



## Florida Association of Special Education Attorneys

April 26, 2012

State Board of Education  
Ms. Kathleen Shanahan, Chair  
325 W. Gaines Street, Suite 1520  
Tallahassee, Florida 32399

Commissioner Gerard Robinson  
Florida Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399

### **Re: Commissioner's Taskforce on Inclusion and Accountability Report**

Dear State Board of Education and Commissioner:

The Florida Association of Special Education Attorneys is an association of attorneys who collectively have represented thousands of parents of, and students with, disabilities over the years. There are almost 362,000 students with disabilities identified in Florida, only nine percent of whom are identified as intellectually impaired. For 2011, only 35% of those students were at an FCAT Level 3 in reading, and 41% in math. A mere 49% graduated with their cohort.

We are submitting the following comments to the recommendations of the Commissioner's Taskforce on Inclusion and Accountability. While there are several Taskforce recommendations we can strongly support, there are also a number of troubling recommendations we must oppose.

We point out that the Taskforce was established to help facilitate Florida's response to and compliance with the U.S. Dept. of Education's (hereinafter, "USED") conditional approval of its request for flexibility under the Elementary and Secondary Education Act (hereinafter, the "ESEA"). As such, the recommendations of the Taskforce must comport to the overarching tenets of ESEA. As you know, the USED's waiver will expire on July 27, 2012 if the Florida Department of Education has not modified its policies to fully include students with disabilities (hereinafter, "SWD") in the State's system of differentiated recognition, accountability, and support.

First, if the ESEA stands for nothing else, it stands for closing achievement gaps for all subgroups, including SWD. Holding FCAT Level 1 and 2 students and Alternative School students, who are disproportionately SWD (and now possibly ESE center school students), to an opaque learning gains calculation instead of the proficiency standards of students who do not have disabilities, is abhorrent.

In fact, we believe to hold SWD to that different standard of accountability, particularly without mandating the statewide implementation of individualized, intensive, research-based interventions to improve their academic performance, violates Title 2 of the Americans with Disabilities Act and Section 504 of the

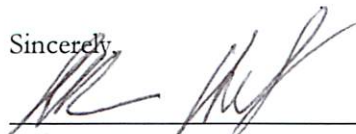
Rehabilitation Act. Not to mention the fact that it could incentivize designating students as in need of special education in order to minimize their impact on school accountability. Until every school district implements the research proven individualized interventions that SWD need in order to meet curricular standards and successfully transition to their post-secondary outcome of choice, we cannot expect them to actually teach such SWD successfully.

Second, we absolutely cannot support using a student's Individualized Education Program (IEP) for accountability purposes. Not only would that confuse, from both legislative and school-based perspectives, the provisions of two entirely distinct laws - the Individuals with Disabilities Education Act and the ESEA - but IEP goals are not designed to be aggregated as a measure of school or district performance.


As USED has stated: "IEP goals are individualized for each student, and a student's progress toward each goal is measured for purposes of reporting progress to parents and for making individualized decisions about the special education and related services a student receives. . . . IEP goals may cover a range of issues beyond reading/language arts and mathematics, such as behavior, social skills, or the use of adaptive equipment, and, as such, an examination of how well a student met his or her IEP goals is not synonymous with achievement measured by an alternate assessment for AYP purposes. . . ."

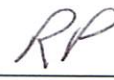
The Florida Association of Special Education Attorneys is composed of experienced and passionate advocates for SWD – which was unfortunately not represented at the Task Force. We respectfully request that our comments are incorporated in Florida's ESEA waiver process. If you have any questions or comments, please contact Allison Hertog at (305) 663 – 9233.

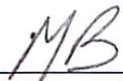
Sincerely,

  
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Allison Hertog, Esq.

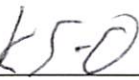
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Maria Cammarata, Esq.


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Mark Kamleiter, Esq.


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Rosemary Palmer, Esq.

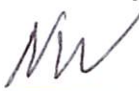
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Michael Boswell, Esq.

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Rose Marie Archibald, Esq.

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Kimberly Spire-Oh, Esq.

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Nancy E. Wright, Esq.

cc: Dr. Monica Verra-Tirado  
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