



RESPONDING TO “*A Blueprint for Reform*” THROUGH THE LENS OF STUDENTS WITH DISABILITIES

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INTRODUCTION

This document provides a brief assessment of the Obama Administration’s plan for the reauthorization of the Elementary and Secondary Education Act (“ESEA”) as represented in “A Blueprint for Reform” [hereafter, the Blueprint] released by the U.S. Department of Education (“ED”) in March, 2010. The Blueprint is expected to provide a starting point for what promises to be a contentious debate about the direction of school reform.

ED’s Blueprint targets five priority areas that build upon existing reforms under the ESEA as well as changes and innovations being developed and implemented using funds from the American Recovery and Reinvestment Act (“ARRA”), including the State Fiscal Stabilization Fund (“SFSF”), the Race to the Top Initiative (“RTTT”), and the Investing in Innovation Fund (“i3”). The five priority areas identified in the Blueprint as key to reform of the ESEA are:

1. **College- and Career-Ready Students** – Focus is on improving the nature and rigor of standards to prepare all students with a well-rounded education, developing improved assessments, and supporting a more fair system of accountability for states, districts and schools.
2. **Great Teachers and Leaders in Every School** – Focus is on developing, distributing, and retaining effective teachers and principals.
3. **Equity and Opportunity for All Students** – Focus is on fair accountability, addressing the needs of diverse learners, and resource equity.
4. **Raise the Bar and Reward Excellence** – Focus is on attaining these goals through Race to the Top, public school choice, and a “culture of career readiness and success.”
5. **Promote Innovation and Continuous Improvement** – Focus is on “fostering innovation and accelerating success” and supporting local innovation.¹

¹ In March, 2011, a group of 11 moderate Democrats in the U.S. Senate issued a set of principles for reauthorizing the ESEA that are quite consistent with the Blueprint but are more targeted with points of emphasis. Hagan, K.R. et al., *A Call for Urgency: Statement of Principles to Fix the Elementary and Secondary Education Act (ESEA)*. Washington, DC: U.S. Senate. Retrieved April 15, 2011 from hagan.senate.gov/files/Statement_of_Principles_for_Education_Reform.pdf. The Senators’ principles included the following: (1) Accountability Structure (developing a new accountability structure that replaces the current one-size-fits all approach with one that provides greater flexibility to schools for determining the best way to meet the needs of their students); (2) School Turnaround (supporting “bold, aggressive action to change the odds for students in schools that persistently fail to provide them with a quality education”); (3) Teachers and Leaders (improving the system for “recruiting, training, supporting, retaining and paying teachers and leaders,” including the promotion of effective teacher and leader preparation programs and teacher and leader evaluation systems that “include examination of student learning gains and provide extra compensation for those who take on additional responsibilities”); (4) Foster Innovation (creating opportunities for States, districts and schools to utilize innovative approaches); and (5) Equity in Resources/Close the Title I Comparability Loophole (“[c]losing the loophole to require school districts to report actual expenditures at the school-level, including those devoted to salaries for teachers, when applying for Title I funding”) (*Id.*).

Other Congresspersons have filed legislation to revise the current accountability system under NCLB and to provide for greater flexibility and improvement. A discussion of these bills, e.g., S. 280 filed by U.S. Senators Susan Collins, R. Me and Olympia Snowe, R.Me., are beyond the scope of this paper and are expected to be addressed in future issue briefs.

The Blueprint provides inconsistent levels of detail and description around these broad themes and priorities. In this review we, nonetheless, attempt to describe briefly basic differences between current law and changes being proposed by the Administration and when possible to examine through the lens of students with disabilities whether the proposed changes will further their right to a high-quality education. This review focuses on the first three priority areas above, consistent with the emphasis of the Blueprint.

There is no question that the 2004 reauthorization of the Individuals with Disabilities Education Act (“IDEA 2004”) was significantly influenced by the 2001 reauthorization of the ESEA, which set the framework for holding all States, local educational agencies (“LEAs”), and schools accountable to students, their families, and members of the broader school community for providing a high-quality education to all school age children and youth. Together these two statutes have raised expectations for learning and have underscored the legally enforceable rights of all students, including those with disabilities, to be effectively taught by highly qualified teachers, to be provided an opportunity to learn to the same high standards as their peers, and to be included in all State and district-wide assessments. Moreover, racial and ethnic minority students, students with limited English proficiency, and students with disabilities have additional protections afforded them by the civil rights statutes as applied to Title I.

I. COLLEGE- AND CAREER-READY STUDENTS

A. Review of Current Law: Standards, Assessments, and Accountability

Enacted through the last reauthorization of the ESEA as the No Child Left Behind Act (“NCLB”) in 2001, the purpose of Title I, Part A is “to ensure that *all* children have a fair, equal and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments” (20 U.S.C. § 6301). The current law sets forth a basic framework for enhanced State, district, and school-level accountability for improved educational outcomes for all students, including students with disabilities in every elementary and secondary school and school district in the State.

As a condition of receiving very substantial federal Title I, Part A grants, each State through its State plan was required to establish a single Statewide system of accountability (20 U.S.C. § 6311(b)(2)(A)) with a goal of reducing the achievement gap between higher and lower achieving students, regardless of their race, limited English proficiency, economic disadvantage, or disability (20 U.S.C. §§ 6301(2)-(3)). Toward this end, each State was required to adopt State academic content standards and achievement standards in at least mathematics, reading/English language arts in each of grades 3-8 and one grade from 10-12, and science by the end of the 2005-2006 school year (at three grade levels), with other subjects left to be decided by the State (20 U.S.C. § 6311(b)(1)(C)). The achievement standards were required to be set for all students based on a minimum of three performance levels defined by the State – advanced, proficient, and basic or partially proficient. The State was further required to have in place a system of fair and reliable assessments, using multiple measures,² and aligned with the State’s standards at corresponding grade levels to determine the students’ levels of performance based on the State’s definition of proficiency (20 U.S.C. § 6311(b)(1)(D)(ii)).

² This is one of many mandates not implemented and enforced and resoundingly criticized for the foreseeable consequences: over-reliance by States and districts on standardized norm referenced multiple choice tests, students being “taught to the test,” and a narrowing of the curriculum.

NCLB set a goal that every student would be proficient as defined by their respective State in English language arts and mathematics by the end of the 2013-14 school year. To ascertain progress toward this goal, the Act requires student performance data to be collected and reported publicly by schools, school districts, and the State in the aggregate as well as disaggregated by special population groups that specifically consist of: students from major racial and ethnic groups, students from families who are economically disadvantaged, students with limited English proficiency, and students with a disability who receive special education services and have an Individualized Education Program (“IEP”). This information is used to assess progress by each local school and school district in meeting each State’s annual measurable outcomes (“AMOs”) or targets that represent incremental steps toward meeting the ultimate goal of all students being proficient in English language arts and mathematics by the end of 2013-14 school year (20 U.S.C. § 6311 (b)(2)(C)(v)).

Furthermore, each State is required under the Act to implement a series of increasingly severe interventions (choice, supplemental education services, restructuring, correctional action) if, after two consecutive years, schools and districts receiving Title I, Part A funds do not make adequate yearly progress (“AYP”) at such levels of improvement as to enable them to meet the State’s proficiency goal by 2013-14 (20 U.S.C. § 6311(b)(2)(A)(iii)). While all schools and school districts are required to report this data and are technically made “accountable” under this framework, only those schools and districts that receive Title I funds and fail to make AYP are labeled as under-performing or failing schools and subjected to what can only be perceived as punitive interventions under the Act.

To make AYP, schools must meet their respective State AMO for the percentage of students scoring at or above the proficient level on their State’s English language arts and mathematics tests, for the whole school or district and for each major subgroup of students. In addition, the school must include at least 95% of students in the school and in every subgroup participating in the required state assessments, and must meet the State established AMO for high school graduation rate, or other academic indicator, such as attendance, for an elementary or middle school (20 U.S. C. §§ 6311(b)(2)(B), (C); 34 C.F.R. §§ 200.13–200.20). Schools and districts cannot make AYP unless they do so based on each criterion both in the aggregate and separately for each subgroup (race, ethnicity, low-income, English language learner, disability) (20 U.S.C. § 6311(b)(3)(C)(xiii)). However, schools that miss the achievement objectives for a particular subgroup or for all students have another option for making AYP; under the so-called “safe harbor” provision of the Act they can still make AYP if the number of students scoring below proficient has decreased by at least 10% from the previous year.

Another key component of NCLB’s system of accountability is that each LEA is required to review annually the progress of each of its public schools in making AYP based on State standards of academic achievement, and the State is required to do the same with respect to each LEA – i.e., make a determination as to whether the LEA is or is not making AYP. As described above, AYP is primarily, but not exclusively, based on students (in the aggregate and disaggregated by subgroup) meeting required levels of performance on the State’s academic assessments in English language arts and mathematics, plus one other academic indicator (graduation rate for high schools; attendance/retention/other for elementary and middle schools), and 95% test participation rates, also in the aggregate and by subgroup. This information must be publicly disseminated by the States and LEAs as report cards.

Schools and LEAs that fail to make AYP for two consecutive years or more are subject to a system of outcome accountability with schools being identified for improvement, corrective action, and restructuring which entail increasing levels of intervention which some would characterize as harsh and

even punitive. When a school fails to make AYP for two consecutive years and then for a third, the LEA must offer all students enrolled in the school with the option to transfer to another school in the district that has not been identified for school improvement, and supplemental educational services, respectively. Schools that are unable to turnaround their performance results (by the end of the second year following identification) must implement at least one corrective step, e.g., replace school staff, fully implement a new curriculum, significantly decrease management authority at the school level, extend the school year or school day, restructure the school's internal organizational structure). If a school fails to make AYP after a full year of corrective action, the LEA must while continuing choice and supplemental services, provide for alternate governance based on multiple models, including reopen as a charter school, turn the school over to the State educational agency, contract with an entity, such as a private management organization, or any "other" major restructuring of the school's governance.

B. Review of Blueprint: College- and Career-Ready Students

First and foremost, the Blueprint proposes changing the goal of the Title I, Part A program. No longer will schools and districts be held accountable for all students attaining proficiency in English language arts and mathematics based on State assessments by 2013-14. Rather, the NCLB goal of 100% proficiency will be replaced with the goal that by 2020 all students will graduate from high school ready for college and a career.³ Toward this end, ED proposes to eliminate the concept of AYP as the statutorily established measure of annual progress necessary for all schools and districts to attain proficiency by 2013-14, and the means for holding schools and districts accountable for meeting their respective state performance benchmarks in language arts and mathematics, and now science. The Blueprint suggests that the focus would instead be on individual student growth and school progress over time. In addition, the Blueprint suggests, and as discussed below in more detail, there would be significant substantive changes in current law to requirements pertaining to state academic content and academic achievement standards and State assessments. While generally lacking in detail, the overall message in the Blueprint is clear that the Obama Administration's plan is to move away from the current NCLB model based on avoidance of stigma and punishment as a force for school improvement to a system that rewards success and reserves consequence for a small subset of the poorest performing schools while giving States more flexibility, including, e.g., to identify and implement strategies to meet the needs of less poorly performing schools.

1. College- and Career-Ready Students

The Blueprint notes that despite current statutory requirements of NCLB, State standards and assessments generally do not reflect the knowledge and skills needed for students to be successful in college and careers (Blueprint, at 4). Nor are States under current law required to consider whether their State adopted K-12 academic content and achievement standards are based on evidence of what knowledge and skills students need to learn ultimately, and year-by-year, to be successful in college and in the workplace. Existing standards and assessments generally do not inform students, parents, or teachers whether students are on track for college- and career-readiness.⁴ Moreover, the Blueprint draws upon research showing that low standards and inadequate and narrow academic preparation of high school graduates result in high costs for individuals (citing data showing that more than 40% enrolled in remedial

³ The FY 2011 budget indicates that the Title I, Part A program ("No Child Left Behind") will be changed to "College- And Career-Ready Students."

⁴ See discussion in text accompanying *infra* note 14.

courses in college) and for the nation (citing cost in the billions of such remediation) (Blueprint Research Summary #1, at *3) (internal citations omitted).

This brief section of the Blueprint makes clear that ED expects the reauthorized ESEA to “follow the lead of the nation’s governors” by adopting the Common Core State Standards⁵ directed at State developed college- and career-ready standards and aligned assessments (Blueprint, at 7). It explicitly states that the new legislation must: reward schools making significant progress, make dramatic change in the lowest performing schools, and address persistent gaps in student academic achievement and graduation rates. Each of these issues is discussed further in the Blueprint under the ensuing section described below.

