IMAGINAL EDUCATION GROUP

Evaluation of Existing Regulations
Docket ID: ED-2017-OS-0074
U.S Department of Education

The following comments are offered based on my understanding of the very complex text in question and not inclusive of all that there is to comment on. The comments are made in the context of the unaddressed issue in the regulations of childhood trauma and its impact on learning and its ability to mimic learning disabilities.

34 CFR 300.300 Parental consent.

(a) ***Parental consent for initial evaluation***.

Based on the research that tells us trauma symptoms mimic special needs, what is the alternative for children of trauma?

How are we defining “related services”?

How are we defining “reasonable efforts”?

How do you guard against parent’s promoting children being identified special needs who are not truly special needs?

How can a parent who is subject to being terminated be the determinate for denying a human being an evaluation? This decision perpetuates the problem, in my opinion. A person deemed unqualified to care for their child enabling the decision for a child not to receive services making the child vulnerable and susceptible to more maladies.

How does a denial to evaluate correlate with the findings of Endrew F. Case heard last year in Supreme Court?

(b) Parental consent for services

Evaluations of students should be inclusive of ACE-inclusive parent and caregiver training. It is, in my opinion, an unwise use of taxpayer monies to evaluate and help a child whose problems are in part perpetuated by the parent, when we do not at the same time expect something from the parent. *(intergenerational)*

How do you differentiate consent vs acknowledgement? Why not create a mechanism at Pre-K / Kindergarten registration where parent’s CONSENT to children receiving evaluations they need in school to support the school’s charge of providing a quality

education? Then, where you are currently asking for CONSENT would be more of an ACKNOWLEDGMENT which is in compliance with their original CONSENT.

An evaluation or reevaluation should not be contingent on parent consent. Do not misunderstand, I do believe you should have consent, but if you are unable to obtain then how can the parent or caregiver demand the service (quality education), but then limit delivery of same?

At some point the child must own their education, by the same token a parent should own responsibility for their child.

These are decisions being made absent of teacher weigh in and the result is teachers in the classroom paying the price.

We can't wash our hands of responsibility and still be held accountable.

34 CFR 300.302 – Screening for instructional purposes is not evaluation

If a teacher is not trained and resourced in and possess an understanding of identifying symptoms of the children in their classroom they should not be conducting screenings nor evaluations.

34 CFR 300.303 – Reevaluations.

"*Not more than once a year"* | *"at least once every three years*": If we were given a cancer diagnosis, and the doctor told us to come back in 12 months, we would have a problem. As with a cancer diagnosis, a time lapse of 12 months in addressing special needs or trauma-related issues can only exacerbate the problem, making the child more vulnerable, worsening outcomes.

34 CFR 300.304 – Evaluation procedures.

This goes back to the enrollment mechanism. If we think of education as a service provider, what service provider takes in a new client without first doing a thorough intake? Enrollment into the public education, whenever that happens, is our opportunity. Determining gaps caused by trauma can be identified and appropriately addressed, consent by parents can be obtained, expectation of engagement by parent in entire process can be clearly communicated.

We need trauma-informed IEP's.

In the light of the charge to the U.S. Department of Education, to provide a quality

education to ALL students, then the delivery of that service should serve its mission of producing productive, contributing, and positive citizens, which in my estimation would mean we teach with the end in mind, with our student's face in the future. The evaluation of that service (quality education) to its customer (student) should also reflect the same. There are quality assurance questions that can be asked and used as filters when determining and appropriating assessment tools and strategies.

In subparagraph, (c)(5) of this section it mentions the transfer of information from one public agency to another and the coordination between them within the same school year. Does this infer that schools are not required or obligated to share information and communication if the transfer is not within the same school year? Many of the issues we face in our societal systems is due to fragmentation, which results many times from lack of and intentionality in communication. This seems to be another area of opportunity.

In subparagraph, (c)(6) of this section speaking to the comprehensiveness of evaluations alerts me to another area where fragmentation can occur. There sometimes can be a disconnect between what IDEA requires or provides and that indicated and set forth by the DSM. Incongruence of multiple protocols for a student being served by more than one agency is not good.

34 CFR 300.306 – Determination of eligibility.

Does the parent determine or come into agreement with the qualified professionals that determine?

With schools receiving additional funds (being incentivized) for special needs classification, it can create a propensity to false diagnosis. Dr. Howard Adelman of UCLA's Center for Mental Health in Schools speaks to this in his information resource entitled Schools and the Challenge of LD and ADHD Misdiagnoses. In addition to the fact that students may be hastily identified so the school can receive funding, students with special needs-mimicking symptoms from trauma are being misdiagnosed.

I would suggest a provision to the special education regulation be added that states if a student living in poverty is suspected of having a learning disability, we say "time out". Because the research tells us that students of poverty are at high risk of trauma, we must give it our attention. There are protocols and frameworks available in other systems for addressing trauma that can be integrated into the education system. Address the trauma, mend the breach that has been created, and place student back on the path for success in school and life rather than a misdiagnosis that leads to a wrong trajectory with adverse outcomes.

I think the idea of drawing upon information from a variety of sources is invaluable. The concern is for the skill level needed for someone to create such a synthesis. Where is the process for this exercise documented?

34 CFR 300.307 – Specific learning disabilities.

See comments under §300.8.

