



June 6, 2023

The Honorable Jamaal Bowman  
U.S. House of Representatives  
345 Cannon House Office Building  
Washington, DC 20515

Re: Consortium for Constituents with Disabilities Education Task Force Concerns with the  
*Teaching Not Testing Act*

Dear Representative Bowman,

On behalf of the Consortium for Constituents with Disabilities (CCD) Education Task Force, we are writing in opposition to the *More Teaching Less Testing Act of 2023*. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society, free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+-based discrimination and religious intolerance. In support of CCD's overall mission, the Education Task Force advocates for federal legislation, regulations, and guidance that protect civil rights, ensure high expectations, and address the educational, as well as the social and emotional needs of infants, children and youth with disabilities and their families. In this work, we focus on the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and other applicable laws.

The CCD Education Task Force has long advocated for including the performance and disaggregation of data of students with disabilities, students of color, English learners, and students impacted by poverty on statewide summative assessments when determining how well a school is meeting the needs of students. For our community, these assessments are a tool to identify opportunity gaps as they provide annual, comparative data on student progress. Before the federal requirements around assessments and data disaggregation were in place, some student subgroups —especially students with disabilities— were excluded from grade-level curriculum and, in some instances, their academic performance was hidden from families and decision makers.

Therefore, we have the following concerns around the different options states can use as outlined in the *More Teaching Less Testing Act*:

**Option 1: Grade-span testing – states could test each of math, Reading/Language Arts, and science once in each grade span (3-5, 6-9, 10-12). (H.R. 1741, SEC. 4. (54))**

**Concerns:** In a recent survey, 78% of caregivers of students with disabilities said that the federal government should request states administer assessments **at least** once per year.<sup>1</sup> Our main concern with this proposal is that parents, advocates, and policymakers would not have data on individual students annually. This is because the proposal introduces the possibility that students are assessed as little as one time between both elementary and middle school. Annual statewide summative assessments allow stakeholders a reliable and valid data point that measures students on grade-level standards. This information is a critical component of the annual Individualized Education Program (IEP) developed for every IDEA-eligible student. Other measures of student learning, such as class grades and assessments may also reflect completion, effort, or class participation but they may not be consistently aligned with grade-level standards.

It is also unclear how schools would be identified as needing support on a yearly basis as is the case in current law. Policymakers need consistent and reliable data on all students and on specific subgroups of students in order to adequately allocate resources and address systemic issues within the education system.

**Option 2: Representative sampling – states could administer assessments to representative samples of students each year in grades 3-8 and once in 9-12. (H.R. 1741, SEC. 4. (56))**

**Concerns:** Again, caregivers of students with disabilities want annual assessments to see how their child is doing and how schools are supporting certain subgroups of students. In the same survey, 66% of caregivers of students with disabilities reported that these annual assessments are “extremely important” or “mostly important” to measure student success.<sup>2</sup> Furthermore, students with disabilities represent a significant subpopulation of students – approximately 15% of public school enrollment.<sup>3</sup> Removing the requirement to assess every child’s learning would hinder efforts to meaningfully disaggregate data by subgroups—crucial to ensuring additional resources are targeted to student groups and schools that need them most—by substantially decreasing total sample sizes. While ESSA requires states to report assessment data disaggregated by racial/ethnic status, socioeconomic status, English-language ability, and disability status of their students, states also set a threshold of the minimum number of students represented in each subgroup to be able to include in public reporting. This guardrail seeks to both protect personal information of students, as well as help ensure statistical

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<sup>1</sup> Kubatzky, L., & Benner, M. (2023). (rep.). *Inclusive, Innovative Assessments for Students With Learning Disabilities*. National Center for Learning Disabilities. Retrieved May 4, 2023, from [https://www.ncld.org/wp-content/uploads/2023/02/Inclusive\\_Innovative\\_Assessments\\_for\\_Students\\_With\\_Learning\\_Disabilities.NCLD\\_Final\\_.pdf](https://www.ncld.org/wp-content/uploads/2023/02/Inclusive_Innovative_Assessments_for_Students_With_Learning_Disabilities.NCLD_Final_.pdf).

