



The Council of Parent Attorneys and Advocates, Inc.
Promoting excellence in special education advocacy nationwide

March 5, 2006

by electronic mail (comments@ed.gov)

The Honorable Troy R. Justesen
Deputy Assistant Secretary of Education
U.S. Department of Education
400 Maryland Avenue SW
Potomac Center Plaza, Room 5126
Washington, DC 20202-2641

Re: Multi-Year IEP Public Comment

Dear Dr. Justesen:

The Council of Parent Attorneys and Advocates (COPAA) is a nonprofit organization of parents, attorneys, and advocates who work to protect the civil rights of children with disabilities and ensure that they receive appropriate educational services. Many professional members work for public interest organizations that serve low-income parents and other nonprofit purposes; other are in private practice. Many of our members are family members of children with disabilities.

We appreciate the opportunity to submit comments in response to the Department's Notice of Proposed Requirements for The Individuals with Disabilities Education Act Multi-Year IEP Demonstration Program. We urge the Department to strengthen the protections for children with disabilities and their families. It is important that children whose parents consent to the multi-year IEP do not receive inferior educations, and that no parent be pressured into consenting to participate in the program. Our comments follow below.

Background for Proposed Requirements and Selection Criteria

Recommendation 1. Modify the assessment criteria to include measuring the satisfaction of family members, as required by IDEA 2004.

Rationale. IDEA 2004 § 614(d)(5)(B)(v) specifically requires the Department to measure and assess the satisfaction of family members with the multi-year IEP pilot program. The proposed regulation improperly omits this criterion from those to be evaluated, and would therefore contradict the IDEA in violation of § 607(b) of the Act.

Recommendation 2. The evaluation of the multi-year IEP pilot projects should include experimental designs that meet the requirements of the Department of Education's "What Works Clearinghouse" and follow its evaluative requirements.

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Rationale. The IES What Works Clearinghouse is designed to provide researchers and others with scientific evidence of what works in education. Because so much is at stake with the pilot programs and they will have a substantial real-time impact on the education of children with disabilities, it is important that the evaluation design be scientifically-based and effective.

Recommendation 3. The Department should contract with an independent outside agency to develop a research-based design that will produce reliable information about the effectiveness of the multi-year IEP pilot.

Rationale. Congress established the multi-year pilot program to give the Department the opportunity to develop guidelines for the program and to gather data and information on the implementation of paperwork reduction plans. Without an independent agency conducting the evaluation with a proper protocol, the actual results could be incorrect and lead to statutory developments that are not helpful to parents, children and schools, and which do not improve educational and functional results.

Proposed Additional Requirements for Multi-Year IEP Program

Recommendation 1. COPAA supports the portion of proposed (3)(a) that requires States to provide assurances that before an LEA requests a parent's informed consent to participate in the multi-year IEP pilot, the LEA will (i) provide the parent in writing with the differences between § 614(d) and the State's requirements for multi-year IEPs and (ii) inform the parent in writing of the right to revoke consent and of the LEA's obligation to hold an IEP meeting to develop an IEP that meets § 614(d) within 30 days of a parent's revocation of consent.

Rationale. This portion of the proposal fulfills the requirements of the IDEA and helps protect the rights of parents and children with disabilities. We support its inclusion in the proposed regulations.

Recommendation 2. Amend proposed 3(a) to add a separate requirement that LEAs have available for review by the State and Department of Education documentation signed by the parent that indicates that before the LEA requested the parent's informed consent to the development of a multi-year IEP, the LEA had informed the parent in writing, in the parent's native language, of the requirements in Proposed Additional Requirements 3(a)(i) and (ii) (difference between annual IEP and multi-year IEP, right to revoke consent, and LEA's requirement to hold an IEP meeting if consent is revoked).

Rationale. It is essential that parents be fully informed of their rights, and that the LEA has provided complete information to parents and obtained their informed consent. This is a fundamental cornerstone of IDEA. In addition,

informed consent is important for parents to be able to participate meaningfully in IEP meetings. While the multi-year IEP is an optional choice for students and parents, many could either be confused by it or feel coerced to accept this option. If parents are pressured to accept a three-year IEP, parental participation and the school's accountability to parents will decrease. If the LEA is providing parents with an explanation in writing of the difference between an annual IEP and a multi-year IEP, it will be simple for an LEA to document that parents have received the information and that it was fully explained to them.

