



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

September 19, 2011

The Honorable Arne Duncan, Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan:

It was a pleasure meeting with you and your senior staff to discuss priorities for students with disabilities within the forthcoming waiver applications for state flexibility under the No Child Left Behind (NCLB) amendments to the Elementary and Secondary Education Act. I'm writing as follow up providing you with a number of policy proposals we are putting forward to ensure that the significant progress that students with disabilities have made under No Child Left Behind is not lost as the Department pursues a waiver process. While the achievement gap between students with and without disabilities is still wide, No Child Left Behind's disaggregation of data and requirement that schools make Adequate Yearly Progress for each subgroup of students has been a critical driver of reform.

We support the "flexibility for reform" model the Department has put forward in its vision for the waiver process. Having said that, it is imperative that the Department consider the needs of students with disabilities both with regards to what it should and should not provide in flexibility from NCLB's accountability provisions and what it should require states and school districts to offer in return for the aforementioned flexibility.

With regards to flexibility, we urge the Department to ensure that the following provisions of NCLB are not eliminated or weakened through the waiver process:

- Maintain NCLB's requirement to disaggregate data and ensure a 95% participation rate in state assessments, disaggregated by subgroup population;
- Maintain accountability for the Students with Disabilities subgroup and avoid the creation of additional rules allowing states and districts to shield certain populations of students from assessment; and
- Maintain NCLB's teacher quality provisions, particularly the requirement that special education teachers be highly qualified in any content area in which they provide direct instruction;

With regards to reform, we urge the Department to ensure that closing the achievement gap faced by students with disabilities is given sufficient emphasis through incorporating reform provisions which specifically relate to this population. As such, we encourage the Department to consider the following proposals for inclusion in the waiver process:

- Eliminate the 2% rule allowing states and school districts to shield 2% of all students from their accountability systems through the use of modified assessments;



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- Reform the 1% rule to ensure that students who take the alternative assessment must first be assessed for and have access to Augmentative and Alternative Communication (AAC) technology;
- Require states applying for waiver flexibility to instruct Local Education Agencies (LEA) to create an additional sub-group for the purposes of disaggregation of data when a sufficient numbers of students within an LEA fall into multiple sub-groups (i.e.: African-American students with disabilities, low-income students with disabilities, etc.);
- Require states applying for waiver flexibility to set goals for increasing students with disabilities' access to the general education classroom (as measured through IDEA State Performance Plan Indicator 5a); and
- Require states to increase their use of research-validated educational methodologies, such as Universal Design for Learning and Response to Intervention;

NCLB has been a source of tremendous progress for students with disabilities and we believe that if properly constructed the waiver process can drive similar reform. We urge you to ensure that closing the achievement gap for students with disabilities is as great an area of emphasis for the Department as closing the achievement gaps faced by other minority groups. To quote from NCD's 2008 report *The No Child Left Behind Act and the Individuals with Disabilities Act: A Progress Report*, "Teachers, administrators, and the community are becoming aware of what students with disabilities are capable of achieving if they are held to high standards and expectations¹."

NCD's Policy and Program Evaluation Committee Chair Ari Ne'eman stands ready to work with you and your staff on these matters. He can be reached at aneeman@ncd.gov or at our office phone number at 202-272-2004. Thank you for your consideration.

Sincerely,

Jonathan M. Young, J.D., Ph.D.
Chairman, National Council on Disability

¹ National Council on Disability. (January 2008). *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report*. Washington, DC



Appendix A - National Assessment of Educational Progress (NAEP) Grade 8 Reading Scores by Race/Ethnicity and Disability Status

Table 1. NAEP Grade 8 Reading Scores by Race/Ethnicity and Disability Status, 2002-2009

