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U.S. Department of Education
400 Maryland Ave. SW., Room 5163
Washington, DC

Re: ED-2020-OSERS-0015 IDEA Paperwork Reduction Waivers

August 18, 2020

Thank you for the opportunity to comment on the Proposed Requirements -The Individuals with Disabilities Education Act (IDEA) Paperwork Reduction Waivers. I am writing on behalf of the National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE). National PLACE's mission is to strengthen the voice of families and family-led organizations at decision-making tables. As a national, family-led organization with 70 national, state, and local family-led organization members including Parent Centers, Family to Family Health Information Centers, Federation of Families for Children's Mental Health chapters, and Parent to Parent USA affiliates, we provide information and support to our members to assist them to support families of children and youth with disabilities and special healthcare needs, and are aware of the critical importance of the protections for infants, toddlers, children, youth and young adults with disabilities and their families under the Individuals with Disabilities Education Act (IDEA), including the "paperwork" provisions.

We note that there does not appear to be a call from the field for this initiative. Why continue to ask for states to apply when they have not in the past?

Overall, National PLACE strongly believes that there are greater threats to the rights of children and families via this "paperwork reduction" waiver "opportunity" than the potential benefits and therefore continues to strongly oppose its implementation.

SUPPLEMENTARY INFORMATION:

Invitation to Comment:

We understand that comments are sought "regarding the proposed requirements and definition... we urge you to identify clearly the specific section of the proposed requirements or definition that each comment addresses." Our responses to the questions posed appear below.

Directed Questions

“1. We invite public comment on whether there are other specific issues the Department should consider when evaluating waiver proposals and whether we should require States, in their proposals, to provide further explanations of the legal and research based supports for their proposals.”

In general, we think that waivers shouldn't be granted, as there is currently a lack of enforcement and accountability, which needs to be strengthened, not weakened. What some states, districts and schools call “paperwork” reflect critical information documenting special education processes and individual student strengths, needs, goals and objectives, services, placement, and progress reporting. If the Department decides to move forward with requesting waivers, no state or territory that is a status other than “Meets Requirements” should be allowed to even apply, much less be granted a waiver. If a state that “Meets Requirements” proposes a waiver, we agree that they should be required to use evidence-based interventions and best practices.

“2. The Department’s regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504) and covering recipients that serve school-aged children with disabilities, as set out in 34 CFR 104.31 through 104.36, contain civil rights protections that often overlap with, or can be met through the implementation of, the protections in IDEA Part B... Given the limitation that the Secretary may not waive any statutory or regulatory requirements of, or relating to, applicable civil rights requirements, the Department is seeking public comment on the best ways to address the close relationship between IDEA and the Section 504 protections that apply to school-aged children with disabilities...”

We are deeply concerned with waivers pertaining to civil rights. Research has demonstrated existing inequities in disproportionate representation in certain eligibility categories, segregated settings, less services and time under I&RS, and discipline including the inappropriate use of restraints, seclusion, and aversive intervention. Further, families of children protected by civil rights laws far too often face the greatest barriers in partnering with educators, schools and districts to ensure their children receive the services and supports, and achieve the outcomes, of other students. Any attempt at streamlining civil rights under Section 504 or IDEA will only exacerbate these disparities.

“3. ...we are interested in public comment on whether these paragraphs are sufficiently clear that parents have the right to understand and consent to changes that affect their children’s education and do not imply that waivers of FAPE are permitted under this program.”

We do not think that these paragraphs are sufficiently clear. We think that parental rights regarding FAPE must be explicitly clear. Indeed, some districts are using the COVID epidemic to offer families a “homeschooling” option rather than home instruction/remote learning, and these parents may be unaware that they will then be responsible for all of their children’s academic and related services. We are aware of many situations before and during COVID when parents who do not speak English, parent with limited literacy, low-income parents, parents with disabilities, etc., have not been provided with easily understandable information in their language about their rights and the rights of their children. An even higher burden of accessibility must be placed on any recipients of a waiver.

Proposed Requirements

Background

While we disagree with the need for waivers, should there be waivers, we strongly agree, “waiver proposals must preserve the fundamental rights of children with disabilities under IDEA.”

Proposed Requirements:

We acknowledge “the following requirements for a proposal to waive certain requirements of, or relating to, IDEA Part B undersection 609.”

“(a) An applicant must include in its proposal the following:

(1) A description of how the State met the public participation requirements of section 612(a)(19) of IDEA, including how the State—

(i) Involved multiple stakeholders, including parents, children with disabilities ...

(ii) Provided an opportunity for public comment...

(iii) Held public hearings...”

We do not see this currently happening. For example, some districts felt they fulfilled their Title I obligations by providing a nutrition workshop to parents. Families are often unaware of proposed changes and hearings are often held with short notice and at times inconvenient to working parents.

“(2) A summary of public comments received in accordance with paragraph (a)(1) of these requirements and how the public comments were addressed in the proposal.”

