teachers expect is typically what students do. For many educators, special education labels have become code words that say “this child can’t learn.” What is frightening is that over the past 30 years that belief has become engrained even among parents, advocates, and policymakers. A few years ago, in a state task force meeting where the state accountability plan was being discussed, I heard a teacher say, “Any fool knows those special ed kids can’t learn the same stuff as other kids.” We know that is not true. We have evidence to the contrary.

We have a colleague at NCEO, Dr. Kevin McGrew, who is one of the authors of the Woodcock-Johnson III tests of achievement. He has tested the assumption that “any fool knows those kids can’t learn” by looking at the academic achievement of students of varying measured IQs, a common measurement used for eligibility for the special education category of mental retardation. 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.”

The bottom line is that 80% of students with disabilities, that is, 98% of all students, do not have cognitive disabilities (called mental retardation in official disability categories) as their primary disability. My 31 year old daughter does have mental retardation, and she is a curious, engaged, life-long learner, so I struggle to understand how educators could systematically make assumptions about her ability to learn. I struggle to understand how educators could make those assumptions about the ability of all students with other disabilities as well, those who may have learning disabilities, speech language disabilities, vision, hearing, or any disabilities that may affect HOW a student learns, but like my daughter, need not dramatically affect WHAT the student learns. We have research and practice tested methods to teach all children well, but in some schools the collective will to do so has not yet been mustered.

#### *IV. Accountability Plan Modeling: An Attempt to Generate Data*

When we realized that it was not possible to generate good quality data to understand effects of accountability systems on students with disabilities from public reporting documents due to lack of transparency, we turned to colleagues at the National Center for the Improvement of Educational Assessment, Inc. (NCIEA). They used existing state assessment databases to model the effects of common strategies being used in state accountability plans in the name of technical adequacy. Using actual assessment data from five states, they specifically looked at the practice of increasing the minimum number a state required prior to public reporting, as well as use of confidence intervals. Their central finding was that when the minimum subgroup size was set at 60 students, almost no schools include the performance of special education students, that is, the subgroup disappears from AYP calculations.

Education Week demonstrated this effect by looking at five specific states: in California, with minimum subgroup of 100, or 50 if that makes up at least 15 percent of students tested, 92% of schools were able to report AYP without the disabilities subgroup reported; Florida, with a minimum subgroup of 100, or 30 if that makes up at least 15 percent of students tested, had 42% of schools with no disability subgroup reported; Georgia, with minimum subgroup of 75, or the greater of 40 students or 10 percent of students tested, had 57% of schools with no disabilities subgroup reported; Ohio, with a minimum subgroup of 45 for students with disabilities (30 for other subgroups), had 96% of schools with no students with disabilities subgroup; and West Virginia, with minimum subgroup of 50, had 80% of schools with

no students with disabilities subgroup. (Education Week, September 21, 2005.) Now, almost a year later and with another set of proposed changes to accountability plans under consideration, it remains difficult to determine from publicly available data which states are truly holding schools and districts (and themselves) accountable for high achievement for students with disabilities.

V. *What Are States Doing to Achieve the Goal of All Students to High Standards?*

How can you judge whether a state is committed to the goal of all students being successful when the system is not transparent? Here are some questions you can pose to judge for yourself.

A. *What does the leadership say and do?* The state director of special education should be carrying the banner of specialized instruction, service, and supports so that all children with disabilities are learning the same challenging content to the same high levels as their enrolled grade peers. HOW students with disabilities learn to high levels may be different; WHAT they learn must be the same. Do you hear that language? Sometimes we hear code words for lower expectations, such as “these children” need a “special curriculum.” We have heard chief state school officers say a variation of “any fool” quote cited above, which as pointed out, we have data to disprove. Consider this quote from a state education chief, which undermines the legal definitions of eligibility in IDEA: “Students who appropriately meet the eligibility criteria for receipt of special education and related services are, by definition [sic, this particular leader’s definition, not the definition in law], unable to reach 100% proficiency.” In that state, determination of eligibility for IDEA services does not open the door to specialized instruction, services, and supports so that the student can achieve; eligibility for IDEA is a life sentence to low expectations and an alternate curriculum. Would you want that for your child?

Instead, you should see and hear state leaders support educators at all levels in bringing every learner to the content, using evidence-based teaching strategies to accelerate and scaffold the student’s learning in order to provide access in spite of the effects of the student’s disability. If schools, teachers, and students are struggling, there should be focused state-wide staff development and coaching to ensure every teacher and every child has the resources and tools needed to be successful.

The Education Trust has quotes from educators that illustrate what I mean. Here are a few that distinguish between different beliefs.

“I have difficulty with the standards because they’re so unattainable for so many of our students \* \* \* We just don’t have the same kids they have on Long Island or Orchard Park.” Superintendent, New York October 21, 2002, The Buffalo News.

Compare that quote reflecting low expectations to the following quote:

“With proper instruction, students here can blow other kids away in the humanities. The more you challenge them, the better they’ll do.” Dolores Edwards Sullivan, an English teacher in the predominantly African American Roosevelt school district, whose 11th graders are starting to earn higher marks on state Regents exams.

Then again, listen to the low expectations in the following:

“It is so inflexible. If any group of kids fails to meet the standard, the whole school is labeled as failing.” suburban superintendent (used to doing extremely well under old system of averages)

Compare that to:

“At the end of the day, we are responsible for every child. Will we do it? Certainly. Will we look good early on? I doubt it.” Superintendent, Wake County June 2, 2002 News and Observer (NC).

Blaming and excuse-making reflects a lack of commitment to the goal of success for all students. Realistic recognition of the challenges of changing ingrained attitudes and beliefs that all children cannot learn, development of strategies for success and systematic implementation of those strategies, and cheerleading by the leadership to spur change reflect the leadership our children require to be successful. We are five years into meaningful reform under NCLB, and for many students with disabilities, they have just begun to be given access to the challenging curriculum. We need to stay the course to overcome years of low expectations and limited opportunities.

B. *What does the assessment system look like?*

The assessment system is the key building block of the accountability system. Do all the state assessment options support high standards for all students? You should see evidence of stakeholder involvement at all stages of development, documentation of how the state worked to build a system based on the highest expectations possible for your state’s children, including challenging content, clear participation and accommodations guidelines that push high expectations, rigorous achievement standards for both regular and alternate assessments, and thorough reporting of results for all subgroups. Standards and assessment peer review processes do not make

judgments of how high the standards are set in a state system. Instead, state citizens must make those judgments, and they need transparency to be able to do so.

Do you see evidence of that involvement in your state system? Do you hear excuses for low level assessment options that have been developed with the rationale that “some children just can’t learn the challenging content” resulting in tests that ensure those children score well to improve school AYP calculations? If this has happened, has anyone asked whether “those children” have been taught the challenging content through research-based teaching methods that allow them to accelerate their learning in order to benefit from the grade-level curriculum to which they are entitled? Testing students on the curriculum they should be taught ensures they will be taught.

C. *What does the accountability system suggest?* Are there separate minimum sizes for some subgroups under the guise that the numbers are “unstable?” Does independent review of those technical rationales corroborate that understanding? How have the minimum n or percentage rules affected how many schools are actually held accountable for students with disabilities? How do any new proposals affect all subgroups? These are complex issues, but why do some states require large “n” sizes, plus percentages, plus confidence intervals when other states simply protect the privacy of the student, and expect the schools to be transparent in their performance?

D. *Where are the success stories and why? where students with disabilities are not successful, what are their learning opportunities?* In the past years, several public groups have conducted studies to find where students are beating the odds of low expectations. These focus on minority and low socioeconomic status students; they do not focus on students with disabilities. The Donahue Institute at the University of Massachusetts specifically looked for schools in Massachusetts where students with disabilities were performing at high levels. They found that “there is no single blueprint for advancing the achievement of students with special needs in socio-economically complex urban areas. However, to the extent that urban districts face a litany of common conditions and problems, the practices identified herein may be put to productive purpose in other districts, as well.” The list below reflects the common themes of practice that emerged from these urban schools where students with disabilities were doing well. You need to ask whether your districts and schools reflect these characteristics, in the context of your state system.

1. A Pervasive Emphasis on Curriculum Alignment with the Massachusetts Curriculum Frameworks
2. Effective Systems to Support Curriculum Alignment
3. Emphasis on Inclusion and Access to the Curriculum
4. Culture and Practices that Support High Standards and Student Achievement
5. A Well Disciplined Academic and Social Environment
6. Use of Student Assessment Data to Inform Decision-Making
7. Unified Practice Supported by Targeted Professional Development
8. Access to Resources to Support Key Initiatives
9. Effective Staff Recruitment, Retention, and Deployment
10. Flexible Leaders and Staff that Work Effectively in a Dynamic Environment
11. Effective Leadership is Essential to Success

E. *What do data on persistently low performing students tell us about our state, districts, and schools?*

In 2005, staff from NCIEA analyzed data from five states’ assessments. Their analyses also included a closer look at the student performance of two states by categories of disability. They found that on a grade 4 math test, special education students showed performance across the full range of scale scores; a significant number of general education students scored among the lowest three percent of students; the percent of special education students scoring proficient varied significantly across disability categories; and even within disability categories, the percent of students found to be proficient varied dramatically across states.

In summary, the lowest performing students are not all students with disabilities, and students with disabilities perform at all levels of achievement, with performance by category of disability varying dramatically from state to state.

In the fall of 2005, the Colorado Department of Education looked at results from two years of the Colorado Student Assessment Program (CSAP) tests in reading and math. The legislatively-mandated study (HB 05-1246) showed that not all of the lowest performers on the state assessment were students with IEPs, and that many were students without disabilities. Looking at growth over time for the lowest performing students, those with IEPs showed considerable increases in scores, at least for those they were able to match scores for across years. They followed up with site visits to schools where student with IEPs were achieving well versus those where they were not.

They found that schools with high achievement of students with disabilities were systematically supporting intensive, targeted, research-based instruction through training, resources, and other supports for teachers and students.

Ask these kinds of questions in your states. Do your state, districts, and schools know who, by student characteristics, are consistently low performing students, within and across districts? How do these data correlate with the opportunities students have to learn the challenging grade-level content? What training, resources, and other supports are there in these schools for teachers and students? Understanding the answers to these questions is essential for you to know whether your state, your district, your school is doing what it can to achieve the goal of high standards reached by all.

#### *VI. One Parent's Conclusion*

Should states, districts, and schools be held accountable for the learning of all students, including students with disabilities? YES!!! Lowering standards for some students cannot be the solution to the challenges educators face in helping them reach proficiency. We have ample research to show that educators do not have the ability to predict which students could learn if taught well. Our only option is to teach them all assuming they can succeed, and finding out whether they all do succeed after we have done all we can do. Pushing children out of the accountability system, or watering it down, is to leave them behind. The questions that I listed are a start for sorting out who really means all when they say all.

If state, district, or school leaders say that they cannot report assessment results for some group because of low numbers, or that they need additional flexibility, I would welcome a full and public report of precisely what opportunities they are providing to ensure that those learners are supported. Is their learning provided on scaffolds to lift them to the content, so that they are all appropriately instructed in their enrolled grade-level curriculum? I would expect to see detailed public reporting of precisely which children they are struggling to teach, by subgroup, and how that changes over time. Is it the same children year after year? Do we see movement in and out of these low-performing groups? How does that relate to their documented interventions and research based teaching? Remember, states like Colorado have analyzed what they call "persistently low-performing" students, and have found many of those students do not have disabilities. Who are these students, and why are they struggling? How would all of these children be affected by any proposed "flexibility?" How will they monitor the effects of this flexibility on these children's opportunity to learn over time?

