

President's Message



Jessica Rueter

What an exciting adventure we had at the CEC Convention in Boston. Becky Diekman was awarded the Member of the Year, and Becky Davis was given the James Poteet award. Congratulations! It was so nice to see so many friends and colleagues at the CEDS



Becky Diekman



Becky Davis

Business Meeting, social, and presentations.

During the CEC Convention, the executive board met and discussed proposed changes to the CEDS constitution and to the structure of the executive board. During the summer and fall of this year, we will be working on the draft of these changes. We will provide you with a copy of the draft after the proposed changes are complete. In addition, we discussed tentative plans for a conference in Fall 2018. We will keep you posted as these plans develop.

Teresa Montani is leading our validation committee to update the advanced specialty standards. We look forward to this process as we work to update our professional organization standards. Elizabeth Dragone and Mitch Yell have worked tirelessly to advocate on behalf of

CEDS to the CEC Representative Assembly. Sandra Irby and myself represented CEDS at the Interdivision Caucus Meeting. Brenda Gilliam, our CAN representative, will be attending the CEC Leadership Conference this summer in Washington DC and will be meeting with legislators to advance CEC and CEDS initiatives.

Please consider the Call for Nominations for our Executive Board. If you know of anyone, including yourself, who would be willing to serve our organization as an executive board member, please contact Mitch Yell at MYELL@mailbox.sc.edu. Please see the Call for Nominations included in this newsletter.

The growth and health of our organization is only as good as our members. Please share with fellow colleagues the importance of being a CEDS member. Our organization cannot remain relevant if we do not have members who support us. If you have recently moved or have let your membership lapse, please contact Norm Geller at norman.geller@gmail.com, or renew your CEC and CEDS memberships at <http://www.cec.sped.org/Membership>.

Finally, I encourage you to check out our Facebook page by going to <https://www.facebook.com/groups/204744876302355/>. We will keep you updated on conferences, current activities of the organization, and opportunities where you can become more involved. While you are on our Facebook page, be sure to "like" us.

Feel free to contact me at jrueter@uttyler.edu. I am looking forward to hearing from you and meeting you at our professional development venues.

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Call for Nominations

Mitchell Yell, Past-President

The Council for Education Diagnostic Services (CEDS) is seeking nominations for two positions on the CEDS executive board. The CEDS executive board provides governance and oversight for CEDS operations and initiatives. The role of each Board member is to act in the best interest of the organization as a whole, and it is vital to the growth and success of the organization that strong and committed individuals are elected to leadership positions.

The two open positions are:

President-Elect. The president elect enters into the CEDS presidential rotation. This position will involve serving 2 years as the president-elect, 2 years as president, and 2 years as past president.

Treasurer. The treasurer serves a 3-year term.

If you are interested in either of these positions or have any questions about them, please contact Mitchell Yell at myell@sc.edu.

AEI Article of the Year Award

The *Assessment for Effective Intervention* is the official journal of CEDS. The AEI Article of the Year for 2016 was presented at the CEC Annual Convention in Boston to Deanne A. Crone, PhD, Sarah E. Carlson, PhD, Marcia K. Haack, PhD, Patrick C. Kennedy, PhD, Scott K. Baker, PhD, and Hank Fien, PhD for their article titled *Data-Based Decision-Making Teams in Middle School* which was first published on November 3, 2015. Members can access the article at <https://goo.gl/seUVXu>.

CEDS Membership

Norm Geller, Ph.D., Chair

The membership committee of CEDS is busy working to recruit and retain members. The Council for Exceptional Children has recently shared with its divisions that they are working on retention and recruitment with a major push in reaching out to the current membership and revitalizing communications with past membership. As an incentive to new members, CEC has developed a marketing plan as a means to encourage more people to join. It is imperative that CEDS reach out to those in our field to help heighten awareness of the need for good diagnostic services.

At the 2017 conference in Boston, CEDS reached out and invited several other divisions to the social. It is our hope that we continue to collaborate with other divisions and provide more opportunities for us to work together in the future.

All members of CEDS are encouraged to submit articles of interest or inquiries for discussion for distribution through either a bimonthly emailing or website distribution. By doing so, CEDS hopes to stimulate discussion and heightened awareness of different test techniques or strategies for assessment. By doing so, we take our national span and distill it into one strong professional organization.