The Blueprint also expressly states that formula grants to high poverty school districts to educate primarily disadvantaged students will be maintained; however, significant changes would be effectuated under ED’s plan to support more effectively States, districts, and schools, including specifically middle and high schools, in improving achievement for all groups of students, including low-income and racial and ethnic minority students, English language learners and students with disabilities.

a. Rigorous College-and Career-Ready Standards

Blueprint Proposal

Because under NCLB every State establishes its own definition of proficiency based on its own State adopted academic content and achievement standards, and State assessments are aligned to those standards, it is not possible, as the Blueprint points out, to compare performance results across States. Nevertheless, it is clear that there are wide differences in the rigor of standards and assessments from State to State based on State to State comparisons on the National Assessment of Educational Progress (“NAEP”), a norm referenced assessment in reading and math. As described in the Blueprint research summary, the State of Mississippi is one of three States with the greatest disparity (61 points) between student performance on its own State assessment of State standards and performance on the NAEP (Blueprint Research Summary #1, at*4) (citing Education Sector),⁶ clearly suggesting that the MS standards are low and non-rigorous compared to the nation. Significant disparities among States are graphically represented by a chart in the Blueprint research summary of each State’s proficiency standard converted into an equivalent NAEP point score (*Id.*, at *5, Fig. 1). The range in scores between South Carolina (312) and Tennessee (234) is greater than twice the 37 point difference between the NAEP basic (262) and NAEP proficient (299) level (*Id.*).

ED’s Blueprint proposes that States expand, develop and adopt evidence-based Statewide standards in language arts and mathematics in each of grades 3-12, not as under current law, grades 3-8 and once between grades 10-12, to help ensure that students possess the coherent and developmental knowledge and skills they are expected to know and be able to do at each grade level necessary to graduate college- and career-ready. These adopted standards must be rigorous, relevant, and meaningful so that families and communities would be able to determine that students are on target toward college and career readiness and that their schools are effective. Academic content and achievement standards must also continue to be developed in science and aligned with assessments at specific grade spans. If the

⁵ See generally information posted at www.corestandards.org/.

⁶ Carey, K. (2006). *Hot Air: How States Inflate Their Educational Progress Under NCLB*. Washington, DC: Education Sector.

State chose to include science and other subject area(s) in addition to English language arts and mathematics in its new academic accountability system, the Blueprint suggests that this would be permitted by the proposed changes to the statute so long as student performance was evaluated using statewide assessments for any such subjects included in the State's accountability system.

Under the proposal set forth in the Blueprint, States would have two options for developing new rigorous standards. States could choose to upgrade their existing standards by having them certified by a four year public university system. Certification of such standards would mean that if a student met the standards, she would not need remedial coursework upon admission to the university. Alternatively, a State might choose to collaborate with other States to create "common standards" developed and designed to ensure that all students graduate from high school prepared to succeed in college without remediation or prepared to enter the workforce with foundational skills to build on and to be successful.

As noted previously, it is clear from the Blueprint that ED expects the reauthorized ESEA to "follow the lead of the nation's governors" by adopting the Common Core State Standards directed at State developed college- and career-ready standards and aligned assessments (Blueprint, at 7). In a subsequent discussion about Assessing Achievement (*Id.*, at 11), it is expressly noted that beginning in 2015, formula funds for improving state assessments will be available only to those States that have adopted standards "common to a significant number of states." The Common Core State Standards Initiative is being jointly led by the National Governors Association and the Council of Chief State School Officers with guidance from experts in standards and assessments. To date almost all States have signed on to adopt the national Common Core Standards. States that submitted applications for the highly competitive Race to the Top funds were granted extra points for having adopted the national Common Core Standards. While participating States cannot selectively adopt standards and must adopt all provided within the Common Core Standards, States are permitted to add an additional 15% to the standards so that the standards might reflect their own State priorities and interests. The Initiative seeks to benefit students by establishing clear and consistently high expectations across all States of what is expected from K-12;⁷ improve parents' understanding of what their children need to learn, and help educators by focusing pre-service preparation and professional development on the key standards and assessments.

Discussion

A matter of serious concern is that the Blueprint makes no provision for the full and informed involvement of teachers, parents, and students (not just in the peer review of the standards and assessments, but in the process of developing them), a transparent and deliberative process with multiple opportunities for input at every stage, and processes for ensuring that the standards are being effectively disseminated and understood. Nor is any reference made in either the development and/or peer review process for persons from advocacy and civil rights organizations so as to ensure, for example, that issues and concerns of cultural competency and, especially for disability groups, that consistency with Universal Design for Learning ("UDL") principles are being considered.

While requiring that these meaningful, relevant standards be evidence-based, the Blueprint is not

⁷ Because current law authorizes every State to establish its own definition of proficiency based on State adopted academic content and achievement standards, with assessments aligned with those standards, it is not possible, as the Blueprint points out, to compare performance results across States. Wide differences in the rigor of standards and assessments from State to State, however, are apparent based on such comparisons on the NAEP, a norm referenced assessment in reading and math.

explicit in requiring that they be developed based on research connected to improved learning. For example, why wouldn't the standards [and assessments] be required to focus on the key qualities of authentic achievement that extensive research has demonstrated results in dramatic achievement gains and closing of achievement gaps – namely, (a) use of disciplined inquiry to (b) create new knowledge in addressing (c) real-world matters?⁸ These explicit qualities could be added to the assessment qualities, but they similarly should be incorporated into the standards themselves.

Moreover, while the Blueprint defines college-ready as being prepared to do college-level work without remediation, it does not define what constitutes the knowledge and skills necessary to be career-ready or describe how such standards would be established, including with the full and informed participation of students with disabilities, their educators, parents, and advocates. “Career-ready” standards should, at a minimum, be consistent with the Carl D. Perkins Vocational and Technical Education Act requirements, including the need for all students to develop a strong understanding of all aspects of an industry (e.g., planning, finance, management, labor and community issues, and principles of technology) (*see generally* 20 U.S.C 2301 *et seq.*).

A report issued in April 2011⁹ affirms the critique of the rigor, or more precisely lack thereof, of the standards generally adopted by the States under NCLB. According to *Betraying the College Dream*, a report of a six year national research study issued by the Bridge Project at Stanford University, “the coursework between high school and college is not connected; students graduate from high school under one set of standards, and three months later, are required to meet a whole new set of standards in college” (Venezia, Kirst, & Antonio, at 2). This lack of coherency and rigor between high school and college level standards is identified as a major factor contributing to why students are not adequately prepared for college, the high rate of remediation, and failure to complete the post secondary program. The report underscores that access to college is not the same as success in college, and finds that if students are to be successful in college, high school course content must prepare them for what it takes, in particular, the knowledge and skills to succeed in college. According to the report, “One of the best predictors of college success is taking rigorous high school classes. Getting good grades in lower-level classes will not prepare students for college-level work” (*Id.* at 31). Meeting minimum high school graduation requirements is not adequate preparation for college, which usually requires a more demanding curriculum. Of particular importance to students within the special population groups of Title I, including students with disabilities, is that “[i]nadequate and inequitable preparation for college affects remediation and persistence rates – major problems in post secondary institutions throughout the country” (Kirst, 2005, at 2).¹⁰ The *Betraying the College Dream* report further points out that remediation problems are most significant in “broad access postsecondary institutions” – defined as those that admit almost every student who applies – and which serve approximately 80% of all first year college students¹¹ (*Id.* at 14).

⁸ Newmann, F., & Wehlage, G. (1995). *Successful school restructuring: A report to the public and educators by the center for restructuring schools*. Madison, WI: University of Wisconsin.

⁹ Venezia, A., Kirst, M. W., & Antonio, A. L. (2011). *Betraying the college dream: How disconnected K-12 and postsecondary education systems undermine student aspirations*. Final Policy Report from Stanford University's Bridge Project. Palo Alto, CA: Stanford University. Retrieved April 15, 2011 from www.stanford.edu/group/bridgeproject/betrayingthecollegedream.pdf.

¹⁰ Kirst, M.W. (2005). *Separation of K-12 and postsecondary education governance and policymaking: Evolution and impact*. Policy Report from Stanford University's Bridge Project. Palo Alto, CA: Stanford University. Retrieved April 15, 2011 from www.stanford.edu/group/bridgeproject/Separation%20of%20K-12%20and%20Postsec%20Ed%20Governance%20and%20Policymak.pdf.

¹¹ Another key but unsurprising finding of the *Betraying the College Dream* report is that students' high school course-taking patterns are the main predictor of college success (Venezia *et al.*, at 40). The report states that the impact of a high quality,

Although the Blueprint acknowledges the importance of aligning proficiency standards for ELLs with the college-ready and-career ready standards, the Blueprint is silent about students with disabilities and strategies for meeting the wide range of students' disability-related educational needs. The Common Core Standards includes a two-page attachment entitled, "Application to Students with Disabilities"; however, this document contains very little information regarding the applicability of the standards to students with disabilities.¹² Moreover, the Attachment refers to the use of "instructional supports for learning – based on the principles of [UDL]" as a support for students with disabilities, thereby implying, incorrectly, that UDL is a framework that benefits *only* students with disabilities receiving special education services. Rather, UDL is a framework that has the potential to improve the education of *all* students, both those with and without disabilities. In any case, additional areas that merit scrutiny for students with disabilities, in particular those identified with developmental delays or intellectual disabilities, who are ELLs, or who belong to any other subgroup, include the content and rigor of entry-level career-ready standards and protections for: ensuring these students access to higher standards, holding schools, districts and States accountable for closing the gap between the different subgroups, and ensuring that entry level does not become the endpoint or goal in educating certain students for whom schools all too often have low expectations.

Another matter of significant concern for students with disabilities and all subgroup students who may be struggling learners is what is not stated about who gets access to which standards and at what level of learning. To the extent that the Blueprint suggests that college-ready and career-ready standards may, for example, open the door to certain students being identified and educated through different pathways toward what may be very different ends, it is important to ensure that procedural safeguards are in place as well as a system for adoption of best practices to ensure that any such identification of students to be educated based on different expected outcomes does not lead to stigmatization, self-fulfilling prophecies of learned helplessness, and lowering of academic expectations. A recent publication from the Harvard Graduate School of Education¹³ raises some serious questions for advocates for students considered "at-risk" of not completing school, including students in the sub population groups. The *Pathways to Prosperity* publication and others that question whether all students should, in fact, be accessing the general curriculum with an expectation of pursuing post secondary education, warrants close scrutiny and concern about programming and placement decisions being based on low-expectations, profiling and stereotypes, and the individual(s) making the decisions. In this context, it is important to bear in mind that from a civil rights perspective students with disabilities are the only group to have to contend with an IEP team as a potential barrier to their accessing the curriculum aligned to rigorous college-and career-ready standards.

rigorous, high school curriculum on degree completion remains more pronounced, positively, for African Americans and Latino than any other pre-college academic indicator (*Id.*) (footnote omitted).

¹² The "Application to Students with Disabilities" to the Common Core Standards makes the following statement regarding the participation of students with disabilities: "Students with disabilities —students eligible under the Individuals with Disabilities Education Act (IDEA)—must be challenged to excel within the general curriculum and be prepared for success in their post-school lives, including college and/or careers. These common standards provide an historic opportunity to improve access to rigorous academic content standards for students with disabilities. The continued development of understanding about research-based instructional practices and a focus on their effective implementation will help improve access to mathematics and English language arts (ELA) standards for all students, including those with disabilities" (*Application to students with disabilities* (2010). Retrieved April 15, 2011 from www.corestandards.org/assets/application-to-students-with-disabilities.pdf).

¹³ Ferguson, R., & Schwartz, R. (2011). *Pathways to prosperity: Meeting the challenge of preparing young Americans for the 21st century*. Cambridge, MA: Pathways to Prosperity Project, Harvard Graduate School of Education. Retrieved April 15, 2011 from http://www.gse.harvard.edu/news_events/features/2011/Pathways_to_Prosperty_Feb2011.pdf.

b. Rigorous and Fair Accountability and Support at Every Level

Blueprint Proposal

Based on the Blueprint and public testimony, ED proposes to change the current accountability system based on AYP to identify and arguably stigmatize which schools and school districts are low-performing because they did not meet their respective State AMOs, including student-based outcomes toward proficiency. Instead, ED proposes that States focus on ensuring accountability of schools and school districts based on their students' growth and successful academic achievement. ED would require States under their new accountability systems to reward schools and districts for success in significantly improving student achievement and in reaching performance targets, and to target only the lowest performing schools and school districts for "rigorous interventions." Unlike the current system under NCLB, ED would allow other than the lowest 5% of underperforming schools and school districts to determine their own strategies for improvement at the local level. States and districts would be required to collect data and make available to the public data needed to demonstrate the progress made by schools and districts toward graduating students who are college-and-career ready. They would be mandated to collect data about individual student achievement and growth, and school progress in English language arts and mathematics, and student academic achievement in science,¹⁴ and if States choose to do so, they could report student academic achievement and growth in other subjects, such as history, provided that such subjects were included in the state performance assessments. At the high school level, this data would be expanded from what is currently required to include, in addition to graduation rates, college enrollment rates, and rates of college enrollment without the need for remediation. The Blueprint indicates that all of this required data would be disaggregated by student subgroup, including in this instance, gender.

