

November 9, 2009

National Assessment Governing Board
800 N. Capitol St. NW
Suite 825
Washington, DC 20002

Subject: Comments to Recommendations of the Technical Advisory Panel on Uniform National Rules for NAEP Testing of Students with Disabilities

The National Center for Learning Disabilities is a not-for-profit organization founded in 1977 that works to ensure that the nation's 15 million children, adolescents and adults with learning disabilities (LD) have every opportunity to succeed in school, work and life. We work with a national network of more than 40,000 parents, teachers and individuals with LD. Our 32-year commitment to children and adults with LD is based on the guiding principle that federal policies should reflect what research tells us. From research we know that:

- Learning disabilities are neurologically based
- They do not go away
- They affect some 5% of the population
- They require early and accurate identification and effective intervention if students with LD are to succeed in school and life
- 2.9 million students are diagnosed with learning disabilities and receive special education services in our schools, representing 45% of students with disabilities nationwide
- 60% of students with disabilities spend 80% or more of their day in the general classroom
- The majority of students identified with LD have their primary deficit in the area of reading.

As the Individuals with Disabilities Education Act (IDEA) definition of specific learning disabilities stipulates, these students have neurological differences that are *not primarily the result of mental retardation, emotional disturbance, or of environmental, cultural or economic disadvantage*. Additionally, IDEA eligibility determination criteria requires that a student should not be determined to be a child with a specific learning disability if the determinant factor is lack of instruction in reading or math or limited English proficiency. These definitional and qualifying criteria establish students with LD as competent to participate in general education curricula and achieve at a proficient level or higher when provided with high quality instruction by trained professionals as well as appropriate accommodations.

NCLD appreciates the National Assessment Governing Board's interest and concern regarding the current rate of exclusion of students with disabilities in the NAEP sample. NCLD commends the Board on its work in this area and appreciates the opportunity to provide comments on the recommendations of the Technical Advisory Panel on Uniform National Rules for NAEP Testing of Students with Disabilities. Given that students with LD represent almost half of those receiving special education, it is particularly important to NCLD that this group of students be fully represented in the NAEP sample.

NCLD is providing comments to the recommendations set forth by the Technical Advisory Panel, as requested by the Board. However, several questions have been raised by the recommendations put forward in the report, making it difficult to formulate comments and take specific positions on the recommendations.

Our first recommendation is to urge the Board to consider conducting further meetings on this issue. In particular, NCLD suggests a meeting of stakeholders to provide an opportunity for full discussion of the recommendations and a chance to seek clarity on the recommendations. An opportunity to better understand the complexities of NAEP administration procedures would assist us in making recommendations to the Board. We hope the Board will consider holding such a meeting prior to finalizing a plan of action.

Our comments below are based on our best understanding of the recommendations of the Technical Advisory Panel.

Recommendation 1

Encourage as many students as possible to participate in NAEP, and provide for the use of allowable accommodations that are necessary to enable students with disabilities to participate.

Comments:

- NCLD agrees with the definitions of “accommodation” and “modification” used by the panel in its deliberations.

- Given that NAGB has defined the construct underlying the NAEP reading test (*an active and complex process that involves understanding written text*) to include the ability to decode written text, NCLD agrees with the panel’s reaffirmation that use of a “read aloud” accommodation on the reading test should not be allowed. However, it is recommended that NAGB document in writing the assumption of the reading test construct as including decoding. Regarding use of calculators, NCLD agrees with the panel’s reaffirmation that the use of calculators on those parts of the NAEP math test that assess computation should not be allowed.

NCLD anticipates that the use of these accommodations as allowable on state/district assessments in many states will most likely continue to be a major issue when using the revised NAEP Decision Tree recommended by the panel. As the Decision Tree states, students who use accommodations not allowed by the NAEP must participate in the NAEP without the use of that accommodation. Participation in this manner may result in seriously limiting the usefulness of test results – something that is not substantially different from exclusion. While NCLD both appreciates and supports efforts to increase the NAEP participation rate of students with disabilities, policies that are likely to replace exclusion with meaningless results should be avoided. This would only serve to undermine parent understanding of the importance of participation, which is already a problem with regard to participation in assessments required under NCLB.