Leann DiAndreth-Elkins, Editor

Communiqué is the official quarterly newsletter of the Council for Educational Diagnostic Services (CEDS), a division of the Council for Exceptional Children. Subscriptions are by membership to CEDS. Web postings are made when the newsletter is sent to members. The editor encourages responses, ideas, and inquiries. Submissions of previously unpublished material are welcome for consideration.

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Assessment for Effective Intervention:

The official quarterly research journal of CEDS is *Assessment for Effective Intervention*, provided through CEDS membership. The primary purpose of the journal is to publish empirically sound manuscripts that have implications for practitioners. Submissions are encouraged; guidelines are available at <http://aei.sagepub.com>

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Updates from The Representative Assembly: Work Continues on the Individuals with Disabilities Education Act Reauthorization Principles and Recommendations

Dr. Elizabeth Dragone

On Friday, April 21, the Representative Assembly met to provide input on the work that has been accomplished throughout the past year and a half by CEC's Individuals with Disabilities Education Act (IDEA) Reauthorization Workgroup. The workgroup was established by the CEC Board of Directors in Fall 2015 to begin developing principles and recommendations for future IDEA reauthorization. The workgroup conducted town hall meetings and surveys to identify potential issues for reauthorization in this member-driven process.

The members of CEC's IDEA Reauthorization Work Group include: Timothy Lewis, Chair; Kaitlyn Brennan; Gwendolyn Cartledge; Vivian Correa; John Eisenberg; Linda Lewis; Brandi Simonsen; Russell Skiba; Martha Thurlow; Sharon Walsh; Denise Whitford; Phyllis Wolfram; Mitchell Yell; Gayle Zavala; and CEC Staff: Alex Graham, CEC Executive Director; Deb Ziegler, CEC Director of Policy & Advocacy; and Katie Grady, CEC Coordinator of Policy & Advocacy.

As the Workgroup stated in a summary sent to RA members prior to the meeting, "CEC fully supports

IDEA and remains committed to the continuing successful implementation of this essential law. At this time, CEC is not calling on Congress to reauthorize IDEA; our leadership is simply doing its due diligence as the largest special education professional association to be prepared with principles and recommendations when IDEA reauthorization is taken up by Congress."

At the Representative Assembly meeting, input was sought on 11 principles pertaining to the following topics: Well-Qualified and Supported Workforce, Identification and Eligibility Process Aligned With Educational Outcomes, Equal Access to General Education Opportunities, Access and Instructional Supports for Improved Student Outcomes, Accountability, Promoting Children and Youth's Social, Emotional, and Behavioral Well-Being, Postsecondary and Career-Ready Alignment, Protection of Children's and Family Rights, Early Intervention and Early Childhood, Federal and State Resources, and National Activities to Improve Education of Children with Disabilities. Work on this document will continue throughout the year.



Report from the Professional Standards Committee

Dr. Teresa Oettinger Montani,

Chair

The CEC Board of Directors made some changes to the Knowledge and Skills Subgroup two years ago. They asked that Divisions appoint Knowledge & Skills Representatives for a 3-year term with the possibility of a 2nd term (total of 6 years). As the CEDS Knowledge & Skills representative, I attend quarterly online meetings and the in person meeting at the CEC Annual Convention. This year we meet for four hours on Friday morning of the CEC Convention. We reviewed the proposed revised standards for the Division of Visually Impairments and DeafBlindness (DVIDB) and we received an

update on the validation report from the Division of Early Childhood (DEC). The committee voted to approve the validation report from DEC.

While we made significant progress with our review of the DVIDB, we will continue the review online to complete review of each standard for this division. In addition, we received updates from divisions on proposed specialty sets and established future Knowledge and Skills meeting dates. We will meet online on July 17, September 25, November 13, and in person at the CEC Annual Convention in Tampa, Florida in February 2018.

The CEDS validation study was presented to the Professional Standards and Professional Standards Board for review at the April 20 meeting. We expect to receive notification of the decision shortly, and then we will begin the next step in the process, which will be to develop proposed knowledge and skill statements and document the literature for any proposed changes to the standards.

The Law Corner

Andrew F. v Douglas County School District (2017)

Mitchell L. Yell, Ph.D.

On January 11, 2017, I was fortunate enough to attend oral arguments at the U.S. Supreme Court in the important special education case, *Andrew F. v. Douglas County School District*. The case involved Andrew F., a young boy with Autism who attended a special education program in Douglas County School system in Colorado. Andrew's parents had requested a due process hearing, contented that the Douglas County School System had failed to provide him with a free appropriate public education (FAPE), as required by the Individuals with Disabilities Education Act (IDEA).