Recommendation 3. Revise Additional Requirement 3(b) to require States to obtain input from all members of the public, including family members and advocates for children with disabilities.

Rationale. Section 612(19) of IDEA 2004 requires public participation in formulating state plans. It does not limit the input to school and district personnel and parents, as Additional Requirements 1(a) of the proposed regulation would. Requirement 3(b) should incorporate this requirement and broaden the group of stakeholders from whom input is sought. Advocates for, and organizations that work with, children with disabilities should be included. There are many organizations and individuals who work to protect the rights of students with disabilities and their families. They have years of experience with the system and the educational needs of children with disabilities, and their input will be of real value in the formulation of a proposed state plan. In addition, the State should not limit input to "parents" but rather should obtain it from other family members, including children covered by the IDEA where appropriate (e.g., children of transition age). Section 614(d)(5)(B)(v) emphasizes the importance of the satisfaction of "family members" with the multi-year pilot, and therefore their input must be sought out and described.

Recommendation 4. Proposed requirement 3(c) should clarify that any proposed state plans must comply with IDEA 2004 § 612(19) requiring public participation (including hearings, notice, and an opportunity for comment) before the State proposes a plan to the Department of Education.

Rationale. The proposed paperwork reduction pilot directly implicates § 612, which sets out the State's obligations under IDEA. These include providing a free appropriate public education (FAPE) and having in place an IEP for each child. Consequently, the State must comply with § 612(19) of the IDEA before putting in place any pilot. A regulation that permits States to avoid this essential requirement violates IDEA § 607(b) of IDEA 2004.

Recommendation 5. Revise proposed requirement 3(d)(v) to require the State and evaluator to collect data from parents and family members.

Rationale. IDEA 2004 § 614(d)(5)(B) requires the Department to evaluate the extent to which the satisfaction of family members is ensured. Therefore,

data must be collected from parents and family members. As presently worded, the requirement would make such data collection optional. It is not sufficient to simply study information from the school districts. The IDEA explains the importance of family input: "almost 30 years of research and experience" has shown that education of children with disabilities is more effective by ensuring that families have meaningful opportunities to participate in their children's education. In addition, the evaluation should include data from students with disabilities where appropriate. IDEA explicitly recognizes the role of students (e.g., transition-age students are specifically included as IEP team members).

Recommendation 6. Revise requirement 3(d)(v) to require the State and evaluator to implement surveys that obtain information from a broad spectrum of parents, including all 13 disabilities groups and parents of varying minority and socio-economic groups.

Rationale. The pilot programs are designed as experiments. For the experiment to yield useful data, it is important to obtain information from a broad spectrum of children. If the pilot has a greater impact on certain students with disabilities, minority groups, or socio-economic groups, this should be examined and considered before proceeding further with the multi-year program.

Recommendation 7. Add a new requirement that the pilot programs to have effective mechanisms for reporting adverse events (e.g., the denial of FAPE).

Rationale. The pilot programs are experiments. As is standard practice for an experiment, there should be an effective mechanism for reporting adverse events to the evaluator and State. For example, if parents, teachers, or others believe that a child in the program is being denied FAPE or failing to make appropriate progress under the multi-year IEP, there must be way to effectively report this.

Recommendation 8. Add a new requirement that States submitting Multi-Year IEP proposals must provide an assurance that they will not restrict any Multi-Year IEP to any specific disability category or group of categories.

Rationale. Given that some disability categories under IDEA cover large numbers and proportions of students with disabilities, and others very few and a much lower proportion of students, (see https://www.ideadata.org/tables28th%5Car_1-3.htm), it may prove difficult for a school or district participating in the program to obtain both a Multi-Year IEP group and a control group that contains participants from all disability categories, or, at the least, equal representation of participants and control group participants by disability category. Yet, the proposed evaluation design states that "These outcomes will be compared for students whose parents consent to their child's

participation in a multi-year IEP and students who are matched on type of disability, age, prior educational outcomes, and to the extent feasible, the nature of the special education services, who do not participate in the multi-year IEP." It is therefore essential that any multi-year IEP program not be restricted to any specific disability category or group of categories.

Recommendation 9. Add a requirement that any State permitted to participate in both Multi-Year and the Paperwork Reduction Pilot may not implement both programs in the same district or school.

