February 2, 2015

Dear Senators Alexander and Murray:

The Learning Disabilities Association of America (LDA) is a strong supporter of the main purposes of the Elementary and Secondary Education Act (ESEA): ensuring all students, including students with disabilities, have a fair and equal opportunity to receive a high-quality education that prepares them for post-school success. However, we believe the law as currently written has not produced better outcomes for students with specific learning disabilities, and in fact has had some unintended negative consequences. We look forward to working with you to ensure the reauthorized law moves from a "test and sanctions" model to a true education law focused on strong teaching directed at educational attainment through the development of skills and knowledge that will help students experience success in school and life.

LDA – a national volunteer organization representing individuals with learning disabilities, their families, and the professionals who serve them – has worked for more than 40 years to ensure children with specific learning disabilities are properly identified and receive appropriate services to enable them to fully benefit from these educational opportunities, graduate from high school, and meet their postsecondary goals.

As Congress moves toward the reauthorization of the ESEA, LDA urges your consideration of the following recommendations:

Note: All section references are to Every Child Ready for College or Career Act of 2015, unless noted otherwise.

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

LDA supports Option I regarding state-designed academic assessment systems. This option provides important alternatives in ways students might be assessed to determine their levels of skill and mastery of subject matter. LDA believes grade-span testing (for example, at grades 3, 5, 8, and 11) is sufficient to provide the information needed to ensure school district and state accountability, leaving more time for focused instruction. Students with specific learning disabilities who sometimes do not fare well on regular standardized assessments may be able to demonstrate mastery of the academic material through performance-based assessments or ongoing formative assessments. In general, LDA believes less emphasis should be placed on testing and more time on teaching and learning.
LDA believes students who as determined by the IEP team require modifications, accommodations, and assistive technology to access the general education curriculum and participate in classroom assessments should receive the same accommodations to participate in any state assessment system, whether traditional standardized assessments or other state options. Also, alternate assessments based on grade-level achievement standards should be available as an option for students with learning disabilities, as determined by the IEP team. Assessing students without appropriate accommodations will deny students an equal opportunity to demonstrate progress and achievement, since they will not be able to fully participate in the assessment. Regardless of decisions about the form of state-mandated assessments, LDA strongly believes all assessments should accurately reflect students' achievement and skill level and whether that student is capable of succeeding at grade-level work.

Legislative Recommendations:

Add the following language in Title I, Part A, Sec. 1111(b)(2)(B)(iv)(II):

"(2) State-designed academic assessments.—...
   (B) Requirements.—The assessment system under subparagraph (A) shall—
   (iv) provide for—,...
   (II) the reasonable adaptations and accommodations modifications, accommodations, and assistive technology services for students with disabilities (as defined under section 602(3) of the Individuals with Disabilities Education Act), which modifications, accommodations, and assistive technology services shall be the same as or equivalent as determined by the individualized education program team for students with disabilities for participation on regular classroom assessments, and are necessary to measure the academic achievement of such children relative to the challenging State academic standards...."

Add the following language in Title I, Part A, Sec. 1112(b)(10):

"(b) Plan Provisions.—....
   (9) how the local educational agency will coordinate and integrate services provided under this part with other Federal, State, and local services and programs, such as
   (i) services for children with limited English, migratory and homeless youth; and
   (ii) services for children with disabilities, including assurances that children with disabilities will receive modifications, accommodations, and assistive technology services as determined by the individualized education program team as necessary for participation in regular classroom instruction and assessment."

Add the following language in Title I, Part B, Sec. 1201(2)(B):

"(A) Developing or improving assessments for students with disabilities, including the development of assessments for all students, including students with disabilities, using the principles of universal design for learning, validated for use with a range of modifications, accommodations, and assistive technology; and aligned to alternate challenging State academic standards for students with the most significant cognitive disabilities."

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

LDA is pleased to see the draft retains disaggregation of assessment data to highlight the continued achievement gap between students with disabilities and their non-disabled peers. In addition, we would support disaggregation of data by disability categories as defined in the Individuals with Disabilities Education Act (IDEA) to highlight achievement gaps among those categorical subgroups. We support any efforts to ensure appropriate training for educators in the use of
instruction based on scientifically valid research for students with disabilities to improve high school graduation rates and students' success in postsecondary education and/or employment.

*We also support language under the State Report Card that calls for disaggregation of data for "information on any other indicator used by the State to determine student achievement...."* Current law requires reporting only of aggregate data. Disaggregation of any additional data on State indicators will provide another opportunity to see where achievement gaps must be addressed. In addition, LDA would urge as a required data point reading proficiency by third grade.