The IDEA defines a FAPE as special education and related services that (a) are provided at public expense, (b) meet the standards of the state educational agency (SEA), (c) include an appropriate preschool, elementary, or secondary education, and (d) are provided in conformity with the individualized education program (IEP). Thus, a student's FAPE is developed, implemented, and memorialized through the IEP. Moreover, the IEP must be targeted toward meeting the student's unique educational needs and be designed to confer educational benefit.

In 1982, the U.S. Supreme Court heard its first special education FAPE case, *Board of Education v. Rowley*. Ruling that the special education services provided to a student had to be sufficient to confer some educational benefit upon a student with disabilities, the High Court developed a two-part test to determine if a school district had provided a student with a FAPE. To determine whether a school district had provided a student a FAPE, the test required that a hearing officer or court ask first if a school district had adhered to the procedural requirements of the IDEA and second if a student's IEP was reasonably calculated to enable the child to receive educational benefits? In the years since the Rowley decision, hearing officers and judges had few difficulties in applying the first part of the Rowley standard, the procedural test, in FAPE cases. The second part of the standard, the substantive test, however, proved to be much more difficult because hearing officers and judges would have to determine what degree of educational benefit was necessary to confer a FAPE. Furthermore, courts were split on the question of what amount of benefit was necessary, with some courts holding that to confer FAPE a school district's program had to confer meaningful educational benefit, whereas other courts held that the degree of benefit only had to be slightly more than trivial or *de minimis*.

This degree of educational benefit question was addressed in a decision by the U.S. Court of Appeals for the Tenth Circuit on August 25, 2015, in the case *Andrew F v. Douglas County School District*. The case involved Andrew F (hereafter Drew), a young boy who was diagnosed with autism and attention deficit hyperactivity disorder (ADHD). Drew attended the Douglas County Schools from preschool through the fourth grade. During those years, Drew received special education services in conformity with his IEP. Because Drew had an especially difficult fourth grade year, his parents decided that he was no longer receiving benefit from his educational program. They rejected the school district's IEP fifth grade IEP and placed him in a special school for students with autism. The parents

believed that Drew had been denied a FAPE, therefore, they requested tuition reimbursement for Drew's private school placement. The parents asserted that Drew had failed to make progress toward his measurable IEP goals and that the school had not addressed their child's worsening problem behavior. The matter went to a due process hearing level. The hearing officer decided that the school district had provided FAPE, therefore denying the parents request for tuition reimbursement. The parents appealed to the U.S. District Court and eventually to the U.S. Court of Appeals for the 10th Circuit, losing at both levels. The parents filed with the U.S. Supreme Court, arguing that the hearing officer and courts needed to use the heightened meaningful benefit when determining if a FAPE had been conferred.

On September 29, 2016, the U.S. Supreme Court decided to hear *Andrew F. v. Douglas County School District*. In this case, the high Court agreed to address the following issue: What is the level of educational benefit that school districts must confer on children with disabilities to provide them with the FAPE guaranteed by the IDEA.

The Supreme Court's decision in the Andrew F. case, which, along with *Board of Education of the Hendrick Hudson School District* (1982), have been the only FAPE cases heard by the highest court in the land since the Education of All Handicapped Children Act was passed in 1975 (this law was renamed the IDEA in 1990). The U.S. Supreme Court's decision was handed down on March 22, 2017. Chief Justice John Roberts wrote the opinion for a unanimous court in vacating and remanding the decision of the U.S. Court of Appeals for the 10th Circuit. According to Justice Roberts to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make academic and/or functional progress appropriate in light of the student's circumstance. In the Court's opinion, Justice Roberts also noted that the IEP, which he called term this "fact-intensive exercise," is developed and implemented by school personnel and a student's parents collaborating to create a special education program for pursuing academic and functional advancement. Justice Roberts wrote that the Court had developed a standard that was "markedly more demanding than the trivial or *de minimis* standard." According to the Court's opinions:

When all is said and done, a student offered an educational program providing 'merely more than *de minimis* progress from year to year can hardly be said to have been offered an education at all. . . . A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

Although the full effects of this ruling will not be evident until new FAPE cases reach the courts, we can be confident that the decision in Andrew means that the *de minimis* standard of educational benefit is dead and that courts will look more at student progress in future FAPE litigation.