



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

August 19, 2020

David Egnor
U.S. Department of Education
400 Maryland Avenue, SW
Room 5163
Washington, DC 20202-5076

Submitted via [regulations.gov](https://www.regulations.gov)

Re: Docket ID ED-2020-OSERS-0015

Dear Mr. Egnor:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Education Task Force appreciate the opportunity to comment on the Proposed Requirements—The Individuals With Disabilities Education Act (IDEA) Paperwork Reduction Waivers, as published in the June 5, 2020, Federal Register. As stated in the Federal Register announcement, the Department may use these proposed requirements and definition in fiscal year 2020 and later years. The Department intends to accept waiver proposals from States for 12 months following publication of an appropriate notice.

To briefly recap the history of the paperwork reduction pilot program, this pilot and Federal grants to assist with it, have been offered to States several times since the Secretary was given this authority in IDEA 2004 (P.L. 108-446), as follows:

In **2007** the Department offered States a small grant to help with the work associated with implementing the pilot. No State submitted a proposal for that grant. In fact, several states wrote letters to OSERS explaining their reasons for not applying for and implementing the Paperwork Waiver Program, noting that the program would require more paperwork and staff, but provide little in the way of additional federal funds.

In **2019** the Department offered States the opportunity to apply for “Planning Grants” that could be utilized to assist them in identifying excessive paperwork and non-instructional time burdens on special education teachers, related services providers, and State and local administrators that do not assist in improving educational and functional results for children with disabilities and developing comprehensive plans to reduce them. Award size ranged from \$150,000 to \$250,000, and the estimated number of awards was 6 to 10. Despite the substantial size of the award (compared to 2007) only one state submitted an application, which was not funded.

In **2020** the Department published Proposed Priorities, Requirements, and Selection Criteria—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—The Individuals With Disabilities Education Act (IDEA) Paperwork Reduction Planning and Implementation Program. This notice specifically asked States to provide input on the appropriate size of awards under these priorities (Directed Question #2). There were a total of 5 comments submitted (CCD Ed TF, supported by 17 national organizations, National Down Syndrome Congress; ASHA; American Academy of Pediatrics; one individual.) All of these comments addressed concerns about the proposed program. Importantly, no state educational agencies or any organization representing state or local special education directors/administrators were submitted.

This history **strongly suggests** that there is little if any interest among States to pursue this waiver opportunity. As the notice points out, *“States have always had the authority, within the constraints of State law, to change or waive State requirements that exceed IDEA statutory and regulatory requirements in order to reduce administrative burden.”* In fact, States may use the funds reserved from their IDEA Part B grant-to-states funds for “paperwork reduction activities, including expanding the use of technology in the IEP process” (P.L. 108-446 §611(e)(2)(C)(ii)).

Despite this clear evidence of disinterest as well as the unprecedented challenges involved in delivering special education and related services brought about by the COVID-19 pandemic, on August 6, 2020, the Department issued an invitation to States to apply for grants to support planning and implementation of an IDEA Paperwork Reduction waiver.¹

Responses to Directed Questions

#1. We invite public comment on whether there are other specific issues the Department should consider when evaluating waiver proposals and whether we should require States, in their proposals, to provide further explanations of the legal and research based supports for their proposals.

RESPONSE: We propose additional requirements as follows:

¹ <https://www.govinfo.gov/content/pkg/FR-2020-08-06/pdf/2020-17218.pdf>

- Add to (a)(i) a specific reference to the State’s Parent Training and Information Center (PTIs) and (if applicable) Community Parent Resource Centers funded under IDEA Part D, the State’s Special Education Advisory Panel required under IDEA Part B, and the State’s Protection and Advocacy Agency as required stakeholders that must be involved in selecting the requirements proposed for the waiver and any specific proposals for changing those requirements to reduce excessive paperwork.

Rationale: It is important to clearly articulate the involvement of these stakeholder as they are most well positioned to provide substantial input on the waiver proposal. Naming them in the requirements will ensure their involvement. We feel that the State’s Protection and Advocacy Agency, while not required nor funded by IDEA, are uniquely positioned to contribute to this activity given their legal expertise regarding all Federal education/civil rights laws, access and their close collaboration with state PTIs.

- Add a requirement that any state submitting an application for a waiver must have achieved a determination of “Meets Requirements” in the most recent annual determination on its implementation of IDEA. Any notice inviting applications should clearly state that the Department will reject any application from a state that received a rating of “Needs Assistance,” “Needs Intervention,” or “Needs Substantial Intervention” in its most recent annual determination.

Rationale: The language contained in section 1408 authorizing the Paperwork Reduction pilots referencing termination of a waiver due to annual state determinations (a)(4)(A)-(B) was based on the fact that the annual determination requirement was part of the 2004 amendments and, therefore, was viewed prospectively. Now, more than 16 years have passed and the annual determinations process has been underway since 2007.² The Department changed the determinations process in 2014 in an attempt to improve outcomes for students with disabilities.³ In the seven ensuing years, only seven states have achieved a “Meets Requirements” rating each year.⁴ Given the accumulated history of annual state determinations, we consider this requirement to be essential to a State’s eligibility to receive a Paperwork Reduction waiver.