Do you recall a president who told us we must "trust but verify" during an important stage of delicate policy negotiations? This is yet another situation where that applies. Have schools in your state implemented systematic prevention and intervention strategies? Have they established progress monitoring procedures K-12 to ensure that not only the basic skills but the full range of the expected content is being taught well in ways all students can demonstrate proficiency? Have they used their IDEA and Title I funding wisely to support the specialized instruction, services, and supports so that the children are successful, or did they use IDEA categories to justify shunting children into a separate curriculum?

How do you know?

Public and transparent reporting of these complex issues, with independent verification, is an essential part of discussions about accountability systems. We are five short years into a robust implementation of a high expectation system for all children. At best, many students with disabilities have had just a few years to overcome many, many years of low expectations and separate curricular targets. Federal IDEA requirements focus on provision of specialized instruction, services, and supports so that students with disabilities achieve at high levels in the same challenging content as their same-grade peers. Students with disabilities may need varied methods in HOW they learn; WHAT they learn must be the same. NCLB requirements have ensured that schools are accountable for that learning, and it is essential for students with disabilities that the requirements of NCLB continue. Together, NCLB and IDEA can help ensure that all of our children succeed.

Mr. CASTLE. Dr. Neuber.

#### **STATEMENT OF KRISTINE NEUBER, GRADUATE SCHOOL OF EDUCATION, GEORGE MASON UNIVERSITY**

Ms. NEUBER. Thank you. I want to thank the committee for allowing me to testify today. Before I begin I would like to take this

opportunity to thank Chairman McKeon and Mr. Miller for leading this committee in the reauthorization of the Assistive Technology Act of 2004. This is a modest Federal program that has a significant impact on helping special education students reach their potential.

I come to you today to share my perspective as a former special education student and special education teacher. I have a somewhat historical perspective, having experienced special education in its infancy and through a lot of iteration. I was born with cerebral palsy. At a young age I had significant speech and language difficulties and mobility issues primarily affecting my leg. Having cerebral palsy has never made me feel limited. My experiences in special education has.

I entered special education at the age of 3 in 1972. According to Connecticut State law, guided by the passage of the Education of the Handicapped Act in 1970, now the Individuals With Disabilities Education Act, I was eligible for services through the public school system. I received special education. I received speech and language services during the 1972-1973 school year, and preschool services the year after.

I was included in regular education classes throughout elementary school with pull-out services for reading occupational therapy. My school also provided an adaptive PE class. This class was intended to provide me with an environment where I could feel success, but at the same time I felt segregated. I felt different. And it was not until sixth grade that I began to be segregated into special education classes for math, English, and history due to my learning disability.

As a special education teacher between 1992 and 1995, I saw how special education services are implemented here today. I also spent several years as an assistive technology consultant who visited special education classes. In my opinion, many aspects of the special education system have not changed. It is still viewed in large part as a place and not a service. It is still segregating and labeling students and seems to subconsciously expect less from students receiving special education.

The principles of high expectations and accountability in No Child Left Behind are moving special education forward from access to accountability. It has the ability to make a significant improvement in the experiences and successes of students with disability.

In high school, I took an opportunity to take a general education math class, against the recommendation of my teacher. I earned a C. The achievement of that C in general education took me much further in knowledge and self-esteem than the easy A in special education ever did. It is not a small thing to be separated from the general population and does not go unnoticed by students.

The students who learn need to learn to work through difficult material. It forces them to develop strategy. There is nothing more powerful than succeeding at something you once viewed impossible. The principles of No Child Left Behind require that all students be tested, and schools are held accountable for what they are learning. With this expectation comes access to the general curriculum. A watered-down curriculum, often offered in special education class-

es, will no longer suffice. Instead, special education and general education teachers should be working together to provide accommodations identified in the individualized educational plans. These services might include assistive technology, alternative modes of accessing the materials, or extended time to complete tasks.

I know firsthand the power of assistive technology and how it can open doors previously closed. I did well in college through the methods I have learned and developed over time to overcome my learning disability.

I dropped out of—once I entered the Ph.D. Program, I found the amount and level of assigned reading material to be a mountain that I could not climb. I dropped out of the program but reentered a year and a half ago when I found a piece of assistive technology that could help me keep up with the reading and reclaim my dream of earning a Ph.D.. I often wondered how many students sit in the classroom looking at the same mountain and do not have access to the assistive technology that could help them climb.

I see that I am beginning to run out of time, so I would like to offer a couple of recommendations to the committee.

First, please stay the course and continue to include students with disabilities in the accountability system incorporated into No Child Left Behind.

And No. 2, please provide additional technical assistance for teachers to help them gain knowledge and access to the appropriate assistive technology and methods used to develop assessments effectively and truly measure the knowledge of students with disabilities.

I would sincerely like to thank the committee for giving me the opportunity to testify about this very important piece of legislation. Please understand that your leadership makes a significant impact in the lives of the 6 million students receiving special education today. Thank you.

Mr. CASTLE. Thank you, Dr. Neuber. We appreciate your testimony.

[The prepared statement of Ms. Neuber follows:]

**Prepared Statement of Kristine Neuber, Graduate School of Education,  
George Mason University**

Thank you Chairman McKeon, Mr. Miller and members of the committee for the opportunity to testify today.

My name is Kristine Neuber. I am a doctoral student at George Mason University in special education. I am also a professional faculty member with the Graduate School of Education and act as the Assistive Technology Coordinator responsible for providing assistive technology accommodations for all students and employees with disabilities at the University.

Before I begin, I would like to take this opportunity to thank you for your leadership Chairman McKeon and Mr. Miller in leading this committee to reauthorize the Assistive Technology Act of 2004. This is a modest federal program with a significant impact in assisting special education students in reaching their potential.

*My Perspective*

I come before you today to share my perspectives as a former special education student and as a special education teacher. I have a somewhat historical perspective having experienced special education law in its infancy and through much iteration. I was born with cerebral palsy (CP). At a young age I had significant speech and language difficulties and mobility issues primarily affecting my legs. Having cerebral palsy never made me feel limited—my experiences in special education did.

I entered special education at the age of 3 in 1972. According to Connecticut state law, guided by the passage of the Education of the Handicapped Act of 1970, now

the Individuals with Disabilities Education Act (IDEA), I was eligible for services through the public school system. I received speech and language services during the 1972-73 school year and preschool services the year after.

I was included in regular classes throughout elementary school with pull-out services for reading and occupational therapy. My school also provided an adapted physical education class. The class was intended to provide an environment where I could be successful, but the minute I was segregated from the general population I felt different.

It was not until sixth grade that I began to be segregated into special education classes for English, math and history due to a learning disability.

As a special education teacher between the years of 1992-1995 I saw how special education services are implemented today. I also spent several years as an assistive technology consultant who regularly visited special education classrooms. In my opinion, many aspects of the special education system have not changed significantly. It is still, in large part, viewed as a place and not a service. It is still segregating and labeling students, and seems to subconsciously expect less from students receiving special education. The principles of high expectations and accountability in the No Child Left Behind Act are moving special education forward from access to accountability and has the ability to make significant improvements in the experiences and success of students with disabilities today.

#### *The Power of High Expectations*

In high school I took an opportunity to be in a general education math class against my teacher's recommendation. I earned a C. The achievement of a C in the general education classroom took me much further in knowledge and self-esteem than the easy A that I got in special education. It is not a small thing to be separated from the general student population and it does not go unnoticed by students.

#### *Access to the General Curriculum*

Students need to learn how to work through difficult material. It forces them to develop strategies to overcome their disabilities. They should understand that they may not succeed at first, but dealing with difficult challenges is a part of life and students with and without disabilities should not be protected from them. There is nothing more powerful than succeeding at something you once viewed impossible. The principles of No Child Left Behind require that all students be tested and schools be held accountable for what they are learning. With this expectation comes access to the general curriculum. A watered-down curriculum often offered in special education classes will no longer suffice. Instead, special and general education teachers should be working together to provide the needed accommodations and services outlined in student Individualized Educational Plans (IEPs). These services might include assistive technology, alternative modes of accessing the material, or extended time to complete tasks.

#### *The Power of Assistive Technology*

I know firsthand how assistive technology can open doors previously closed. I did well in college with the methods I had developed over time to help me overcome my learning disability. Once I entered the Ph.D. program, I found the amount and level of the assigned reading material to be a mountain I was not able to climb. I dropped out of the program, but re-entered a year and a half ago when I found a piece of assistive technology that has allowed me to keep up with my reading and reclaim my dream of earning a Ph.D. I often wonder how many students sit in the classroom looking at that same mountain and do not have knowledge of or access to the technology that could help them climb it.

#### *Valid and Reliable Assessments*

Poorly designed assessments can also present obstacles for students with disabilities, and can cause the results to be invalid. Assessments should be designed to reduce barriers caused by disabilities allowing students to use their strengths to answer questions ensuring that their knowledge is effectively evaluated. There has been a fair amount of research in this area showing the promise of universally designed assessments to more accurately assess the knowledge of all students with and without disabilities. I have included some of these studies as an appendix to this testimony. If assessments are invalid we really have no way of knowing what students are learning and therefore cannot in all fairness hold schools accountable.

#### *Recommendations*

As the committee convenes to deliberate over the reauthorization of this Act, I would like to offer two recommendations:

(1) Stay the course by continuing to include students with disabilities in the accountability systems incorporated into No Child Left Behind. It is extremely important for students to have access to the general curriculum in order to truly assess their knowledge and give them the opportunity to succeed in life on equal footing with their non-disabled peers. That is, I believe, the ultimate goal.

(2) Provide additional technical assistance for teachers to help them gain knowledge and access to appropriate assistive technology and methods used to deliver assessments effectively and truly measure the knowledge of students with disabilities. Additional research is needed to ensure that all assessments given to students are valid and reliable.

I would like to sincerely thank the committee for giving me the opportunity to testify and share my views about this very important piece of legislation. Please understand that your leadership makes a significant impact on the lives of the six million students receiving special education services today.

Mr. CASTLE. Mr. Soifer.

**STATEMENT OF DON SOIFER, EXECUTIVE VICE PRESIDENT,  
LEXINGTON INSTITUTE**

Mr. SOIFER. Mr. Miller and members of the committee, thank you for the opportunity to participate in the hearing this morning.

The No child Left Behind Act and the resulting shift to formula funding have changed the education business of teaching English language learners in schools around the United States in some fundamental ways.

Since it became law, every State has upgraded its monitoring of the academic progress made by English language learners. A common trend has been the development and implementation of a single statewide method for identifying, assessing, and reclassifying English language learners. Under the supplemental educational services under the law there has been a real increase since NCLB began, and the number of English learners are receiving free tutoring, largely thanks due to the increased capacity and private provider.

Another example is that No Child Left Behind requires that the teachers of students in special language programs be fluent in English themselves. While that may have seemed a somewhat obvious requirement at the time, sometime in 2003 some four dozen teachers were dismissed because they had not been fluent in English—bilingual education teachers. It has been a commonly heard complaint about NCLB that schools that are not making adequate early progress are doing so largely because of the failures of these two subgroups.

We are here today to discuss English learners and students in special education. But increasingly the evidence demonstrates this is not the case. According to data released by the Federal Department of Education earlier this year of schools nationwide that did not make AYP, only 4.2 percent failed to do so because of the achievement of English language learners. Only 13.2 percent failed because of the achievement of students in special education, and only 1 percent failed to make AYP because of both of these two groups and no other factors.

