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March 23, 2010

The Honorable George Miller  
The Honorable John Kline, Ranking Member  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Miller and Ranking Member Kline:

The Learning Disabilities Association of America (LDA) is a strong supporter of the main purpose of the Elementary and Secondary Education Act (ESEA): to afford all children an opportunity to meet challenging academic standards and, in doing so, to close the achievement gap for all students, including students with disabilities. LDA – a national volunteer organization representing individuals with learning disabilities, their families, and the professionals who serve them – has worked for more than 40 years to ensure that children with learning disabilities are properly identified and receive the services they need to be successful in school and to meet their postsecondary goals.

*As Congress moves toward the reauthorization of the ESEA [currently authorized as the No Child Left Behind Act (NCLB)], LDA urges consideration of the following important principles:*

**I. Provide students with learning disabilities access to the general education curriculum.**

Most students with learning disabilities spend the majority of their time in general education classes. In addition to research-based and intensive remedial instruction in basic skills received through special education services, students with specific learning disabilities also need access to the general education curriculum. Access to the general education curriculum is a fundamental and critical step toward improved academic results for all students, including those with learning disabilities. With appropriate instruction, including accommodations, modifications, and the use of learning strategies, they will have the tools to progress and reach proficiency on State academic content standards.

While most students with learning disabilities are capable of mastering academic content standards, their success in meeting those standards may be dependent on a number of factors, including the receipt of appropriate learning supports from special education teachers in a small group or resource program and universally designed curriculum and assessments. For many students with learning disabilities, accommodations are a vital tool for ensuring effective access to the general education curriculum. Many students with learning disabilities in language/literacy areas also will need access to technology in order to understand print materials, as well as to produce written materials that accurately reflect their ability to acquire, organize, and communicate academic content. The Individualized Education Program (IEP) team should continue to determine what accommodations and technology may be necessary and appropriate for each student.

LDA also believes that students who, as determined by the IEP team, require modifications, accommodations, and assistive technology to access the general education curriculum and to participate in classroom assessments should receive the same accommodations to participate in statewide standardized assessments required by ESEA. Also, alternate

assessments based on grade-level achievement standards should be available as an option for students with learning disabilities, as determined by the IEP team. Assessing students without appropriate accommodations will deny students an equal opportunity to demonstrate progress and achievement, since they will not be able to fully participate in the assessment.

### **Legislative Recommendations:**

#### **Add the following language in Title I, Part A, Subpart 1, Sec. 1111(b)(3)(C)(ix):**

"(3) Academic Assessments.—...

(C) Requirements.—Such assessments shall--...

(ix) provide for—...

(II) the reasonable adaptations and modifications, accommodations, and assistive technology services for students with disabilities (as defined under section 602(3) of the Individuals with Disabilities Education Act), which modifications, accommodations, and assistive technology services shall be the same as or equivalent as determined by the individualized education program team for students with disabilities for participation on regular classroom assessments, and are necessary to measure the academic achievement of such students relative to State academic content and State student academic achievement standards...."

#### **Add the following language in Title I, Part A, Subpart 1, Sec. 1112(b)(1)(E):**

"(b) Plan Provisions.—...

(1) In general.—In order to help low-achieving children meet challenging academic achievement standards, each local educational agency plan shall include—...

(E) a description of how the local educational agency will coordinate and integrate services provided under this part with other educational services at the local educational agency or individual school level, such as—...

(ii) services for children with limited English proficiency, ~~children with disabilities,~~ migratory children....;

(iii) services for children with disabilities, including assurances that children with disabilities will receive modifications, accommodations, and assistive technology services as determined by the individualized education program team as necessary for participation in regular classroom instruction and assessment."

#### **Add the following language in Title VI, Part A, Subpart 1, Sec. 6111(2)(G):**

"Sec. 6111. Grants for State Assessments and Related Activities.

The Secretary shall make grants to States to enable States—...

(2) if a State has developed the assessments and standards required by section 1111(b), to administer those assessments or to carry out other activities described in this subpart and other activities related to ensuring that the State's schools and local educational agencies are held accountable for results, such as the following:...

(G) Expanding the range of modifications, accommodations, and assistive technology services available to students with limited English proficiency and students with disabilities to improve the rates of inclusion of such students, including professional development activities aligned with State academic achievement standards and assessments and instruction in how to appropriately implement modifications, accommodations, and assistive technology services."