In addition, schools and districts would also be required to collect information about teaching and learning conditions, including through student, parent, or school staff surveys about their school experience. Performance targets for whole-school and subgroup achievement toward the 2020 goal will be used to help guide responses from each State that will, under the proposed law outlined in the Blueprint, possess increased responsibility to provide targeted, rigorous support and interventions to the lowest performing "challenge" districts and schools and to reward improvement and progress. What is not clear is how frequently these surveys would be conducted, or the data collected and reported.

Discussion

Rather than seeing the current State assessment/AYP/ intervention structure of the law as a check on the system of reform, not as the system of reform, ED's Blueprint would jettison the use of the individual cohort model – the aggregation and disaggregation of students scores on State assessments – for determining AYP by measuring progress in learning toward a goal of proficiency in language arts, mathematics, and science as the primary means for identifying Title I schools and districts in need of technical assistance, instructional expertise, additional resources for helping all or specific groups of children and, indeed, individual children, to learn to the expected levels necessary to meet the projected goal of proficiency.

¹⁴ States would not be required to track student growth in science because assessments would be limited to certain grades.

There are many reasons to criticize the existing “status model” or “group status model” in which school and district performance is primarily determined based on the proportion of students meeting state established proficiency standards for reading/English language arts and mathematics over a period of time. Criticisms include the over-reliance on single test scores to measure achievement, the resulting narrowing of the curriculum, punitive approach to accountability by labeling so-called under-performing schools and districts as “in need of improvement,” “restructuring,” and “corrective action,” and the ineffectiveness of State interventions in turning around poorly performing schools and districts. Yet, it can and should be argued that a strong rationale exists for maintaining a tight definition of AYP – one that makes schools, districts, and the State accountable to individual students and subgroups of students and their families by ensuring that no child will be left behind and subjected to lower expectations or less attention when he or she is not on the path toward proficient *and* high levels of achievement. Nothing precludes these high levels of achievement from being defined by policymakers, educators and parents to include attaining rigorous college- and career-ready standards.

The AYP provisions are among NCLB’s most controversial. This past month the Secretary of Education testified before Congress that the number of schools not making AYP this year could be more than 80%.¹⁵ However, the Center for Education Policy which has been tracking this national data since 2005, refuted the dramatic projected increase, reporting based on the most recent preliminary data that an estimated 38% of the nation’s public schools did not make AYP in 2010, with 12 states and the District of Columbia showing at least 50% of their public schools not making AYP.¹⁶ It is important to note, however, that there is no subgroup for whom the definition of AYP based on the individual cohort model has been more beneficial than students with disabilities. As Martha Thurlow, an expert from the National Center on Educational Outcomes, stated in her testimony before the U.S. Senate HELP Committee on April 28, 2010:

There is no question that students with disabilities have benefited in many ways from our country’s focus on standards and assessments. After decades of being excluded from state and district assessment systems, their participation in state assessments has increased from 10% or fewer of most states’ students with disabilities participating in the early 1990s, to an average of 99% at the elementary level, 98% at the middle school level, and 95% at the high school level in 2007-2008 ... These increases are due in large part to participation requirements in ESEA and IDEA. We also are seeing evidence of improvements in the academic performance of students with disabilities. Some of this evidence comes from trends in the performance of students with disabilities on the National Assessment of Educational Progress (see Figure 2 for 2009 grade 8 reading results).

Although there are large gaps in performance between students with disabilities and their peers

¹⁵ Duncan, A. (March 9, 2011). *Winning the future with education: Responsibility, reform and results*. Oral Testimony of U.S. Secretary of Education Arne Duncan before the House Committee on Education and the Workforce. Retrieved April 15, 2011 from www.ed.gov/news/speeches/winning-future-education-responsibility-reform-and-results.

¹⁶ Center for Education Policy: Update with 2009-10 Data and Five Year Trends – How Many Schools Have Not Made Adequate Yearly Progress? (2011). Retrieved May 5, 2011 from www.cep-dc.org/cfcontent_file.cfm?Attachment=Usher%5FRreport%5FAYP%5F042811%2E.pdf

without disabilities, we have built better understanding about students with disabilities, their opportunities to learn, and what can be expected of them. We have also learned much about what needs to change in their instruction, access to the curriculum, and in assessments in order to first see their achievement increase dramatically, and then to capture that achievement on sensitive assessments.

It would seem reasonable before rejecting wholesale the system of accountability under current law to consider selectively eliminating the punitive provisions that stigmatize and label districts and schools as “failing,” and instead to target those “in need of improvement” and to provide them with increased resources, expertise, and technical support needed to enable them to improve student achievement through improved teaching and learning opportunities. Furthermore, before replacing the so-called “status model” for determining AYP with school performance being evaluated based on the proportion of students meeting or exceeding proficiency standards for reading and mathematics with a model based on student performance and growth, it would only seem reasonable to consider the findings of ED’s own 10 State Growth Model Pilot Project (“GMPP”) that was initiated in 2005 for determining AYP.

The growth model that measures how much students have gained from one year to the next using longitudinal records of individual student achievement in reading/English language arts and mathematics, determines whether each student is “on-track” to reach or exceed the State’s grade-level proficiency cut points (or thresholds) on the annual tests of reading and mathematics within three or four years or by a specified grade level (usually grade eight or nine) as defined by the State’s particular growth model. For purposes of determining AYP, a student who is not proficient but on-track can be counted the same as a proficient student or as some fraction thereof. Significantly, based on analyses of data provided from ED’s GMPP of the participating States’ progress in implementing the GMPP in 2007-08, with the exception of Ohio, only 2% of all schools in the other eight reporting States made AYP uniquely by growth (Hoffer *et al.*, 2011, at 41).¹⁷ The report suggests that use of the growth model did not significantly affect the agencies making AYP, including for the disaggregated students with disabilities subgroup.

c. Measuring and Supporting Schools, Districts, and States

Blueprint Proposal

A legitimate criticism of current law may well be that no distinction is made between two schools that do not make AYP for very different reasons, whether based on single versus multiple indicators, e.g., when students do not meet AYP in the aggregate versus when a single subgroup does not meet the State target, the 95% test participation requirement, or meet the additional academic indicator (graduation for high school, attendance or retention for elementary and middle school). Both schools are labeled as “failing” and depending upon the length of underperformance, are labeled “in need of improvement,” “corrective action” or “restructuring.” Schools and districts do not receive credit based on improved student performance or growth over time; they are still labeled as “failing” to make AYP, and stigmatized. Moreover, under current law, largely as a result of limited State support and resources for technical

¹⁷ Hoffer, T. B., Hedberg, E. C., Brown, K. L., Halverson, M. L., Reid-Brossard, P., Ho, A. D., & Furgol, K. (2011). *Final report on the evaluation of the growth model project: Prepared for U.S. Department of Education*. Chicago, IL: National Opinion Research Center. Retrieved April 15, 2011 from www2.ed.gov/rschstat/eval/disadv/growth-model-pilot/gmpp-final.pdf.

assistance and expertise, interventions are not tailored to respond to these schools based on an understanding of specific needs but rely upon a one size fits all model. To address such limitations, the Blueprint suggests, without detail or analysis, that ED would allow school districts to categorize struggling schools based on the specific subgroup of students who are not meeting performance targets to determine appropriate support strategies, to target lowest performing schools and districts for intervention and to reward schools and districts making the most progress.

Moving dramatically away from NCLB's fixation on failure, the Blueprint describes how State accountability systems would instead have increased responsibility for recognizing individual student growth and school progress over time and for rewarding such success not measured solely by performance and proficiency. The Blueprint would designate schools, districts, and States that successfully reached performance targets, significantly increased student performance for all students, closed achievement gaps or effectively turned around the lowest-performing schools as "Reward" schools, districts, and States.

States would receive funds specifically to design innovative programs to reward high poverty and high need¹⁸ schools and districts. In the interest of promoting professional learning communities and best practices, States may give financial awards to staff and students for participating in communities that share best practices and strive to replicate successful strategies for improving low performing schools and districts. Moreover, as described, the Blueprint would authorize rewards in the form of greater flexibility in use of ESEA funds or competitive preference for designated States, districts, and schools that have earned "reward" status based on performance and expectations. The Blueprint provides no detail as to what percentage of these so-called "reward" funds would be Title I, Part A monies or the extent of flexibility that might be given to LEAs.

Reward districts might, for example, receive more flexibility in addressing their lowest performing schools, especially to the extent that they are fulfilling the key requirements set out in Title I, Part A for helping to ensure all students receive high-quality education, i.e., an accelerated and enriched curriculum, effective instructive, timely and effective assistance for any individual student having difficulty mastering particular standards, high-quality staff development, etc.

At the other end of the spectrum from "reward" schools and districts, the Blueprint describes a plan for measuring, supporting and effectuating school and district level change that would target the lowest 5 % of those schools in each State based on student academic achievement, growth, and graduation rates, which are not showing progress in student improvement. These "challenge" schools would be required to implement one of four research-based turnaround models identified by ED: (1) A transformation model that would require removing the principal, strengthening the administrative and instructional staff, implementing a research-based instructional program, providing extended learning time, and importing new governance and flexibility; (2) a turnaround model would similarly replace the principal but rehire only up to 50 % of the school staff, then implement a research-based instructional program, provide extended learning time, and implement a new governance structure; (3) a so-called restart model would shut down and reopen the school under new charter management or another education management organization; and (4) a school closure model would close the school and enroll its

¹⁸ The term "high-need" is not defined in the Blueprint. However, in the RTTT grant competition, ED defined a "high-need LEA" as "an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line." U.S. Department of Education (2009). *Race to the top application for initial funding* (p. 8). Washington, DC: Author.

students in other, higher-performing schools in the district.

In addition, based on the Blueprint, States and school districts would have increased responsibility for ensuring that a second group of “challenge” schools, those falling within the next lowest 5 % or the “warning” zone, implement research-based, locally determined support strategies for improving student achievement. A third grouping of so-called “challenge” schools, specifically those that are not showing improvement in closing significant, persistent achievement gaps would be required to implement data-driven interventions to support the students who are farthest behind and to close the achievement gap. “Challenge” districts responsible for oversight of any of the three types of challenge schools may also elect to implement such strategies as extended learning, supplemental education services, or public school choice. They may face additional restrictions in the use of ESEA funds or be required to work with an independent consultant to improve student outcomes. Furthermore, if the “challenge” school leadership is not receiving the support necessary for the students to be successful, changes in staffing and governance may be imposed, including, e.g., removal of the superintendent. States and school districts with “challenge” schools will, based on the Blueprint, be restricted in their use of Title I Part A funding. What is not clear, however, from the Blueprint is whether the lowest performing 5 % of all schools are limited to Title I, Part A targeted assistance or schoolwide programs. Nor is it clear whether “challenge” districts would be required to implement school choice and supplemental educational services for their students as required under current law when Title I schools fail to make AYP and are identified for improvement, corrective action, and restructuring.

Discussion

The use of “one-size fits all” consequences for schools and school districts failing to meet AYP has under current law been demonstrated to be ineffective, is arguably punitive, and is definitely in need of revision. There is little evidence that labeling schools and districts “in need of improvement,” “corrective action,” or “restructuring” based primarily on State assessments relying on single tests (not multiple measures) has resulted in closing the gaps among our most vulnerable students. As the 2013-14 deadline approaches, it is widely recognized that there will be significant increases in the number of schools and districts that will be identified for not meeting AYP.¹⁹ More than half of the States have had to set annual goals that rise more steeply in order to make sufficient progress toward the goal of 100% of students scoring proficient by 2014. This is because in the earlier years following enactment of the law, they set their objectives at a more moderate level. Therefore, as the achievement objectives rise, so do the number of schools and districts failing to meet AYP.

It is also clear that threatening underperforming schools and districts with stigmatizing labels and harsh sanctions, including restructuring and State take-over, has contributed to unintended adverse consequences at the school and district levels, such as, narrowing the curriculum, teaching to the test, encouraging struggling non-achievers to drop-out of school, and States’ lowering academic achievement standards and gaming the “n” size of subgroups²⁰ to ensure that certain students’ performance will not be

¹⁹ See Center on Education Policy. (2008). *Many states have taken a “backloaded” approach to No Child Left Behind goal of all students scoring “proficient.”* Washington, DC: Author. Retrieved April 15, 2011 from <http://www.cep-dc.org/index.cfm?DocumentSubSubTopicID=8&sortBy=DocumentTitle&sortDir=Desc>.

²⁰ The “n” size is the minimum number of students required in a subgroup in order for an AYP determination to be made. For an excellent description of the adverse impact of the U.S. Department of Education’s failure to control the states undermining the law’s intended focus on low-performing sub-groups by setting widely diverse “n” sizes, see Commission on NCLB, Aspen Institute, Staff Research Report on Children with Disabilities & LEP Students: Their Impact on AYP, May 06. Retrieved from

counted.