As I testified to this committee 7 years ago, before NCLB, under the Title VII old Bilingual Education Act, data on student performance often showed very low levels on student achievement, including toward English language fluency. Selective reporting and selec-

tive omission of test scores was quite common under the competitive grant process. There were Federal funded programs that failed to demonstrate that a single child made any measurable progress toward English in a given year, and frequently the curricula, frankly, reflected this lack of focus on achievement and results.

Using the new data, one area that NCLB has shown to be problematic is the rate at which limited English proficient students are reclassified as proficient in English.

Often in States with large LEP populations like California, Texas, and Illinois, there has been a large, sometimes dramatic increase in test scores particularly by young students. The rate of transition remains low, between 8 and 10 percent. Regardless of what method of language instruction you prefer, 8 percent transition rates can be viewed as scandalously low.

Finally, I would respectfully submit to the committee three policy recommendations that I hope you may consider as you continue with your reauthorization process.

No. 1, the current process for determining a starting point for adequate yearly progress can produce unrealistic objectives, particularly for the lowest performing schools and especially those that have large populations of English learners. I see this as an unintended consequence that could be solved by changing the formula to eliminate the requirement that starting points be linked to the achievement of schools at the 20th percentile of achievement in the State.

No. 2, as Mr. Miller correctly pointed out, ensuring that reporting requirements and privacy concerns are not misused so that students and groups of students are not excluded from the NCLB accountability systems.

And, finally, currently the use of testing accommodations for English learners varies greatly from State to State. Little scientific research exists to determine the validity of these testing accommodations. And as Federal funding for education is linked to student achievement, it is very important that we understand that these accommodations be valid.

Thank you, Mr. Chairman, and the committee for your time.

Mr. CASTLE. Thank you, Mr. Soifer. We appreciate that.

[The prepared statement of Mr. Soifer follows:]

**Prepared Statement of Don Soifer, Executive Vice President, Lexington Institute**

Chairman McKeon, Chairman Castle, Congressman Miller, and Members of the Committee, thank you for the opportunity to participate in this morning's hearing.

The No Child Left Behind Act (NCLB) and the resulting shift to formula funding have changed the education business of teaching English Language Learners (ELLs) in schools around the United States in some fundamental ways.

Under NCLB, states and school districts are now responsible for showing progress by students who are ELLs under the requirements of both Title I and Title III. Students are tested both for academic content as well as for progress toward English fluency. States must also track and report on the number of students attaining English proficiency each year.

Since NCLB became law, every state has upgraded its monitoring of the academic performance of English language learners. A common trend has been toward a single statewide method for identifying, assessing and redesignating ELLs. Previously these had varied from school district to school district and defied comparison of student performance.

NCLB requires that all teachers in any language instruction program for English learners be fluent in English. While this may sound like an obvious requirement,

it was not always the case. In Massachusetts in 2003 some four dozen bilingual education teachers were dismissed because they were not fluent in English—an action which their union challenged in court.

It has become a commonly-heard complaint about NCLB that schools are failing to make Adequate Yearly Progress largely because of unrealistic requirements in the law for English language learners and students with disabilities. There have already been several alternative plans introduced that would each have the bottom line of reducing accountability for academic results for both of these subgroups, or even removing them from the NCLB accountability system. I have not seen a single alternative that increases accountability for results in these programs.

But increasingly, evidence fails to support this observation. According to U.S. Department of Education data released in February of this year, of those schools that did not make Adequate Yearly Progress nationally, just 4.2 percent missed because of the achievement of the English Learner subgroup only, 13.2 percent missed because of the achievement of students with disabilities only, and 1.0 percent missed because of the achievement of both of these groups but not for any other reasons.

Further, as was documented recently by the Aspen Institute, increasing numbers of students in these two subgroups are being excluded from NCLB accountability because of a loophole in the state reporting requirements due to privacy concerns.

With the Committee's permission, I would like to mention some additional observations about NCLB that you are less likely to read about in your daily press clippings. All told, there has been a major upgrade in the transparency and accountability for academic progress for English language learners as a result of the reforms of NCLB. There is no shortage of upward trends where students' test performance is concerned, either. And my own unscientific observation is that spending seems more centered on the classroom.

There has even been an increase in the number of ELLs receiving free tutoring under the law's Supplementary Education Services provision since NCLB was first implemented, thanks in large part to an increased capacity to serve them among both public and private sector providers. To mention one positive example, a community-based afterschool tutoring provider I had the chance to work with in Chicago, Julex Learning Systems, has expanded to serve thousands of Latino ELLs over the past 3 years, and produced average gains in English reading of over one grade level of progress per student.

As I testified to this Committee in 1999, before NCLB, data on student performance often revealed very low amounts of progress, including progress toward English fluency. Selective omission of test scores was common in reporting on competitive grants. There were federally-funded programs that failed to demonstrate that a single child demonstrated any measurable progress toward English fluency. The curricula for students and also for professional development programs for teachers frankly reflected the program's lack of emphasis on results.

One area the new accountability of NCLB has shown to be a problem is the low rate at which English language learners are being reclassified as proficient in English. Often in states like California, Illinois and Texas, test scores for English learners have increased while these transition rates remain between 8 and 10 percent.

In Illinois between 2002 and 2004, 50 percent of English learners scored at the Proficient and Advanced levels in math, and 37 percent did so in English reading and language arts. But fewer than 9 percent of English learners were redesignated as proficient in English.

California's schools Superintendent Jack O'Connell was describing this "noticeable gap" in his own state last year when he remarked that "it is critical that California school districts continue to review their reclassification procedures as well as the current academic support they provide to English learners." Transition rates low represent a poor track record, regardless of what method of teaching English you subscribe to.

Finally, I would respectfully suggest that the Committee consider the following policy recommendations as it continues to examine these critical provisions of NCLB:

1. The current formula for determining starting points for Adequate Yearly Progress can produce unrealistic objectives for the lowest-performing schools, especially those with large language-minority populations. I see this as an unintended consequence that could be solved by changing the formula to eliminate the requirement that starting points match the performance of schools at the 20th percentile in the state.

2. Ensuring consistency in reporting requirements so that privacy concerns are not misused to exclude students or groups of students from the NCLB accountability system.

3. Currently the use of different, individual testing accommodations when giving standardized tests to English Language Learners varies greatly from state to state. Little scientific research exists on the validity of these different accommodations. Because NCLB links federal education dollars to students' performance on these tests, it is essential that permitted accommodations be both valid and consistent.

I deeply appreciate the opportunity to share these observations with you to today and look forward to any questions you may have. Thank you.

Mr. CASTLE. Mr. Buchanan.

**STATEMENT OF KEITH BUCHANAN, ENGLISH FOR SPEAKERS  
OF OTHER LANGUAGES OFFICE COORDINATOR, FAIRFAX  
COUNTY, VA, PUBLIC SCHOOLS**

Mr. BUCHANAN. Good morning. I too would like to thank the committee for this opportunity to testify today about the academic impact of No Child Left Behind on the academic achievement of LEP students in Fairfax County, Virginia.

Today I would like to address three issues: the value of the new LEP subgroup for accountability; the impact of the assessment requirements; and changes in our instruction.

Fairfax is the 12th largest school system in the United States and has experienced a demographic shift that is fairly steady. And today, one-third of Fairfax households speak a language other than or in addition to English. We educated over 30,000 LEP students last year, a highly diverse group speaking almost 100 different home languages, from more than 70 countries.

The accountability systems established by NCLB which require reporting by subgroups have had an overall positive impact on the Fairfax student. Like the *Lau v. Nichols*, Supreme Court case of the 1970's, the reporting of test results of the LEP subgroup focuses on the unique educational needs of students who are learning complex academic content while simultaneously acquiring English. With 3 years of LEP test data now available, our teachers can review specific information on the performance of their LEP students and then make adjustments to their instructional approaches for the subsequent year.

The good news is that in each of the 3 successive years, reading and math scores for LEP scores in Fairfax has improved that sunny picture; however, is clouded by uncertainty, since Virginia's numerical targets of the percentage of students passing the tests will increase every year.

Because our schools now fully understand the LEP scores are part of their AYP calculation, we have seen an increase in teachers' accountability for their students' success. This commitment by teachers is crucial since LEP students continue to learn English after they leave specialized ESOL classes. Commonly, Fairfax students remain in ESOL for about 2 to 4 years, yet the complex academic English needed to succeed on standardized tests takes at least 5 to 10 years to acquire.

Every Fairfax teacher, from kindergarten to high school chemistry, works with LEP students; and because of NCLB, we feel that they now understand that they have an even greater stake in the students' success.

NCLB has set ambitious goals for students, with timeframes. Our challenge is for the expectation that LEP will learn English at

the same rate. It is those who have had substantial formal schooling in their home countries who will acquire English relatively rapidly. Yet there are also thousands of other students who have had interrupted formal education. Wars in Africa, Central America, Afghanistan and Iraq have sent thousands of students to the U.S. Classroom with little or no prior schooling.

I once taught a group of 17 Afghan teens who had been soldiers for pro-U.S. forces during their adolescence, and their education had taken place on the battlefield. And in our beginning lesson we had to focus on basics such as learning to use scissors and handwriting. They had had little exposure to school, but NCLB requirements would have treated them the same as any other student who had gone to school their entire lives. After taking assessments in English, their scores would still be included in their school's AYP calculation after just 1 year in Fairfax.

The challenges of providing fair, accurate, and reliable reading and math assessments remain daunting when our students take Virginia's language tests. Those assessments are given in English. Depending on the student's level of English proficiency, a word problem focusing on solving a quadratic equation is not a test of that student's math knowledge at all. It is a test of English comprehension. So the student's math score is not reliable.

We are concerned that the requirement that all students take the same reading and math test and their scores be included in AYP calculations after just a year in school, regardless of their level of English, does not reflect what research has shown about appropriate assessment for LEP students.

NCLB has had a far-reaching impact on how and what we teach as well. The legislation provided Virginia with the impetus to revise its English Language proficiency standards. And at the national level the ESL Teachers Association has just published new standards for English language learners in grades pre-kindergarten through 12. The TESOL standards not only demonstrate how to implement instruction in English, but they also focus on instruction for LEP students in math, science, and social studies classes.

And finally I want to emphasize the value of Title III funding for our LEP students of Fairfax. With Title III funds, we began a dozen early literacy programs to teach parents of LEP preschoolers to prepare their students for kindergarten and English. And as our LEP population continues to grow, it is critical that Federal funding keep pace with this fastest growing subgroup so we can maintain valuable instruction programs for LEP students.

I want to thank the committee for this opportunity to review the benefits of NCLB by describing Fairfax's commitment to use the provisions of the law as we work to close the achievement gap.

Mr. CASTLE. Thank you.

[The prepared statement of Mr. Buchanan follows:]

**Prepared Statement of Keith Buchanan, English for Speakers of Other Languages Office Coordinator, Fairfax, VA, County Public Schools**

My name is Keith Buchanan, Coordinator in the English for Speakers of Other Languages (ESOL), Office of Fairfax County Public Schools, Virginia. I would like to thank the committee for this opportunity to discuss the impact of No Child Left Behind on the academic achievement of Limited English Proficient (LEP) students in our schools. Today, I would like to address three issues: the value of the new LEP

subgroup for accountability, the assessment requirements, and changes in our instruction. Fairfax County, the twelfth largest school system in the U.S., has experienced a steady demographic shift, and today, one third of Fairfax households speak a language other than or in addition to English. We educated over 30,000 LEP students last school year, a highly diverse group speaking almost 100 different home languages from more than 70 different countries.