## **II. For accountability purposes, maintain "students with disabilities" as a specific subgroup.**

LDA strongly supports retaining the "students with disabilities" subgroup. However, we are extremely concerned that the "excluded subgroup" concept is widely misused and requires constraints on its current flexibility. In order to ensure accountability for the progress of students with disabilities, States, school districts, and schools must report on both their

participation and academic performance. The minimum size of the subgroup on which data are reported must be the lowest possible and maintain statistical reliability, while protecting the confidentiality of individual student information.

The subgroup size varies dramatically from State to State. In some instances, States had established different "n" sizes for the various subgroups, including larger subgroup size for students with disabilities, resulting in the disability subgroup not being counted because of statistical insufficiency. LDA strongly opposes wide variations in subgroup size across States and any difference in "n" size across subgroups.

### **III. Maintain students with disabilities in the general accountability system.**

The Learning Disabilities Association of America (LDA) has extremely serious concerns about any suggestions that students' Individualized Education Programs (IEP) would be used as the accountability tool for measuring their progress. We strongly believe that a move to use the IEP for this purpose would be a major step backward in the Committee's efforts to ensure that *all* students are challenged and taught to high standards and to hold states equally accountable for the progress of *all* students.

The IEP lists goals and the services and supports needed to achieve those goals that are designed to enable the student to "be involved and make progress in the general education curriculum." In other words, the IEP is not the curriculum for that student, but rather the means to access the general curriculum. IEP goals are designed to provide supports for students to participate and learn to those standards.

The most important point, however, is that the majority of students with learning disabilities have the capacity, given the appropriate accommodations and supports, to meet state academic content and achievement standards. In fact, using the IEP as the accountability measure would amount to decreasing the rigor and the high standards that ESEA has established for all students. LDA urges Congress to continue to include all students with disabilities in the general accountability system, so all children have the same opportunities to prepare for post-school success.

### **IV. Allow appropriate use of out-of-level assessments for *all* students.**

LDA believes state assessments should be used as the demarcation of state standards. Out of level assessments could be used for students with and without disabilities, as long as schools continue to increase the expectations of what students know and can do. Students who are working below grade level often are fully aware they lag behind academically. Asking these students to participate in assessments on material which they have not been taught may further exacerbate already low self-esteem and may result in behavioral problems. LDA would support all students being assessed at their current academic levels, while school personnel continue to work on getting that student to grade level achievement.

### **V. Identify students with learning and behavioral challenges early and provide targeted instruction before referral for special education services.**

The forerunner of the Individuals with Disabilities Education Act (IDEA) was first passed in 1975 to meet the instructional needs of identified students with disabilities. These needs must continue to be the primary mission of the IDEA. The 2004 reauthorization of the IDEA allows school districts to use up to 15 percent of their federal IDEA State Grant (Part B) funds to develop and implement coordinated early intervening services for *general education students not currently eligible for special education*. The IDEA also provides that a process of "scientific, research-based interventions" may be used in addressing academic and behavioral challenges prior to a referral for special education services in the category of specific learning disabilities. These interventions have become known generically as Response to Intervention (RTI).

In fact, RTI and other such interventions are *general education* initiatives designed to provide early intervention supports and services for all children who are below grade level achievement. "Scientific, research-based interventions" have been included in the IDEA, even though the services referred to are not special education and related services. If school staff suspects that a student in an intervention program may have a disability, the IDEA allows data collected from those interventions to be used as part of the comprehensive special education evaluation.

LDA strongly recommends moving "scientific, research-based interventions" (e.g., IDEA Regulations, Sections 300.307 – 300.311) from the IDEA to the ESEA. These interventions, as previously noted, are designed specifically for use with struggling students in *general education* and are to be provided in the general education classroom as soon as possible after problems begin to surface. If school personnel determine at any time during implementation of such interventions that a referral for a comprehensive evaluation for special education services is warranted, these interventions may not be used to delay or deny an evaluation.

### **Legislative Recommendations:**

#### **Add new subparagraph (iii) under Title I, Part A, Subpart 1, Sec. 1112(b)(1):**

"Sec. 1112. Local Educational Agency Plans.

...

(b) Plan provisions.—

(1) In general.—In order to help low-achieving children meet challenging academic achievement standards, each local educational agency plan shall include—

...