As described above, ED's response seems totally inadequate given the scope and scale and proven need for effective education reform to provide all students with the kind of high-quality education that will prepare them to be college- and career-ready and to be successful. The heightened emphasis that ED proposes would be placed on the lowest performing high-needs districts and schools would likely have the effect of reigning in the scope and scale of Title I, Part A not only for overseeing the improvement of all other Title I schools and districts that are currently subject to sanctions under the ESEA, but all public schools and school districts that under current law are required to meet their respective State's standards even though they do not receive Title I, Part A funds and are not subject to sanctions for not making AYP under the Act. This pull back would likely be most adverse for members of those sub group populations who under NCLB have been, as described above, included for the first time in the State accountability system and become the focus of attention of their schools and districts because of their subgroup's failure to make AYP. It is important to remember that significant achievement gaps still exist between, e.g., the subgroup of students with disabilities and their peers without disabilities. These students are not only enrolled in schools and school districts that will be identified among the lowest 5, 10 or 15 percent of all schools.

Obviously given the disparity in State standards, "challenge" schools in certain States with existing high standards, such as MA or SC, might be performing at a level two, three and even four times that of so-called "challenge schools" in States with low level standards.

d. Building Capacity for Support at Every Level

Blueprint Proposal

The problem of limited vision and ineffective State support and capacity building is exacerbated by current law that restricts States from using limited resources to monitor and support effective interventions and build capacity of underperforming schools. States are very limited by current law in using Title I, Part A funds for State administration and oversight activities and seriously lack capacity to oversee and support failing schools. As a result, necessary resources in the form of technical assistance and expertise at the State or district levels are not available to failing schools.

Without specifying the amounts or percentages of funding, the Blueprint proposes to allow States and districts to retain funds under the ESEA for the purposes of supporting the adoption and development of rigorous college-ready and career-ready standards with assessments aligned to those standards and supporting teachers responsible for teaching those standards. Such funds would also be used under Title I, Part A to support the use of data to identify local needs and to improve student outcomes; to improve the capacity of States and districts to use technology to improve instruction; to coordinate with early learning programs to promote school readiness; and to implement family engagement strategies.

The Blueprint further provides that districts would be required to set aside a portion of funds under Title I, Part A to improve student performance in high-need schools by "implementing effective school improvement strategies and carrying out strategies to ensure the equitable distribution of effective

http://www.aspeninstitute.org/sites/default/files/content/docs/commission%20on%20no%20child%20left%20behind/LEP_and_Disabilities_Subgroup_report_finala.pdf

teachers and school leaders.”

Discussion

With respect to these authorized uses, maybe through a shift away from the singular use of AYP with its focus on consequences to a new focus on thinking of Title I as an investment in improving the system on the front end, it may be possible to leverage the federal dollars to assist in improving the school level programs, so that students achieve in the first place. That program money comes attached to program provisions (particularly 20 U.S.C. §§ 6314, 6315, and 6318) – for designing and implementing key program components (such as accelerated and enriched curriculum, effective instructive, timely and effective assistance for any individual student having difficulty mastering particular standards, high-quality staff development, etc.) – through a plan jointly developed with the parents of the school, under a process spelled out in the jointly developed and approved parent involvement policy, which also must spell out a variety of necessary components for building parents’ capacity to participate effectively.

The Blueprint does not indicate the percentage of Title I, Part A funds that LEAs would be required to set aside to improve student performance in high-need schools to implement effective school improvement strategies and strategies for equitably distributing effective teachers and school leaders. Presumably “reward” districts would expect to be given some flexibility with respect to this set-aside. To the degree ED encourages support and rewards for schools and districts that recognize and implement the key school improvement provisions of current law for building a high-quality program at the front end, it will help to restore the sense of balance here – politically and otherwise, between program quality and accountability. More importantly, it will create a focus on the long-ignored but most important part of the system – the core educational program that is supposed to be provided in response to gaps in achievement – not AYP (which is merely a tool for identifying the gap in achievement and need for robust instructional services aligned with high level standards). For this to happen, the core components of Title I must be preserved and then adequately resourced and effectively implemented.

e. Fostering Comparability and Equity

Blueprint Proposal and Discussion

Issues and concerns regarding the misuse of federal Title I, Part A funds for State and local expenditures require vigilance over the program for economically disadvantaged students. Through its own comparability provision, Title I, Part A requires that services provided with State and local funds in schools participating in Title I, Part A must be comparable to those provided in non Title I, Part A schools in the same LEA. Equivalent levels of state and local funds must be provided to targeted assistance schools receiving Title I, Part A funds and to other public schools within each LEA participating in the program. Moreover, Title I, Part A funds must supplement and not supplant state and local funds for Title I, Part A schools just as any non-Title I, Part A schools. States are responsible for reviewing comparability among schools within an LEA and for ensuring their compliance with the supplement not supplant provision.

The Blueprint indicates that ED, concerned about resource disparities, will closely monitor the comparability requirement of Title I. By adopting changes that were made in the ARRA to address the same concerns, ED proposes that it will monitor personnel and non-personnel expenditures on a per pupil basis at high and low poverty schools on a school-by-school basis. The Blueprint suggests that school

districts that would use their resources to provide strong support to disadvantaged students will be given additional flexibility to do so.

2. Assessing Achievement

Blueprint Proposal

Based on the Blueprint, States would continue to receive formula funding to develop and implement assessments, but such assessments must be aligned with the college-ready-and career-ready standards in language arts and mathematics. These assessments would be designed to measure a student's academic achievement growth, measure school progress and success, and provide feedback to teachers and members of the school community to improve teaching and instruction. States would be authorized to use the funds to develop or implement additional statewide assessments in other academic or career and technical subjects, high school course assessments, English language assessments and interim or formative assessments up until 2015. After that date, funds will only be available to States that are using assessments based on college- and career-ready standards that are common to a significant number of States.

The Blueprint would also continue to support competitive grants to consortia of states and other entities to research, develop, and improve additional assessments in science, history, foreign languages, high school course assessments in academic and career and technical subjects, assessments that are consistent with UDL, and assessments for English language learners and for students with disabilities.

Discussion

The Blueprint provides minimal guidance about the assessment of students with disabilities even though ESEA requires full participation of students with disabilities in State assessments. Regulations implementing NCLB provide alternate assessments based on alternate achievement standards for students with the most significant cognitive disabilities, and alternate assessments based on modified achievement standards for those students whose disabilities may prevent them from achieving grade level proficiency within a year, but who do not have the "most significant cognitive disabilities." Because there is no way to predetermine the students whose disabilities may prevent them from achieving grade level proficiency, the Secretary of Education seems to be in agreement that the rule allowing those assessed on an alternate assessment based on modified standards to be counted as proficient for AYP purposes (not to exceed 2% of all students assessed) will be repealed. Despite the rights of students with disabilities to comparable aids, benefits, and services under Section 504, however, there is still no provision requiring development of an alternate assessment for those students whose disabilities impede them from demonstrating that they can achieve grade level proficiency and advanced levels.

Of particular consequence to students with disabilities and all other students who belong to subgroup populations, the Blueprint provides no indication that ED is prepared to rectify its failure to provide a clear definition of the statutory mandate to use "multiple measures" to assess student proficiencies. NCLB explicitly requires that a State must establish a system of assessments that uses valid, reliable, multiple methods for measuring whether all students are reaching proficient and advanced levels of mastery of the State's academic standards (20 U.S.C. § 6311(b)(3)(C)(iii)). It is critical in developing new assessments aligned with college- and career-ready standards that this statutory requirement is preserved and given meaning consistent with the purpose of Title I (to ensure all students

access to proficient and advanced levels of learning) and professionally recognized technical principles of testing and assessment. Multiple measures “encourage states to move toward using new forms of assessments, such as performance based measures, for the purpose of determining adequate yearly progress and for assessing the performance of children served under Title I, Part A.”²¹

To date ED has ignored the prime reason for having multiple measures – i.e., to ensure validity and reliability of the judgments about proficiency²² by providing *multiple ways* for students to demonstrate proficiency in the *same* skills and knowledge. Failure to implement and enforce this requirement properly has seriously adverse consequences for students with disabilities, e.g., those with print disabilities such as some language based learning disabilities, including dyslexia, who are especially prone to being wrongly identified based on incorrect inferences drawn from invalid assessments that they are, in fact, unable to learn at the same level of difficulty and within the same timeframe as their peers without disabilities. To the extent that these individual students can demonstrate that their education and future livelihood are harmed as a result of these practices, they have a basis for exploring the viability of claims of discrimination under Section 504/the Americans with Disabilities Act (“ADA”).²³

3. School Turnaround Grants

Blueprint proposal and discussion

In 2010, statutory requirements governing use of federal Title I School Improvement Grants (“SIGs”) to assist failing schools were revised. The Blueprint would continue the changes made to this program that now focus on using SIG funds under Title I to support school improvement activities in the lowest performing schools. The Blueprint, however, would also continue to target the lowest achieving schools and would rename the SIG program School Turnaround Grants.

Title I currently includes a separate grant for State School Improvement Grants that are formula based and provide a supplemental source of funds for school improvement activities. At least 95% of the State grant must be allocated by the State to LEAs for schools identified as in need of improvement, corrective action, or restructuring. Under the Blueprint, States would continue to receive the separate formula based grants but would be authorized to reserve an amount of funds not specified in the Blueprint to build State capacity for oversight and improvement of the lowest performing schools.

The law governing the SIG program was amended in 2010 to include as eligible any school that has not made AYP for at least two years or is in the State’s lowest quintile of performance based on proficiency rates or, in the case of high schools, has a graduation rate less than 60%. The State must provide the LEA serving each school that receives a SIG grant (renewable every 2 years) with a minimum of \$50,000 but not more than \$2 million dollars annually.

²¹ 103rd Congress, 2nd Session, S. Rep. No. 103-292 (Part I of 5) (June 24, 1994).

²² According to Standard 13.7 of the *Standards for Educational and Psychological Testing*, “...in elementary or secondary education, a decision or characterization that will have a major impact on a test taker should not automatically be made on the basis of a single test score. Other relevant information... should be taken into account if it will enhance the overall validity of the decision.” American Educational Research Association, American Psychological Association, and National Council on Measurement in Education (1999). *Standards for educational and psychological testing* (p. 146). Washington, DC: American Psychological Association.

²³ It is also possible that subgroup students other than those with disabilities would have similar legal claims for challenging their exclusion on the basis of inaccurate inferences being made based on the assessment.

Within the existing SIG program ED has defined the lowest performing schools based on two tiers. A Tier I school is a Title I, Part A school that has been designated for improvement, corrective action or restructuring and falls within the lowest 5% of Title I, Part A schools or has a graduation rate less than 60%. A Tier 2 school is any eligible secondary school that is NOT receiving Title I, Part A funds that has been identified as in need of improvement, corrective action, or restructuring and falls within the lowest-achieving 5% of all such schools or has a high school graduation rate less than 60%. Currently LEAs distributing SIG funds for Tier 1 or Tier 2 schools must choose from one of four intervention models. Only after awards are made to LEAs serving Tier 1 or 2 schools will competitive grants be made to LEAs serving Tier 3 schools, which share characteristics of the schools in Tier 1 and Tier 2 but do not fall within the lowest-achieving 5% of all such schools. Under the Blueprint the competitive grants would be open to LEAs, or partnerships of districts and non-profit organizations to implement one of the four intervention models. The Blueprint suggests that the districts and partners would receive three-year competitive awards to implement the turnaround strategies, and would be eligible for an additional two years of renewable funding if the school is showing progress.

The four intervention models that are currently required under the revised SIG grant program would appear to continue under the Blueprint. The Blueprint provides minimal information about the models which are: (1) the turnaround model (characterized by replacing the principal; providing new leadership with enhanced flexibility in staffing and budget; rehiring no more than 50% of existing staff; adopting new governance, a research based instructional program, data differentiated instruction, increase learning time; and providing social and emotional support and community services); (2) restart model (characterized by required conversion to or closure and restart as a charter school with new operating management chosen through “rigorous review process”); (3) school closure model (characterized by LEA required to close school and transfer students to higher achieving schools within the LEA, including charter schools); and (4) transformational model (characterized by LEA required to implement any number of strategies to increase effectiveness of teacher and school leadership; to implement a research-based instructional program and use data to differentiate instruction among individual students; to increase learning time; and to establish community connections and support).

The Blueprint research summary discusses very briefly how incremental reforms have failed to turn around the nation’s lowest performing school and research indicating that turning around a persistently low-performing school requires intensive effort and strong support from districts and partner organizations (Blueprint Research Summary #1, at **13-14). The brief description in the research summary states that persistent failure is not inevitable even among the poorest and lowest achieving schools and proceeds to cite anecdotal reports and research about effective turnaround strategies including: build a positive culture of high expectations; ensure strong leadership and staff who have the commitment and skills to increase student achievement; strengthen the instructional program, extend learning time and engage families and communities; and change governance (*Id.*, at **14-15). What is noteworthy, however, is that these strategies that are embedded in the four required Turnaround Models never reference, allude to, or even seem to be aware of existing mandates under current law that were written precisely to establish a process for effectuating the kinds of school and district level change necessary to ensure that every child receive a high-quality public education. These core provisions of Title I, which are at the core of the Center for Law and Education’s work, mandate:

- *Joint* development, by the school staff and the parents (including provisions for ensuring that the processes are truly joint and participants have sufficient information and training) of a concrete

plan for how various required elements of educational quality will provided to all students within the school, including, for example:

- accelerated and enriched curriculum,
- effective instructional methods
- high-quality staff development,
- timely and effectively help when a student experiences difficulty learning any of the skills or knowledge found in the applicable standards,

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- Implementation of that plan and continued review and improvement of that plan and its implementation; and
- State and district responsibilities for ensuring that these processes and quality elements are put in place at the school level, ensuring that each school has the capacity to do so, and providing the necessary support.

