



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

July 25, 2011

Elizabeth McFadden
Deputy General Counsel for Ethics, Legislative Counsel,
and Regulatory Services
Office of the General Counsel
U.S. Department of Education,
400 Maryland Avenue, SW., Room 6E300,
Washington, DC 20202-2110

Dear Ms. McFadden:

RE: Comments to Docket ID ED-2011-OGC-0004
Reducing Regulatory Burden: Retrospective Review Under E.O. 13563

The Consortium for Citizens with Disabilities Education Task Force respectfully submits the following comments to the U.S. Department of Education's proposal to include the regulations in 34 CFR part 300 under Part B of the Individuals with Disabilities Education Act (IDEA) among the Department's initial list of candidate rules for review over the next two years. Including IDEA in this review raises serious concern for a number of reasons.

First, the Department states that its reason for including IDEA regulations as a candidate is based on having "*heard from a number of States about burden associated with some provisions of our current Part B, IDEA regulations...*" While this criticism is not surprising, it should be noted that IDEA was established more than 35 years ago because state education agencies and local education agencies were implementing policies that resulted in children with disabilities being under-educated if they received any education at all. Moreover, IDEA, as a civil rights statute, is formulated to ensure that students with disabilities are included in and receive an appropriate public education; and, as cited in IDEA the purpose is:

- (A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living,
- (B) to ensure that the rights of children with disabilities and parents of such children are protected; and
- (C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities.

Furthermore, IDEA's purpose is also:

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

In the 2004 amendments to IDEA, Congress established a pilot program through which states can identify ways to reduce paperwork burdens and other administrative duties that can increase time and resource available for instruction and other activities aimed at improving educational outcomes for students. We continue to support the state education agencies and local education agencies to meet their obligations to students with disabilities in accordance with the United States Constitution and encourage them to pursue innovative and efficient activities that relieve paperwork and other administrative challenges.

Second, the notice lists among the factors ED will use in setting priorities for the review *“Does ED anticipate reauthorization of the authorizing statute in the near term such that prompt review of existing regulations would likely be disrupted or not lead to regulatory revisions that could be implemented before reauthorization?”*

Most would agree that reauthorization of IDEA is anticipated in the “near term.” While Part B is permanently authorized, it is likely that Congressional activities to review and amend all other parts of IDEA will begin immediately following the passage of a reauthorized Elementary and Secondary Education Act (ESEA). We hope Congress will address ESEA legislation during the 112th Congress. Equally important is the need to closely align IDEA with a reauthorized ESEA to ensure that students with disabilities are provided equal opportunities to benefit from the broader federal education law while ensuring the protections provided by IDEA. We believe that revising IDEA regulations in the face of ESEA reauthorization is likely to create less alignment and more confusion.

Third, the Department notes that one of the principles for regulatory planning and review is to *“allow for meaningful public participation.”* We are particularly concerned about how any review of existing IDEA regulations— in the absence of a Congressional reauthorization process— can provide for meaningful public participation, especially for parents and other family-members of students with disabilities. The Congressional review process ensures public participation by virtue of its elected members' interest in their constituents. A Department review does not ensure the same level of interest. Rather, it could easily be heavily and unduly influenced by those with significant Washington-based resources. The resource inequities among IDEA stakeholders are an important consideration for the Department in deciding whether to include IDEA in this process.

It is also important to note that the federal regulatory process following the last two reauthorizations of IDEA (1997 and 2004) each took two full years complete. Moreover, 7

years after the reauthorization, we are still waiting to receive final Part C regulations. While lengthy, these processes have ensured equal public participation and consideration of large numbers of comments. The Department should anticipate the process of proposing revised IDEA regulations via the retrospective review to be equally lengthy.

Overall, these concerns bring us to conclude that a review of existing IDEA regulations is imprudent. Therefore, we request that the Department remove IDEA regulations from its list of candidates.

We do, however, believe this may be an appropriate time to review the guidance generated by the Department regarding the State Performance Plan and Annual Performance Reports, as well as the process currently used by the Department to determine States' adequate implementation of IDEA. Current guidance omits consideration of "performance" indicators – such as graduation rate, dropout rate and proficiency on state assessments – in making both State Education Authority (SEA) and Local Education Authority (LEA) determinations. If the Department really wants to make changes to guidance that will improve outcomes for students, the current guidance should be closely examined, particularly its alignment to Congressional intent.

We thank you for considering the views of the children, their parents, teachers and other personnel that we collectively represent.

Sincerely,

Association of University Centers on Disabilities
Autism National Committee
Council of Parents Attorneys and Advocates
Easter Seals
Higher Education Consortium for Special Education
National Alliance on Mental Illness
National Center for Learning Disabilities
National Down Syndrome Congress
National Down Syndrome Society
The Advocacy Institute
The Arc of the United States

The Consortium for Citizens with Disabilities is a coalition of nearly 100 national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society. Approximately 50 national organizations participate in the CCD Education Task Force. For additional information, please contact:

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