(E) a description of how the local educational agency will coordinate and integrate services provided under this part with other educational services at the local educational agency or individual school level, such as—

--

(iii) early intervening services, as described in section 613(f) of the Individuals with Disabilities Education Act, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment."

#### **Add the following language to Title I, Part A, Subpart 1, Section 1115(c)(1)(C):**

"Sec. 1115. Targeted Assistance Schools.

...

(c) Components of a Targeted Assistance School Program.—

(1) In general.—To assist targeted assistance schools and local educational agencies to meet their responsibilities to provide for all their students...the opportunity to meet the State's challenging student academic achievement standards..., each targeted assistance program...shall—

...

(C) use effective methods and instructional strategies, including, as appropriate, a process based on the child's response to scientific, research-based interventions, ~~that are based on scientifically based research~~ that strengthens the core academic program of the school...."

#### **Add the following language to Title I, Part B (Reading First), Subpart 1, Section 1202(c)(7)(A)(ii)(II):**

"Sec. 1202. Formula Grants to State Educational Agencies.

...

(c) Subgrants to Local Educational Agencies.—

...

(7) Local uses of funds.—

(A) Required uses.—Subject to paragraph (8), an eligible local educational agency that receives a subgrant under this subsection shall use the funds...to carry out the following activities:

...

(ii) Selecting and implementing a learning system or program of reading instruction based on scientifically based reading research that—

...  
(II) provides such instruction, including as appropriate a process based on the child's response to scientific, research-based interventions, to the children...served by the eligible local educational agency...."

**VI. Allow the use of a growth-based accountability model to measure student improvement.**

LDA supports allowing States to use a growth model if it is carefully monitored to ensure that accountability for students with disabilities is not diminished. A growth model tracks the progress of a cohort of students over time and incorporates this growth into the mechanism designed to determine progress toward proficiency for schools and school districts. In addition to holding the school and district accountable for overall improvement, a growth model will provide data on improvements in individual student performance. For students with learning disabilities whose progress sometimes may be more incremental than their non-disabled peers, these data are important to document that individual students are continuing to progress toward proficiency on State achievement standards.

**VII. Ensure that teachers deemed "highly qualified" have the skills and knowledge to address the academic and behavioral needs of the students for whom they are responsible.**

LDA believes both general and special education teachers must be able to recognize the academic needs and challenging behaviors in students, so that a team of qualified professionals can provide appropriate interventions and supports.

General education teachers designated as highly qualified should be prepared to deliver scientific, research-based instruction with fidelity, monitor student academic and behavioral progress, and modify curriculum. In addition, they should be prepared to implement recommended accommodations and use technology in instruction and assessment for students with learning disabilities. Teachers also should possess the knowledge and competence to align instruction with grade-level content standards and/or assist other professionals to provide such instruction.

Special education teachers designated as highly qualified should be prepared to (1) provide intensive, highly individualized instruction at the appropriate intensity and duration and monitor uneven progress, (2) deliver and/or collaborate with general education teachers to deliver the general education content curriculum, and (3) provide team and consultative advice concerning accommodations and modifications to general education and related professionals.

**Legislative Recommendations:**

**Add the following language in Title II, Part A, Subpart 1, Sec. 2113(c)(1)(A)(i):**

"Sec. 2113. State Use of Funds.

...  
(c) State Activities.—The State educational agency...shall use the funds...to carry out one or more of the following activities...

(1) Reforming teacher and principal certification (including recertification) or licensing requirements to ensure that—

(A)(i) teachers have the necessary subject matter knowledge and teaching skills, including the ability to align instruction with academic content standards, in the academic subjects that the teachers teach...."

**Add new subparagraph (17) and renumber current (17)-(18) in Title II, Part A, Subpart 1, Sec. 2113(c):**

"(16) Supporting activities that ensure teachers are able to appropriately monitor students' academic and behavioral progress, modify curriculum as appropriate, and implement accommodations and use technology as described in the individualized education program of students with disabilities, in accordance with section 614(d) of the Individuals with Disabilities Education Act."

**Add new language in Title II, Subpart 2, Sec. 2122(b)(9)(A):**

"Sec. 2122. Local Applications and Needs Assessment.

...  
(b) Contents.—Each application submitted...shall be based on the needs assessment...and shall include the following:

...  
(9) A description of how the local educational agency will provide training to enable teachers to—  
(A) teach and address, including through collaboration with special education teachers and other appropriate school personnel, the needs of students with different learning styles, particularly students with disabilities, students with special learning needs...and students with limited English proficiency...."