34 CFR 300.309 – Determining the existence of a specific learning disability.

Students who have experienced trauma in childhood can show developmental delays in the areas described in (a)(1), but not have a true learning disability. The maladaptive emotions and behaviors resulting from child maltreatment hides a child's true learning ability.

Subparagraph (a)(2)(i) states that the determination was made based on the child's response to scientific, research-based intervention. If a child has been traumatized and mimic indicators of a specific learning disability, then a wrong intervention will create or produce wrong results.

Subparagraph (a)(3) states that the group determines findings are not primarily the result of one of six indicators. Where children who have been impacted by trauma at an early age the effects can mimic emotional disturbance as well as be brought on or exacerbated by the fact the child is at an economic disadvantage. What process is in place to make this delineation? This appears to be a place for expansion of explanation and an opportunity to address the issue of trauma more directly.

In subparagraphs (b)(1)(2), in light of the research on trauma's influence on learning, I would recommend more clarity on "appropriate instruction" and "qualified personnel". How are we going to prepare educators so that they are "qualified" to teach students of poverty and trauma and therefore, providing "appropriate instruction"?

34 CFR 300.310 – Observation.

How do we guard against a teacher's "get them out of my classroom" bias?

I question the applicability and effectiveness of "routine classroom instruction". Teachers trained in routine are trained, most likely, in normed teaching. Normed teaching caters to students in the mean. Students of poverty and trauma do not typically fall within the mean.

34 CFR 300.311 – Specific documentation for the eligibility determination.

Within the context of subparagraph (a)(3), it is important to consider the multi-varied impact of childhood trauma, and with it comes comorbid effects. Comorbid effects are when multiple behaviors manifest or exist simultaneously. Based on research, I would

caution against the identification or attempt to identify a singular response as the cause. You may identify the visibly-prominent behavior, but the root cause behavior could be something totally different. Cognitive and emotional effects not only reside simultaneously, but there is an interplay between them. You can't identify a child with one at the alienation or consideration of the other.

Subparagraph (a)(6): *Repeat from subparagraph* 300.309(a)(3) - Where children who have been impacted by trauma at an early age the effects can mimic emotional disturbance as well as be brought on or exacerbated by the fact the child is at an economic disadvantage.

Subparagraph (a)(7): *Repeat from subparagraph* 300.309(a)(2)(i) - If a child has been traumatized and mimic indicators of a specific learning disability, then a wrong intervention will create or produce wrong results.

As this section relates to RTI. I have heard horror stories first hand of the attempted implementation of RTI in schools. In general, as a whole, it doesn't seem to be working as planned. I recommend the creation of a trauma-informed version of RTI. A trauma-informed version of RTI could restore RTI back to its true original intent which was to reduce children from being identified as special needs. In my opinion RTI is not being used to its full extent, except with Tier 3 where students can default to special education classification. With a TI-RTI, we could help educators work with children of trauma, creating a pathway to success.

34 CFR 300.320 – Definition of individualized education program.

In regards to the research on trauma and its impact on learning, I would question the use of appropriate assessments and measures as it relates to this section.

With over half of our students in classroom in poverty and those same students at high-risk of trauma, I recommend looking at appropriateness of general education curriculum. If the benchmarks we are requiring in our general education curriculum and assessed by our standards, the same areas of impediment caused by trauma, then are we not setting those children up for failure?

34 CFR 300.321 – IEP Team.

Subparagraph (a). Is the child involved in any other system? If the answer is yes, it should be mandatory that an active representative from that agency and specifically that child's "case" be present as well. This section represents an opportunity to steward forward a more integrative service model. Fragmentation between systems serving children further exacerbate the child's trauma.

Subparagraph (b). The attendance of a child should be a non-negotiable. How in the world can we have a meeting regarding the outcomes and future of a student, when the person responsible for carrying out the outcomes is not present to take ownership?

We have to ask ourselves the question if we want to be effective. Why have a meeting if the people critical to delivering the outcomes and required to participate by this regulation, not expected to be there? Why would we make provision for failure?

34 CFR 300.322 – Parent participation.

We are a team, we need to make it work, not make it adversarial. We are all on the same side. We have a common goal and that is the success of the student.

34 CFR 300.323 – When IEPs must be in effect.

The child and the services they receive should never be compromised because of a lack of communication or partnership between agencies and states.

34 CFR 300.324 – Development, review, and revision of IEP

In subparagraph (a)(1), it lists four considerations that should be addressed. For (i) how are strengths identified? The idea of considering strengths, offering strength-based services is supported by research. I question the intentionality of this by IEP teams and the process by which they go about determining. If it is not clearly laid out in another location, it should be. All children, especially those who have been traumatized, need two things. They need to feel safe and the need to feel competent. Building instruction around a child's strength and passion, increases personal agency, which in turn increases success.

In subparagraph (2)(i), it reads *in the case of a child whose behavior impedes the child's learning….* Trauma in childhood interrupts brain development which impedes learning. If then trauma, is as currently written, would be a special factor considered, it is recommended that a standard being developed for a trauma-informed IEP.

34 CFR 300.8 – Child with a disability

Under this section, it sounds like children who have been traumatized would not be considered special needs, but only need related service, not special education.

Children who have been traumatized will experience developmental delays.

In subparagraph (b)(1) it says developmental delays, as defined by the state. Is this inferring there different states have different definitions?

As defined in subparagraph (c)(4)(i) someone could identify someone who has experienced trauma in childhood with a classification of *emotional disturbance.*