### III. Ensure States maintain students with disabilities as part of the assessment and accountability system.

LDA believes it is extremely important for teachers and parents to know where a student is in the learning process and to be able to use that information to move that student forward toward achieving proficiency. We also believe students should have strong instruction in the material before their knowledge is assessed.

The newly developed state assessments with higher grade level expectations are extremely challenging. For many students with specific learning disabilities (SLD) who may not be receiving appropriate instruction, such assessments are exercises in futility as demonstrated by state data indicating very low passing rates for students with disabilities in general and specifically for students with SLD. Studies have shown students who experience repeated failure are much more likely to become frustrated, suffer from depression, and often drop out of school.

For many students with SLD and/or attention disorders, the learning process may take longer and require specialized direct instruction delivered with fidelity by qualified special educators. Please note, however, that *LDA has extremely serious concerns about any suggestions that students' Individualized Education Programs (IEP) would be used as the accountability tool for measuring their progress.* We strongly believe any move to use the IEP for this purpose would be a major step backward in efforts to ensure *all* students are challenged and taught to high standards and to hold states equally accountable for the progress of *all* students.

The IEP lists goals designed to enable the student to "be involved and make progress in the general education curriculum" and the services and supports needed to achieve those goals. In other words, the IEP is not the curriculum for that student, but rather the means to access and succeed in the general education curriculum. Given the appropriate instruction, accommodations and supports, many students with learning disabilities have the capacity to meet state academic content and achievement standards.

### IV. Maintain Cap on Use of Alternate Assessments.

*LDA supports the use of alternate assessments aligned with alternate academic achievement standards* as allowed in the draft bill for students with significant cognitive disabilities. *Regarding the use of alternate assessments, we urge Congress to maintain the 1 percent cap imposed on the number of students for whom these tests are allowed.* Without this safeguard, school districts may choose to teach and assess students with specific learning disabilities to lower standards which do not challenge them and, in many cases, are inappropriate. Many students with specific learning disabilities are capable of meeting state academic achievement standards, given appropriate instruction and, as necessary, additional time.

*LDA also supports out-of-grade-level testing* for students who have not yet achieved grade-level proficiency, allowing them to demonstrate mastery of skills and knowledge at their current academic level as they are assisted to reach grade-level proficiency.

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

The 2004 reauthorization of the IDEA allowed school districts to use up to 15 percent of federal IDEA State Grant (Part B) funds to develop and implement coordinated early intervening services for *general education students not currently*
eligible for special education. The IDEA also provides that a process of scientific, research-based interventions may be
used in addressing academic and behavioral challenges prior to a referral for special education services in the category of
specific learning disabilities. These interventions have become known generically as multi-tiered systems of support
(MTSS), which encompass both Response to Intervention (RTI) and positive behavioral interventions and supports
(PBIS).

LDA strongly recommends the 15 percent of funds designated for early intervening services for non-disabled students in
the IDEA should be used solely for the education of students with disabilities. Funds under the ESEA should be
designated for the purposes of pre-referral services through MTSS for students who have not yet been identified as
needing special education services.

In fact, multi-tiered systems of support are general education initiatives designed to provide early intervening supports
and services for all children who are below grade level achievement. Each tier of the system should be time-limited, so
more significant needs are addressed in a timely fashion and referral for more intensive interventions occurs as soon as the
need is evident. Scientific, research-based interventions were included in the IDEA, even though those services are not
special education and specialized instructional support services. If school staff suspects a student in early intervening
program may have a disability, the IDEA allows data collected from those interventions to be used as part of the
comprehensive special education evaluation.

LDA strongly recommends including "early intervening services" (See, IDEA Regulations, Sections 300.307 – 300.311)
in the ESEA These interventions, as previously noted, are designed specifically for use with struggling students in general
education, provided in the general education classroom as soon as possible after problems surface. School districts should
be urged to use these interventions appropriately. If school personnel observe a student is not making sufficient progress
after a reasonable period of time using a particular intervention, different or more intensive interventions should be
implemented. At any time during implementation of such interventions if school personnel and/or parents believe a
comprehensive evaluation for special education services is warranted, these interventions may not be used to delay or
deny an evaluation.

Legislative Recommendation:

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

"Sec. 1112. Local Educational Agency Plans.

