



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

September 20, 2017

Hilary Malawer
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue SW
Room 6E231
Washington, DC 20202

Re: Docket ID: ED-2017-OS-0074, Evaluation of Existing Regulations

Dear Ms. Malawer:

The Consortium for Citizens with Disabilities Education Task Force writes in response to the above referenced docket number.

The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national disability organizations working together to advocate for Federal policy that ensures the self-determination, independence, empowerment and integration of individuals in all aspects of their lives. CCD's Education Task Force works on behalf of children and youth and their families to ensure the inclusion of children and youth with disabilities in our nation's education systems and in all aspects of society. The CCD Education Task Force sees these principles as critical elements in a society that recognizes and respects the dignity and worth of all its members.

For nearly 50 years, the civil rights of children, including those with disabilities – from infancy into adulthood – have been the focus of key federal laws passed by the U.S. Congress. These laws, upheld by the courts and regularly reauthorized and consistently aligned to create unified federal policy, provide the strong basis to promote and uphold equity and access to a public education for America's children. Some of the laws were enacted in response to widespread discrimination that was confronted by strong citizen activism and litigation brought by individuals facing discrimination.

The CCD Education Task Force stands behind all laws we believe are the most significant to correcting discrimination and sustaining equity in our education system. The laws, their federal implementing regulations and non-regulatory guidance that are essential to assuring states and districts fulfill their obligations to children with disabilities and their families including:

- Civil Rights Act of 1964

- Elementary and Secondary Education Act (ESEA), currently known as the Every Student Succeeds Act (ESSA)
- Rehabilitation Act of 1973 (particularly Section 504)
- Individuals with Disabilities Education Act (IDEA)
- Higher Education Act
- Americans with Disabilities Act (ADA)
- Workforce Innovation and Opportunity Act (WIOA) amending Title 1 of the Rehab Act

The undersigned members note that the wholesale evaluation of existing regulations for the purpose of repeal, replacement, or modification (Executive Order 13777 Sec. 3(g)(ii)) is highly unusual and misguided. The process of promulgating regulations is codified in the Administrative Procedures Act (APA) and is a bedrock of administrative law. Indeed, more than forty years ago, Senator McCarran noted that the APA was, “a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated by federal government agencies.”

The regulations listed by the *Regulatory Reform Task Force* for possible “repeal, replace or modify” by the U.S. Department of Education have already gone through the open, transparent, and prescribed procedure as mandated by the APA. For all regulations, the rulemaking process begins after Congress passes a bill and the President signs it into law. Before the draft rule is published by the federal agency, it is reviewed by the Office of Management and Budget (OMB). The public then has 30 to 90 days to provide feedback. Agencies must consider all comments, document responses to them, and develop a revised regulation that is then sent to OMB for final review. In some cases, these regulations undergo a second comment period before final regulations are published.

Further, in promulgating regulations agencies must assess costs and benefits of regulatory action (Executive Order 12866), provide estimates of time necessary for reporting of information required by the regulations (Paperwork Reduction Act of 1995), provide opportunities for consultation by elected officials of those state and local governments affected by the regulations (Executive Order 12372) and determine whether the regulations require transmission of information that another agency gathers or makes available (20 U.S. Code § 1221e–4, Educational impact statement). These processes ensure that development of regulations is based on a wide range of input and sound information and that the statute in question will be implemented as intended.

We believe the Administration’s proposal under Executive Order 13777 is completely unnecessary, costly and redundant.

Executive Order 13777 requires each Regulatory Reform Task Force to attempt to identify regulations that:

- (i) eliminate jobs, or inhibit job creation;
- (ii) are outdated, unnecessary, or ineffective;
- (iii) impose costs that exceed benefits;
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently

transparent to meet the standard for reproducibility or
(vi) derive from or implement Executive Orders or other Presidential directives that have
been subsequently rescinded or substantially modified (Executive Order 13777 Sec. 3(d)).

It is important to note that the normal process of promulgating regulations already takes these factors into account.

Agencies should review their regulations from time to time to ensure that they remain relevant and effective. However, we believe that eliminating regulations for the sake of elimination is misguided and will be harmful. All agencies should conduct their activities in a way that furthers their mission. The U.S. Department of Education should work to ensure that its regulations “promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access” (U.S. Department of Education Mission Statement, <https://www2.ed.gov/about/landing.jhtml>). Any efforts of the Department to repeal, replace, or modify regulations without regard to the impact on the students and families served by this Department carries the risk of doing harm to the very students and families it serves.

The U.S. Department of Education fulfills a vital role in providing federal regulations and guidance to states so that districts and schools can meet their legal obligations to assure children with disabilities are provided equal educational opportunities and a free appropriate public education.

As Education Secretary DeVos recently commented to a gathering of the nation’s special education leaders, “We should celebrate the fact that unlike some countries in the world, the United States makes promises that we will never send any student away from our schools. Our commitment is to educate every student. Period. It’s but one of America’s many compelling attributes.”

Federal regulations and non-regulatory guidance help states and districts fully implement each of the above-mentioned laws which are critical to this promise. As such, none should be repealed, modified or rescinded by the Administration.

Sincerely,

The Advocacy Institute
American Dance Therapy Association
American Foundation for the Blind
The Arc
Association of Assistive Technology Act Programs
Association of University Centers on Disabilities
Autistic Self Advocacy Network
Center for Public Representation
Conference of Educational Administrators of Schools and Programs for the Deaf
Council for Exceptional Children
Council for Learning Disabilities
Council of Administrators of Special Education
Disability Rights Education and Defense Fund
Division for Early Childhood of the Council for Exceptional Children
Easterseals
Higher Education Consortium for Special Education
IDEA Infant Toddler Coordinator Association

Judge David L. Bazelon Center for Mental Health Law
Learning Disabilities Association of America
National Association of Councils on Developmental Disabilities
National Association of School Psychologists
National Association of State Directors of Special Education
National Center for Learning Disabilities
National Disability Rights Network
National Down Syndrome Congress
School Social Work Association of America
TASH
Teacher Education Division of the Council for Exceptional Children

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