



TO: Biden Transition Team for the U. S. Department of Education

FROM: National Down Syndrome Congress

SUBJECT: Recommendations for the Biden Administration

DATE: November 30, 2020

Thank you for the opportunity to participate in the meeting on November 25 to share our views on key issues that are important for the Biden Administration to address. Per your request, we are sharing in this memo the points raised during the meeting by Stephanie Smith Lee, NDSC Senior Policy Advisor.

Increased focus on inclusion

We request an increased focus on quality education and inclusion for students with intellectual disability (ID), particularly those who take an alternate assessment. Unfortunately, despite the least restrictive environment (LRE) requirements that have been in the law since 1975, these students are usually placed automatically in segregated life skills classrooms where they have little opportunity to meaningfully participate in the general curriculum or interact with typical peers. A recent [study](#) shows that only 3% of students who take an alternate assessment are included in regular education classes at least 80% the time (Kleinart, *et al* 2015).

There has been great work funded by OSEP over the years on how to provide a high quality, inclusive education for these students. The TIES Center (<https://tiescenter.org>), the national technical assistance center on inclusive practices and policies, has excellent resources available. We request:

- A new focus on placing students with ID in general education classrooms with appropriate supports and services.
- A new focus on moving evidence-based practices on high-quality, inclusive education into the classroom.
- A restructuring of the Office of Special Education Programs (OSEP) monitoring system so that there is accountability for and monitoring of the education and placement of students with ID.

Support for Inclusive Higher Education

An exciting development over the past decade is the increase in postsecondary opportunities for students with ID since the Higher Education Opportunity Act of 2008 authorized certain forms of federal financial aid, model Transition and Postsecondary Programs for Students with Intellectual Disabilities (TPSIDs) and a National Coordinating Center (NCC). We request:

- Support Retaining and improving these ID provisions in the reauthorization of Higher Education Act (HEA) as outlined in this [letter](#) to Congress from the Inclusive Higher Education Committee, cosigned by 100 organizations.
- Include increased funding for TPSIDs/NCC in the Department's budget request.
- Correct misinformation on the Office of Postsecondary Education section of the ED website that is causing confusion in the field and problems for students and programs. Certain information regarding the definition of ID and other aspects of the TPSID program is inaccurate and contrary to the law. Despite requests from Senate staff and several national organizations that it be corrected, the corrections have not been made.

Addressing the impact of COVID-19 on students with disabilities.

The CARES Act required the Secretary of Education to report to Congress on any waivers that she thinks are needed to the Individuals with Disabilities Education Act (IDEA) during the pandemic. An in-depth [NDSC analysis](#) showed that significant flexibility already exists and waivers to IDEA are not needed. We are pleased that the [Secretary's Report](#) strongly affirmed the rights of students with disabilities and did not recommend waivers.

- We oppose any waivers of IDEA.

OSERS and the Office of Civil Rights (OCR) issued guidance regarding students with disabilities during COVID. This very important guidance stated clearly that states and districts must continue to provide a free appropriate public education (FAPE) in the LRE to students with disabilities, with specific guidance that distance learning plans must be developed by the IEP team. This is going well in some states, but not in others. Parents in a number of states are expressing concerns that the guidance is not being followed and not following the guidance is having a negative impact on their children, who are regressing academically, socially and emotionally. We request:

- Retain the OSERS and OCR guidance.
- Develop a comprehensive resource document quickly with evidence-based information and tool kits for teachers on educating students with disabilities, including students with the most significant disabilities, during the pandemic, with a focus on moving what we know from research into practice.
- That OSEP monitor the states' written guidance to local educational agencies (LEAs) during COVID to ensure it is accurate and sufficient; monitor the states' general supervision of LEA's during partial and complete school

closures; and monitor how states are using issues raised state complaints in their monitoring of LEAs.

First 100 days priority

We oppose any efforts by the Department to open existing regulations implementing the Workforce Innovation and Opportunity Act (WIOA) of 2014 and oppose any change to the definition of “competitive integrated employment” (CIE). WIOA defines CIE as work at or above minimum wage, with wages & benefits comparable to, and fully integrated with, co-workers without disabilities. This definition was the result of robust discussions among all stakeholders and has become settled law. Unfortunately, the Department has indicated that it will likely re-open the regulation.

- We encourage the Biden Administration to announce within the first 100 days that the WIOA regulations will not be reopened and the CIE definition will not be changed.

Other important priorities

There were other important priorities raised by disability colleagues at the meeting that we support. In particular, we agree about the importance of increased funding for all parts of IDEA – Part C early intervention, Section 619 preschool, Part B grants to states, and Part D national activities. We also agree on the need to pass and implement legislation on restraint and seclusion.

Thank you for this opportunity to share our views. If you would like any further information, please contact Stephanie Smith Lee at Stephanie@ndscenter.org.