**Add new language in Title II, Subpart 2, Sec. 2123(a)(3)(B)(i)and (ii):**

"Sec. 2123. Local Use of Funds.

(a) In General.—A local educational agency...shall use the funds...to carry out one or more of the following activities...

...  
(3) Providing professional development activities—  
...  
(B) that improve the knowledge of teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—  
(i) involve collaborative groups of teachers, including special education teachers, other appropriate school personnel, and administrators;  
(ii) provide training in how to teach and address, including through collaboration with special education teachers and other appropriate school personnel, the needs of students with different learning styles...."

**Add new subparagraph (B) and re-letter current (B)-(C) under Title II, Subpart 3, Sec. 2134(a)(2):**

"Sec. 2134. Use of Funds.

(a) In General.—An eligible partnership...shall use the subgrant funds for—

...  
(2) developing and providing assistance to local educational agencies and individuals who are teachers, highly qualified paraprofessionals, or principals...for sustained, high-quality professional development activities that—

...  
(B) ensure individuals are able to appropriately monitor students' academic and behavioral progress, modify curriculum as appropriate, and implement accommodations and use technology as described in the individualized education program of students with disabilities, in accordance with section 614(d) of the Individuals with Disabilities Education Act."

**VIII. Empower family members and students to be effective advocates through specific training and technical assistance.**

LDA strongly supports and advocates for the ongoing training, participation, and formal recognition of parents, families, and students, as appropriate, in a true partnership to genuinely enhance the complex yet vital education process. Parents and families require specific training and technical assistance in order to make informed decisions about their child's educational needs. All parents, but especially parents of children in low-performing schools, should be given adequate and clear information about educational options available to their children, including their rights under the Individuals with Disabilities Education Act (IDEA). In addition, students should be taught to self-advocate for and be involved in, to the extent appropriate, decisions that affect their education, including preparation for postsecondary opportunities.

**Legislative Recommendations:**

**Add new subparagraph (2) and renumber current (2)-(14) under Title I, Subpart 1, Sec. 1118(e):**

"Sec. 1118. Parental Involvement.

...  
(e) Building Capacity for Involvement.—To ensure effective involvement of parents and to support a partnership among the school involved, parents, and the community to improve student academic achievement, each school and local educational agency...

...  
(2) shall provide information to parents about the range of appropriate educational options, including, as appropriate, the Individuals with Disabilities Education Act."

**IX. Ensure all students are afforded graduation pathways that provide quality educational programming which fulfills their interests, talents, and career goals.**

A major part of educational reform is an emphasis on more rigorous academic standards. These standards are intended to strengthen both teachers' instructional skills and students' academic performance. However, historically many students with learning disabilities have been relegated to lower level courses and directed away from honors or advanced placement classes, effectively denying them the opportunity to be taught to and meet higher academic standards.

Students with learning disabilities are a diverse group of learners who exhibit patterns of learning strengths and weaknesses. Some students with learning disabilities may do well or even excel in some areas of academics and technical training, or may exhibit unique gifts and talents in art or music. At the same time their disabilities may negatively impact them in other areas of learning and may result in more students with learning disabilities not graduating from high school.

States and school districts must be aware that a "one-size-fits-all" educational system doesn't work. LDA urges States to take a new look at Career and Technical Education programs, not just as electives, but as a way of offering flexibility in graduation standards and opportunities to train students in specific marketable skills that appeal to their interests and talents. This change will enhance the chances of students remaining in school and graduating ready to enter the work force. In addition, schools should provide transition services to assist students in planning for postsecondary education or employment.

LDA fully supports educational accountability that seeks to improve the skills, competence, and attitudes of America's students, as well as increasing our competitiveness in the world marketplace. However, these efforts must always be balanced by the need to nurture the unique abilities and talents of each student, including students with learning disabilities. LDA is committed to ensuring that such a balance is achieved and maintained.

**Legislative Recommendations:**

**Add new subparagraph (bb) and new language in current subparagraphs (bb) and (cc) [designated below as (cc) and (dd)] and re-letter current (bb)-(cc) under Title I, Subpart 1, Sec. 1114(b)(1)(B)(iii)(I):**

"Sec. 1114. Schoolwide Programs.