These requirements constitute the process for the school community, including teachers and parents, to work together to get clear on its vision for the kind of teaching and learning it wants for its children (consistent of course with State standards, but in ways that are animated by such vision, rather than passively inherited); the accelerated and enriched curriculum, effective instructional practices, teacher qualities, staff development, and systems of individual attention it needs for that to happen; the extent to which those elements are fully in place; and the specific plans for how the community will move these elements forward so they are fully consistent with its vision – along with aligning State and district support for this process. *Yet, these powerful provisions continue to be ignored.*

II. GREAT TEACHERS AND GREAT LEADERS

A. Review of Current Law: Definition of “Highly Qualified”

1. Definition of “Highly Qualified” under the ESEA

Pursuant to the current ESEA, State educational agencies (SEAs) and LEAs receiving assistance under Title I were required to ensure that all teachers teaching in “core academic subjects” were “highly qualified” no later than the end of the 2005-2006 school year (20 U.S.C. §6319(a); 34 C.F.R. § 200.55(b)). “Core academic subjects” are defined to mean “English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography” (20 U.S.C. § 7801(11); 34 C.F.R. § 200.55(c)). The current definition of “highly qualified” in Title IX of the ESEA consists of three basic components: (1) the teacher must have obtained full State certification or passed the State licensing exam and hold a license to teach in the State (and must not have had certification or licensure requirements waived on an emergency, temporary, or provisional basis); (2) the teacher must hold at least a bachelor’s degree; and (3) the teacher must demonstrate subject matter competency (20 U.S.C. § 7801(23); 34 C.F.R. § 200.56).

Satisfaction of the third requirement above varies depending on whether the individual teaches elementary or middle/high school and whether the individual is a new or veteran teacher. For teachers

who are not new to the profession, the ESEA allows States to use a “high objective uniform State standard of evaluation” (HOUSS), provided that certain conditions are met (20 U.S.C. § 7801(23)(C)(ii); 34 C.F.R. § 200.56(c)(ii)). The “highly qualified” requirements do not apply to teachers who do not teach core academic subjects, including “some vocational education teachers” (34 C.F.R. § 200.55(b)(2)).²⁴ The requirements also do not apply to teachers hired by private elementary and secondary schools (*Id.* § 200.55(d)). For teachers teaching in public charter schools, the statute specifies that the term “highly qualified” means that the teacher has met the requirements found in the State’s public charter school law (20 U.S.C. § 7801(23)(A)(i); *see also* 34 C.F.R. § 200.56(a)(3)).

2. Definition of “Highly Qualified” under IDEA

IDEA 2004 included a definition of “highly qualified” with respect to special education teachers that incorporated the definition of this term from the ESEA (*see* 20 U.S.C. § 1401(10)(A); 34 C.F.R. § 300.18(a)). Under IDEA 2004, all special education teachers must be certified in special education and must hold at least a bachelor’s degree (20 U.S.C. § 1401(10)(B); 34 C.F.R. § 300.18(b)). In addition, special education teachers who are teaching in core academic subjects must demonstrate subject matter competency. This requirement is important to ensure that students with disabilities have an equal opportunity to achieve to the same high academic standards as other students. In its commentary accompanying the 2002 implementing regulations to the ESEA, ED stated: “Students ... with disabilities are expected to meet the same standards as all other students, and their teachers should be expected to have met the same standards for content knowledge” (67 Fed. Reg. 71710, 71763 (Dec. 2, 2002)). ED further noted that despite the fact “that there is an urgent need for highly qualified teachers, and that critical shortages exist in some areas, particularly... special education teachers ... the NCLB Act sets high standards for students, as well as teachers, and states should work to meet them” (*Id.* at 71764). Similarly, in its comments accompanying the 2006 implementing regulations of IDEA 2004, ED stated that “the clear intention of [IDEA] is to ensure that all children with disabilities have teachers with the subject-matter knowledge and teaching skills necessary to assist children with disabilities achieve to high academic standards” (71 Fed. Reg. 71 FR 46540, 46555 (Aug, 14, 2006)).

Under IDEA 2004, special education teachers who teach core academic subjects must demonstrate subject matter competency, while special education teachers who are not teaching these subjects are not required to do so, provided that they have met the requirements for special education certification and hold at least a bachelor’s degree (34 C.F.R. § 300.18(b)(3)). Examples of special education teachers who do not teach core academic subjects include those who “provide consultation services to other teachers, such as adapting curricula, using behavioral supports and interventions, or selecting appropriate accommodations for children with disabilities ... [or] ... assist children with study skills or organizational skills and reinforce instruction that the child has already received from a highly qualified teacher in that core academic subject” (71 Fed. Reg. 71 FR 46540, 46557-46558 (Aug, 14, 2006)).

The IDEA 2004 definition of “highly qualified” also includes two modifications of the ESEA definition. The first pertains to special education teachers who teach core academic subjects exclusively to children who are assessed against alternate achievement standards (i.e., students with the most significant cognitive disabilities). For these teachers who teach above the elementary level, they may be

²⁴ In its comments accompanying the 2002 regulations, ED noted that vocational teachers who teach core academic subjects such as applied physics would be required to be highly qualified, while vocational teachers who teach a trade such as auto mechanics would not (67 Fed. Reg. 71710, 71763 (Dec. 2, 2002)).

considered “highly qualified” if they can demonstrate that they have “subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards” (20 U.S.C. § 1401(10)(C); *see also* 34 C.F.R. § 300.18(c)(2)). The second modification pertains to special education teachers teaching two or more core academic subjects exclusively to children with disabilities. These teachers, when not new to the profession, may demonstrate subject matter competency based on a State developed single, “high objective uniform State standard of evaluation” (HOUSSE) that covers multiple subjects²⁵ (20 U.S.C. § 1401(10)(D); 34 C.F.R. § 300.18(d)). The State’s HOUSSE must not “establish a lower standard for the content knowledge requirements for special education teachers” (34 C.F.R. § 300.18(e)). Further, IDEA allows new special education teachers who teach multiple subjects and who are highly qualified in mathematics, language arts, or science at the date of hire to have two years to demonstrate competency in the other core academic subjects in which they teach (20 U.S.C. § 1401(10)(D)(iii); 34 C.F.R. § 300.18(d)(3)). Special education teachers who meet the “highly qualified” requirements of IDEA 2004 are considered “highly qualified” for the purposes of the ESEA²⁶ (20 U.S.C. § 1401(10)(F); 34 C.F.R. § 300.18(g)).

3. Requirements Concerning Teachers in Alternative Route to Certification Programs

As noted above, the first requirement for “highly qualified” teachers pertains to State certification. The relevant statutory language for this requirement in the ESEA is as follows: “The term highly qualified... when used with respect to any public elementary school or secondary school teacher teaching in a State, means that ... (i) the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State ... and (ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis” (20 U.S.C. § 7801(23)(A); *see also* 34 C.F.R. §§ 200.56(a)(1), (4)). Notwithstanding the statutory requirement that a “highly qualified” teacher must have obtained full State certification, a 2002 ED implementing regulation of the ESEA allows a teacher to be considered “highly qualified” if the individual “[i]s participating in an alternative route to certification program,” provided that the teacher:

- Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
- Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

²⁵ On Feb. 3, 2011, Senators Collins and Snow introduced a bill in the Senate that would, among other things, modify the definition of “highly qualified” with respect to teachers of multiple academic subjects (No Child Left Behind Flexibility and Improvements Act, S. 280, § 8). This bill would allow the SEA to make a determination for not more than 3 years that “the teacher should be considered highly qualified based on a showing that the teacher is making progress toward becoming highly qualified as defined in [the ESEA]” if the LEA in which the teacher teaches has provided the SEA with evidence that it has made a reasonable effort to provide every child with a highly qualified teacher (proposed to be codified at § 1120C(a)(4)(A)). The bill would also allow the SEA to make such a determination if the teacher has an academic minor in each subject in which the teacher teaches (proposed to be codified at § 1120C(a)(4)(B)). Further, the bill would require the SEA to make available to the public each year a report on the number of teachers deemed highly qualified under this provision (proposed to be codified at § 1120C(b)).

²⁶ The IDEA regulations also explicitly state that the “highly qualified” requirements do not apply to “private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities...” (34 C.F.R. § 300.18(h)).

- Assumes functions as a teacher only for a specified period of time not to exceed three years; and
- Demonstrates satisfactory progress toward full certification as prescribed by the State.

(34 C.F.R. § 200.56(a)(2)(ii)).

In its comments accompanying the 2002 ESEA regulations, ED stated that the above conditions were added “to ensure that alternative routes to certification do not become vehicles for granting long-term waivers of certification requirements” (67 Fed. Reg. 71710, 71764 (Dec. 2, 2002)). Thus, in order for teachers participating in alternative route to certification programs to be considered “highly qualified,” they must be receiving high-quality professional development and intensive supervision, and must demonstrate satisfactory progress toward full certification. In addition, the regulation places a three-year cap on the period in which such individuals may be considered “highly qualified.” In its comments accompanying the 2002 regulations, ED further stated that “we believe that LEAs can and should be able to continue to effectively use alternate routes to certification as a mechanism for increasing the number of teachers who are capable of providing effective instruction, and, indeed that these alternative routes can also serve as models for the certification system as a whole” (*Id.*). The 2006 implementing regulations of IDEA 2004 contain a parallel provision regarding the designation of special education teachers who are participating in alternative route to certification programs as “highly qualified” (*see* 34 C.F.R. § 300.18(b)(2)).

4. Recent Developments Concerning the Definition of “Highly Qualified” and Teachers in Alternative Certification Programs

The validity of the 2002 ED regulation at 34 CFR § 200.56(a)(2)(ii) regarding the designation of teachers participating in alternative route to certification programs as “highly qualified” was recently undermined by the decision of the U.S. Court of Appeals for the Ninth Circuit in *Renee v. Duncan* (623 F.3d 787 (9th Cir. 2010)). In *Renee*, a number of community organizations challenged the above regulation on the basis that it was inconsistent with the statutory definition of “highly qualified” and alleged that the regulation resulted in a disproportionate number of teachers participating in alternative certification programs in schools with high percentages of low-income and minority students (*Id.* at 794). The Ninth Circuit held that “the definition of a ‘highly qualified teacher’ contained in 34 C.F.R. § 200.56(a)(2)(ii) is invalid because it *impermissibly expands* the definition in 20 U.S.C. § 7801(23) to include teachers who only ‘demonstrate [] satisfactory progress toward full certification’” (*Id.* at 800 (emphasis added)). The court pointed out that the current version of the ESEA defines “highly qualified” to mean that “the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification)” (*Id.* at 795 (quoting 20 U.S.C. § 7801(23))). The court went on to note, however, that the regulation at 34 C.F.R. § 200.56(a)(2)(ii) states that a teacher may be considered “highly qualified” even if the teacher has *not* obtained full certification, provided the teacher “[i]s participating in an alternative route to certification program” and “demonstrates satisfactory progress toward full certification as prescribed by the State” (*Id.* at 796). Finding a difference between the meaning of “has obtained” full State certification and “merely making satisfactory progress toward” such certification, the Ninth Circuit held that the regulation impermissibly expanded the statutory definition of “highly qualified” (*Id.*).

Subsequent to the Ninth Circuit’s invalidation of 34 C.F.R. § 200.56(a)(2)(ii), Congress, as part of a December 2010 Amendment to the Continuing Resolution (“CR”), included language that essentially overturned the *Renee* decision by explicitly incorporating 34 C.F.R. § 200.56(a)(2)(ii) into the ESEA statute. Specifically, Sec. 163(a) of the December Amendment stated: “A ‘highly qualified teacher’ includes a teacher who meets the requirements in 34 CFR § 200.56(a)(2)(ii), as published in the Federal Register on December 2, 2002.” Sec. 163(b) added: “This provision is effective on the date of enactment of this provision through the end of the 2012–2013 academic year.”

Although the Ninth Circuit may have been correct that 34 C.F.R. § 200.56(a)(2)(ii) impermissibly expanded the statutory definition of “highly qualified,” because the regulation has now been incorporated into the ESEA, inconsistency with the statutory language is no longer an issue. Some have suggested, as an interim fix, that the language in the Parents Right-to-Know section of the ESEA (20 U.S.C. § 6311(h)(6)) be modified to provide notice to parents that their child’s teacher is currently completing an alternative route to certification program and has not yet obtained full State certification. While such a strategy may be helpful in the short-term, it does not fully address the underlying questions concerning the classification of teachers participating in alternative certification programs as “highly qualified.”