Although we strongly agree that a summary of public comments is necessary, often changes are still made despite the overwhelming majority of comments made against the change, even at the national level. What purpose is served by soliciting and summarizing comments if there is no true consideration of the perspectives of stakeholders, especially intended beneficiaries?

“(3) A description of the procedures the State will employ to ensure that, if the waiver is granted, it will not result in a denial of FAPE to any child with a disability, infringe on any applicable civil rights requirements, or result in a waiver of any procedural safeguards...”

We strongly agree with this but have seen denial of FAPE, and violation of civil rights, including unacceptable delays in procedural safeguards.

“(4) A description of the procedures the State will employ to ensure that diverse stakeholders... understand the proposed elements of the State’s submission for the IDEA Paperwork Reduction Waivers.”

Again, while we agree with this it doesn’t happen in practice. The most vulnerable underserved populations, particularly families of color, homeless, English-language learners, etc. are the last to know and the least represented.

“(5) Assurances that every parent of a child with a disability in participating LEAs will be given, in easily understandable language, written notice (in the native language of the parent, unless it is clearly not feasible to do so) of all statutory, regulatory, or State requirements that will be waived and the procedures that the State will employ under paragraph (a)(3) of these requirements.”

The definition of “feasible” is “possible to do easily or conveniently.” This is not an acceptable standard. Even this low and inappropriate standard is frequently ignored. Even at the bare minimum, Spanish-speaking families are not given notices, IEP evaluations, or even meetings in Spanish, let alone other languages.

“(6) Assurances that the State will require any participating LEA to obtain voluntary informed written consent from parents for a waiver of any paperwork requirements related to the provision of FAPE.”

Although we agree with the concept of parental consent, we strongly disagree with any waiver related to the provision of FAPE even if it is couched under the term of “paperwork.”

With regards to paragraphs (a)(6) of the proposed requirements, we are concerned by the simple requirement for an “assurance” that voluntary informed written parental consent would be obtained by participating LEAs for a waiver of any paperwork requirements related to the provision of FAPE. It is critical that parents receive clear communication about the waiver they are agreeing to and how consenting to the changes will affect their child’s education. Even though the proposed requirements state that this consent could be revoked by parents at any time, and the requirements state this would not imply waivers of FAPE under this program, we believe there is a significant potential for confusion and misunderstanding among parents during this process. Those applying for participation in this waiver authority should be required to provide a detailed description of how they will seek written informed consent from parents. Additionally, the consent process should be specifically subject to the stakeholder and public comment provisions described in (a)(1) and States must ensure that no pressure is exerted upon parents to provide such consent.

“(7) Assurances that the State will require any participating LEA to inform parents in writing (in the native language of the parents, unless it is clearly not feasible to do so) of—

(i) Any differences between the paperwork requirements under the waiver program approved for the State and the existing paperwork requirements of IDEA related to the provision of FAPE;

(ii) The parent’s right to revoke consent to waive any paperwork requirements related to the provision of FAPE at any time; and

(iii) The LEA’s responsibility to meet all paperwork requirements related to the provision of FAPE if the parent does not provide voluntary written informed consent or revokes consent.”

Here again, parents must be able to understand what they are signing, and there should be no waiver related to FAPE. And the term “feasible” is far too low a standard.

We are concerned that participating LEAs would be required to inform parents in writing of any differences between the paperwork requirements under the waiver program approved for the State and the existing paperwork requirements of IDEA related to the provision of FAPE, in the native language of the parents, “unless it is not feasible to do so.”

The 70 members of National PLACE have experience providing written materials and individual assistance in many languages to families from diverse backgrounds. The notion that some parents may not be informed due to a language barrier is distressing – particularly as parents whose native language is not English often have additional barriers in navigating the IEP process and securing FAPE for their children. If a participating LEA cannot inform parents in their native language, or in a language that they can sufficiently utilize to understand any differences in paperwork, those LEAs should not subject such parents (and their children) to any waivers.

“(8) A list of any statutory requirements of, or regulatory requirements relating to, IDEA Part B that the State desires the Secretary to waive, in whole or in part. For each requirement, the State should discuss how waiving the requirement will—

(i) Reduce excessive paperwork and noninstructional time burdens on special education teachers, related services providers, and State and local administrators;

(ii) Not affect the right of a child with a disability to receive FAPE under IDEA Part B, infringe on any applicable civil rights requirements, or result in the waiver of any procedural safeguards under section 615 of IDEA.”

We strongly disagree with the concept of “paperwork burden” as IDEA rights must be maintained and not diminished for administrative convenience. If there is no documentation, parents cannot make informed decisions or be sure that they are carried out.

“(9) A list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.”

We strongly disagree with waiving current state requirements, which were developed through the collaboration of stakeholders, including advocates.

“(10) A description of the interplay between the requirements described in paragraph (a)(8) and any State requirements including, but not limited to, those described in paragraph (a)(9).”

See our comments under #8 and 9 above.