...  
(b) Components of a Schoolwide Program.—

(1) In general.—A schoolwide program shall include the following components:

...  
(B) Schoolwide reform strategies that—

...  
(iii) (I) include strategies to address the needs of all children in the school, but particularly the needs of low-achieving children and those at risk of not meeting the State student

academic achievement standards who are members of the target population of any program that is included in the schoolwide program, which may include—

...

(bb) the teaching of self-advocacy skills;

(cc) transition services, including college and career awareness and preparation, such as college and career guidance, personal finance education and other life skills, and other innovative teaching methods...; and

(dd) the integration of ~~vocational and technical education programs~~ career and technical education courses and training in marketable workforce skills."

**X. Include a definition of Universal Design for Learning and incorporate these principles throughout the ESEA.**

LDA supports adding the definition of Universal Design for Learning (UDL) that was added to the Higher Education Act in 2008:

"UNIVERSAL DESIGN FOR LEARNING.--The term 'universal design for learning' means a scientifically valid framework for guiding educational practice that— (A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient."

LDA also supports the recommendations of the National UDL Task Force, including:

- States should assure the State educational agency (SEA), in consultation with experts, teachers and other stakeholders, will develop a comprehensive plan to address the implementation of universal design for learning.
- A competitive grant program should be established to transform existing practices to reflect the UDL framework in the following areas: standards, instructional methods, curriculum, accountability/assessment systems, and professional development beginning with a needs assessment and including evaluation and national dissemination best practices.
- Each State plan should demonstrate the State has adopted challenging academic content standards and challenging student academic achievement standards that are consistent with the principles of UDL, or will adopt such standards as soon as feasible.
- In grants for preparing, training, and recruiting high quality teachers and specialized instructional support personnel, the application should require a description of how the SEA will use the funds to provide training in the use of instructional methods consistent with the principles of UDL. *These trainings should be carried out using UDL methods.* Also the needs assessments should be conducted with the involvement of both general and special education teachers and specialized instructional support personnel and take into account activities that need to be conducted to provide educators with teaching skills consistent with the principles of UDL.
- Assessments should be required to be universally designed, to the extent feasible. To clarify the standard for universally designed assessments, the definition should state: These assessments are developed using the principles of universal design for learning in order to minimize the effect of construct-irrelevant factors—such as physical, sensory, learning, or cognitive disabilities, or language barriers—that may interfere with the accuracy of the assessment; and provide appropriate supports for students to demonstrate the knowledge, skills, and abilities according to the intended learning standards.

**XI. Require schools to determine and to assure the availability of social and mental health services for their students as part of their school improvement plan.**

LDA urges Congress to require schools to include in their school improvement plans the available school and community social and mental health services critical to supporting student success. Students with specific learning disabilities often have co-occurring mental health and social and emotional problems that impede academic success. Research indicates students struggling with mental health concerns achieve at higher rates when schools identify and intervene early to address these problems. When creating school improvement plans, schools should be required to determine the availability of school and community social and mental health services to support struggling students. LDA maintains that school improvement plans should include mechanisms for assuring access to such services along the full continuum of mental health care.

**Recommended language:**

**Title I, Part A, Subpart 1, Sec. 1116 – Add new subparagraph (b)(3)(A)(iv) and re-number current (v)-(xi):**

"Sec. 1116. Academic Assessment and Local Educational Agency and School Improvement.

...  
(b) School Improvement.—

...  
(3) School Plan.—

(A) Revised Plan.—After the resolution of a review under paragraph (2), each school identified...for school improvement shall...develop or revise a school plan....The school plan shall cover a 2-year period and—

...  
(iv) describe the availability of social, behavioral, and mental health services in the school and the community to assist students in overcoming barriers to learning and achievement, including—

(I) staffing adequacy of school-employed mental health personnel, such as school counselors, school psychologists, and school social workers, in accordance with the recommended ratios found in Section 5421 (c) (2) (K) of this Act ;

(II) breadth of available school services including counseling, positive behavior supports, screening and assessment, intervention and skill development, and behavioral and instructional consultation;

(III) accessibility of school personnel and services to meet the needs of struggling students;

(IV) availability and accessibility of community social and mental health programs and qualified personnel capable of linking with schools to provide a full continuum of social and mental health support."

We appreciate your serious consideration of these recommendations. Should you need further information or clarification, please feel free to contact Myrna Mandlawitz, LDA Policy Director (mandlawitz@verizon.net; 202- 686-1637).

Sincerely,  
*Pat Lillie*

Pat Lillie  
President