B. Review of Blueprint: Great Teachers and Great Leaders

Within the category of “Great Teachers and Great Leaders,” the Blueprint discusses three funding options under Title II of the ESEA - namely: (A) Effective Teachers and Leaders (formula grants to States and districts pertaining to teacher and principal effectiveness and equity); (B) Teacher and Leader Innovation Fund (competitive grants to States and districts seeking to promote *significant* reforms in teacher and principal effectiveness and equitable distribution); and (C) Teacher and Leader Pathways (competitive grants that support the development of high-performing programs that prepare teachers and principals to succeed in high-need districts, schools, subjects, and fields). The Blueprint’s proposed recommendations under this section focus primarily on changes to Title II of the ESEA; however, some of the proposed changes in this section also have implications for provisions under Title I of the ESEA as well as the definitions under Title IX of the ESEA.

1. Effective Teachers and Leaders

The Blueprint proposes modifications to the existing Title II formula grants to States and districts in order to promote a greater focus on improving teacher and principal effectiveness and ensuring the equitable distribution of effective teachers and principals across schools. The Blueprint notes that States and districts will have some flexibility regarding how these funds may be used, provided that certain policies and systems are in place. These include: (a) Statewide definitions of “effective” and “highly effective” teachers and principals; (b) State-level data systems that link student and teacher data to teacher and principal preparation programs; and (c) District-level teacher and principal evaluation systems (Blueprint, at 14-15).

a. Statewide Definitions of “Effective” and “Highly Effective” Teachers and Principals

Blueprint Proposal

A central feature of the Blueprint is an emphasis on linking teacher and principal effectiveness to increased student achievement and observations of teacher performance. Moving beyond the concept of

“highly qualified” required under the current version of the ESEA, the Blueprint embraces instead the concepts of “effective” and “highly effective.” The rationale for this shift, as explained in the Blueprint research summary document for “Great Teachers and Great Leaders,” is that while the percentage of classes taught by teachers who have met the highly qualified requirements of NCLB has increased to an average of 95 percent, research has shown that “meeting these requirements does not predict or ensure that a teacher will be successful at increasing student learning” (Blueprint Research Summary #2, at *5). Similarly, the summary document notes that “while the NCLB requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in what matters most: the effectiveness of teachers in raising student achievement” (*Id.*)

The Blueprint proposes that, as a condition for receipt of funding under the Title II formula grants for teacher and principal effectiveness, States be required to develop definitions of the terms “effective” and “highly effective” with respect to both teachers and principals. These definitions are to be “developed in collaboration with teachers, principals, and other stakeholders” and are to be “based in significant part on student growth and also include other measures, such as classroom observations of practice” (Blueprint, at 14).

According to the Blueprint, States will have the option of using Title II formula grant funds for a variety of activities, including recruitment and development of effective teachers and principals, creation of effective educator career ladders, and improvements in teacher and principal certification and retention policies to reflect greater alignment with increased student outcomes. States will also be able to use these additional funds to make improvements to principal preparation programs as well as to training and support for principals of high-need schools. Moreover, States will be required to develop a plan to ensure the equitable distribution across schools of teachers and principals receiving at least an “effective” rating (Blueprint, at 15).

Discussion

The Blueprint de-emphasizes the concept of “highly qualified” in favor of the categories of “effective” and “highly effective” based on student growth and observations of teacher performance. In order for Statewide definitions of “effective” and “highly effective” to be meaningful, however, it is important that these definitions capture the full range of knowledge and skills that enable teachers to help all of their students attain high academic standards. For students with disabilities, a key element of the statewide definition of “effectiveness” should be whether the definition encompasses the knowledge and skills that are necessary to help these students attain the same high academic standards that are expected of all students. In previous comments on proposed changes to the ESEA, CLE suggested criteria for defining teacher quality that derive from the program quality provisions of Title I, Part A and can also be found in CLE’s “Educational Quality Bill of Rights.” One of the suggested criteria, for example, is an “ability to work with students with diverse backgrounds and diverse learning needs in order to assist them in achieving at high level.”

While a major emphasis of the Blueprint is on connecting teacher and principal effectiveness to increased student achievement, there are a number of concerns associated with attempts to assess the actual effect of teachers on student achievement. Systems linking the classification of teachers and principals as “effective” and “highly effective” to student performance gains must be sufficiently sophisticated and valid to support the purported links. In particular, attention must be paid to data rigor and quality with respect to complex statistical procedures such as value-added measures and growth

models. There are a number of challenges associated with current student assessments and the ways in which the assessments are used. For example, current assessment systems often fall short of the requirements of the ESEA in terms of providing valid, reliable, multiple measures of mastery of standards by all students, and assessment results are often used in ways that are not valid such as teaching to the test. Consequently, the labeling of teachers and principals as effective, based in large part on reliance on the use of flawed student assessment systems, is problematic, with the likelihood that the increased stakes associated with receiving a rating of “effective” may lead to inappropriate responses on the part of States, districts, and schools.

It is also important to consider the concepts of “effective” and “highly effective” in the context of the overall framework for accountability under the ESEA. The current approach to accountability places an inordinate focus on punitive measures that sanction schools for failure to meet certain benchmarks, including having “highly qualified” teachers. As a result, schools and districts often attempt to “game” the system in an effort to avoid punishment. Without a strategic movement away from this punitive model, the Blueprint’s shift in emphasis from “highly qualified” to “effective” and “highly effective” may continue to elicit defensive responses by schools and districts (e.g., making teacher performance evaluations *pro forma* as opposed to rigorous and meaningful). A reconceptualization of accountability under the ESEA would also involve paying greater attention to the concept of teacher and principal effectiveness in the context of the sections of Title I, Part A of the ESEA that promote the key elements of program quality (e.g., enriched and accelerated curriculum, effective instruction, timely and effective individual attention) (*see generally* 20 U.S.C. §§ 6314, 6315, and 6318).

The Blueprint specifies that, in addition to requiring States and districts to designate teachers as “effective” and “highly effective” in accordance with State-developed definitions of these terms, States and districts will also be required to publish report cards at least every two years that provide information concerning “teacher qualifications” as well as “teacher and principal designations of effectiveness”²⁷ (Blueprint, at 16). Such an approach makes sense in light of the fact that teacher qualifications (including certification), although important, are not sufficient on their own to ensure that teachers possess the full range of knowledge and skills that are necessary to enable all students to attain high academic standards. Indeed it is fair to say that most students who are not being taught well enough to attain proficient and advanced levels of mastery are taught by teachers who are certified and meet the ESEA’s current definition of highly qualified. As noted earlier, the Blueprint research summary points out that, while approximately 95 percent of teachers have met the “highly qualified” requirements, research has shown that satisfaction of these requirements has not resulted in improved student achievement (Blueprint Research Summary #2, at *5).

While the Blueprint de-emphasizes the concept of “highly qualified,” a coalition of organizations that came together to promote “full and equal access to qualified and effective teachers” [hereinafter “Teacher Quality Coalition”], of which COPAA is a member, has recommended continuation of the requirement that all new teachers meet a “qualified” standard by completing a preparation program and meeting “full state certification standards in the content area(s) and for the specific student groups he or she will teach” (3/18/2011 Draft, Rec. #1). Ultimately, as noted above, in the absence of a major change in the overall accountability framework under the ESEA away from a punitive model, requiring States and

²⁷ Other indicators that State and districts would be required to report on in such report cards include “teachers and principals hired from high-performing pathways; teacher survey data on levels of support and working conditions in schools; the novice status of teachers and principals; teacher and principal attendance; and retention rates of teachers by performance level” (Blueprint, at 16).

districts to designate teachers as “highly qualified” *or* “effective” will not result in the elimination of efforts by States, districts, and schools to “game” the system in order to avoid punishment.

Although the Blueprint proposes to move away from the current ESEA requirements pertaining to “highly qualified,” the Blueprint also states: “As states transition to using ... measures of effectiveness, we will maintain the provisions of current law relating to ‘Highly Qualified Teachers,’ but with additional flexibility.” Further clarification is needed regarding the meaning of the phrase “with additional flexibility.” Moreover, certain questions remain with respect to the requirement that States and districts report at least every two years on teacher qualifications: What information will States and districts be required to include in the report cards concerning “teacher qualifications” and how will this information be used? Will States and districts be required to report on the number of teachers who are “highly qualified”? Will States and districts be required to provide separate data on the three criteria that comprise the current definition of “highly qualified” (i.e., certification, degree, and subject matter competency)? Requiring States and districts to report separately on these indicators has the advantage of highlighting subject matter competency. Particularly with respect to students with disabilities, teacher mastery of the content areas is an important, often under-emphasized, component to ensure that these students are taught at high levels. In addition, requiring the reporting of separate indicators for teacher qualifications may provide an opportunity for States and districts to specify the number of teachers who have completed full teacher preparation programs vs. alternative certification programs.

The designation of teachers participating in alternative route to certification programs as “highly qualified” raises particular issues for students with disabilities. On the one hand, in light of the shortage of “highly qualified” teachers in several subject areas, including special education, alternative route to certification programs can be viewed as filling an important gap. These programs can provide a mechanism to place talented individuals in classrooms in need. Some of these programs attract older, mid-career professionals who can bring a wealth of knowledge and experience to the classroom. Other programs, such as Teach for America, attract young, energetic teachers who often have high levels of content knowledge in areas such as math or science. A number of these programs emphasize, as a key component, the importance of teachers’ having high expectations for all students. It is also worth noting that, for any given student, having a teacher who is participating in an alternative route to certification program in which the teacher is receiving on-going support and professional development would be better than having a teacher who is not receiving any support at all and has had the certification requirements waived on an emergency basis.

At the same time, however, it is difficult to prepare teachers during a brief, five or six week training period over the summer to address, in an effective manner, the complex learning needs of students with disabilities. The teaching of students with disabilities involves highly specialized skills including, *inter alia*, teaching reading strategies and organizational methods; implementing behavioral interventions; making curricular, assessment, and environmental accommodations; utilizing assistive technology devices; and engaging in concentrated teaching methods such as explicit instruction. These specialized skills, which are premised on having knowledge and understanding of how different disabilities affect communication, understanding, and learning, take time to develop and may be learned more effectively through a rigorous teacher preparation program that includes an intensive clinical or practicum component. While it is important for teachers of students with disabilities to have content knowledge (for many years they did not), it is also important for them to understand how to provide effective, specially designed instruction. The highly specialized and technical nature of the instruction required for students with disabilities calls into question whether alternative routes to certification

programs are appropriate for teachers of these students.

In proposing recommendations for the ESEA reauthorization, the Teacher Quality Coalition has suggested that parents be informed that their child's teacher has not completed a preparation program and has not yet met full State certification (3/18/2011 Draft, Rec. #5). The coalition has further proposed that States and districts be required to report on the distribution of such teachers by field and school in order to ensure the equitable distribution of qualified teachers (*Id.*). Moreover, the coalition has suggested that districts be required to provide teachers who have not yet met full State certification with a fully qualified "Supervising Teacher" who has at least five years of experience and who would be responsible for coaching and observing the teacher in the classroom to "ensure that the needs of students, including students with disabilities and English learners, are being adequately met" (*Id.*). Further, the coalition has recommended that the "ESEA should strengthen and enforce comparability requirements to ensure that poor and minority students, and students with disabilities, do not experience disproportionate numbers of *uncertified, inexperienced, or out-of-field* teachers" (Rec. #6) (emphasis in original).

b. State-Level Data Systems that Link Student and Teacher Data to Teacher and Principal Preparation Programs

Blueprint Proposal

The Blueprint proposes that, in an effort to promote transparency, States will be required to develop data systems to track the effectiveness of teacher and principal preparation programs with respect to measures such as job placement, student achievement, and teacher/principal retention (Blueprint, at 15). The Blueprint research summary points out that many traditional teacher preparation programs as well as alternative certification programs are not successfully preparing teachers for the classroom (Blueprint Research Summary #2, at *17). In particular, these programs often fail to provide high-quality clinical or practicum experiences and do not adequately prepare teachers for "classroom realities" (*Id.*). The research summary further notes that, while some States, including Florida, Louisiana, Tennessee, and Texas, have begun to implement data systems to monitor the effectiveness of graduates of teacher preparation programs, such systems are "not yet in widespread use for improving teacher preparation programs" (*Id.*)

Discussion

In a paper released in July, 2010, the Center for American Progress (CAP)²⁸ highlighted a number of problems associated with current accountability systems for teacher preparation programs, including, *inter alia*, high variability among State accountability systems; lack of evidence to show that national accreditation processes result in positive student outcomes; and limited predictive validity for teacher licensure tests with respect to teacher success in the classroom (6-7). This paper recommended a major overhaul of the accountability system for teacher preparation programs to include empirical data "showing that students are learning from their teachers, that program graduates stay in the profession, and that they teach in the hard-to-staff schools that badly need them" (*Id.* at 2). The paper also noted that multiple measures should be used to evaluate teacher effectiveness and that a major indicator should be classroom observation and assessment. In addition, the paper recommended that accountability systems

²⁸ Crowe, E. (2010). *Measuring what matters: A stronger accountability model for teacher education*. Washington, DC: Center for American Progress. Retrieved April 15, 2011 from www.americanprogress.org/issues/2010/07/pdf/teacher_accountability.pdf.

include surveys of program graduates and their employers (*Id.* at 14-16). The paper further argued that accountability measures should be applied equally to all preparation programs, regardless of whether the program is a traditional or alternative certification program, and that an important feature of this system should be public disclosure of information (*Id.* at 2-3). Moreover, the paper cautioned that, as States develop relevant data systems, “effective confidentiality and privacy policies are crucial” (*Id.* at 13).