The accountability systems established by NCLB which require reporting by subgroups have had an overall positive impact on the education of Fairfax LEP students. Like the *Lau v. Nichols* Supreme Court case of the 1970's, the reporting of test results of the LEP subgroup focuses on the unique education of students who are learning complex academic content while simultaneously acquiring English. With three years of LEP test data now available, teachers can review specific information on the performance of their LEP students and then make adjustments to their instructional approaches for the subsequent year. The good news is that in each successive year, reading and math scores for LEP students in Fairfax have improved. That sunny picture, however, is clouded by uncertainty, since Virginia's numerical targets of the percentage of students passing the tests will increase every year.

Because schools fully understand that LEP subgroup scores are part of their AYP calculation, we have seen an increase in teachers' accountability for their LEP students' success. This commitment by teachers is crucial, since LEP students continue to learn English for a long period after they leave specialized ESOL classes. Commonly, Fairfax students remain in ESOL for about two to four years, yet the complex academic English needed to succeed on standardized tests takes at least 5 to ten years to acquire. Every Fairfax teacher, from kindergarten to high school Chemistry, works with LEP students, and because of NCLB, we feel that they now understand that they have an even greater stake in the students' success.

NCLB has set ambitious goals for student achievement with specific timeframes. Our challenge, however, is the implicit expectation that all LEP students will learn English at the same rate. Those who have had substantial formal schooling in their home countries and languages will acquire English relatively rapidly, yet there are also thousands of other students who have had interrupted formal education. Wars in Africa, Central America, Afghanistan and Iraq have sent thousands of students to our classrooms with little or no prior schooling. I once taught a group of seven Afghan teens who were resettled after having been soldiers for pro-U.S. forces during several years of their adolescence. Their education had largely taken place on the battlefield, not in school, and we focused on basics such as using to learn scissors and handwriting. They had had little exposure to school, yet NCLB requirements would have treated them the same as any other students who had gone to school all their lives. After taking assessments in English, their scores would still be included in their school's AYP calculation after just one year in Fairfax.

The challenges of providing fair, accurate and reliable reading and math assessments remain daunting. When our students take Virginia's Standards of Learning tests, the obvious challenge is that those assessments are given in English. Depending on a student's level of English proficiency, a word problem focusing on solving a quadratic equation is not a test of that student's math knowledge at all—it's a test of English comprehension, so the student's math score is not reliable. We are concerned that the requirement that all students take the same reading and math tests and their scores be included in AYP calculations after just a year in school, regardless of their level of English, does not reflect what research has shown about appropriate assessment for LEP students.

NCLB has had a far-reaching impact on how and what we teach, as well. The legislation provided Virginia with the impetus to revise its English Language Proficiency Standards. And, at the national level, the ESL teachers' association, Teachers of English to Speakers of Other Languages, TESOL, has just published new standards for English language learners in grades pre-kindergarten through 12. The TESOL standards not only demonstrate how to implement instruction in English, but they also focus on instruction for LEP students in math, science and social studies classes.

Finally, I want to emphasize the value of Title III funding for LEP students in Fairfax. For example, with Title III, we began a dozen Early Literacy programs to teach parents of LEP preschoolers to prepare their children for kindergarten literacy. Last year, using Title III funds, we offered a graduate-level course to help more than 200 math, science, social studies and English teachers differentiate their instruction for LEP students. And, as our LEP population continues to grow, it's critical that federal funding keep pace with this fastest growing subgroup so we can maintain valuable instruction programs for LEP students.

I want to thank the committee for this opportunity to review the benefits of NCLB by describing Fairfax's commitment to use the provisions of the law as we work to close the achievement gap.

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Mr. CASTLE. Ms. McLeod.

**STATEMENT OF MARGARET McLEOD, EXECUTIVE DIRECTOR  
OF THE OFFICE OF BILINGUAL EDUCATION, DISTRICT OF  
COLUMBIA PUBLIC SCHOOLS**

Ms. McLEOD. Good morning to the members of the committee and to my colleagues on the panel. Thank you for allowing us the opportunity to share with you some of our experiences in implementing NCLB for English language learners and perhaps to offer some suggestions to improve this law.

First of all, NCLB has had amazingly positive benefits for English language learners. One of the benefits that it has had is that our parents are no longer ignored. My office is charged with doing transitions and interpretations for the district; and whereas before we would get requests for some requests for translation of vital documents, now central administration and school staff just routinely send all kinds of stuff to my office to be translated. And I think this is a direct result of the emphasis on parent involvement from NCLB.

The other important effect is that schools have to educate everyone. Schools used to do a fabulous job of educating 85 percent of their kids, but if you were among the unlucky 15 percent that happened to be English learners or kids with disabilities, you didn't necessarily get a good education. Now we have to educate everybody to really high standards.

As a Title III director, I don't feel ignored anymore. And the reason is because if you are exempt from accountability provisions you don't exist; while we now exist because everybody has to educate our kids. The reporting on academic achievement has finally led to real school reform.

Our teachers, we have really changed the way we deliver professional development programs and schools have had to really change the organization of the delivery of instructional services so that kids are educated where they have access to the content standard and can really succeed to high levels.

We feel that data is really the keystone to accountability. So please, please, do not in any way weaken those provisions in the law. The segregated data allows us to see the performance of the subgroups, and that is a critical piece from NCLB; and finally, the NCAOs have focused the attention to districts of the development of English language deficiencies.

As in any law, I think this is a good time to obviously look at some changes, and I think there are some that would really improve the law. One is—this is not a change—but one is to really maintain the strong accountability provisions by keeping the desegregated data requirements. Please consider establishing uniform subgroup numbers across the States for purposes of consistency and reporting. And I would keep those numbers on the low side. There is some redundancy involved in the reporting of AMAOs. I am not going to get into that because I talked about that in my

testimony, but that might be something for the committee to address as the law is being reauthorized.

I would ask you to consider more flexibility in this teacher fluency requirement as pertains only to dual language programs. You know these programs have increased greatly in popularity over the last few years. But teachers who are teaching not in English but in the target language, sometimes have difficulty meeting the teacher fluency requirements in English, so some flexibility in that area would be greatly appreciated.

Consider other measures of AYP that reflect the reality of the population of English language learners. These kids come into our schools with not necessarily the types of skills and background that other kids have. And so it is going to take them a while to reach full levels of proficiency. So I think the AYP requirements are not realistic.

Please consider funding new concepts to develop tests of academic achievement, either in native language and/or in English, but that yield better results for all.

And then, finally, I don't think that there is any Title III director worth his or her salt that would not put in a major plug for more funding for Title III. Please, please consider more funding for Title III. As it is right now, in the District we are receiving about \$175 per student for Title III funds. We have done amazing, amazing things with Title III funds. We know how to educate English language learners. We know how to teach them English. We know how to get them to achieve at high academic standards, and we will do that but we need your help. So please consider really increasing the funding for Title III, and I really appreciate your willingness to listen to our concerns. Thank you.

Mr. CASTLE. Thank you, Ms. McLeod.

[The prepared statement of Ms. McLeod follows:]

**Prepared Statement of Margaret R. McLeod, Executive Director of the Office of Bilingual Education, District of Columbia Public Schools**

My name is Margaret McLeod and I am the Title III director for the District of Columbia as well as the bilingual director for DC Public Schools, the largest of 48 local education agencies in DC. Approximately, 84% (4,275) of English language learners (ELL) in the District are served by DCPS; the rest (approximately 800) are served by charter schools. DC serves ELLs through a wide range of service delivery models from thriving dual language schools to English as a Second Language instruction in schools with small numbers of ELLs. Today, I would like to talk about the impact of No Child Left Behind on English language learners.

*Positive Impact of No Child Left Behind*

In the four years since its implementation, NCLB has led to many positive outcomes for children, particularly for those who were often left in the margins of previous school reform efforts. For English language learners, it has meant that schools, districts and states have had to focus attention and resources on improving the education of these students. NCLB has also meant that their parents could no longer be ignored. My office is in charge of translations and interpretations. Because of NCLB, all vital documents must be translated into DC Public Schools' five official languages before being sent out to parents. This practice has become so ingrained in central administration and schools that my office routinely receives many documents for translation that are not at all related to NCLB requirements.

Before NCLB, many of our nations' schools did a wonderful job of educating their students. Unfortunately, many did a wonderful job for a lucky 85% of students. The rest, frequently ELLs and students with disabilities, were not so lucky. They did not succeed in school, did not graduate and could not pursue higher education. And, there was no need for schools to report to parents, to the community or even to the federal government.

For those of us who are in the business of educating English language learners, the enactment of NCLB has meant that we no longer feel so ignored. Our business has now become everyone's business with real and concrete consequences for failing to educate ELLs. After all, in the field of education, being exempt means that you do not exist. For too many years, ELLs did not exist.

Reporting the academic achievement of all students has led to real school reform. Districts and schools have had to change the way they provide professional development and the way they organize the delivery of instructional services. My office provides numerous professional development opportunities and an increasing number of the participants in our workshops are general education teachers looking for ways to serve their ELLs. We also offer training for principals so that they can provide instructional leadership for their teachers.

#### *English Language Proficiency Standards*

DC is a member of the WIDA consortium, one of the consortia funded through an Enhanced Assessment Grant to develop English proficiency standards and assessments aligned to these standards. Our English proficiency standards are aligned to our new content standards, which are considered among the most rigorous in the country. Our teachers use these ELP standards so our students can be prepared to master our rigorous content standards.

#### *Teacher Quality*

Schools have realized that for students to learn these content standards, they must be taught in general education classrooms. Many of our high performing schools keep ELLs in their classrooms where they learn what their peers learn with ESL teachers providing instruction and support in coordination with the general education teacher. This collaboration enriches instruction and allows students to access the knowledge and skills of several adults in their classroom. The teacher quality provisions of NCLB have had an enormous impact on the education of ELLs. Schools are staffed with teachers who have a deep understanding of the educational needs of ELLs.

#### *Accountability*

Data is the keystone to accountability. The requirements for disaggregated data allow us to see how subgroups perform in states, districts and schools. They are clear indicators of the performance of students and of schools and districts.

Finally, the Annual Measurable Achievement Objectives (AMAO) of Title III have led local education agencies to ensure that ELLs are acquiring English language proficiency.

As Congress nears reauthorization, I entreat you to resist the calls from some quarters of our society to weaken this law. The accountability provisions are especially critical to our most vulnerable populations.

#### *Recommendations*

As with any law, however, there are modifications that would result in improvements. For those of us in the field, it sometimes seems that we are just starting to implement a law when the five-year reauthorization mark suddenly arrives and Congress starts making changes to this law. This can be a challenge for states and districts but also a wonderful opportunity to improve the law after the experience of implementation.

With that in mind, I would like to humbly offer some suggestions to improve NCLB as relates to English language learners.

Perhaps the most important point is to maintain English language learners as part of systems of accountability. As stated before, please maintain the reporting of disaggregated data. However, for the sake of reporting consistency across states, Congress should consider setting a uniform size for the subgroups. The subgroup size for DC is 40, which is adequate to address concerns related to the identification of individual students but small enough to examine achievement.

The Title III Annual Measurable Achievement Objectives could be improved. As currently defined, the AMAOs include three measures of achievement: progress in developing English language skills, the attainment of English language proficiency and AYP. However, this is not a clean measure of progress. States are required to test all ELL students, usually from grades K to 12. Since academic achievement is not measured at all grades, these three measures included in AMAOs are not parallel. Furthermore, states and districts have AYP scores for ELLs counted twice. A better and cleaner measure of AMAOs would be limited to progress and attainment of English language proficiency.

