

**TESTIMONY OF LILLIAM RANGEL-DIAZ
MEMBER**

NATIONAL COUNCIL ON DISABILITY

before the

Committee on Health, Education, Labor and Pensions

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Good morning, Chairman Kennedy, Senator Gregg and distinguished members of the committee. Thank you very much for inviting me to participate in this hearing. I am a proud member of the National Council on Disability, and am honored to be here today on their behalf. I am also most proud to be "mom" to six wonderful boys, two of them with disabilities, and to serve the families of children with disabilities in my community as a professional parent advocate. From personal and professional experience, I am happy to be this morning to talk about why we at NCD believe the IDEA is a good law and what we have found to be fundamental flaws in its implementation.

NCD is an independent federal agency representing all people with disabilities, regardless of severity, and from all cultural, racial and ethnic backgrounds. Council members are appointed by the President of the United States and confirmed by the U.S. Senate. Our charge is to make recommendations to the President, Congress and federal agency officials concerning ways to better promote equal opportunity for all individuals with disabilities. We view this testimony to be one way that we are fulfilling our responsibility to Congress.

Unfortunately, students with disabilities and their advocates continue to be fight some of the same battles that were fought in *Brown v. the Board of Education*. In 2002 students with disabilities are still discriminated against in our school systems. Congress crafted the precursor to IDEA in 1975 to halt these practices, and, if IDEA was faithfully implemented and consistently and effectively enforced across the country, it would indeed halt the discrimination. However, twenty-seven years later we are still seeking solutions.

One might ask, “doesn’t such a high level of non-compliance point to the fact that it is clearly a bad law whose time for change has come?” To the contrary, again, we believe it is a good law, with absolutely essential protections for students with disabilities. Altering the core educational rights in IDEA would devastate the promise of a free and appropriate public education for students with disabilities. While we will take you through startling non-compliance data, please let me point out that there is indeed compliance with the law and we believe where basic rights are implemented, the outcomes for students are good. We believe the issue is not the law. Our data clearly points to the same problem that families and other advocates have expressed concern about for over two and a half decades: enforcement and accountability. Never popular concepts, but ones, that are, nonetheless, essential to the implementation of any basic civil right.

My statement today and recommendations are based on a number of NCD reports and other activities focused on IDEA implementation.

In January 2000, NCD released its evaluation of federal enforcement of IDEA. Entitled [*Back to School on Civil Rights*](#), this study evaluated federal monitoring and enforcement of

basic IDEA requirements in the areas of free appropriate public education (FAPE), least restrictive environment (LRE), individualized education plans (IEP), transition services, general supervision, procedural safeguards and protection in evaluation of students with disabilities. It examined the major leadership role that the Department of Education is required to play with regard to IDEA. Our findings indicate that every state and the District of Columbia out of compliance with IDEA requirements: 90% of states failed to ensure compliance in the category of general supervision; 88% of states failed to ensure compliance with the law's secondary transition services provisions; 80% states failed to ensure compliance with the law's FAPE requirements; 78% of states failed to ensure compliance with the procedural safeguards provisions of the law; and 72% of states failed to ensure compliance with the placement in the LRE.

And, what is the result of this non-compliance and lack of enforcement? This study confirmed what children with disabilities and their families have repeatedly told NCD, namely, that too many students: (1) did not receive FAPE; (2) were not educated in the LRE – meaning inappropriate placement in separate, segregated settings and a lack of services for students served in regular classrooms; (3) did not receive related services such as speech therapy, physical therapy, or psychological counseling as reflected in their IEPs; (3) had not been able to access critical transition services; and, (4) did not receive the benefits of procedural safeguards and protections in evaluation in some states. In addition the report told us that students from diverse backgrounds are disproportionately represented in separate educational settings.

NCD has also recently completed a study commissioned by the Social Security Administration on the status of the implementation of the IDEA transition mandates, as well as post-secondary education, and employment outcomes for 14 to 22 year old youth and young adults with disabilities. The study tells us that transitioning youth experience: (a) poor graduation rates from high school; (b) low employment rates after high school; (c) low post-secondary education participation; and (d) an increasing number of youth receiving Social security benefits and not leaving the benefits rolls. Again, we see lack of federal enforcement and accountability in IDEA transition service requirements.

In addition, NCD is working in collaboration with the Office of Special Education Programs (OSEP) and a group of stakeholders to review OSEP's Continuous Monitoring Improvement System, and develop recommendations regarding performance benchmarks and enforcement triggers.

And, NCD supports a Youth Advisory Committee (Advisory Committee) established as a non-paid advisory body to include youth and young adult perspectives in carrying out the mission of NCD. This is to ensure that NCD's activities and policy recommendations incorporate the needs of youth with disabilities, particularly as they relate to the implementation of critical civil rights legislation such as IDEA.

During IDEA reauthorization, NCD will use a variety of strategies to solicit community input. We will use this information to advise the Administration and Congress regarding issues that go to the heart of education reform for over 6 million students with disabilities

and involve: (a) accountability in federal education spending, (b) achievement and progress in the K-12 arena, and (c) fidelity of implementation in all aspects of the IDEA entitlement program.

During the course of five studies on the IDEA, from 1989 to 2000, NCD learned that parents of children with disabilities are enthusiastic supporters of the law. They think it's a good law. They also told us there is room for improvement on the basics, with enforcement and accountability being a major issue. If, as we found in NCD, 80% of the states fail to ensure compliance with the law's FAPE requirements, that tells us that 20% of the states are in compliance. What can we learn from those in compliance that will lead to the needed improvements? The same goes true for LRE compliance; we need to look to the 28% of the states that were found to be in compliance for guidance. Likewise, we need help from the 22% of the states that fully follow the procedural safeguard requirements. There are beacons out there that we need to follow.