"(B) identifying quickly and effectively students who may be at risk for academic failure, and providing early intervening services based on scientifically valid research for students who have not been identified as needing special education or specialized instructional support services but who need additional academic and behavioral support to succeed in a general education environment."

VI. Ensure all teachers have the skills and knowledge to address the academic and behavioral needs of the
students for whom they are responsible.

LDA believes both general and special education teachers must be able to recognize the academic needs and challenging
behaviors in students, so that a team of qualified professionals can provide appropriate interventions and supports. LDA
supports instruction by professional educators who are graduates of accredited colleges of education, preferably with
residency programs that allow pre-service experience in meeting the needs of diverse learners.

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

LDA is concerned with the increasing number of teachers leaving the profession due to:
- teaching to large classes of students who may differ widely in skill levels, are English language learners and/or students with disabilities;
- the need to adjust curriculum for the varying skill levels and disabilities;
- lack of appropriate professional supports and training for personnel;
- increased responsibilities for mandated testing; and,
- in some states, being held responsible for gaps in student learning as part of annual teacher evaluations.

Special education teachers should be prepared to (1) provide intensive, highly individualized instruction at the appropriate intensity and duration and monitor uneven progress, (2) deliver and/or collaborate with general education teachers to deliver the general education content curriculum, and (3) provide team and consultative advice concerning accommodations and modifications to general education and related professionals. However, it is important school systems honor the "continuum of alternative placements" decisions made by the IEP team based on the student's individual needs. Schools must recognize some students receiving special education services may need to work with special education teachers in small group settings outside the general education classroom, so they are fully afforded a free appropriate public education (FAPE), according to their individual needs.

Legislative Recommendation:

Add the following language in Title II, Part A, Sec. 2103(b)(3)(F):

"(F) developing programs and activities that increase the ability of teachers to effectively teach students with disabilities, including students with significant cognitive disabilities, which may include the use of multi-tiered systems of support, such as response to intervention and positive behavioral interventions and supports, and training in how to appropriately modify curriculum, implement accommodations, use assistive technology, and develop effective collaboration among general and special educators ...."

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

LDA strongly supports and advocates ongoing training, participation, and formal recognition of parents, families, and students, as appropriate, in the educational process. Families require specific training and technical assistance in order to make informed decisions about their child's educational needs. All parents, but especially parents of children in low-performing schools, should be given adequate and clear information about educational options available to their children, including their rights under the Individuals with Disabilities Education Act (IDEA). Any information provided under the State and local district report cards should be presented in language that parents can understand, as stated in current law.

In addition, students should be taught to self-advocate for and be involved in decisions that affect their education, including preparation for postsecondary opportunities.

Legislative Recommendation (Amendments to Title I, Sec. 1118, current law):

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

"Sec. 1118. Parental Involvement.
..."
(e) Building Capacity for Involvement.—To ensure effective involvement of parents and to support a partnership among the school involved, parents, and the community to improve student academic achievement, each school and local educational agency...

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

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

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

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

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

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

Recommendations:

1. **LDA supports** the draft bill language under the Annual State Report Card [Sec. 1111(d)(C)(iv)] that requires inclusion of secondary school graduation rates, including 4-year adjusted cohort rates and extended-year adjusted cohort graduation rates. The latter is particularly significant for students with specific learning disabilities who may require additional years to graduate with a regular high school diploma. We appreciate your counting and highlighting those students' achievements.

2. We request you include in statutory or report language the need for transition services that focus on multiple pathways to graduation, including the integration of career and technical education courses, college and career awareness and preparation, and for students with disabilities, self-advocacy and other life skills.
IX. Include a definition of Universal Design for Learning and incorporate these principles throughout the ESEA.

LDA supports adding the definition of Universal Design for Learning (UDL) used in the Higher Education Act in 2008. Please note that "universal design" as used in the draft bill has a different definition and connotation than "universal design for learning," the term appropriately used in the educational setting.

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

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

X. Retain current law language for Part C (IDEA) students under the Targeted Assistance School program (Title I, Sec. 1113(d)).

Current law delineates categories of children specifically included to receive services under this provision, as does the draft bill. However, the draft bill eliminates as a category a "child, who at any time in the 2 years preceding the year for which the determination is made, received services under Part C...." The Part C program for infants and toddlers with disabilities is a critical early childhood program which feeds into the special education preschool program and helps prepare young children with disabilities for success in school, much as the Head Start program does. We would encourage the Committee to retain this important category.

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

Sincerely,

Nancie Payne, Ph.D.
President