NCLD’s independent report on the variance of state assessment accommodation policies (*State Testing Accommodations: A Look at Their Value and Validity* available at www.LD.org) noted concerns about the variability of accommodations, the research supporting state policies, as well as both selection and implementation of test accommodation by school staff. All of these suggest a possibility that some students with disabilities are being over-accommodated on state testing, which could lead to compromising their ability to fully participate in NAEP.

NCLD continues to recommend that NAGB conduct research on the validity of test accommodations most widely used on state assessments to inform current NAEP accommodations policy and ensure that students are not being assessed in a way that produces results that are not useful.

Recommendation 2

Clarify and expand NAEP's guidance to schools, encouraging maximum participation of students with disabilities so at least 95% of those drawn for the NAEP sample participate. Students should be excluded from participating in NAEP only if they have previously been identified in an IEP as having a significant cognitive disability, and are assessed by the state on an alternate assessment based on alternate achievement standards (AA-AAS). Students should be included if tested on an alternate test with what is called modified achievement standards (AA-MAS).

Comments:

- The report is unclear as to whether the panel's recommendation is to exclude all students assigned to a state's AA-AAS from the sample or whether to exclude this group from participation. If the panel proposes the former – essentially an *a priori* decision about inclusion in the SD sample (and total sample) - NCLD would view such a recommendation as unacceptable. No group of students should be excluded from either the sample or participation based on a category of disability or a particular type of assessment being used to measure student achievement on state assessments.

Furthermore, NCLD is concerned that the panel recommendation regarding use of a student's participation in the state's AA-AAS as a proxy for determining which students with disabilities in the sample should be excluded for the following reasons:

- The AA-AAS policy (as it relates to participation in state assessments required by ESEA) is currently not in federal statute. Given the upcoming reauthorization of ESEA, all existing provisions regarding alternate assessments for students with disabilities are likely to undergo scrutiny and possible adjustments. Additionally, the limitation imposed by the AA-AAS regulation pertains to proficient **scores**, not to the number of students who can be administered the assessment, so guidance that all students administered this type of assessment should be automatically excluded from the NAEP sample will quite possibly lead to more than 1% of the sample.
- The percent of students being administered the AA-AAS varies substantially across states, based on available data. While the current policy is intended to limit use of alternate assessments and ensure maximum participation in general assessments, the evidence that this is occurring nationwide is uneven. According to data compiled by the NCEO, one state-- Michigan-- assessed 20% of students with disabilities on the AA-AAS in SY 07-08. Therefore, if participation in the state AA-AAS was used to determine NAEP participation, this state would exclude double the number that the panel recommends. The number of students placed in the AA-AAS is also somewhat dependent on whether the state is implementing another allowable alternate assessment, the Alternate Assessment on Modified Achievement Standards (AA-MAS).
- IEP Teams are charged with the responsibility to make a determination regarding WHICH state assessment the student will take (annually and separately in reading and math) based on available assessment options within the state. The IEP Team may not decide to EXEMPT a student from testing (except in states that allow parental exemptions for all students). In contrast, the NAEP decision is whether to include or exclude the student in NAEP testing. *These decisions are quite different.*

NCLD recommends that new rules for student participation not include the panel's recommendation

regarding students taking the AA-AAS and that any guidelines for participation percentages be based on the total sample.

- NCLD strongly supports the panel's recommendation for a broader effort at public information to explaining the value of NAEP and of securing high participation rates in assessments. Such efforts should include outreach to and involvement of organizations and associations working with parents of students with disabilities.

- NCLD also recommends that NAEP policy require IEP/504 teams to make separate decisions regarding both accommodations and participation in NAEP as part of annual IEP preparation. Parents of students with disabilities should be informed regarding NAEP participation procedures and accommodation policies. *Just as implied parental consent is required for NAEP participation, parental notification should be required for all NAEP exclusion decisions made by school staff.* This would lead to a broader understanding among both parents and school personnel about NAEP participation and purpose and could positively impact participation rates.

Recommendation 3

Report separately on students who have individualized education programs (IEPs) and those with Section 504 plans, but (except to maintain trend) only count the students with IEPs as students with disabilities. This was a recommendation made to the Ad Hoc Committee and NCLD appreciates the panel's attention to it.

