



30 August 2005

Office of Special Education and Rehabilitative Services
U.S. Department of Education,
400 Maryland Avenue, S.W.
Potomac Center Plaza, Room 5126
Washington, DC, 20202-2641

Dear Colleagues:

The Division for Learning Disabilities (DLD) of the Council for Exceptional Children (CEC) is pleased to have the opportunity to comment on the proposed rules for the Individuals with Disabilities Education Improvement Act (IDEA 2004). DLD is a part of the largest professional organization committed to improving educational outcomes for individuals with exceptionalities. DLD's focus, since its inception, has been providing information and resources for teaching students with Specific Learning Disabilities (SLD) as well as promoting the use of evidence-based practice in education generally. The majority of DLD's 7100 members are teachers and other school professionals, which gives DLD a strong advantage when addressing issues such as bringing research to scale, implementing evidence-based practice, and developing policy that benefits students with Learning Disabilities in both the public and private sectors.

As a member of the Learning Disabilities Roundtable, DLD would like to thank the Department of Education for incorporating much of the proposed regulatory language developed by the 14 organizations comprising the RoundTable. We continue to support the recommendations of the LD RoundTable made after the IDEA 2004 became law as well as the recommendations that are being submitted during this public comment phase.

DLD also supports the Council for Exceptional Children's response to the proposed regulations for IDEA 2004, especially those regarding procedural safeguards, discipline, and Individualized Education Programs (IEPs). In addition, DLD would like to comment on certain regulations that will affect students with Specific Learning Disabilities (SLD) as well as their teachers and families.

Learning Disabilities

§300.307: DLD reiterates its support for the use of evidence-based procedures. Therefore, DLD recommends caution in making rules that endorse procedures such as response-to-intervention models, because the research on those models has yet to show that they improve processes for identifying students with SLD and is not extensive enough to guide large-scale implementation. Failure to respond, or responsiveness to intervention, has great potential as a pre-referral mechanism that will identify a pool of students who need additional support, and who may or may not have SLD; however, to use a process to identify SLD when that process cannot distinguish between students with SLD and students who may be underachieving for other reasons is indefensible.

Issues such as disproportionality, misidentification and expensive litigation related to identification and service delivery may escalate if failure to respond to intervention is used as the criterion to identify Learning Disabilities in the absence of the research base needed to guide and support its use. Thus, DLD supports the use of comprehensive evaluation to distinguish students with SLD from students without SLD and recommends intensive research to make response-to-intervention models an evidence-based process.

Recommendation: Remove section §300.307 (a) (1) because the regulation contradicts the statute and goes beyond the intent of Congress as evidenced in the Conference Report. The statute does not prohibit a state from using discrepancy to identify SLD, although the LEA is not required to do so.

DLD supports the inclusion of §300.307 (a) (2) that clarifies a state is not required to use a severe discrepancy between ability and achievement to identify SLD.

§300.308 (b) (1): DLD strongly supports including a special education teacher “with expertise in Learning Disabilities” as a group member when determining if a child has a Learning Disability. Because SLD is different from other disabilities such as visual or hearing impairments, a strong knowledge base in Learning Disabilities is essential for making informed decisions about eligibility, instruction, modifications, and accommodations for children with SLD.

§300.309 (c): The phrase “if the child has not made adequate progress after an appropriate period of time,” is subject to varied interpretations and may delay “a referral for an evaluation to determine if the child needs special education and related services.” DLD recommends extending ‘appropriate period of time’ to include “as agreed to by the child study team and parents” and also recommends that research on appropriate timelines for responding to interventions be an initiative that receives high priority for support by the Department.

Highly Qualified Personnel

§300.10 and §300.18(b)(3): DLD supports listing the core academic subjects, but clarification is needed in what is considered to be a core academic subject at the secondary level when special education teachers are teaching reading or language arts, or mathematics to students who are significantly below the secondary level. Such instruction goes beyond “consultative” services to other teachers who are highly qualified, and yet the content being taught is not precisely a “core academic subject.”

Recommendation: Add a section that states: Special education teachers at the secondary level who provide instruction in areas such as cognitive strategies for learning, reading skills significantly below the secondary level, and postsecondary skill sets, have met the requirements of a highly qualified special education teacher if they meet full state certification to teach students with disabilities at the assigned level.