The requirements of teacher fluency in Title III have had a negative impact on dual language schools. In these schools, content is taught in English and in the tar-

get language, often by two different teachers. Title III requires all teachers to be fluent in English and in any other language of instruction. This means that teachers who teach only in the target language are required to have a high level of English fluency although they never use English as the language of instruction. As other states, DC uses the Praxis (test used by states as part of licensing and certification requirements) as a proxy of English proficiency. Dual language schools have lost teachers who are unable to pass the Praxis because of the language load. While all teachers need some level of English fluency, revising this requirement would allow schools to keep their dual language teachers. As this model of instruction continues to grow in popularity for both ELLs and native speakers of English, Congress could provide additional support by changing this requirement.

Another area for consideration by Congress should be the measures of AYP. While the current goal of 100% proficiency by 2014 is laudable, it will be impossible for ELLs to meet this goal by the very nature of the subgroup. This subgroup includes students who have been in the country only for a short period of time and may not have the academic skills that native-born students have. Other measures of achievement, including a growth model, should be considered for this subgroup.

Assessment of academic achievement in English does not yield a true measure of achievement in those students who are just beginning to learn the language. Students in dual language schools who are learning content in the target language rather than in English may also be negatively affected by academic assessments in English. Congress should consider funding new consortia (such as those funded to develop ELP standards and assessments) to develop native language assessments or assessments in English that would yield more accurate measures of the academic achievement of ELLs.

Finally, Congress should increase the Title III funds available for states. The District of Columbia received \$922,000 for school year 2005-2006 to serve nearly 5,250 ELLs. This means we received approximately \$175 per student. A generous increase in Title III funds would allow us to create more innovative programs, such as our Newcomer Literacy Program. This program serves secondary ELL students who are recent arrivals and have low levels of literacy in their native language. These students are those who are most at-risk for dropping out of high school. The preliminary results of this program show participants staying in school. During a monitoring visit by the U.S. Department of Education earlier this year, the team issued a commendation to DC for this program, funded by Title III.

Thank you for the opportunity to provide testimony to this Committee as it embarks on the important work ahead. The Committee's willingness to listen to concerns from those of us charged with implementing NCLB gives us great hope that the amended law will continue to promote a high quality education for all English language learners.

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Mr. CASTLE. Just a couple of comments before I yield to myself.

First of all, I think it has been an excellent panel for a couple of reasons. One, you are knowledgeable but also you have all made suggestions for improvements, which is what we are after. I won't even ask some questions but my sense is that each and every one of you strongly supports what No Child Left Behind is doing to help those with disability in English language learners. We think that is a very important concept of No Child Left Behind.

We also, by the way, believe in the desegregated data. We think that is very important to demonstrate and these are the kinds of things that we want to make sure that we maintain as far as the future is concerned. So we thank you for your testimony. And with that, I will yield to myself first as far as the questions are concerned.

And I want to go to you, Dr. Neuber, because you talked about your background and your past when you were classified as a student with disabilities and going through classes. The IDEA statute is to have people in the least restrictive environment. You have a "Doctor" before your name. You have a very impressive bio. Obviously at some point you blossomed into a good student.

From your own personal watching of this and looking back at your own history and from what you have seen of the programs in general, do you feel that that wasn't spotted soon enough; that more could have been done, and that is a problematical area as far as children with disabilities are concerned? That there are those kids who could be taken, with the least restrictive environment, more rapidly than they are?

Ms. NEUBER. Thank you for the question. First of all, I haven't quite earned my Ph.D. But it is nice to see my name written in that way.

Mr. CASTLE. We are here to make you feel better.

Ms. NEUBER. I think my experience in special education, I mean I obviously learned a lot and was able to overcome a lot of my disabilities. However, the way the IDEA is written, it involves an individualized education plan, and I think that is a good plan. However, what happens still is that students with special needs are still being put into special classes or special education classes and not automatically given the opportunity to try to succeed in the regular education classroom first and see how they do. And also I think the way the IDEA is written and implemented, it is separating special ed teachers from regular teachers, and rather than seeing it as a service, as a place.

My experience in being able to get out of special education in high school and starting to get into the regular classroom really came from a push that my parents made to make that happen. The recommendation came down that let her stay in special education so they can be successful, when I really wanted to be successful in the general education classroom. And we all have to succeed out in the real world where there are no special education jobs. There are jobs for everyone and we all have to succeed with the general population. And I feel like No Child Left Behind is really saying we are all going to learn and we are going to give people a better opportunity to succeed in, quote, the real world.

Mr. CASTLE. Thank you. I think we have it. It is an area we have to pay attention to.

Another area I would like to go into is the State choosing funds wisely. I think it will take you 40 minutes to answer that question, I suppose, but I worry about some of these funds. And IDEA, for example, I worry about it in some of the programs mentioned here, Title III, whatever it may be. Are they being used for the right purposes in terms of what we are doing? I would just like to get a general assessment of that based on what you stated and what you have seen.

Ms. QUENEMOEN. I actually would like to think of the funding for students with disabilities as part of the same pool that we expect States to fund high-quality education for all students. Federal dollars should not be the primary source of funding for any student in the State, it seems to me, but when there are needs that the Federal Government is supporting, then I think having documentation that the outcome of the use of those funds is good is important.

It actually goes back, then, to data on how well the students are achieving. A least restrictive environment is that environment in which the students achieve to high levels given their needs. Where

they are placed shouldn't affect how well they are taught, the general curriculum taught of same grade peers.

So in the end, I would say your best indicator of how well the money is being spent both from the State level funding and from the Federal support is to look at the achievement of the students. Doesn't make any difference where they were educated. They all should be achieving to very high levels.

It is why we are so concerned that it is very difficult, the transparency of the system is missing, so that we can clearly see what is happening. Once I look at that data, I like to actually go out and see what is happening in the schools where children are successful. And studies like the Donahue Institute recent study in Colorado have both shown that in schools where students with disabilities are doing well, they have had access to highly qualified teachers. They have specialized instruction that they need so they can be successful. So I think the data are actually embedded in NCLB requirements.

Mr. CASTLE. Thank you. I had questions for all of you and, as you can see, my time is up. And if I take too long everybody will take too long. So I am going to turn to Mr. Miller.

Mr. MILLER. Thank you. I have been around here a long time and my involvement both with educational handicapped children back in the 1970's and participating in the right of the language of the least restrictive environment, free and appropriate education is one of the things I am very proud of. And obviously the writing of No Child Left Behind participation in that, is one of the things I am very proud of. I find both of these acts, my thoughts of them were—both of them were very—they are for optimists and they are for innovators.

And Ms. Neuber, I like your statement that too many people still look at special education as a place as opposed to services; which, obviously, then requires you to focus on the needs of the student; that we still think this is someplace where these students go.

I was just thinking when time ran out on you, for how many students another 3 minutes, 2 minutes, in the completing of the task would make a difference in their scores but very often it is not allowed.

I would like to raise a question, Mr. Soifer. In your first recommendation you talk about starting points match the performance of schools of the 20th percentile in the State. I don't quite know—explain to me what you are trying to do there, because we are now 5 years into the act. Do we—do we erase all of this and start back and you would have—you would be AYP at 15 percent?

Mr. SOIFER. It certainly struck me as an unintended consequence when that provision was first enacted. It seemed to me that that threshold was one more perhaps of the process than based on any research findings.

Mr. MILLER. We thought if you were going to put in billions of dollars, you might try to get 1 in 5 students past the goal post here.

Mr. SOIFER. I understand. And from practical point of view, I very much appreciate where the committee needs to be.

In the data that we have researched when we look at particularly State-level data, particularly at the schools that are the low-

est performing in school districts that are making good conscientious improvements in student performance, the data for the starting point and the first couple of years are just unrealistic objectives for them to make. And these are particularly very high population—very high LEP population schools and they are typically some of the lowest performing schools in the district. And just from the very beginning the gains that they are making, some gains are quite impressive. They are just being dealt a set of circumstances where they are fundamentally not able to make progress in the beginning, and some degree of flexibility or some of the growth models seem promising to me. But it seems that those principles are certainly making good gains, but, by virtue of the fact that they are dealt, not good enough.

Mr. MILLER. It is obviously a technical discussion, but I am deeply concerned about it because I think that it goes to the question of what are our expectations. We have this program, students with disabilities, of interim flexibility and mathematical adjustments, that we will start to make it appear as if more students with disabilities and those schools and those classrooms are AYP than is actually the case. Whose interest are we serving there except maybe the—under the Constitution we are certainly not serving the children, parents, or employers that are engaged in this system. But, you know, the flexibility—at some point we got to get back to purpose of this act which is about each and every child. That is why we insisted upon the desegregated data. I hope we will continue to insist upon it and increase the transparency in this act.

There is an awful lot that is being done here to solve the political problems; various districts, States, schools and others. But I think at some point we have got to get back to this is about high expectations, high standards, and accountability in reaching those standards. And I think the suggestion that most everybody on this panel—I think all of you—that far more students are capable of reaching those standards than are doing so, well, those are huge deficits, you know.

I was always struck in my involvement with children that in foster care we gave a child a review every 6 months, but for a child that was a year old, that was half their life that they were sitting in some untenable place in that system. Children basically get, you know, you get 12 years to run the gauntlet here. You lose a year, you lose 18 months, you have lost a huge chunk of your allocated time and of your ability to acquire those skills.

So I just worry, you know, that we keep making adjustments because there is a lot of howling going on out there in the country about people who find this inconvenient. And I just—I think we have to keep our eye on the basic principles here. There are many, many things that we are going to make adjustments about, but these basic principles in terms of—I mean, do we start suggesting that 1 in 6, 1 in 8 is proficient? I don't think my taxpayers think that is a good return on the investment, and that is what worries me about that. But we will go into more detail on that.

Finally, just one quickly. Red light never applies to us. The suggestion, Mr. Buchanan, is that the new standards by teachers of English speakers, you find that consistent with the goals? I don't know. I am just—I want to look at those, but you find that—

Mr. BUCHANAN. For the first time we have a national perspective so that States can take a look at these teachers, and not just English speakers, but other language teachers, all teachers of LEP students: How do we manage instruction in a variety of settings, in a chemistry class?

Mr. MILLER. Let me get to that. I assume they are making this decision, whether you have a lot of students or few students, that these kinds of standard would work.

Mr. BUCHANAN. Yes.

Mr. MILLER. Thank you.

Mr. CASTLE. Thank you, Mr. Miller. Appreciate your questioning and wisdom.

Mr. Boustany is recognized.

Mr. BOUSTANY. Thank you.

Ms. Neuber, I found your testimony very interesting and particularly from the standpoint of the fact that oftentimes, even with the best intentions, with good policy, a lot of time the implementation of policy doesn't seem to work out the way we expect. And I think you bring a very important perspective to this with your background.

You mentioned in your testimony where you hit a wall in going toward a Ph.D. And then you found some assistive technology to help you overcome that. Can you give us an indication, how did you find that particular assistive technology?