Rationale. The pilot programs are experiments. This prohibition is necessary to ensure that the results of the evaluations are precise to the program being evaluated and not the result of the co-mingling of the two.

Recommendation 10. Add a requirement that Multi-year IEPs will be limited only to students given assessments against grade-level achievement standards, and may not be offered to students being given assessments against either the modified achievement standards or alternative achievement standards.

Rationale. The Department's Proposed 2% assessment regulations, §200.1(e)(5), would require that IEP teams review on an annual basis their decision to assess a student based on modified achievement standards to ensure that those standards remain appropriate. Students given multi-year IEPs will not have annual IEP meetings with the IEP team. Rather, they will receive only a truncated review. Because the decision to assess a child against modified or alternative achievement standards is a very high-stakes decision, with severe implications for the child and their academic career, such children must continue to have annual IEP meetings and one-year IEPs. Indeed, a child placed into the modified achievement standard category may need an IEP with a greater intensity or kind of services and with that support, may improve his/her achievement such that a grade-level assessment is appropriate. An annual IEP is essential to make these kinds of changes. Otherwise, there is a risk that students with disabilities will languish in the land of low expectations for extended periods, instead of receiving the demanding academic standards and content that all children in America deserve.

Proposed Selection Criteria.

Recommendation 1. Revise the proposed "Significance" Selection Criterion 1(b) to include improving educational and functional outcomes for children with disabilities.

Rationale. Congress specified in IDEA 2004 § 614(d)(5)(B)(v) that the Department must report on how effective the pilot is in improving positive outcomes for children with disabilities. This cannot be done if the selection process does not emphasize programs that improve educational and functional

results for children. Indeed, the first purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." Any proposed pilot must effectuate this purpose. The Significance criteria include the undefined extent to which the project involves "new" strategies, and the likelihood it will improve long-term planning, but says nothing about the likelihood of improving positive educational and functional results for children.

Recommendation 2. Revise the proposed "Quality of Design Project" Selection Criterion 2 to include improving educational and functional outcomes for children with disabilities.

Rationale. Congress specified that the Department must report on how effective the pilot is in improving positive outcomes for children with disabilities. This cannot be done if the selection process does not emphasize programs that improve educational and functional results for children. Indeed, the first purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." The quality of design project criteria emphasizes reduction of paperwork and improvement of long-term planning, but they do not include the degree to which positive outcomes for children are improved.

Recommendation 3. Revise criterion 3(c) to include among the perspectives those of family members and advocates for children with disabilities.

Rationale. Criterion 3 measures the extent to which the program ensures "that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, related services providers, school administrators, or others, as appropriate." Other than parents, all of the other named persons are school district employees: teachers, related services providers, and administrators. This imbalance affects and imperils the role of the parent in the process. It enables the school districts' views to outweigh those of parents and waters down the importance of parents' views. Yet it is the satisfaction of "family members" that the statute requires the Department to measure in § 614(d)(5)(B)(v) .

Neither the IDEA in general, nor § 614(d)(5)(B)(v) specifically, assigns importance to considering school district employees' views. For example, a proposed multi-year program might be a very effective tool for long-term educational planning, and increase educational and functional results for children, yet be disliked by administrators. Their dislike is wholly irrelevant.

Furthermore, the perspectives of advocates for children with disabilities are important, as many have years of experience working with different children. Their involvement is essential to ensure that parent rights are protected. Likewise, because § 614(d)(5)(B)(v) of the statute places a special emphasis on the satisfaction of "family members," the criterion should be revised to include all family members and to accord greater significance to this group.

Recommendation 4: Add a new Selection criterion for compliance, stating that the Department will assess whether the proposal complies with the content requirements of Section IDEA § 614(d)(5)(A)(iii)(II) and will reject any proposals that do not.

Rationale. IDEA 2004 § 614(d)(5)(A)(iii)(II) provides specific content requirements with which a multi-year pilot project must comply. Although the regulations require **assurances** that the State meets those requirements, this is not sufficient to comply with IDEA. Rather, the Department must evaluate the actual proposals themselves to determine whether they comply.

CONCLUSION

Thank you for considering the comments of the Council of Parent Attorneys and Advocates about the Multi-Year IEP pilot program. Please contact Robert Berlow, COPAA's Government Relations Chair, if COPAA may be of additional assistance or provide additional information.

Sincerely,
Barbara J. Ebenstein, Chair

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