<sup>2</sup> Ibid.

<sup>3</sup> Digest of Education Statistics, Table 204.70. [https://nces.ed.gov/programs/digest/d22/tables/dt22\\_203.70.asp](https://nces.ed.gov/programs/digest/d22/tables/dt22_203.70.asp)

reliability. However, by decreasing the total number of students being assessed, there is a stronger likelihood that this minimum “n-size” number will not be met, especially in smaller districts and schools where there may already be suppressed data for students of color, students from low-income backgrounds, English learners, and students with disabilities. Students with the most significant cognitive disabilities - who make up approximately 10 percent of all IDEA-eligible students - would essentially be eliminated from testing since the group could not be assessed via sampling on an alternate assessment since they would not meet “n” size in most if not all districts.

Additionally, students from subgroups such as students with disabilities or certain racial minorities may be impacted by sampling as they might be “selected” to the sample more frequently than their peers not in that subgroup to ensure representation. This is already the case with NAEP.

Sampling would also likely lead to much less intersectional data being reported, such as having information on the performance of students with disabilities who are also impacted by poverty. It’s incredibly important that decision makers have data around students who are multiply marginalized in order to address issues affecting our most vulnerable students.

Students with disabilities already experience low expectations, evidenced by this recent report on state assessment targets.<sup>4</sup> Assessment options such as those proposed are likely to lead to no expectations.

**Option 3: Combination testing – states could design a system that uses either a combination of grade-span and representative sampling or grade-span and matrix sampling. (H.R. 1741, SEC. 4. (55))**

**Concerns:** The third option would introduce the possibility of even less district and school level data about students with disabilities. In addition, matrix sampling (in its current form) cannot provide valid scores for individual students. While this method is valid for group accountability (and is currently employed for National Assessment of Education Progress or NAEP), it does not allow individual parents and educators to evaluate how a child is performing compared to peers and grade-level expectations. This system runs the risk of not providing any comprehensive measure of a specific student’s ability to perform against grade-level standards. Parents, particularly parents of students with disabilities, have indicated that having access to these measures is important to them. In addition, this option also faces similar challenges as option 2 with regards to alternate assessments. For these reasons, our Task Force has strong concerns with this proposal.

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<sup>4</sup> Examining Annual Targets for Indicator 3B: Proficiency for Children with IEPs on Statewide Assessments  
<https://www.advocacyinstitute.org/resources/Indicator3B.SpecialReport2022.pdf>.

Our Task Force believes annual assessments are an important tool to support the learning of students with disabilities and to assess the effectiveness of our schools. Given that since 1997, the IDEA has required that states include [all] students with disabilities in state assessment systems, including through the development of alternate assessments<sup>5</sup> and that the disability and civil rights communities have won important victories regarding assessments that include all students and monitor student performance with disaggregated data, we cannot support this bill. We also recognize that more needs to be done to create assessments that are culturally responsive and provide meaningful data and feedback for educators to craft more inclusive curriculum. We look forward to working with you to ensure students with disabilities needs are met. If you have any questions or concerns, please reach out to one of the CCD Education Task Force Co-chairs listed below.

Sincerely,

Access Ready  
Autism Society of America  
Autistic People of Color Fund (APOC)  
Autistic Women & Nonbinary Network  
Center for Learner Equity  
Children and Adults with Attention-Deficit/Hyperactivity Disorder  
Council for Learning Disabilities  
Council of Parent Attorneys and Advocates  
Division for Learning Disabilities - Council for Exceptional Children  
Learning Disabilities Association of America  
Learning Disabilities Association of America  
Muscular Dystrophy Association  
National Center for Learning Disabilities  
National Down Syndrome Congress  
Perkins School for the Blind  
RespectAbility  
The Advocacy Institute  
The Arc of the United States

#### **CCD Education Taskforce Co-Chairs:**

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<sup>5</sup> Quenemoen, R. (2008). *A brief history of alternate assessments based on alternate achievement standards* (Synthesis Report 68). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.