Ms. NEUBER. One of my specialty areas is actually assistive technology. I have a master's in it. And I think it is interesting when you are a professional that you don't necessarily take advantage of your own knowledge and think about yourself as a person who could benefit from that technology. Technology and also assisted technology is changing rapidly. So I find myself recommending this technology to other students that are at the university level. We actually scan books for our students and put it into electronic format. And 1 day I came to the realization that, hey, this is something that I could benefit from. And I think the reason I didn't start off with that is because since I have been in college, there are no special education classes in college. They have a service. It is a true service, and I wasn't taking advantage of that service. It was sort of 1 day when I realized that there was a student who needed accommodation and then started to utilize materials that I was offering to other students.

Mr. BOUSTANY. Can you tell us what is being done to evaluate assistive technology; what it is, what comes out, to see what really works, what doesn't work? And then once it is decided that you got a particular form of technology that seems to work very well, how is that information being disseminated?

Ms. NEUBER. There are a couple of ways. The Assistive Technology Act plays a big part of that. In Virginia, obviously the money is distributed through the Virginia assistive technology systems where there are people available to give advice to anyone in the community. Also each of the school systems generally are beginning to have assistive technology specialists in their school to help them purchase technology and evaluate that technology.

Finding the correct piece of technology is very difficult because you do have to go through several different trial and error periods.

Some people talk about it as being “living in a state of stuck.” you try something and something falls apart, and you have to try something else.

So there are a lot of different ways to get access to that technology, but you really need to have a dedicated group of people who can consistently keep trying something new until you find the thing that works. Generally you are going to go through two or three different pieces of technology that don't work before you find what does work, so a lot of resources need to be available for school systems to make sure that that can happen.

Mr. BOUSTANY. One final question. In looking at the collaboration between special education teachers and regular classroom teachers, what can be done to improve that collaboration?

Ms. NEUBER. I think now what is happening when they are collaborating, it is more of a resource-room-type situation where the student is maybe included in the classroom, but they leave the classroom for additional instruction. I think what really needs to be pushed is more team teaching where there is a special education student or special education teacher and a regular education teacher working together. And I think that would benefit not only the students who are classified as special education, but also the typical student who might be struggling about some of the content. With the two teachers working together, I think you could provide an environment that is totally inclusive, where all students are getting access to the same curriculum, because again we are all going to have to take the same exams here in K to 12, but also to get into college, and I really believe it is important to do that.

Mr. BOUSTANY. Thank you very much. Mr. Chairman, I yield back.

Mr. CASTLE. Thank you. Mr. Grijalva is recognized.

Mr. GRIJALVA. Thank you, Mr. Chairman. Many years ago when I began school, I was—my primary language was other than English. And I remember the process. It was a very crude process and somebody, Mr. Miller, talked about that just now. You were held back until you did.

And I am glad that we are talking about a topic now where those kinds of punitive measures are not attached to the ability to acquire another language. And you know, the wave of immigrants in this country are learning English at a faster rate than previous waves of immigrants in this country. There is a real desire and a need to learn English.

And I believe we need to increase the availability of tools to learn English, and that involves funding for Title III, as it was mentioned. It involves the preparation of the kinds of highly qualified educators that we are going to need in the classroom. This demographic shift is not momentary, it is a constant. And I think as we go through this reauthorization, accommodating that demographic shift and what kinds of resources are going to be needed to assure that the accountability we ask for No Child Left Behind, the rate of transition that we worry about and are concerned about our goals and expectations that are met, but that is going to require more than just platitudes. It is going to require real resources and energy.

And we can talk about English only as a platitude. We can talk about punitive measures for people that are wanting to acquire another language. Those are not going to bring us to the accountability, and they are not going to bring us to the rate of transition that we want for our children.

On that point and the point of the educators I was going to ask Ms. McLeod this question: Do you express some concern, Mr. Soifer as well, that the obvious issue is that the teachers be fluent in dual languages as a working limited English proficient student? It is an obvious standard, common sense, but it is a challenge and it is a challenge to meet that standard.

And I wanted to ask you, if I may, could you just further explain what that challenge is, because I think there is a pipeline, severe pipeline issue in terms of who is coming into the classroom and are they prepared, and what are we doing as part of the reauthorization to assure that we have the qualified—highly qualified teachers in those classrooms.

And so could you explain to us the challenges in meeting that highly qualified criteria and some of the suggestions you might have to deal with that issue?

Ms. MCLEOD. Thank you. One of the suggestions I had, Mr. Grijalva, is that you consider funding more professional development programs so that we do have highly qualified teachers of English language learners. The amount of professional development funds that have been dedicated to this effort have really gone down in the last few years. And the result is that we are going to have difficulty in meeting the numbers of highly qualified teachers that can serve English language learners.

So I know that I and a number of other folks who work in the field are the products of professional development programs. I got my doctorate from the University of—from George Washington University. And it was funded through a professional development grant. And, like me, there are a whole bunch of us around; and we are the teachers, we are the administrators of these programs. So if you all would consider increasing the funding for those professional developments, I think those are investments that the Federal Government has done that are really, really worthwhile.

Mr. GRIJALVA. Thank you very much. I yield back, Mr. Chairman.

Mr. CASTLE. Mr. Ehlers is recognized for 5 minutes.

Mr. EHLERS. Thank you, Mr. Chairman, and I will be following up a bit on Mr. Grijalva's questions from a slightly different perspective. I live in a community which has a high profile of religious institutions, churches, religious schools, and so forth, and they are also very interested in reaching out to those with needs in other countries. So we have a huge influx of refugees in our area and there is one relatively small school system in my district that has, it is a system that has students with roughly 30 different languages represented and in one school building that has something like 17. That makes a very difficult situation. And since this is a hearing about how to improve No Child Left Behind next time around I have a couple questions of that.

How do you take that out of the AYP? How do you deal with the AYP measurement in cases like that to really be fair to the school

and the district? They are doing a good job. Their tests results are good in other areas, but obviously there is a problem here. How should we treat schools that have large populations of LEP students? How do you suggest we measure the progress of these schools and educating these students? In other words, what way should the No Child Left Behind Act be amended to address this what is essentially a public relations concern, because the superintendent and the administrators are terrified about reading in the paper that their school is a failing school. Even though we never put that language in the bill, that is what the newspapers use all the time. So I would appreciate your comments. How we can first of all improve the way in which we teach those students but, second, how can we as legislators improve the bill so that the measurements process is more fair?

I appreciate any comments anyone would have. Mr. Buchanan.

Mr. BUCHANAN. I think there are several approaches that have been alluded to a little bit by Mr. Soifer, and one of those for small schools might be to look at the reliability of growth models; that is, all of us want to prove that our English language learners are learning and they are making substantial progress in English. The challenge is how to do that. The assessment interest is critical that can demonstrate that which one the State has selected but, second, for that highly impacted small school, we have a number of those in Fairfax as well, for the exact same reason that you mentioned in your district: Refugee resettlement groups have been very active as well.

The principals have worked extremely hard to try to meet the needs of those children by offering additional training to the teachers. We have certainly helped with title III funding in those cases as needed, as requested by principals. But in terms of those scores, to prove that students are learning English, and that is one of goals of the legislation, we need to look at where they started and set expectations for where they should be and chart that progress.

Mr. EHLERS. So you are suggesting that should be part of the legislation?

Mr. BUCHANAN. I think it should be an option and it certainly deserves further consideration and research.

Mr. EHLERS. I appreciate that. It is hard to overstate the difficulty. One student I recall was from Bosnia in fifth grade and had never been in school in Bosnia. So how do you handle a student like that? There are endless problems that are created.

Anyone else? Mr. Soifer.

Mr. SOIFER. I have had the opportunity to see a number of proposed alternatives to No Child Left Behind. And none of them in my estimation increases the accountability for students in these subgroups. What terrifies me most is any system where you have the existing AYP accountability but you have populations of students who are excluded from that. You could potentially, based on what we have seen particularly with special education and with limited English proficient students, have a federally subsidized segregation system, where you have kids that are excluded, and I think what Mr. Miller was pointing to with the Aspen research is very appropriate, where you are starting to see States and school districts look at ways of using things like end sizes for excluding

populations of students from the existing accountability, and I would just respectfully submit to the committee that any steps that they do take, it is very crucial, as we have seen and we have heard in the testimony here this morning, that remedies do not allow for those exceptions and that any remedy increases accountability or at least maintains it and does not exclude children from this excellent system of accountability.

Mr. EHLERS. I appreciate your comments and I want to emphasize the schools in my district are doing a great job of this, but they just get ranked rather poorly and that is very discouraging to the administration and the teachers. I yield back the balance of my time.

Mr. CASTLE. Thank you. Mr. Kildee is recognized for 5 minutes.

Mr. KILDEE. Thank you very much, Mr. Chairman. The term "disaggregate data" some people think it is a rather new term that came into being with No Child Left Behind. I was chairman of the subcommittee back in 1994 during the previous reauthorization and we put the term "disaggregate data" in at that time. And we were serious about it, but I think people have realized that we have become very serious about it now. But it certainly is a 12-year-old term at least here and I think we borrowed it from Texas. So yet there is no question about it that some people still become confused by both the statutory language and the thousands of pages of regulations and guidance from the Department.

In my own State of Michigan, for example, I note that many schools have difficulty in advocating through the law and its regulations and it seems that many of the struggles the Michigan schools face in meeting the requirements for these subgroups could be allayed by having maybe a simple, more open process. I think that the law itself should require very strict high standards for each one of these disaggregated groups. I think it is very important that we recognize that. Perhaps give some reasonable transparent flexibility to the Department, but some predictable flexibility. Right now it is not predictable. School districts seem to hear conflicting advice from different representatives from the Department and are frustrated by the lack of transparency.

The N factor, for example. I mean, one State says they have 200 N factor and we asked for a little beyond our 30 and we were rejected. And this has created a great deal not only of confusion out there but anger out there. And I think that we can do anything with people like yourself helping us to try to make sure we keep these standards for all these subgroups and have some transparency in any adjustments.

And I do not like to see adjustments. I really think that we really meant high standards for each one of these disaggregate data. What could they, I will ask you, Dr. McLeod, what could the U.S. Department of Education do to help States and schools navigate the process more effectively and consistently? If you were within the Department how would you advise them to, under NCLB as written now, how they would deal with this lack of transparency and confusion that exists out there?

Ms. MCLEOD. That is a difficult one. I think the Department has really made an effort to reach out to States. I know that we deal with the Office of English Language Acquisition and they have

been very supportive of what we have tried to do. We just feel that we do not get a lot of information from the Department of Education. And that as you pointed out, what is OK for one State is not OK for another and there does not seem to be any reason why one State is allowed to do something and another State is not allowed to do the same thing when we apply for more flexibility. So certainly at this point more transparency in that process on their part would be great.

NCLB has forced us to be a lot more transparent in the way we report to parents and the way we report to the community. We cannot hide low performing schools anymore. We cannot hide districts that do not do their job. And it would be really great if that transparency, as you point out, were also extended to the Department of Education.

Mr. KILDEE. I can understand some school districts are worried about being labeled as only the newspapers label them, not the law, "a failing school" or something like that. They are worried about sometimes the public relations part and what they really should be worried about is delivering great education to each one of these groups out there. And that should be their highest concern rather than maybe getting a bad editorial in their local newspaper because so many schools did not meet the standards.

Anyway, I really think all of you have contributed a great deal to our understanding and we want to reauthorize this bill in a way that really makes sure that each one of these groups gets the very best possible education and that we let people know how that group is achieving, and I thank all of you. Thank you very much.

Mr. CASTLE. Thank you, Mr. Kildee. Mr. Osborne is recognized for 5 minutes.

