August 30, 2017

Ms. Hilary Malawer

U.S. Department of Education

400 Maryland Ave, SW, Room 6E231

Washington, DC 20202

Dear Ms. Malawer:

The American Speech-Language-Hearing Association appreciates the opportunity to respond to the U.S. Department of Education’s (ED’s) request for comments on regulations that may be appropriate for repeal, replacement, or modification in keeping with Executive Order 13777, “Enforcing the Regulatory Reform Agenda.”

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 191,500 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students. Audiologists, specialize in preventing and assessing hearing and balance disorders as well as providing audiologic treatment, including hearing aids. Speech-language pathologists identify, assess, and treat speech and language problems, including swallowing disorders.

Audiologists and speech-language pathologists (SLPs) who work in the schools are part of the education team, and the majority of ASHA’s SLP members work in a school setting. They provide important and valuable services that help students access the general curriculum and can be instrumental in designing learning systems for students. ASHA’s members support students, families, and staff from early education through graduation in the context of both general and special education and as such, this notice impacts ASHA members and those they serve.

ASHA recommends that ED provide federal guardrails to states to ensure students with disabilities have access to the necessary services they need for success.

**Family Educational Rights and Privacy - FERPA (Part 99)**

**Recommendation:**

Maintain FERPA (1974), and provide harmonization with the Health Insurance Portability and Accountability Act (HIPAA, 1996). Harmonizing these two laws for school-based services funded by both the Individuals with Disabilities Education Act (IDEA) and Medicaid will improve efficiency and reduce redundancy in reporting.

***Rationale****:*

Both FERPA and HIPAA require different personal identification data requirements. Schools that access IDEA funds and submit Medicaid claims are subject to both FERPA and HIPAA; thereby requiring two different sets of documentation for one child. The current reporting requirements do not improve student outcomes, but increase administrative burden on both the school and the provider of service. By harmonizing FERPA and HIPAA, states, school districts, and providers can still protect student data privacy while improving the provision of services. For example, there has been some misunderstanding regarding HIPAA’s and FERPA’s influence on the disclosure of information from newborn hearing screening programs to primary providers. This confusion can result in a loss to follow-up and delays in an identified child receiving essential early intervention services.

**Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Education Effectuation of Title VI of the Civil Right Act of 1964 (Part 100)**

**Recommendation:**

In general, ASHA recommends keeping the Office of Civil Rights (OCR) regulations and guidance at ED. Any review of regulations and guidance should require stakeholder input.

***Rationale:***

ED’s OCR regulations and guidance provide important oversight and guidance for students and their families who participate in programs that receive federal assistance in accordance with civil rights statutes, such as the Americans with Disabilities Act (ADA)/504 and IDEA. These regulations ensure that federal civil rights statutes are implemented and that programs that receive federal funds do not discriminate on the basis of race, color, national origin, or disability. In addition, the regulations provide critical protections to individuals and their families, particularly those individuals with communication disabilities, regarding the right to access services. Many students with disabilities may not qualify for services under IDEA, however, they may still require access to education and may qualify through other programs such as a 504 plan. For example, a child with hearing loss who is on grade level may still require specialized technologies and services, such as **remote microphone systems, classroom audio distribution systems, speech to text software, or classroom captioning,** in order to comprehend material presented in the school environment.

The OCR at ED has demonstrated an important track record of oversight and guidance, assisting schools in meeting the intent of both IDEA and ADA mandates. These protections are critical to students with disabilities and their families and must be maintained**.**

**ESSA Title 1 Improving the Academic Achievement of the Disadvantaged**

**(Part 200)**

**Recommendation:**

ASHA recommends that ED keep the Every Student Succeeds Act (ESSA) Title 1 regulations and guidance, which provide needed accountability to stakeholders, including state education agencies (SEAs), local education agencies (LEAs), providers of services, and others.

***Rationale:***

These regulations and guidance provide much needed federal oversight and establish minimum accountability measures and protection across states. Title 1 provides funding flexibility for specialized instructional support personnel (SISP) to be included in programs such as Multi-Tiered Systems of Support (MTSS) for struggling learners. State and local school districts do not always recognize the value or the need for SISP services including those provided by audiologists and SLPs. Therefore, federal oversight and guidance is needed to ensure that services are provided for struggling learners in Title 1 programs. Audiologists and SLPs provide services for language and literacy acquisition, hearing loss, and students with cognitive delays to ensure that struggling learners meet minimum academic standards and demonstrate improved academic and social outcomes.

**IDEA Part B - Assistance to States for the Education of Children with Disabilities (Part 300)**

**Recommendation:**

ASHA recommends that ED keep all regulations and guidance related to IDEA Part B.

***Rationale:***

IDEA serves more than 6 million children in our nation's schools and preserves a free appropriate public education (FAPE) for children with disabilities, including students with communication disorders. Therefore, it is important for ED to continue to provide federal regulatory oversight across states with the establishment of minimum accountability measures and protections for children with disabilities. These are major regulations that provide guidance to SEAs, LEAs, teachers, related service providers, and other stakeholders on the provision of special education and related services to children with disabilities.