Information from the NCD studies is readily available to you, and we trust it will be useful to you during the reauthorization process.

What Does This Mean for IDEA Reauthorization?

As a result of our work, NCD has identified four critical issues for reauthorization: (1) monitoring and enforcement; (2) full funding; (3) discipline; and, (4) eligibility and over-representation of students from culturally diverse backgrounds. Most of my comments this morning will be on the first, monitoring and enforcement, for we believe it to be the key to all others.

The findings of Back To School were not a surprise, but a confirmation and documentation of what so many have reported anecdotally for two decades or more, i.e., that the statute is strong, but implementation and enforcement are thin and inconsistent. When students do not receive the IEP services and/or supports for which they are deemed eligible, they cannot achieve outcomes. When school systems categorically and unnecessarily place students (particularly those from diverse backgrounds) in more restrictive educational settings, students will be stigmatized and will have difficulty learning. Under such circumstances school systems do not maximize the use of the scarce federal education dollars. Without clear and effective reforms in IDEA implementation, too many students with disabilities will continue to be left behind.

NCD Recommendations for Reauthorization

Monitoring and Enforcement. NCD findings indicate that over 25 years and through several administrations, federal IDEA enforcement efforts have consistently lacked "teeth." When a state is found out of compliance with the Act, the Office of Special Education Programs works with the states on the development of a compliance plan and provides technical assistance on the implementation of that plan. This strategy has not solved the problems, especially when there are no clear, objective criteria for additional enforcement options. There are currently no clear and effective (positive or negative) for a

state that continues substantial and persistent non-compliance. The result has been devastating for the students with disabilities and their families who are denied the protections of the law. Without standards that define the limits and provide appropriate sanctions, the incentives for corrections have not been compelling enough to stop the cycle of noncompliance.

NCD believes this issue has reached a crisis point, and we recommend bold steps to correct it.

1. The Department of Education should not be the sole enforcement agency. The Department has a long-standing and collaborative relationships with state education administrators. This is an important relationship that is jeopardized when the Department threatens sanctions. Partial solutions were included in the last reauthorization when enforcement authority was also given to DOJ, but only following referral of cases from the Department of Education. This has not worked for there have been no referrals to DOJ since that authority was added to the Act. To address non-compliance problems, NCD recommends an expansive role for DOJ. Congress should authorize and fund the Department of Justice to independently investigate and litigate IDEA cases, as well as administer a federal system for handling pattern and practice complaints filed by individuals.

2. The lack of national standards is at the root of the enforcement problems. NCD recommends that the Departments of Education and Justice be directed to develop national compliance standards, improvement measures, and enforcement sanctions that will be triggered by specific indicators and measures indicating a state's failure to ensure. Stakeholders, including students with disabilities and parents, should be consulted by the Departments for consistency and clarity as they develop and implement a range of enforcement requirements.

3. Families members and students are very strong stakeholders in the enforcement of IDEA. In fact, as I pointed out earlier, they have been the true enforcers of the law. However, critical to their effectiveness is the availability of free and low cost legal advocacy, through public and private legal service providers. Equally important are training and technical assistance programs for students to expand their self-advocacy skills. Finally, there are other important partners in this process; collaborative participation should be encouraged by special and regular education teachers and agents of relevant systems such as INS, child welfare and juvenile justice systems. NCD recommends that Congress authorize more funding for Department of Education-sponsored technical assistance programs to support the development of state-level technical assistance networks, self-advocacy and monitoring training for students and parents, other partners, as well as free and low-cost legal services for families. To fund these activities, we recommend IDEA include a formula that triggers additional funding (10%) every time IDEA, Part B is increased.

4. Culturally Appropriate Training Materials. NCD recommends that the law encourage Office of Special Education and Rehabilitative Services in the Department of

Education to expand its initiatives to serve non-English speaking groups and/or people with limited English proficiency and create culturally appropriate training materials.

5. Over-representation of Students from Diverse Backgrounds in Special Education. We echo the multiple concerns expressed over the past few years about the serious problems caused minority students who are wrongly placed in special education. These problems were verified in our Back To School on Civil Rights report through testimony of parents at public hearings, consultation with special education advocates serving rural, Native American, and other communities around the country, as well as studies by various government and advocacy organizations. It is useful to note that the most recent 2001 report of the National Academy of Sciences entitled, *Minority Students in Special and Gifted Education*, echoes these findings. **We know you are committed to addressing this issue and NCD stands ready to help.**

6. Funding and Discipline. Full funding and discipline are issues that are new to no one in Congress following last years prolonged debates on these two issues. We voice the concerns of individuals with disabilities, their families, and their advocates across the country about inadequate funding for special education. **NCD urges Congress to adopt mandatory funding in keeping with the original commitment from the Federal government to fund 40% of the per pupil cost of special education.**

We are alarmed that the discipline of students with disabilities has become such a controversial issue. The law as currently written includes a strong and effective balance of protections for students and the school system. The recent GAO study on discipline and IDEA confirms our position. **NCD strongly recommends that the current provisions on the discipline of students eligible for Part, B IDEA remain unchanged.**

7. Professional Development. Teachers are still not receiving adequate training in special education issues. **NCD recommends an increased authority for personnel preparation funding, with assistance to states to increase the mandated level of college-level teacher training 'special education' coursework beyond the all too general 'Introduction to Special Education' undergraduate-level course for all teacher preparation programs.**

Again, I want to thank you for the opportunity to share these thoughts with you today on behalf of the National Council on Disability. NCD stands ready to provide you with any assistance that might be useful to you as you move through the reauthorization process.