Mr. OSBORNE. Thank you. I will try to be pretty brief here. I know at times there have been some concern about misdiagnosis. Young people have been diagnosed as having a learning disability when maybe that isn't actually the fact, a lot has to do with early learning experiences, and I just wanted to get your opinion, and this is a general question, whether you feel a considerable amount of misdiagnosis still occurs. And then the second question I have is that I note that roughly 1 percent of children who have maybe extremely severe cognitive disability are allowed to take some type of alternative test. And now the Department is talking about maybe expanding that to 2 percent is the way I read it. And do you feel this is an adequate percentage? 2 percent, 1 percent? And then the question about diagnosis, misdiagnosis in the early stages.

So anybody that has a thought I would be glad to hear from you.

Ms. QUENEMOEN. I would like to respond, first to the diagnoses. The way we set the criteria, States set their own criteria for eligibility for special education services in any one of the categories. Many of the categories are not—are fairly subjective and based on a variety of kinds of ways people diagnose in your terms or assess whether or not a student meets criteria. And there may be errors made either in identifying students or not identifying students over time. But the bottom line is if special education services eligibility means that you get the services and support and specialized instructions so that you are successful, that would not be a grave error.

We have a huge problem with disproportionate representation of some groups in special education and I keep puzzling if in fact that opportunity opened the door to access to all of the supports you need to be successful then that would not be so bad, but clearly we have fallen off the track there. So rather than struggle, spend a lot of money trying to figure out how to get our criteria perfect, I would rather say, well, once they are identified they are given outstanding supports and they are successful. They are achieving to the same high standards in their grade, then the mis—as you call it—diagnosis will not harm them. But as long as we see special education as a place where we can provide a special curriculum or lower expectations, the chances of a student being harmed by being identified for special education are high. So let's fix the system. Let's not spend all of our money on criteria.

As for alternate assessments, I work very closely with States on development or alternate assessment for students with the most significant cognitive disabilities, and we have seen remarkable shifts in their access to the general education curriculum since that time. These are students who in the past have typically not had access and in fact the field of severe disabilities has changed dramatically based on the students surprising us. The most common quote for students from that group from teachers was I had no idea what my students could do until we actually did this.

Many States actually led us in that direction by saying if this is for all, we are going to provide it for all, and then the students surprised us.

There is a group, that small group, the 1 percent of students who are, there is very little contention that in fact they need very significant supports to achieve in the grade level curriculum and we are seeing that happen.

Educators do not have a good track record of being able to predict which other students could not learn to exactly the same level as their same grade peers prior to actually teaching them. I cite a paper by Dr. Kevin McGrew in my written testimony that shows that we do not have the skills to predict which children cannot achieve to high levels if they are taught well. So it seems to me personally that we have an obligation to teach all children well.

I know that many States are struggling with the notion of increased flexibility or the notice of proposed rulemaking that is still out, struggling to figure out what really is the theory of learning that would underline that kind of logic. So we have told States it is time to really look closely at your data. Find out who your consistently low performing students are. Find out why they are persistently low performing, if in fact they have been given all the opportunities to learn that they need. In other words, is their consistent low performing because they have not been taught the grade level curriculum? Or if you have some groups, we know that many of those students do not have disabilities, the most low performing students on the general assessment.

So we have been trying to support States as they really dig into their data to discover what is happening because it is not clear whether or not we have the ability to predict who should be in another category and thus it may be very dangerous. That is my opinion.

Mr. OSBORNE. OK. Well, thank you. I think my time is up. The red light is on. I yield back.

Mr. CASTLE. Thank you, Mr. Osborne. Ms. Woolsey is recognized for 5 minutes.

Ms. WOOLSEY. Thank you, Mr. Chairman. Thank you, panel. You are excellent. First of all, I want to go on record saying I echo Dr. Ehlers' questions. They are exactly what is bothering me about No Child Left Behind and the questions you asked, Mr. Kildee, there is a huge concern about the anger in the communities over No Child Left Behind and what it means to the individual school, particularly schools that have a larger population of kids with the most needs.

But what I have heard up here today from Dr. Neuber, and I am going to call you that because you will be very soon, Mr. Soifer, and Dr. McLeod, I heard in your testimony and you did not say it exactly like this, but that one size does not fit all. Dr. Neuber wanted out of the special ed environment and that worked for her. There also are youth who need to stay in that environment. And, we have English learners who are coming in and learning at a very fast rate but they are starting in the hole.

So given the absolute goal of leaving no child behind, tell us how we are going to fix this problem without punishing the teachers and the schools, who are doing everything they can. How do you see more flexibility so that we can meet our goals through No Child Left Behind in the long run? And we will start down here with you, Dr. McLeod.

Ms. MCLEOD. Perhaps you do not want to hear this but we need more funds to do our job.

Ms. WOOLSEY. I want to hear it. I get it.

Ms. MCLEOD. We need more funds. I mean \$175 per student for the District of Columbia per English language learner is not sufficient for us to do our job. With the money that we receive from the Federal Government we have managed to put in all kind of fabulous programs to help kids, precisely the kids that you are talking about. We have a Newcomer Literacy Program that was recently recognized by the Department of Education, we received a commendation during the recent monitoring visit. That is a program to help kids who are coming in with very delayed skills in their native language, and it really helps them ramp up. We really ramp up instruction so that these kids are eventually able to achieve at the same level as other kids.

So I think we know what to do. We want you to continue to hold us accountable for doing what we do, but we really also need your support. We need a lot more support than what we have received from Congress in order for us to be able to do our job effectively. I do not think I am asking for anything that is unreasonable. I think that any of us would say the same thing, and we are willing to hold up our side of the bargain.

Ms. WOOLSEY. All right. And you are aware, and the other two of you I hope you will comment also, that the House Appropriations Committee has proposed a 10 percent cut this year in teacher qualify funding and that is on top of the many cuts before.

Let's go on to Mr. Soifer.

Mr. SOIFER. There really has been a sea change, speaking particularly to the LEP subgroup, where there previously has been a culture where accountability for results was far removed. I was not just citing an obscure example, when a typical competitive grant progress would be that a competitive grant of a title VII recipient under the bilingual education act would suggest that they would make, 60 percent of students would make a one NCE level of growth toward English fluency. Then when you would go into the data you would typically find that somewhere between 60 to 80 percent of test scores were being reported. Very often it was closer to 60. That combined with the sea change in culture of accountability combined with the real challenges relating to starting points, so that there has been so much change so quickly, and also those lowest performing schools in the school district, like for instance in south Texas with a very high LEP population, where suddenly they are being walloped with these very—it is hard to look at those principles and describe that initial starting point as a realistic objective that I really think that this culture is really on the right track and that continuing this accountability without creating a segregated system, without segregating children out of the accountability system, is very much in the right direction. And I am really impressed by progress in places that I had not expected to be impressed.

Ms. WOOLSEY. Can I take 2 minutes for Dr. Neuber?

Mr. CASTLE. Certainly.

Ms. WOOLSEY. Thank you.

Ms. NEUBER. I guess from my perspective I think a lot of the attention is on punishment of schools and then being worried about what it is going to look like, as Mr. Castle said earlier. I think what we really need to be looking at is worrying less about that and worrying more about what does the data say and how can we deal with that, how can we look at what the students are learning and look at it from that perspective instead of always looking at it from a point of view of sanction or some sort of punishment.

Ms. WOOLSEY. Thank you.

Mr. CASTLE. Thank you, Ms. Woolsey. Mr. Fortuna is recognized for 5 minutes.

Mr. FORTUNA. Thank you, Mr. Chairman. Thank you for holding the hearing today. I want to thank the panel for being here. It just happens that actually Mr. Hinijosa, Mr. Grijalva and myself have introduced, and actually and I thank the members of this committee, a number of amendments throughout the last year and a half promoting early intervention with LEP students, Head Start programs, for example, so that when you get them in first grade they have already been approached in one way or another.

My first question, and we have done this because we are fully sensed that you need to learn English to achieve the American dream. There is no way around that. So we are big fans of early intervention. I have heard from some other people that perhaps you should take it slowly. I would like to hear from the panel, whomever wants to comment on this. I mean are we wrong in what we are trying to do in trying to accelerate that process of immersion so that they learn English as soon as possible? Is there something we do not know that we should know?

Mr. BUCHANAN. I would like to highlight programs that we started in a dozen locations with title III funds called early literacy programs. We recognize that children's first teacher are their parents. This program works with 3 and 4-year-olds and their parents simultaneously to teach the parents who speak Spanish, Korean or Arabic how to pick up a book and read to their child, to teach them skills that they need for kindergarten success, like what does the sound-letter correspondence look like, the enjoyment of literacy.

Our results after 2 years of that, kindergarten teachers are thrilled with these children coming into their classrooms like never before, ready with the skills taught in whatever language to transfer from the parents and children's first language. In other words, we are taking advantage of that resources that is already there.

Mr. FORTUNA. Thank you. Anybody else?

Mr. SOIFER. We hear all sorts of the reasons, particularly relating to kids that come into U.S. Schools, older who come into U.S. Schools, say, in the 7th grade. And there are so many intervening factors regarding how to go ahead and teach that child English. I think No Child Left Behind's approach focuses, and most kids that come into U.S. Schools, according to the U.S. Department of Education, come in in kindergarten and first grade. Some of the recent new programs that we have seen with structured English immersion in places, in some of the California school districts that we have studied, even in Miami-Dade County, where they are able to close the language gap by the end of the third grade really defines what we have heard from the bilingual education community that it can take 6 to 8 years to attain formal fluency in English. I have been really impressed by some of the new structured immersion programs to focus on early English fluency at much younger ages with quite impressive levels of success.

Mr. FORTUNA. Thank you. One more question. Mr. Buchanan, in your testimony you mentioned your concern with those newly arrived students with limited English proficiency. We have heard also today that we do not want to segregate those students. So what exactly would you advocate that we have? How should we handle this?

Mr. BUCHANAN. In our situation, as Dr. McLeod mentioned, in D.C. Schools we do provide additional instruction for those students with limited literacy in their first language. That takes extra dollars, that takes additional teachers, that takes unique strategies and technology.

Mr. FORTUNA. When you say additional, do you mean after school programs?

Mr. BUCHANAN. That is correct. They have an additional period at high school level. They have an additional period with specialized ESL techniques. Because these are situations where they need very basic skills before they can access what is happening in a regular ESL classroom and in a conventional classroom. Our goal is not to segregate those students, but it is certainly appropriate strategies that that teacher has been trained in to find in individual cases, those students are the ones who have the steepest learning curve ahead of them. And we need to give them the extra time it takes. We are funding a substantial number of students going to summer school right now to do that.

Mr. FORTUNA. Thank you again, Mr. Chairman. Thank you for the hearing and thank you to the panel. I yield back.

Mr. CASTLE. Thank you, Mr. Fortuna. Mr. Van Hollen is recognized for 5 minutes.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. I apologize for bouncing between committees. We have a voting session in another committee. I serve on the Judiciary Committee but I did hear all the testimony when I was here earlier and I want to thank all the witnesses for their remarks and input, insights.

I remember Ms. McLeod making a comment, if you are exempt from accountability requirements you do not exist. I think that is absolutely true. I think anyone who served in a government organization or in the private sector understands that if you are not part of an accountability scheme you are overlooked and do not exist. And I think that is the beauty of the No Child Left Behind program, that it creates an accountability system that asks us to measure progress across all groups and all individuals as much as possible. And so I just want to underscore remarks that have been made by others and other members of the panel that I think as we move forward as on the reauthorization of No Child Left Behind it is important that we not undermine that basic scheme.