The Blueprint provides minimal specificity regarding ways in which States may operationalize the requirement to develop data systems that connect student and teacher performance with teacher/principal preparation programs.²⁹ Therefore, a number of questions remain, including: Who will be responsible for developing and monitoring such systems? What kind of resources will be necessary to carry out the process? Will States be encouraged to work together so that each State does not have to reinvent the wheel? It is also worth noting that the concerns discussed earlier in relation to using student performance data to measure teacher effectiveness would be relevant here again with respect to accountability for teacher preparation programs. Moreover, as States develop data systems to monitor the effectiveness of such programs, attention must be given to ensure the inclusion of graduates of special education teacher preparation programs as well as graduates of general education teacher preparation programs who will be working with students with disabilities in their classes. All measures of effectiveness, including teacher persistence/retention rates, need to be examined in the context of students with disabilities. Given the shortage of special education teachers, the inclusion of teachers of students with disabilities in such data systems may yield valuable information about the effectiveness of teacher preparation programs.

c. District-Level Teacher and Principal Evaluation Systems

Blueprint Proposal

The Blueprint further specifies that, as a condition for receipt of funds under Title II formula grants, districts will be required to develop district-level evaluation systems of teacher and principal effectiveness that are fair and meaningful. Such evaluation systems must: “(i) meaningfully differentiate teachers and principals by effectiveness across at least three performance levels; (ii) [be] consistent with their state’s definition of ‘effective’ and ‘highly effective’ teacher and principal; (iii) provide meaningful feedback to teachers and principals to improve their practice and inform professional development; and (iv) [be] developed in collaboration with teachers, principals, and other education stakeholders” (Blueprint, at 15). The Blueprint research summary points out that many evaluation systems do not currently provide feedback to teachers, despite research showing that “[h]igh-quality teacher evaluations are based on: clear performance standards; multiple, distinct rating options; regular monitoring; frequent and regular feedback; training for evaluators; professional development linked to the performance standards; and intensive support for teachers who fall below the performance standards” (Blueprint Research Summary #2, at *5).

The Blueprint also specifies that districts will have the option of using Title II formula grant funds to engage in activities such as promoting opportunities for collaboration among school staff, developing instructional leadership teams, and supporting educators “through effective, ongoing, job-embedded, professional development that is targeted to student and school needs” (Blueprint, at 15). When funds are

²⁹ The proposal of the Teacher Quality Coalition has also recommended that teacher preparation programs be “held to the highest standards to prepare future teachers” and that programs that do not meet such standards be given time to improve, and if no improvement is shown, be closed (3/18/2011 Draft, Rec. #3). Unlike the Blueprint, however, the coalition’s proposal does not explicitly mention the use of data systems to monitor the effectiveness of such programs.

spent on professional development and class size reduction, such efforts must be research-based (*Id.*). Moreover, districts will be required to develop plans to ensure the equitable distribution of effective teachers and principals across schools (*Id.*).

Discussion

Classroom observations of teacher performance can provide a valuable mechanism by which to evaluate the qualities associated with successful teaching and can utilize certain measures of effectiveness that are not easily captured by traditional teacher licensing exams. Just as the experiential nature of a teaching internship or practicum is often the most beneficial component of a teacher preparation program, a classroom observation can show how a teacher interacts in real time with the students in his or her class. A teacher may have strong content knowledge but not necessarily the skills to be a successful teacher.

At the same time, it is extremely important for teacher performance assessments to be fair and meaningful for the teachers who are going to be assessed. Just as student assessments cannot be based on a single criterion, teacher performance assessments should also include multiple measures. Such teacher performance assessments must be validated for the purposes for which they are going to be used and must consist of rubrics and protocols that are grounded in research and standards for best practice. In addition, the scorers/evaluators must be trained in how to use the evaluation protocols. As the Blueprint research summary points out, the assessments should also be administered in such a way as to ensure that the teacher is able to receive feedback (Blueprint Research Summary, at *5). Implemented appropriately, a teacher performance assessment can provide a valuable opportunity for the teacher to engage in a process of self reflection that ultimately leads to constructive changes in teaching practices.³⁰

The Teacher Quality Coalition has also proposed that in order for teachers to be identified as “effective,” they should be required to “meet a high performance standard based on their performance over time” (3/18/2011 Draft, Rec. #4). To promote the validity of such measures, the coalition also recommends that “trained assessors” conduct evaluations of the teachers based on “rigorous teaching standards, their joint efforts to improve learning within the school, and appropriate and multi-faceted evidence of their contributions to student learning” (*Id.*). The coalition further proposes that new teachers, in addition to experienced teachers, be required to pass “a robust, field-specific teacher performance assessment that validly and reliably measures whether a teacher can successfully teach diverse students in the classroom” (Rec. #1).

Care must be taken to ensure that the protocols used as part of teacher performance assessments adequately address the education of students with disabilities. The typical protocols used for such assessments may not include measures focusing on the effectiveness of special education teachers or general education teachers who must address the complex learning needs of the students with disabilities in their classes. Further research is needed regarding some of the pilot teacher performance assessments

³⁰ A recent policy brief by the Alliance for Excellent Education highlighted efforts that are currently underway to promote “reliable, valid, and nationally available performance assessments” – e.g., 20 States have joined the American Association of Colleges for Teacher Education, the Council of Chief State School Officers, and Stanford University in the creation of the Teacher Performance Assessment Consortium (see Alliance for Excellent Education (Feb. 2011). *Transforming high schools: Performance systems for powerful teaching*. Policy Brief. Washington, DC: Author. Retrieved April 15, 2011 from www.all4ed.org/files/TransformingHSs.pdf). Linda Darling Hammond also recently wrote a paper on evaluating teacher performance assessments (see Hammond, L.D. (2010). *Evaluating teacher effectiveness: How teacher performance assessments can measure and improve teaching*. Washington, DC: Center for American Progress. Retrieved April 15, 2011 from www.americanprogress.org/issues/2010/10/pdf/teacher_effectiveness.pdf).

to determine their appropriateness with respect to various elements of special education. There is also the danger, as noted above, that under the traditional ESEA accountability framework focusing on punitive measures, administration of teacher performance assessments would not be sufficiently rigorous because the district would be fearful of the negative impact of low teacher ratings.

The Blueprint identifies as an additional use of Title II formula grant funds ongoing, high-quality, and job-embedded professional development, an area that is of particular significance for teachers of students with disabilities. Professional development should be focused on developing and augmenting the skills and knowledge identified in the criteria for teacher effectiveness. Whenever possible, districts should promote opportunities for joint professional development training for special and general education teachers. These two groups have much to learn from one another. Joint opportunities for professional development also help to minimize the artificial divide between special and general education. In addition, the goal should be for districts to immerse new teachers in strong learning communities with other teachers and mentors who understand and exemplify good teaching at the highest level. Although research has shown that teacher mentoring is an effective practice to support novice teachers, a recent study highlighted the lack of high-quality mentors for special education teachers.³¹ Districts should also promote the creation of a strong professional learning community, with sufficient time in the schedule for ongoing teacher collaboration on improvement of practice and for opportunity for discussion, coordination, and common planning time to support the provision of high-quality instruction and assistance for struggling learners.

2. Teacher and Leader Innovation Fund

Blueprint Proposal

The Blueprint proposes to award competitive grants to States and districts willing to implement “ambitious” reforms to recruit, retain, reward, and advance effective teachers and principals in high-need schools (Blueprint, at 16). Potential uses for such funds include the implementation of differentiated compensation systems and career advancement opportunities for educators based on factors such as increased student achievement or willingness to teach in high-need schools, subjects, areas, and fields (*Id.*). The Blueprint research summary highlights the fact that traditional compensation systems do not provide incentives for educators to work in challenging schools or shortage areas (Blueprint Research Summary, at *5). Similarly, the summary points out that traditional compensation systems tend to compensate educators based on years of experience and courses taken rather than on performance (*Id.*, at **5-6). For the proposed competitive grants under the Teacher and Leader Innovation Fund, interested States and districts would be required to use measures such as student growth to differentiate among teachers and principals in order to provide differential credentialing, professional development, retention and advancement decisions, and rewards to teachers and principals in high-need schools (Blueprint, at 16). The funds under these grants may also be used to make additional improvements to “human-capital management systems” such as earlier hiring timelines that are more consistent with the policies of wealthier districts³² (*Id.*).

³¹ Wasburn-Moses, L. (2010). *Rethinking mentoring: Comparing policy and practice in special and general education*. Oxford, OH: Miami University. Retrieved April 15, 2011 from www.nctq.org/tr3/conference/docs/tr3_conf_washburn-moses.pdf.

³² The Blueprint Research Summary points out that a number of large, urban school districts hire their staff later than wealthier districts, with the result that the lower-income districts have access to a less qualified pool of candidates (Blueprint Research Summary, at **13-14).

Discussion

The Blueprint’s proposal to promote differentiated compensation systems based on factors such as student growth raises serious concerns and needs to be implemented with caution. Even the Blueprint research summary points out that additional research is needed to show how such systems can be effective and “to identify the particular components of alternative compensation systems that are associated with successful programs” (Blueprint Research Summary #2, at *13). The concern regarding systems in which pay is based on competition among teachers (either explicitly or in effect) pertains to the fact that such systems are inconsistent with two basic premises of NCLB – namely, (1) that *all* children, including students with disabilities, should have meaningful opportunities to achieve at proficient and advanced levels, and (2) that their doing so is dependent on the quality of instruction provided by their teachers. The first premise requires movement away from a norm-referenced assessment system of comparing students to one another. The second NCLB premise means that *all* teachers must have the high level of skills and knowledge necessary to enable each of their students to reach proficient and advanced levels. Attainment of this level of skills and knowledge by all teachers requires evaluation of teacher performance against standards of good practice – i.e., the use of a system of evaluation that is criteria-based rather than competitive. A competitive system can produce an overall learning environment that undermines the achievement of NCLB’s goals by valuing competition over collaboration.

In previous comments on proposed changes to the ESEA, CLE discussed the problems associated with the use of merit pay systems. For example, the same concerns that were raised above regarding the linking of teacher and principal effectiveness with increased student achievement also apply to systems of merit pay. Moreover, incorporating performance or merit pay into the ESEA may divert limited resources away from more effective ways of improving overall teacher quality such as providing greater teacher support in the form of high-quality professional development and teacher mentoring and collaboration. There is also a question as to how teachers of students with disabilities will fit into a system of merit pay. Will such systems create a disincentive on the part of some teachers to educate students with disabilities for fear that the scores of these students may not lead to increases in teachers’ compensation?

In its previous comments, CLE further recommended that, notwithstanding the above concerns, if Congress decides to incorporate performance pay, it would be important to enact the strongest provisions possible to reduce the potential for the system to become competitive by:

- (a) Adding explicit language prohibiting performance pay systems that have a norm-referenced basis and requiring, instead, that a criteria-referenced basis be adopted; ← --- Formatted: Bullets and Numbering
- (b) Prohibiting systems in which the effect is to create a competitive system, including: (1) systems in which the number of teachers who may receive performance-based increases is limited, with the result that teachers are ranked against one another; and (2) systems in which the selection basis is facially criterion-referenced but in which the criteria have in fact been selected based on efforts to make a certain number of awards; and ← --- Formatted: Bullets and Numbering
- (c) Conducting careful evaluation of and subsequently remedying the extent to which any system is operating, in effect, as a competitive system, despite facially not being competitive, or the extent to which a system is having a negative impact on teacher collaboration. Such evaluation should include input from teachers, administrators, students, and parents. ← --- Formatted: Bullets and Numbering

In place of competitive, performance pay systems, a more effective approach would be to promote compensation structures that: (1) help attract the best educators to high-need schools, subjects, areas, and fields (including special education) and (2) increase compensation based on increases in educators' knowledge and skills as reflected in teaching characterized by rigor, high standards, and relevance. If the goal is to have *all students* achieve at high levels, then teaching must be premised on aiming to ensure that *all teachers* have the skills and knowledge to enable their students to do so. Such approaches are likely to be less subject to counterproductive consequences than merit pay systems that reward educators for student performance *per se*.

