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Hilary Malawer
U. S. Department of Education
400 Maryland Avenue, S.W.
Room 6E231
Washington, DC 20202

Re: Docket ID: ED-2017-OS-0074/ Comments regarding Evaluation of Existing Regulations
Title I, Part C, Migrant Education Program (MEP) regulations – 34 C.F.R. §§ 200.81 to 200.89

Dear Ms. Malawer:

Through this letter we would like to comment on several current regulations of the Title I, Part C Migrant Education Program (MEP), pursuant to the Department's review resulting from the President's Executive Order 13777 ("Enforcing the Regulatory Reform Agenda").

As you well know, this Executive Order established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. The specific regulations at issue discussed below are unduly costly and unnecessarily burdensome. We urge their repeal as a result of this regulatory review.

Federally Mandated, Detailed, Prescriptive Re-interviewing Process

First, we want to draw your attention to 34 C.F.R. § 200.89 (b), the regulation requiring direct re-interviewing of migratory parents several years after the intake of personal information from a family by a local or state Title I, Part C Migrant Education Program.

We believe the regulation is unnecessary, burdensome, and unduly costly and should be repealed. The regulation mandates an extensive, burdensome, and very expensive re-interviewing process that takes significant funds away from direct services to children and uses those funds for unnecessary, burdensome, and costly administrative functions. If there ever was a justification for the regulation in the past, the major justification for that regulation has passed, especially with the enactment of ESSA which allows states very substantial discretion in the implementation of Title I programs. This regulation is overly prescriptive and mandates a very detailed and burdensome system which costs even very small state programs outsized sums. Just a cursory review of this regulation reveals the large number of specific requirements of its mandate. One could argue that the discretion ESSA devolves to the states and local school districts renders this subsection illegal and in violation of ESSA.

Ensuring appropriate eligibility for migratory students is important, but the extraordinarily burdensome, overly detailed, and extensive re-interviewing mandate required in this regulation is not necessary and has

significant detrimental impact on education programs funded by this Title I and other educational programs. It is extremely intrusive on the states and agricultural (farmworker) and fishing parents. States should be allowed to develop their own quality control mechanisms and staff training, not dictated in great detail by and from Washington, DC. Once a state develops appropriate quality controls to ensure accountability and compliance with law, the state should be held accountable for those mechanisms and its eligibility determinations.

These re-interviewing regulations require hiring out-of -state personnel at great time and expense for each state program. Furthermore, and perhaps most importantly, the process has significantly intimidated parents and has caused many parents simply to refuse eligibility interviews and participation in the Program by their children, depriving them of important educational services which allow them to be promoted to their next grade and to graduate from high school. They do not understand why years after the initial interview, Program representatives who they have never seen before are asking them the same question they already responded. The parents often think the school believes they are dishonest. This creates enormous distrust between parents and the school district and program.

The current regulation at subsection 200.89 (d) is entirely sufficient to ensure quality control and proper eligibility determinations. That subsection (d) allows appropriate state discretion in determining the most effective method of quality control, based on its particular circumstances and student population, which could include re-interviewing, among other mechanisms, but would allow state discretion regarding the quality control process. Over-regulation through micromanagement or "dictates" from Washington, DC harms the program, creates barriers to parent participation, and means fewer educational services to this at-risk population. . Subsection 200.89 (b) should be repealed, and 200.89 (d) should be left intact, so the states may devise their own effective quality control systems.

Federally Mandated Certificate of Eligibility Form

We would also urge the Department to repeal the very strict and detailed federally mandated requirement for the Certificate of Eligibility (COE) found at 34 C.F.R. §200. It is an overly prescriptive, burdensome, and costly requirement for states and it renders state administration of the Program much more difficult. This has become especially true with the newest version of the national COE imposed by ED as a result of the change in some Program definitions in ESSA. States have been struggling to develop a form which complies with the detailed requirements in the regulation at the same time collecting the additional information that the state needs from the families

As long as the state COE form ensures necessary eligibility criteria, states should be able to develop and produce their own form. In many states, printing of this form has to go through a state process and, therefore, this state control, so long as the state form has the elements need to demonstrate eligibility, should be sufficient. The exact format of the Certificate should not be mandated by Washington, DC. If anything is needed at all, it would be a very simple regulation mandating that each state adopt a Certificate of Eligibility Form that is legally sufficient such that an eligibility determination may be made.

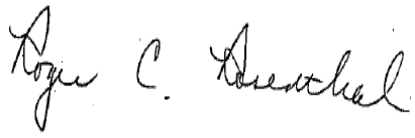
Use of MSIX For the Migrant "Count"

While not yet a regulation, the Office of Migrant Education has been talking for some time now about using the Migrant Student Information Exchange (MSIX) system for the migrant "count" which is used to

fund the state programs pursuant to a statutory formula. Currently, the "count" comes from the CSPR which is for a uniform "performance period". This requirement to use MSIX for the count would be exceedingly difficult to implement given the fact that different states upload data to MSIX at different times and it would be well nigh impossible to capture a count that is consistent from state to state. That would significantly disadvantage some states and, therefore, be extremely unfair and probably violate due process and administrative law. The current CSPR reporting period allows such a consistent snapshot of the count in each state at the same moment in time, and, therefore, ensures that no state is favored or disfavored by the time that the MSIX data would be captured for the all-important count for funding. Also, changing the count from CSPR to MSIX would be extremely costly to the states and local educational agencies and use very significant state (and federal) funds to change the state computer systems, taking more funds from direct services to children to use for DC-imposed bureaucratic changes which are unnecessary. The current system works well and does not need to be changed at very great expense and burden to state education technology and systems. We also take issue with whether ESSA actually provides authority for the MSIX system to be used to develop the count, given the enumerated functions for the MSIX system listed in the statute

In summary, we strongly urge the Department to repeal the two aforementioned regulation sections and to decide not to pursue a change in regulations regarding the migrant "count".

Sincerely,



Roger C. Rosenthal
Executive Director