

To: 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:

I am a parent of a special needs student as well as an attorney from Burbank, California. I am writing in response to the U.S. Department of Education's (ED) request for public comment on regulations that may be appropriate for repeal, replacement, or modification as directed by Executive Order 13777 and as part of the "Enforcing the Regulatory Reform Agenda" led by the Administration.

My work/role as an advocate and attorney directs me to first tell you that the test of any regulation, guidance, technical assistance and/or other administrative activity must be *whether [the regulation/guidance] advances educational equity and serves the interests of all students*. Therefore, COPAA believes ED's narrow slant and sole focus in this regulatory review tilts too far toward reducing burden on "entities significantly affected by Federal regulations" while completely disregarding the most important entity served by our nation's education laws – students.

Therefore, it is on behalf of children with disabilities in my school district and state and their families that I make the following recommendations:

1. Maintain all Federal Regulations pertaining to all education laws.

I strongly recommend that ED maintain all regulation, joint regulation and guidance related to the following laws:

- The Civil Rights Act of 1964
- The Elementary and Secondary Education Act (ESEA), currently known as the Every Student Succeeds Act (ESSA)
- Education Amendments Act of 1972 (particularly Title IX)
- The Rehabilitation Act of 1973 (Particularly Section 504)
- The Individuals with Disabilities Education Act (IDEA)
- The Higher Education Act (HEA)
- The Americans with Disabilities Act (ADA)
- The Workforce Investment and Opportunity Act (WIOA)
- The Carl D. Perkins Vocational and Technical Education Act (PERKINS)
- Freedom of Information Act (FOIA)
- Family Educational Rights and Privacy Act (FERPA)

As this relates to IDEA in particular, 20 U.S.C. Sec. 1232 states: "The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act which would procedurally or substantively lessen the protections provided to handicapped children under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services,

timelines, attendance of evaluation personnel at Individualized Education Program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.” I urge ED to maintain all IDEA regulations and guidance.

2. **Maintain all guidance pertaining to all education and civil rights laws.**
3. **Maintain the majority of ED Memos and Dear Colleague Letters.**
4. **Rescind a select few Dear Colleague Letters (DCL) that actually run counter to the IDEA and impede a parent’s right to be equal partners with the school system under the IDEA.**

The letters to rescind are:

- **Parent’s right to include/invite participants to IEP meetings:**
 - o Letter to Anonymous (2003)
 - o Letter to Byrd (2003)

Rationale: These letters must be rescinded. IDEA, 20 U.S.C. § 1414(d)(1)(B)(vi) and the regulations, 30 C.F.R. § 300.321(a)(6) and (c) allows parents and school district—at their discretion—to include on the IEP team individuals with knowledge or special expertise about the child **and upholds a parent's right to invite related services professionals and other IEP team members to IEP meetings.**

- **Parent(s) and expert(s) right to observe [the child] in the classroom**

Letter to Mamas (2004)

Rationale: This letter must be rescinded. As stated above, Congress has repeatedly found that “the education of children with disabilities can be made more effective by ... strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home.” §601(C)(5). To meaningfully participate parents and the experts they choose to work with/support their child often need to observe the child in the classroom. To fully participate as members of the IEP team, they should have the right to observe the child's education in progress, a proposed placement, whether accommodations and services are being provided, and other matters.

- **Independent Education Evaluations (IEE): The right of the family to include recommendations [to the IEP team] from the evaluator.**

Letter to LaDolce (2007)

Rationale: This letter should be rescinded because IDEA 34 C.F.R. 300.503(c) requires IEP teams to consider parentally obtained independent education evaluations (IEE). While the agency [state/district] may place restrictions on the criteria for the evaluation (34 C.F.R §300.502(a)(2)), the findings and recommendations of the IEE are integral to making final decisions about the child’s IEP.

- **Failure to consent to IEP under IDEA should not impact eligibility for Section 504**

Letter to McKethan, 25 IDELR 295, 296 (OCR 1996)

Rationale: This letter should be reversed because when parents reject the IEP developed under the IDEA, they “would essentially be rejecting what would be offered under Section 504. The parent could not compel the district to develop an IEP under Section 504 as that effectively happened when the school followed IDEA requirements.” This reasoning runs contrary to the intent of Section 504 protections.

I appreciate the opportunity to comment.

Sincerely,

Kelly L. Duenckel, Cal. State Bar. 168915