3. Teacher and Leader Pathways

Blueprint Proposal

Finally, the Blueprint proposes continuation of competitive grants to improve the recruitment and preparation of effective teachers and principals by nonprofits, colleges/universities, and school districts with respect to high-quality preparation programs targeted to high-need districts, schools, subjects, areas, and fields (e.g., special education) (Blueprint, at 17). The Blueprint describes two pathways – one pertaining to teachers and the other pertaining to school leaders/principals. With respect to the former, the grants will focus on both traditional and alternative pathways to teaching (*Id.*). Programs selected by the Secretary must address the teacher needs of a district (or districts) and must have a track record of preparing effective teachers or be committed to measuring the effectiveness of their graduates (*Id.*). The Secretary will select grantees based on programs that teach to college- and career-ready standards and address high-needs areas or fields, including teaching English language learners and students with disabilities (*Id.*). Priority may also be given to programs that target high-performing college graduates, military veterans, or midcareer professionals (*Id.*).

Competitive grants will also continue to be awarded to support traditional and alternative pathways for principals and other school leaders interested in turning around persistently low-performing schools (Blueprint, at 18). Programs must have a record of effectiveness among their graduates or be willing to track such information and must include a substantial residency or field-based component and induction component (*Id.*). Priority will be given to programs that promote conditions that can help their graduates succeed – e.g., autonomy over staffing, budget, instructional program and schedule (*Id.*). The Secretary will also award grants to support effective State and district leaders such as superintendents, chief academic officers, and human resource directors (*Id.*).

Discussion

It is important to ensure that the competitive grants for Teacher and Leader Pathways award funding to programs that are designed to address the complex learning needs of students with disabilities.³³ The residency and field-based components of such programs are particularly valuable, as is the provision of induction support for new teachers and principals. Because the focus of such grants is to support new pathways for teachers and principals (traditional and alternative pathways), targeted strategies should be focused on ensuring that such programs include high-quality learning opportunities

³³ The Teacher Quality Coalition has similarly proposed recommendations to “invest in the preparation of teachers in shortage fields and hard to staff schools to effectively instruct students with diverse needs and attract and retain prepared and effective teachers” (3/18/2011 Draft. Rec. # 7).

for participants that will help them understand the legal requirements pertaining to the education of students with disabilities as well as best practices from educational research. For example, future principals should learn from the outset that they must be accountable for the education of the students with disabilities in their school and that they cannot shirk this responsibility or pass it on to someone else. Care must also be taken to ensure that grantee programs provide high-quality courses in areas such as adapting instruction for general education teachers, teaching strategies that take into account the background and culture of students, and basic psychology.

III. MEETING THE NEEDS OF ENGLISH LEARNERS AND OTHER DIVERSE LEARNERS

This section of the Blueprint acknowledges that the federal government has made a commitment under the ESEA to serve all students and to ensure that States, school districts, and schools meet their statutory responsibilities to address the needs of diverse learners and to provide effective instruction so as to enable them to have the opportunity to learn to high standards and be prepared to succeed in college and in a career. The Blueprint acknowledges the need to strengthen the Act by providing additional support to States, school districts, and schools to meet the range of needs of students with disabilities, English language learners (“ELLs”), migrant students, homeless children and youth, neglected and delinquent students, American Indians, native Hawaiians and native Alaskans, children living in rural areas, and those connected with federal activities (e.g., children and youth of military families) who are served by existing programs under current law. The Blueprint notes the array of programs authorized by the ESEA presently serving these students.

A. Students with Disabilities

Blueprint Proposal and Discussion

With respect to students with disabilities, the Blueprint offers minimal new information about changes that would affect this population subgroup. Rather, the Blueprint suggests, perhaps by its silence, that few changes in current practice would be anticipated in the reauthorized ESEA for students with disabilities since most of them participate in the general education classroom and fully participate in the State assessments required for all students by Title I.

The Blueprint does expressly state that the Administration’s ESEA proposal will increase support for inclusion and improved outcomes of students with disabilities. It further states without a hint of additional detail that it will help ensure that teachers and leaders are better prepared to meet the full range of needs (presumably educational and non-educational) of students with disabilities and that assessments of these students will more accurately assess their performance. There remains some concern—especially in light of reduced maintenance of effort at the State and LEA levels in the aftermath of the ARRA—that the Administration may be promoting greater intermingling of IDEA and ESEA funds, resulting in potential dilution of educational services for students with disabilities. As the reauthorization of the ESEA and IDEA move forward, it will be important to ensure that students with disabilities are recognized as general education students first, and to ensure that they receive comparable aids, benefits, and services as their non-disabled peers under Title I and consistent with their rights under Section 504. In addition, it will be important to clarify the distinction between IDEA and ESEA in that the former is an entitlement statute providing students with disabilities in need of specialized instruction the right to a free

appropriate public education (“FAPE”) that is not only tailored to meet their unique needs but is also consistent with their respective State’s educational standards – i.e., the academic content and academic achievement standards adopted by their State under Title I, Part A of the ESEA. The Blueprint also references the principles of UDL in the context of curricula, instructional supports, and assessments. Further attention needs to be given to the specific areas of the ESEA that should reference UDL, as intended for *all* students (not only students with disabilities), including the definition of the term that is currently in the Higher Education Act (“HEA”). Consideration should also be given to the inclusion of provisions with implications for the use of accessible instructional materials (“AIM”) and technology.

B. English Learner Education

Blueprint Proposal and Discussion

As under current law, the Blueprint reports that formula grants will continue to be relied upon to help implement high-quality language instruction educational programs to improve education outcomes for ELLs. The grantees will have flexibility in offering dual-language programs, transitional bilingual education, sheltered English immersion, newcomer programs for late entrant English learners, or other language instruction programs. Funding under the formula grants will also be directed to support ongoing professional development for all teachers of ELLs, including teachers of academic content areas. As noted previously in the discussion of the College- and Career-Ready Students program, States will be required to adopt and implement grade-by-grade English proficiency standards that are aligned with the State’s college- and career-ready academic content standards.

Although under current law (Title III of the ESEA) States and LEAs must provide language instruction to ELLs and to ensure that these students gain proficiency in English and meet the State’s academic content and academic achievement standards, there is no federal requirement governing the standards to be used in identifying ELLs as eligible for instructional services. In response to long term criticism that criteria being applied across and within States is uneven, is inconsistent, and fails to consider native language proficiency, its relevance to grade level, prior schooling, and academic achievement, the Blueprint indicates that States will be required to establish new criteria to ensure consistent Statewide identification of ELLs, and to determine eligibility, placement, and duration of programs and services based on the State’s valid and reliable English language proficiency assessment. In addition, States must implement a system for evaluating the effectiveness of language instructional programs and provide information about the achievement of subgroups of ELLs, which the Blueprint does not specify but ought to include ELLs with a disability, to inform decision-making related to program improvement, including selection of effective programs. If LEAs fail to demonstrate improved performance by ELLs, they will lose their flexibility and be required to work with the State in implementing effective strategies for improved outcomes.

While details are lacking, the Blueprint seems to indicate that compared to current law, the State will be held to a higher level of accountability for ensuring that ELLs attain English proficiency such as to enable them to meet their State academic content and academic achievement standards and that the State will have an enhanced level of responsibility and oversight of the process for ensuring all ELLs are identified and effectively educated to college-ready and career-ready standards. As should be apparent, these provisions concerning identification, eligibility, and appropriate and effective instructional services are highly relevant to improved educational opportunity and outcomes for students with disabilities who

are also ELLs or ELLs with disabilities.

Finally, the Blueprint indicates that the Administration's plan will include competitive grants for States, districts, and nonprofit partners to support the development of innovative programs, build the knowledge base about promising practices, and scale up effective instructional practices for ELLs, including, e.g., graduate research fellowships or partnerships with colleges and universities to prepare effective teachers.

C. Migrant Education

Blueprint Proposal and Discussion

Under the Blueprint, the Migrant Education program would remain a formula grant program to support States and districts in meeting the educational needs of migrant youth. The current funding formula would be updated based on more accurate data to ensure that the funds are actually reaching those areas where migrant students need educational services. ED would also continue to support interstate efforts to facilitate the educational transition of migrant youth into local schools and communities.

D. Homeless Children and Youths' Education

Blueprint Proposal and Discussion

Similar to Migrant Education, ED would continue formula grants to assist States and districts but would modify the formula so that grants would be awarded to States based on updated data. Although specific detail is lacking, the Blueprint indicates that barriers to homeless students' receiving effective services would be eliminated. Such barriers to the academic success of homeless students often include problems related to students' accrual of credits toward promotion or graduation; inefficient and slow transfer of school records; inconsistent course descriptions and requirements; and lack of timely access to special services, e.g., ELL instructional support and/or special education. To some extent the wide adoption of the national Common Core standards and the Administration's proposal requiring States to adopt English proficiency standards by grade level may help to mitigate some of these barriers to learning related to consistency across the curriculum for displaced and mobile students.

E. Neglected and Delinquent Children and Youths' Education

Blueprint Proposal and Discussion

The Blueprint indicates that Title I, Part D of the ESEA, which authorizes programs under Subpart 1 and Subpart 2 to educate students who are neglected, delinquent, or at risk of dropping out of school would continue to operate as formula grants. Under Subpart 1 of Part D, ED provides federal assistance to SEAs to utilize or award subgrants to other State agencies that operate free education programs in institutions or community day programs for children and youth who are neglected, delinquent, or "at-risk." Part D, Subpart 1 funds can only be used to assist those children and youth identified as failing, or at risk of failing, to meet the academic content and achievement standards set by the State for all students,

and to supplement and improve the quality of educational services provided by the State agency. Subpart 2 funds support school districts that collaborate with locally operated correctional facilities to implement high-quality education programs: to help youth prepare for secondary education completion, training, employment, or further education; to facilitate their transition from the correctional program to further education or employment; or to provide programs *in local schools* for children and youth returning from correctional programs and programs that serve youth “at risk” of dropping out of school. Students of color and students with disabilities are disproportionately represented in programs funded under both Subpart 1 and Subpart 2. Greater oversight, responsibility, and accountability by the SEA is warranted over these programs, in particular, Subpart 1 programs, which are often administered by another State agency such as Department of Corrections or Department of Youth Services, virtually guaranteeing little, if any, professional knowledge and expertise for overseeing the delivery of quality instruction and education of detained and incarcerated youth – never mind instruction designed to prepare them for rigorous college-ready and career-ready standards.

F. Indian, Native Hawaiian, and Alaska Native Education

Blueprint Proposal

The Blueprint indicates continued strong support through formal and competitive grants to States; districts; Indian tribes; Indian institutions of higher education; Indian, native Hawaiian, and Alaska native educational and community based organizations; and non-profit organizations, agencies, and institutions working to meet the unique needs of Indian students, native Hawaiian, and native Alaskan students. Based on the Blueprint, ED would expand the flexibility in use of the funds under Title VII, Part A of the ESEA (Indian education), so they may be used for Native language immersion and Native language restoration. Under Title VII, Part B, eligibility under the Native Hawaiian and Alaska Native programs would be significantly expanded to school districts and to charter schools.

G. Rural Education

Blueprint Proposal

Finally, the Blueprint’s proposals to improve rural education would also have implications for students with disabilities. Students with disabilities living in rural communities may have fewer public resources available to them and may therefore rely even more on services provided through the student’s school. The Blueprint proposes using an updated method to identify rural school districts. In addition, the Blueprint proposes expansion of the “REAP Flex” authority. This would allow more rural school districts even greater ability to tailor federal funds to their unique needs. Lastly, the Blueprint proposes that federal funds may be reserved for nationally-supported activities designed to help rural school districts overcome ubiquitous capacity constraints and apply for competitive grants and improve student academic performance. In addition, nationally-supported technical assistance should cover areas relevant to students with disabilities such as research and technical assistance in use of assistive educational technology, including, e.g., interfacing through online learning.

H. Impact Aid

Blueprint Proposal

The Blueprint indicates that formula grants under Title VIII of the ESEA would continue to compensate districts for the expense of educating federally connected children and for the presence in the district of tax exempt federal property. LEAs would also continue to enjoy significant flexibility in the use of these funds.

CONCLUSION

This review has analyzed, through the lens of students with disabilities, the first three priority areas of the Obama Administration's Blueprint for the ESEA reauthorization – namely, (1) College- and Career-Ready Students; (2) Great Teachers and Leaders; and (3) Equity and Opportunity for All Students. Although the Blueprint provides varying levels of specification regarding details of the Administration's proposed changes, it is important for advocates of students with disabilities to become aware of the potential implications of the ongoing debate for students with disabilities. While there is no question that the ESEA and IDEA have formed a strong cohesion to ensure the inclusion of students with disabilities in the overall accountability system for all students, there are lingering concerns regarding the watering down of accountability provisions for these students (often in the name of "flexibility" for schools and school districts) as well as the intermingling of IDEA and ESEA funds, with the potential for dilution of educational services for students with disabilities. As the reauthorization of the ESEA and IDEA continue to unfold, it is imperative for advocates of students with disabilities to ensure that the changes continue to support the full and meaningful participation of students with disabilities in the overall accountability framework for all students in order that students with disabilities have an opportunity equal to that of their non-disabled peers to become college and career-ready.