“(11) A description of the anticipated benefits of the proposed waiver, including, but not limited to—

(i) The total reduction in burden hours on State and local personnel and the total number of instructional hours gained, disaggregated by applicable statutory or regulatory provision;

(ii) The total number of administrators and direct service providers affected, including the number of individuals in each group, disaggregated by applicable statutory or regulatory provision; and

(iii) The total number of likely beneficiaries, and the magnitude and scope of anticipated benefits and other activities intended to improve educational and functional results for children with disabilities.”

It appears that most of the benefits derived will affect State/local personnel, administrators, and other providers, to the detriment of students with disabilities.

We do not believe the requirement to list anticipated benefits of a proposed waiver is sufficiently stringent to meet the goals of section 609. Applicants should be required to list the specific amount of increased instructional and other time that will result from the granting of such a waiver and that this information be subject to the stakeholder and public comment provisions described in (a)(1). The goals of any waivers granted should not be just to reduce paperwork burden, but to expand instructional time and other benefits to children with disabilities.

“(12) A State that received a planning grant under the IDEA Paperwork Reduction Planning and Implementation Program (84.326F) must include in its waiver proposal the plan the State developed under that program.”

We agree with this, but disagree with waivers in general.

“(b) An applicant must include in its proposal its proposed plan to disseminate information and materials regarding any revisions...to relevant stakeholders, including, but not limited to, LEAs; private schools (including parochial schools) that provide services to children with disabilities; charter management organizations; the State Advisory Panel, as defined in section 612(a)(21) of IDEA; and parent organizations...”

We agree that all stakeholders, including parent groups, must be notified and would like to see the SAP take on an advisory role in this. We appreciate that Parent Centers are explicitly included in the list of stakeholders and agree with CCD that others who should be involved explicitly must include the Protection and Advocacy agencies.

“(c) An applicant must assure that it will make publicly available all information...”

We agree that this information must be available publicly but question how families will be informed. Simply putting information up on an English-only website available only to families who have web-access is not sufficient.

“(d) An applicant must include in its proposal its proposed plan to provide training on revisions.”

While we disagree with this proposal overall, should it move forward, we agree that parent and professional development must be required. Such training must be developed and delivered in collaboration with the federally designated Parent Center(s) in the state/territory.

“(e) An applicant must include in its proposal its proposed plan to collect and analyze data on specific and measurable goals, objectives, and outcomes of the project related to the implementation of any waiver granted, including data on the effectiveness of the waiver in—

(1) Reducing—

(i) The paperwork burden on teachers, principals, administrators, and related services providers; and

(ii) Noninstructional time spent by teachers in complying with IDEA Part B;

(2) Enhancing longer-term educational planning;

(3) Improving positive outcomes, including educational and functional results, for children with disabilities;

(4) Promoting collaboration between IEP Team members; and

(5) Ensuring satisfaction of family members.

(f) An applicant must submit its proposal with a letter signed by an appropriate State official, or his or her designee, stating that—

(1) The appropriate State official is authorized to make the proposal for a waiver under State law; and

(2) The proposal meets all of the applicable requirements for a waiver.”

We strongly support data collection. We do not see the paperwork requirements under 504 and IDEA as burdensome, but necessary. We would strongly support ongoing data on outcomes and immediate revocation of any waiver resulting in adverse consequences for children with disabilities. We do not think that annual IEPs interfere with “enhancing longer-term educational planning.”

Proposed Definition

“Applicable civil rights requirements,” includes, but is not limited to...

- (1) Section 504 of the Rehabilitation Act of 1973, as amended.
- (2) Title VI of the Civil Rights Act of 1964.
- (3) Title IX of the Education Amendments of 1972.
- (4) Title II of the Americans with Disabilities Act of 1990.
- (5) Age Discrimination Act of 1975.”

We acknowledge this definition but oppose any changes regarding civil rights due to existing inequities and the importance of these laws in reducing disparities and discrimination.

Executive Orders 12866, 13563, and 13771 Regulatory Impact Analysis

We disagree with the statement that “this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866” as waivers are substantive changes.

Although we understand that “[W]e are issuing the proposed requirements and definition based on a reasoned determination that the benefits would justify the costs” we disagree that waivers will justify the adverse outcomes for students, which will be more costly in the long run for them and for our society at large.

We also disagree with the statement that “[W]e also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions” as some states have requirements that exceed federal regulations.

Paperwork Reduction Act of 1995

We acknowledge, “The proposed requirements contain information collection requirements that are approved by OMB under OMB control number 1820–0028; the proposed requirements do not affect the currently approved data collection.”

Clarity of the Regulations

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

This proposal is stated clearly enough for most stakeholders but needs to be simplified and more outreach needs to be done to families and family organizations, especially to be understandable to families with limited English proficiency, limited literacy, etc.

We also support the comments submitted by CCD and the Advocacy Institute.

Thank you again on the opportunity to comment on IDEA Paperwork Reduction Waivers.

Sincerely,

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