SLPs who work in a school-based setting provide primary service to a large number of students served under IDEA Parts B and C. According to the 36th Annual Report to Congress (2016) in 2014, the most prevalent disability category of children ages 3 through 5 served under IDEA Part B, is speech or language impairments (43.7%). Speech or language impairments is the 2nd or 3rd most prevalent category for students ages 6 through 21 in every racial/ethnic group. The report also states that speech or language impairments is the 2nd or 3rd most prevalent category for students ages 6 through 21 in every racial/ethnic group served under IDEA Part B.

**IDEA Part C- Early Intervention Programs for Infants and Toddlers with Disabilities (Part 303)**

**Recommendation:**

ASHA recommends keeping federal regulatory requirements and other guidance for IDEA Part C - Early Intervention Program for Infants and Toddlers with Disabilities.

***Rationale:***

Transition between Part C and Part B services under IDEA can often result in a delay in services and loss to follow-up for children and families who are moving between those programs. Delay in services to these children could lead to an increase in the provision of special education services moving forward. These regulations provide much needed federal oversight and the establishment of minimum accountability measures and protections for children with disabilities across states. Effective early intervention programs can reduce later identification and referral for special education services. If identified early in a child’s life, many language, speech, and hearing related disabilities can be addressed effectively by qualified providers; thus, ensuring the highest quality outcomes for that child. The Early Childhood Technical Assistance Center (ECTA) collects data regarding the benefits and outcomes on Early Intervention (Part C) services. For more information on Outcomes for Children Served through IDEA’s Early Childhood Programs see <http://ectacenter.org/eco/assets/pdfs/childoutcomeshighlights.pdf>.

**IDEA: Service Obligations under Special Education Personnel Development to Improve Services and Results for Children with Disabilities (Part 304)**

**Recommendation:**

ASHA recommends keeping regulations on Service Obligations under Special Education Personnel Development to Improve Services and Results for Children with Disabilities under IDEA.

***Rationale:***

Federal oversight is needed to provide stakeholders (e.g., Institutions of Higher Education, LEAs, SEAs), and scholarship recipients with information on the requirements of the grantee and scholar, including information on allowable cost and eligibility under the program per 20USC1462 (h). Personnel development grants are important to ensure that there is an adequate number of qualified professionals who have the knowledge and skills to provide appropriate service to students with disabilities.

**The Secretary’s Recognition of Accrediting Agencies (Part 602)**

**Recommendations:**

ASHA and the Council on Academic Accreditation in Audiology and Speech-Language Pathology (CAA) recommend keeping ED regulations on the Secretary’s Recognition of Accrediting Agencies under the Higher Education Act of 1965.

In order to ensure the implementation of certain aspects of accrediting agency regulations, ED developed the “Guidelines for Preparing/Reviewing Petitions and Compliance Reports.” Although this document was originally meant to serve as guidelines, over the years the document has been interpreted to be regulatory requirements. The overreach of this guidance has significantly increased the administrative burden on accreditors and accredited programs and institutions, with little or no evidence that the requirements improve the quality of higher education. ASHA is not suggesting that ED remove the guidance because it does provide important information, but requests that ED use the document for its intended use - as a framework for implementation, which does not carry the full impact of regulations.

***Rationale:***

ASHA has maintained and supported an accreditation program for graduate education programs in audiology and speech-language pathology since the 1960s. This specialized accrediting body has maintained its recognition from the U.S. Secretary of Education continuously since 1967, ensuring the quality and integrity of audiology and speech-language pathology education programs.

While it is of utmost importance to keep accrediting agency regulations, what is a major concern to ASHA is the inconsistency across ED staff in the interpretation of the regulations. ASHA is also concerned with the growing list of expectations that have evolved from ED staff reviews and general letters to stakeholders. These interpretations have been given the same level of enforcement as the actual regulations. ASHA believes this is an overreach of ED to enforce guidance in the same manner as regulatory requirements, and requests ED to review this process to ensure the appropriate use of the guidelines by its staff. Should ED feel the need to provide further regulatory oversight on accreditation, then it should go through appropriate rulemaking procedures with feedback from stakeholders.

Some examples of the overreach of guidance include:

* The letter dated April 22, 2016, which strongly encouraged accreditors to engage in a “risk-based” approach to reviews that is in the purview of the accreditor to establish its own policies and procedures.
* The letter dated November 17, 2016, which required submission of documents beyond the requirements in statute or regulation, such as the Clarification of Terminology and Requirements for Accrediting Agency Reporting to the U.S. Department of Education.
* The letter dated June 6, 2017, which imposed a Department interpretation of the effective date of accreditation.

**Federal Perkins Loans (Part 674)**

**Recommendation:**

Maintain regulations on the Federal Perkins Loans, which contain the definition of Speech-Language Pathologist in 674.51 Special Definitions.

***Rationale:***

The demand for SLPs by school districts remains high, and the Perkins Loan program enables low-income students to pursue a degree in the field of speech-language pathology. Removing the Perkins Loan benefit and the incentive of cancellation of the loan for completing a high-need work-setting requirement would affect both the children who need speech-language pathology services as well as the providers who seek to use these loans and loan repayment arrangements.

Thank you for the opportunity to share our comments and recommendations. Should you have questions about our comments, please contact Catherine D. Clarke, ASHA's director of education and regulatory advocacy, at 202-624-5953 or by e-mail at [cclarke@asha.org](mailto:cclarke@asha.org).



Sincerely,

**Gail J. Richard, PhD, CCC-SLP**

2017 ASHA President