§300.18 (b)(2): DLD is pleased that details are provided to ensure support of teachers who are pursuing alternate routes to certification programs in which the individual makes satisfactory

progress toward full certification as prescribed by the state; however, clearly defining for states and traditional teacher preparation programs what constitutes approval as an alternate route to certification is needed. An individual who is working toward full certification through an alternate route is arguably on an emergency, temporary, or provisional basis, which means that the individual has not met the highly qualified requirement according to section (b)(1)(ii).

The stipulation that an individual who is participating in an alternative route to certification program may be considered a highly qualified special education teacher the moment he or she enrolls in the alternative route and have three years to gain full certification creates a lower standard for special education teachers. Furthermore, it is a divisive issue for teachers, especially for special education teachers who are also enrolled in traditional teacher preparation programs. Being considered a highly qualified special education teacher for up to three years just because they have enrolled in an alternative certification program creates a major loophole in the highly qualified mandate, and may also encourage the proliferation alternative route special education teacher preparation programs that are of low caliber and do not actually improve the competence of the teaching corps.

DLD recommends deleting §300.18 (b)(2) or clearly defining for states and traditional teacher preparation programs what constitutes approval as an alternative route to certification. If the proposed regulations for alternative routes become final, teachers enrolled in traditional teacher preparation programs should be considered to be highly qualified if the traditional teacher preparation program includes the same conditions set forth in section (b)(2) for alternative routes to certification programs.

§300.18(g): Highly qualified special education teacher requirements should apply to all special education teachers who provide services to individuals through IDEA, whether in public or private schools. Authorizing a lower standard in private schools than in public schools, when public dollars are being expended, violates both the spirit and the letter of the law.

DLD also recommends the expansion of the concept of highly qualified to include professionals working with federally funded preschool programs to ensure that well-trained professionals implement early interventions.

HOUSSE:

§300.18: DLD recommends additional regulatory language that would allow special education teachers to meet the highly qualified requirements through coursework, in-service training, or successful completion of a separate “high objective uniform State standard of evaluation (HOUSSE), including a single HOUSSE covering multiple subjects.

Discipline

§300.530 (c) 4: DLD recommends changing "removal is not for more than 10 consecutive school days and is not a change of placement" to "removal is not for more than 10 consecutive school days, does not reflect a pattern of repeated short-term removals that interrupt service delivery

and is not a change of placement...." DLD is concerned about the impact of the interruption of services, which occurs over a long period of time through multiple removals, each for fewer than 10 consecutive days, which would not trigger the involvement of the IEP team as a change of placement.

Parental Placements in Private Schools

§300.130-144: Students with Learning Disabilities who are placed in private schools should have access to services that are comparable to those services provided to students attending public schools. Federal funds should be given to the local education agency (LEA) for the school rather than the student's LEA based on residence, because the provided services will be more accessible to the student. For example, if the private school is one hour away from the LEA where the family lives, access to the services may be difficult because of the geographic distance. If an LEA near the private school provides services, which would be geographically more accessible, then funding should be given to the school providing the services, not the LEA where the student's parents reside.

Summary of Performance

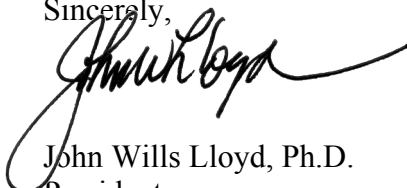
§300.305 (e) (3): DLD supports adding language that the LEA shall provide the Summary of Performance and recommends adding to the requirement of the performance summary the following language:

(4) provide information on available resources and the way to access those resources to facilitate successful transition.

Students with SLD need to be informed of available resources as well as the way those services can be accessed to ensure the accommodations, modification and services that were effective can continue to support the student's performance in post-secondary settings and in the workplace.

DLD appreciates the effort the Department of Education has made to issue proposed regulations and request input from stakeholders in a timely manner. DLD is happy to provide additional comments or clarification and to assist the Department as the regulatory language is crafted to guide the implementation of IDEA 2004. Thank you for this opportunity to contribute to this important endeavor.

Sincerely,



John Wills Lloyd, Ph.D.
President