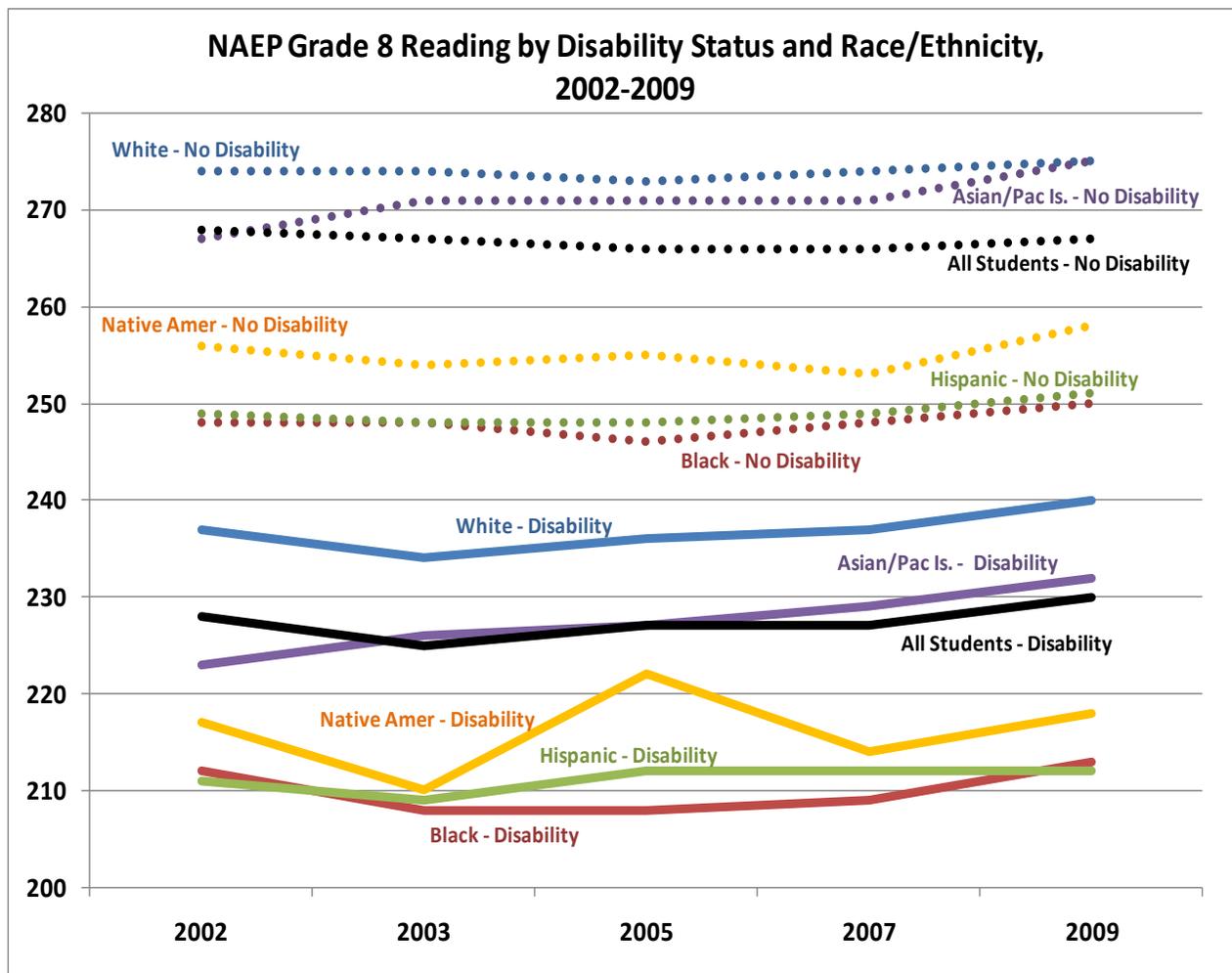
| | 2002 | 2003 | 2005 | 2007 | 2009 |
|--|------|------|------|------|------|
| All Students - w/ a disability | 228 | 225 | 227 | 227 | 230 |
| All Students - w/o a disability | 268 | 267 | 266 | 266 | 267 |
| White - w/o a disability | 274 | 274 | 273 | 274 | 275 |
| Black - w/o a disability | 248 | 248 | 246 | 248 | 250 |
| Hispanic - w/o disability | 249 | 248 | 248 | 249 | 251 |
| Asian/Pacific Islander - w/o a disability | 267 | 271 | 271 | 271 | 275 |
| American Indian - w/o a disability | 256 | 254 | 255 | 253 | 258 |
| White - w/ a disability | 237 | 234 | 236 | 237 | 240 |
| Black - w/ a disability | 212 | 208 | 208 | 209 | 213 |
| Hispanic - w/ a disability | 211 | 209 | 212 | 212 | 212 |
| Asian/Pacific Islander - w/ a disability | 223 | 226 | 227 | 229 | 232 |
| American Indian – w/ a disability | 217 | 210 | 222 | 214 | 218 |

Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), NAEP Data Explorer, July 2011



Appendix A - National Assessment of Educational Progress (NAEP) Grade 8 Reading Scores by Race/Ethnicity and Disability Status

Figure 1. NAEP Grade 8 Reading Scores by Race/Ethnicity and Disability Status, 2002-2009





Appendix B - National Assessment of Educational Progress (NAEP) Grade 8 Mathematics Scores by Race/Ethnicity and Disability Status

Table 2. NAEP Grade 8 Mathematics Scores by Race/Ethnicity and Disability Status, 2000-2009

| | 2000 | 2003 | 2005 | 2007 | 2009 |
|--|-------------|-------------|-------------|-------------|-------------|
| All students- w/ a disability | 230 | 242 | 245 | 246 | 249 |
| All students- w/o a disability | 276 | 282 | 283 | 285 | 287 |
| White - w/ a disability | 239 | 253 | 255 | 257 | 260 |
| Black - w/ a disability | 206 | 219 | 222 | 226 | 229 |
| Hispanic - w/ a Disability | 218 | 228 | 229 | 231 | 235 |
| Asian/Pacific Islander - w/ a disability | | 251 | 249 | 249 | 253 |
| American Indian - w/ a disability | | 234 | 236 | 235 | 232 |
| Unclassified - w/ a disability | | 240 | 246 | 254 | 257 |
| White - w/o a disability | 286 | 291 | 292 | 294 | 296 |
| Black - w/o a disability | 248 | 256 | 259 | 263 | 265 |
| Hispanic - w/o a disability | 254 | 262 | 264 | 267 | 269 |
| Asian/Pacific Islander - w/o a disability | 288 | 292 | 297 | 298 | 302 |
| American Indian - w/o a disability | 266 | 271 | 270 | 270 | 273 |
| Unclassified - w/o a disability | | 281 | 281 | 285 | 287 |

Source: NAEP Data Explorer, July 2011



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