Comments:

NCLD strongly supports this recommendation and suggests that it be implemented as quickly as possible.

Additionally, NCLD agrees with the recommendation that 504-only students should be expected to participate in the NAEP. However, it should be recognized that in some cases, students may have 504 status because they are temporarily hindered by a physical injury that would prevent participation, particularly given the NAEP accommodation rules.

NOTE: It is assumed that the SD "sample" discussed in Recommendation 2 does NOT include 504-only students.

Recommendation 4

Provide incentives for schools to include students with disabilities, including additional outreach and public reporting of participation rates below 95% of students with disabilities.

Comments:

NCLD supports the panel recommendation to provide notation of states and districts with more or less than the recommended SD participation rate as part of NAEP results. As noted in Recommendation 2, the proposed participation rate guideline should apply to the entire SD sample, including those who may not participate due to the most significant cognitive disabilities. The participation rate guideline should be a state level goal. It should be recognized that school districts will sometimes have anomalies due to clusters of particular programs for SDs.

NCLD also supports the panel recommendation to undertake special studies to look at any outlier states

with unusually high or low exclusion rates. In particular, such studies should look at the specific disabilities and specific accommodations on state assessments for excluded students to gain a better understanding of the particular circumstances leading to exclusion.

While NCLD supports the recommendation that NAEP study the possibility of developing a uniform SD participation guideline based on a percentage of the total student population regardless of the percent identified as SD, a closer look at the impact of the variance across states shows the variance to have little overall impact (see example below). As the panel's report points out, there is significant variation among states in the rate at which they identify students with disabilities for IEPs. While the nationwide percentage of the public school enrollment served by the IDEA is 13.6%, the percentage across states ranges from a low of 10.6% to a high of 18%.

EXAMPLE of impact of state variation in IDEA identification rates on total sample*:

- **STATE A:** The state has an IDEA identification rate of 12%. If the state excludes 5% of the SD sample, it would exclude 0.6% of the total sample.
- **STATE B:** The state has an IDEA identification rate of 18%. If the state excludes 5% of the SD sample, it would exclude 0.9% of the total sample, or 0.3% more than State A.

If a uniform participation guideline based on a percentage of the total student population were adopted – for example 0.7%, State B in the example above would need to lower its SD sample exclusion rate to 3.9% from 5%.

**Based on the 95% inclusion guidelines.*

Recommendation 5

Support research efforts to develop targeted testing for students at both the top and bottom levels of achievement, with sound procedures to identify students to receive targeted test booklets on the basis of their performance on some standard indicator of achievement.

Comments:

NCLD recommends AGAINST the development of any type of targeted testing, whether for use with all students OR specific student groups, such as the SD subgroup, as an alternative to current testing. As noted by the panel, this approach would involve significant new development work, would increase the burden on schools to participate in NAEP, and would introduce the possibility of bias in the selection process. Such targeted testing would also compromise the comparability of state performance on NAEP with state performance on state assessments.

Alternatively, NCLD continues to encourage the NAGB to examine how test accessibility can be improved by:

- Using the principles of Universally Designed Assessments in the development of test items and the implementation of the assessment (including the use of computerized assessments and the supports that can be incorporated in these assessments); and
- By looking more closely, as the assessment is being designed, at which accommodations can be included.

Recommendation 6

Encourage and review research on the identification and progress of students who have a significant cognitive disability but in the short term do not test this 1% of students on NAEP.

Comments:

NCLD supports the need for further research into ways to include all students with disabilities, including those with the most significant cognitive disabilities. However, as stated in our comments to Recommendation 2, no students with disabilities should be routinely excluded from participation.

Recommendation 7

Assess the English language proficiency of students with disabilities who are English language learners and are drawn for the NAEP sample and provide linguistically appropriate accommodations for those who need them before determining whether additional accommodations may be needed to address any disabilities those students may have.

Comments:

NCLD supports this recommendation. While clearly some students drawn for the NAEP sample will be both ELL and IEP students, , too little is still know about the comorbidity of ELL and students with IEPs; therefore, data on the percentage of such a group and the exclusion rate would be helpful.

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