Now in that regard I do have a couple of questions. If I could ask those witnesses who are here today that are focusing on the disabilities component of the legislation just to comment on some of the regulations that have been passed by the Department of Education recently, the 1 percent rule and the 2 percent rule. Because I think we all agree we want to make sure that there are reasonable expectations and that we have an implementation program that is matched to the needs of the students and that also makes sure that we address the concerns out there. But I also share Mr. Miller's concerns that at some point when you begin to make lots of exceptions to meet concerns raised in specific States or school districts, that you potentially create loopholes, unintentionally sometimes, that undermine that sort of uniform effort at accountability and expectations.

So if you could comment on the regulations to date that have been sort of implemented to try and address concerns raised by some of the school districts but I am interested in your comments as to whether or not they neatly address those problems or whether you think they open up loopholes.

Ms. QUENEMOEN. There was a question in the interim that we spoke to generally. The 1 percent option to include students with the most significant cognitive disabilities and accountability tests based on the same grade level content but with a different understanding of what proficiency has brought those children to the grade level curriculum in ways that none of us thought were possible.

I wrote on book actually about 5 years ago where we were still wondering how these children would respond. I have been telling people tear out the piece of how they access the academic curriculum because based on these alternate assessments, we found that children are doing things that most of us did not think they could do. If nothing else comes out of testing that is a wonderful success story. Those are students who are unarguably needing very

different ways of getting to the interesting challenging curriculum as their peers and who will show that differently.

Educators have very poor skills at predicting for just about every other child what will happen when that child is taught well. We know that if you identify a student as needing a lowered standard that is probably where they will achieve. The teacher expectation effect on student achievement is very powerful there. So I can provide you data on just how poorly we predict.

I have heard some troubling concerns from parents, actually from a friend of mine who went to an IEP meeting and received from her district a checklist of why her students should be put into a lower test, even though that has not been as yet approved, the regulation, that included a series of steps that said well, has this student gotten high quality instruction. Yeah, we can check that, we can check that, we can check that. So I think that some of that is already happening.

As a parent serving on an IEP team, to make decisions about your student is probably the most complex and difficult work I have ever done, including preparing for coming here. And so the pressure being put on parents to back off of high expectations for their student is sometimes very grave. So that combined with educators' inability to predict who will learn when taught well makes us very, very cautious against any additional flexibility in that vein.

Mr. VAN HOLLEN. Thank you.

Mr. CASTLE. Thank you, Mr. Van Hollen, very, very much. Next we will call on Ms. McCollum. I understand she is a birthday girl and we want to wish her a very happy birthday. I can give you an extra minute for your birthday.

Ms. MCCOLLUM. You mean I do not get 52 minutes, one for every year? Thank you, Mr. Chairman.

I want to pick up on exactly what you just said. Being the parent at one of those interventions is exhausting. You want to be fair. You want to be fair to the student. You want to be fair to the school district. You want to be fair to yourself. And quite frankly had I taken some of the well-intentioned advice, and I know it was meant as well-intentioned, from a school district that I think does a superb job, my son would have never taken a foreign language. He is dyslectic and he is talking about working on his Ph.D. Now in English as a second language and is going over to teach at a Japanese university. I said let him fail. But as we had these high stake tests, the pressures that will be put on parents even more now to do that because it is going to be a reflection on the school district coming to that collaboration now to let them take a class and fail in it.

So that is where I do not want to have so much flexibility that people start finding loopholes. But we do need to have the flexibility to let people explore who they are, at the same time not drag the school district down for allowing that exploration. And so that is where the tension becomes. I appreciate the comments that were made by the other panelists about including parents.

St. Paul schools, which I represent, refugee populations, people from coming over happily to people coming over having parents attending workshops at the centers for victims of torture, where you

know there is a lot of conflict going on in that family and a lot of healing where school might not be the first priority. Watching Hmong mothers at a Head Start program sit behind a bookshelf so they could learn the English along with their children means that we need to provide opportunities for the whole family to be successful, and we are not funding that and we are not doing that. And we need to have a full discussion about that.

What I would like to focus on, and I would like to thank my fellow Minnesotan so much for her testimony, is national standards. And I am going to kind of say why I think national standards are important. One, we need to know what we are comparing and who we are comparing and if we as a nation are succeeding in leaving no child behind. The other is because just in my own home State, because we had started our own form of Leave No Child Behind years ahead of the Federal Government, we found ourselves in a snapshot, a snapshot in which our State auditor predicts that according to simulations that he has run, and if you haven't even seen the State auditor report I think you would find it fascinating reading, between 80 and 100 percent of Minnesota schools will fail to meet adequate yearly progress by 2014.

Now that isn't what No Child Left Behind was set up to measure, but because of our State having a high standard we are going to be caught in a trap in which our standards are so high there is really no way that at some point that student can achieve even more at that grade level. And so we need to be looking at what we are measuring, how we are measuring it and really being careful in using this measurement to make sure all children in this country are moving forward.

So I would just like to, things you would like to share with us that maybe you did not have in your testimony or talk about why if we are really going to be sincere about leaving no child behind we need to move toward a national standard.

Ms. QUENEMOEN. I will comment briefly. I have not seen the auditor's report and I will look for it.

Very often projections on what will happen by 2014 in States are based on a continuation of past performance by students, especially in the subgroups, and so one of the things I will look carefully at is the methodology to project.

In terms of national standards, a number of years ago in one State I was asked why did we not just all come out with one test and one standard and when will that be. And I said, well, given the political discussions probably when something freezes over that was not their State. But I think trying to grapple, I think it is good that States grapple with their own standards and their own achievement standards and build a system of staff development and supports around the needs of their schools for their children.

Everybody thinks their own school is good. Data suggests that even when their school is not good local people like their schools. The closer we can make some of those decisions to the students usually the better. That is where the predominant amount of the funding should come. But I would agree that there are in some places games being played around measuring the standards and in other cases just a lack of clarity. Everybody is pretty sure their own State is pretty good. Everybody is pretty sure their own dis-

trict is pretty good. And everybody is sure their school is pretty good. So I think it is not as simple as announcing now that we will have a national standard, but your point is well taken and something that I think serious educators and policymakers have to address together.

Ms. NEUBER. I would like to make a brief comment about something that I feel very strongly about, and that is looking at the assessments that are given to students and making sure that they are designed in a way that they can show what their knowledge is and not designed in a way that makes it more difficult for them to show the knowledge that they actually have. And basically the idea is universal design. I think we all know people that are, for instance Thomas Jefferson, not being a great speaker but he was obviously an excellent writer. And I think making sure that we are giving students assessments where they can really show what they know and not just giving these assessments where you are bubbling in answers because not everybody can answer questions that way.

Mr. CASTLE. We will take one more. We will take Dr. McLeod's testimony.

Ms. MCLEOD. I just wanted to say about the national standards because it is very unlikely that we could come to agreement on those. I think that in lieu of that what we need to do is have really high content standards for each State and to ensure that there is an objective way of evaluating those standards so that each State is required to have really high standards and where there is a new standards board or something that Congress establishes. We just changed our standards and they are considered one of the most rigorous in the country.

With respect to the issue of 100 percent by 2014, I do not think that is feasible and I do not think there is any shame in Congress looking at next year perhaps changing that to something that is more attainable for everyone.

Mr. CASTLE. Thank you very much. Thank you, Ms. McCollum. Mr. Davis is recognized for 5 minutes.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. And I think I waited until the end to hear some of what I had been listening to because in response to Mr. Fortuna and in response to the comments of Representative McCollum, I heard some of what I have been wanting to hear. It has been my experience that when children have special needs relative to language and culture that the family has special needs and that the needs are not just those of the children. And so how impactful, and you have responded, Mr. Buchanan, to that somewhat, is that we also have structured programs and activity built in as a part of the curriculum in terms of No Child Left Behind curriculum that not just leaves it to chance but makes certain that these parents also have the opportunity to learn along with their children.

Yes.

Ms. MCLEOD. I would suggest to you that No Child Left Behind has made it really important for parents to be involved. It has made it quite explicit that we have no option but to ensure that parents are kept informed of the progress of their students. I think

that takes care of a lot of what we have had in the past where parents and the community have not really been notified.

I would go further than that, however, sir, and I would suggest that Congress consider expanding because, as you rightfully pointed out, it is not just the child who is coming into this country and learning a new language and learning a new content, it is also the family. I would suggest that you might consider expanding Even Start programs to cover the full age range of students that we see in our schools. You know that these Even Start programs teach literacy to both parents and students together. Obviously something for older kids would be different. But definitely I think we do need more programming in order to continue to support parents.

Mr. DAVIS OF ILLINOIS. Mr. Buchanan.

Mr. BUCHANAN. I certainly support Dr. McLeod with a couple of examples. Again title III has allowed us to expand some very positive programs to teach advocacy to parents for whom that is not a familiar topic. I once had a Vietnamese father tell me when I called him to have a conference with his son, Mr. Buchanan, in our country first there is God, then there is teacher, you tell me what to do for my child.

And so parents with that perspective need introduction and assistance with what they are dealing with our American school systems.

Mr. DAVIS OF ILLINOIS. Actually when I was growing up that was about the way it existed where I lived in this country.

Mr. BUCHANAN. With title III funds we have expanded a program that our principles feel is critical to reach out to parents who are normally not included in their schools and these are paraprofessionals who are multilingual, multicultural, called parent liaisons. They work 20 hours a week to bring parents to school, to teach them the ropes of their new community. They have been highly effective in Fairfax.

Mr. DAVIS OF ILLINOIS. There have also been some concerns expressed about teacher certification that in some instances may be somewhat overbearing for individuals who are going to be certified to each special ed, that you may have to be certified in a number of different areas. As a matter of fact, my sister just retired as the principal of a special ed school. All of the kids there had special needs and of course there was a great deal of interaction, sometimes frustration, but of course the graduations were the best in the world because as kids would graduate there would be so much emotion in many instances expressed not only by them but also the parents, the teachers, and everybody else just to see the kind of progress that had been made. But how would you respond to the certification requirements for teachers?

Ms. QUENEMOEN. You are specifically looking at special education teachers, is that correct?

Mr. DAVIS OF ILLINOIS. Yes.

Ms. QUENEMOEN. If a special education teacher is providing instruction to a student in the content area, I would expect that teacher to understand and be skilled in the content area. There are special education teachers who work in partnership with their content partners and they rely on people who understand the content in that side of the instruction and provide instructional support to

the students. That is a different situation than if a student is in a self-contained classroom and is learning algebra from a teacher who does not understand algebra. So I think any of you with your children would hope that the teacher teaching them the content knows the content herself.

In that way I do not see how you could argue against licensure in a content area for someone who is instructed in the content.

Mr. DAVIS OF ILLINOIS. Thank you very much. You have been very patient and very informative. I was fortunate to spend 6 years working at a special school in the city of Chicago with young people who had tremendous needs. And as a matter of fact, I think it was probably one of the greatest experiences of my life. And I certainly thank you for the input you have given to us.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. CASTLE. Thank you, Mr. Davis. We appreciate your being here and your patience in waiting until the very end. We have reached the end of our hearing. I do not know why we were so fortunate not to have a vote on the floor. Maybe they didn't tell us about it. I do not know which.

I would like to thank each of the panelists. You have also been very patient and very thorough in your answers. I believe this hearing to be of utmost importance in terms of the very heart and soul of No Child Left Behind. So there is a lot for us to shuffle through as we do this, but thank you very much for your presence here today.

If there is no further business the committee stands adjourned.  
[Whereupon, at 12:25 p.m., the committee was adjourned.]

