



September 20, 2017

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:

On behalf of the National Center for Learning Disabilities (NCLD), I write in response to the notice posted in the Federal Register on June 22, 2017 in accordance with Executive Order 13777 “Enforcing the Regulatory Reform Agenda” and the request for input on regulations that may be appropriate for repeal, replacement, or modification. NCLD urges you to maintain all regulations and guidance relating to the civil rights and education of students with disabilities.

NCLD represents and works to improve the lives of the 1 in 5 individuals with learning and attention issues, which are brain-based difficulties that cover a wide range of challenges children may face in school, at home and in the community, including trouble with reading, writing, math, organization, concentration, listening comprehension, social skills, motor skills or a combination of these. NCLD’s mission is to empower parents and young adults, transform schools and advocate for equal rights and opportunities. For 40 years, NCLD has been on the forefront of the field of learning disabilities, working side-by-side with parents, educators, and policy leaders to improve federal legislation and ensure that students with learning and attention issues have access to equal educational opportunities.

As you undertake this evaluation of existing regulations and significant guidance from the U.S. Department of Education, **NCLD encourages you to maintain all regulations relating to the civil rights and education of students with disabilities and all guidance that helps states, districts, schools, or other stakeholders to fully understand and effectively implement the laws. We oppose this effort by this administration to repeal, replace, or modify any regulations or significant guidance documents.**

Landmark civil rights and education laws (including the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and the Rehabilitation Act, the Elementary and Secondary Education Act, and the Civil Rights Act) were enacted to combat discrimination and promote equity in our schools. The existing regulations promulgated in response to these civil rights and education laws have already gone through the open and transparent procedure prescribed by law. This procedure includes an assessment of costs and benefits and an evaluation of the burden imposed by each regulation. Thus, existing regulations have already been closely examined and designed to be critical to the successful implementation of all civil rights and education laws. For this reason, NCLD opposes efforts to rescind or modify any regulations or significant guidance documents. Indeed, the outcomes for students with

disabilities indicate comprehensive regulations and guidance are needed to support their success. There, the Department should instead consider with stakeholders whether additional guidance and regulations might be necessary to serve the need.

More than three million students in our public schools have been identified with specific learning disabilities (SLD) or other health impairment (OHI), which often includes students with attention deficit hyperactivity disorder (ADHD). Even now, more than 40 years after the enactment of IDEA, these children often struggle to access the supports and services they need to succeed. This is evidenced by the data regularly released by the Department of Education and other government sources:

- More than 90% of students with specific learning disabilities (SLD) scored below proficient on the 2013 NAEP.¹
- Students with an Individualized Education Program (IEP)—including those with SLD and OHI—are 85% more likely to be held back or retained than their peers who have not been identified with disabilities.²
- Only 70.8% of students with SLD left school in 2013–2014 with a regular diploma.³
- Students with disabilities are more than twice as likely to be suspended as students without disabilities. Nearly two-thirds (65%) of total disciplinary removals among students with IEPs involved students with SLD or OHI.⁴
- The dropout rate for students with learning disabilities is nearly three times the rate for all students. In 2013–2014, 18% of students with SLD dropped out compared to 6.5% of all students.⁵

These outcomes signal a need to better meet the needs of students with disabilities. We cannot do so by rescinding or modifying the regulations and guidance that outline how to serve our most vulnerable students. Instead, we must maintain current protections and consider whether additional guidance and resources are needed.

In fact, as an organization that represents parents, we continuously hear from them about how they use various guidance letters in their advocacy for their children. Educators and parents look to guidance from the Department of Education for clarity on complex legal issues and for examples of how schools can or should meet the needs of students with disabilities. The Office of Special Education Programs and the Office of Special Education and Rehabilitative Services has been responsive to parent and educator concerns and has worked closely with the disability community in many instances to produce quality,

¹ U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics (2015). [The Nation's Report Card: 2015 Math & Reading Assessments](#).

² U.S. Department of Education, Office for Civil Rights (2016). [Civil rights data collection 2013–2014 raw data](#).

³ U.S. Department of Education, Office of Special Education and Rehabilitative Services (2016, October). [38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act](#). Washington, DC.; U.S. Department of Education (2017, January 06). [IDEA Section 618 Data Products: Static Tables](#).

⁴ U.S. Department of Education, Office for Civil Rights (2016, October 28). [2013–2014 Civil Rights Data Collection: A First Look](#).

⁵ U.S. Department of Education, Office of Special Education and Rehabilitative Services (2016, October). [38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act](#). Washington, DC.; National Center for Education Statistics, Institute for Education Sciences. (2015). [Percentage of high school dropouts among persons 16 to 24 years old \(status dropout rate\), by sex and race/ethnicity: Selected years, 1960 through 2014](#).

comprehensive, and useful guidance. Specifically, the community has greatly benefited from guidance documents including but not limited to:

- FAQs About the Rights of Students with Disabilities in Public Charter Schools under the IDEA (12/28/2016)
- Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Programs (08/01/2016)
- Dear Colleague Letter and Resource Guide on Students with Attention- Deficit/Hyperactivity Disorder (ADHD) (07/26/2016)
- Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans (03/09/2016)
- Dear Colleague Letter on Free and Appropriate Public Education (11/16/2015)
- Vision for the One-Stop Delivery System under the Workforce Innovation and Opportunity Act (WIOA) (08/13/2015)
- Dear Colleague Letter: Guidance to Ensure All Students Have Equal Access to Educational Resources (10/01/2014)
- Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline (01/08/2014)

We urge you to maintain these guidance documents and all guidance and Dear Colleague Letters issued in furtherance of existing laws or regulations.

NCLD stands with the Consortium for Citizens with Disabilities and with our colleagues in the civil rights community. As a community, we call on the U.S. Department of Education to honor its commitment to serving and providing equal educational opportunities to all students. Because federal regulations and non-regulatory guidance are critical to doing so, none should be rescinded or modified by the Department of Education. If you have any questions, please contact me at ljones@nclد.org.

Sincerely,



Lindsay E. Jones
Vice President, Chief Policy & Advocacy Officer
National Center for Learning Disabilities