- Add a requirement that States must provide, as part of the description of anticipated benefits (Proposed Requirements (a)(11), quantitative data on the expected improvement of performance of students with disabilities.

Rationale: The current requirement regarding anticipated benefits is insufficient. How the pilot resulted in quantifiable improvement in the performance of students with disabilities

²U.S. Department of Education Determination Letters on State Implementation of the IDEA
<https://www2.ed.gov/fund/data/report/idea/partbspap/prevideaetermfs/2007ideastatedetrmnationsfactsheetfinal.pdf>

³ DETERMINATION LETTERS ON STATE IMPLEMENTATION OF IDEA JUNE 2014
<https://www2.ed.gov/fund/data/report/idea/finalrev0413152014ideafactsheet-determinations.pdf>

⁴ <http://www.advocacyinstitute.org/www/resources/IDEAPartB-StateDeterminations2014-2020.pdf>

should be included. These could include performance on State Performance Plan indicators such as performance of students with disabilities on general state assessments, alternate academic assessments, graduation rate and drop-out rate. Without measuring these elements, it will only be **presumed** that the anticipated benefits articulated in (11)(i)-(iii) result in improved educational and functional results for children with disabilities, which is the stated purpose of the program.

#2. The Department is seeking public comment on the best ways to address the close relationship between IDEA and the Section 504 protections that apply to school-aged children with disabilities and if, because of the overlap between IDEA and Section 504, should States, in their waiver proposals, be required to include a specific explanation of why the waiver sought would not conflict with requirements of, or relating to, Section 504 and its implementing regulations?

RESPONSE: While we acknowledge the close relationship between Section 504 and IDEA described in the notice, we see no reason for the Department to require States to address Section 504 in an application for an IDEA paperwork reduction pilot. While States may use their IDEA procedures as one means of compliance with Section 504, this is at their discretion and varies by State. Equally important, the Office of Special Education Programs has no authority regarding monitoring or enforcement of Section 504. In the educational context, the Office for Civil Rights has been given administrative authority to enforce Section 504.⁵ Therefore, it would be both illogical and burdensome to ask States to address why a waiver would not conflict with requirement of, or relating to, Section 504.

#3. We are particularly interested in comments regarding paragraphs (a)(6) and (a)(7) of the proposed requirements. These requirements originally appeared in the 2007 final requirement. However, we are interested in public comment on whether these paragraphs are sufficiently clear that parents have the right to understand and consent to changes that affect their children's education and do not imply that waivers of FAPE are permitted under this program.

RESPONSE: Under Section 609 of IDEA it is clear that the Secretary may not waive any statutory or regulatory provisions relating to applicable civil rights requirements or allow a State or local educational agency to waive procedural safeguards under section 615 of IDEA, and waivers may not affect the right of a child with a disability to receive a free appropriate public education (FAPE) under IDEA Part B. Therefore we appreciate the opportunity to answer whether paragraphs (a)(6) and (a)(7) of the proposed requirements are sufficiently clear that parents have the right to understand and consent to changes that affect their children's education and do not imply that waivers of FAPE are permitted under this program.

We are very concerned that the language in these paragraphs is very confusing and could be interpreted to imply that the provision of FAPE is being waived. Even in the question being

⁵ Frequently Asked Questions About Section 504 and the Education of Children with Disabilities available at <https://www2.ed.gov/about/offices/list/ocr/504faq.html>

asked by the Department there is a reference to changes affecting the child's education. If there are paperwork waivers that affect the child's education, then FAPE is being waived. Nothing in this program should impact a child's education. The language "paperwork requirements related to the provision of FAPE" does not clearly state what parents would be agreeing to waive. Instead, we suggest that this language refer to "an IEP that does not meet the requirements of section 614(d) of the Act" and provide examples of components of the IEP that could be changed without impacting the provision of FAPE. If the Department is referring to any other paperwork changes related to the provision of FAPE besides IEP development, that information should be clearly stated in the requirements.

American Association on Intellectual and Developmental Disabilities
American Council of the Blind
American Physical Therapy Association
Association of University Centers on Disabilities (AUCD)
Autism Society of America
Autistic Self Advocacy Network
Children and Adults with Attention-Deficit/Hyperactivity Disorder
Council of Parent Attorneys and Advocates
Council for Learning Disabilities
Disability Rights Education & Defense Fund
Easterseals
Learning Disabilities Association of America
National Center for Learning Disabilities
National Center for Parent Leadership, Advocacy, and Community Empowerment
National Center for Special Education in Charter Schools
National Disability Rights Network
National Down Syndrome Congress
RespectAbility
The Advocacy Institute
The Arc of the United States