July 30, 2021

Nkemjika Ofodile-Carruthers
U.S. Department of Education
400 Maryland Avenue SW, Room 4W308
Washington, DC 20202

RE: ED–2021–OPEPD–0054

Submitted at: www.regulations.gov

Dear Ms. Carruthers,

The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The Education Task Force proactively monitors federal legislation and regulations that address the educational needs of children with disabilities and their families, including the 7.7 million infants, children, youth and young adults eligible under the Individuals with Disabilities Education Act (IDEA) who must be provided a free, appropriate public education (FAPE) and maintain their rights to an individualized education program (IEP) that is implemented in the least restrictive environment (LRE). We also advocate for the 1.3 million students eligible under Section 504 of the Rehabilitation Act of 1973 (Section 504) and ensure equal access to educational opportunity for all these students under the Americans with Disabilities Act (ADA). The Education Task Force advocates for enhanced opportunities for children under these laws.

CCD is providing input on the U.S. Department of Education (ED) *Proposed Priorities and Definitions—Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs*. We appreciate the opportunity to weigh in as the Secretary establishes a key focus and framework for discretionary grants in the coming fiscal year.

First, we wish to thank ED for the intentional mention of students with disabilities and English Learners in the introduction, especially as it relates to technology. To reinforce the important focus of discretionary grants on the educational equity, access and improved outcomes for all students, we offer the following recommendations:

**Introduction**

Recommendation 1: Edit the preamble/introduction [at page 34665] regarding "technology" to ensure it is consistent with all requirements of federal law. (Edits in **bold):**

"Additionally, regarding each technology reference, all technology developed or used under these proposed priorities must **be universally designed and fully** accessible, **including in the use and interoperability with assistive technology for** to English learners and to individuals with disabilities in accordance with Section**s** 504 **and 508** of the Rehabilitation Act of 1973, **the Individuals with Disabilities Education Act, the Elementary and Secondary Education Act of 1965,** and Title II of the Americans with Disabilities Act, as applicable."

Rationale: Federal education and civil rights laws must be accurately reflected and referenced by ED in its Priorities and Definitions. This is necessary to both promote and support ED's goal to assure equity and accessibility and to include accurate terms and references as used in federal education law(s). Specifically, the introductory note regarding "technology" must be consistent with ED recommendations regarding universally designed technology[i] and provide specific references to federal requirements regarding the useability and interoperability[ii] of assistive technology[iii] as an appropriate accommodation.[iv] The current introductory note also lacks complete references to all federal education and civil rights laws regarding accessibility [and access to AT] and therefore must include the Individuals with Disabilities Education Act (IDEA) Elementary and Secondary Education Act of 1965 (currently known as the Every Student Succeeds Act) (ESEA) as well as Section 508 of the Rehabilitation Act of 1973.

**Proposed Priority 1 —Addressing the Impact of COVID–19 on Students, Educators, and Faculty.**

Comment: First, CCD would like to thank the Secretary, as part of the clarification for ED's focus on "underserved students", for stating that "Underserved students are also more likely to rely on key school- or campus-supported resources such as food programs, special education and related services, health services (including mental health), counseling, or after-school programs to meet basic or developmental needs." The specific reference to special education helps establish that children with disabilities are in fact among the group of students significantly impacted by the pandemic.

Second, Priority 1 underscores that "states and districts need resources to stabilize current workforce positions and protect the pipeline into the profession." CCD has long advocated for ED, through the Teacher Quality Partnership Grants, IDEA's Part D: Personnel Preparation program and other federal initiatives to focus on the special education teacher shortage problem that existed before COVID-19 and is now at crisis levels. For example, in Fairfax County Public Schools this June, summer school programs for over 1,200 children with disabilities had to be delayed due lack of sufficient staff.[v] We also know specialized instructional support personnel are experiencing shortages in key areas such as school psychology, occupational and speech therapy and paraeducators. It is critical that ED include the special education workforce in upcoming discretionary grant programs.

Recommendation 1: Proposed Priority 1 (e): Edit to specifically include assistive technology that is *accessible, usable* and *interoperable*, for all students, including English Learners [and students with disabilities] as required by law. (Edits in **bold**):

(e) Providing students and educators with access to reliable high-speed broadband and devices; providing students with access to high-quality, technology-supported learning experiences **and assistive technology** that are accessible, **usable and interoperable** to children, **English Learners** or students with disabilities and educators with disabilities to accelerate learning; and providing educators with access to job-embedded professional development to support the effective use of technology.

Rationale: CCD appreciates that ED has provided a priority that specifically supports job embedded professional development for teachers. Such training is key to students accessing the general curriculum as required by IDEA, to accessing assessments as required by the ESEA and as supported by federal civil rights laws. To avoid confusion about providing AT, and to promote the professional development that teachers need to support all students, we strongly recommend ED include proper terminology in Priority 1, consistent with federal civil rights and education laws.

**Recommendation 2 Proposed Priority 1 (h): Edit to include postsecondary programs for students with an intellectual disability**
Comment:  Priority (h) should be edited to add the language in bold: Using evidence-based instructional approaches or supports to better allow individuals who did not enroll in, withdrew from, or reduced course loads in postsecondary education or training programs due to COVID-19 to enroll, remain enrolled, and complete credit-bearing coursework and **earn recognized postsecondary credentials or complete Comprehensive Transition and Postsecondary Programs for Students with Intellectual Disabilities .**

Rationale: By solely referencing "credit-bearing" coursework and recognized postsecondary credentials, this priority excludes students with an intellectual disability who did not enroll in, withdrew from, or had reduced course loads in postsecondary education or training programs due to COVID-19, such as students enrolled in Transition and Postsecondary Programs for Students with Intellectual Disability (TPSIDs).

**Proposed Priority 2—Promoting Equity in Student Access to Educational Resources, Opportunities, and Welcoming Environments.**

Recommendation 1: Proposed Priority 2 (a): ADD NEW (7), RENUMBER (in **bold**)

Projects designed to promote educational equity and adequacy in resources and opportunity for underserved students— (a) In one or more of the following educational settings:

**ADD NEW: (7) " Alternative schools and programs". Renumber existing (7) to (8) and existing (8) to (9).**
Rationale: Data show that students with disabilities are disproportionately referred to "alternative" schools/programs. Such programs are found to have poor academic performance and low graduation rates. Including alternative schools and programs as one of the settings is critical.
Recommendation 2: Proposed Priority 2 (b)(1)(i): Maintain reference to universal design for learning. ED proposes in (b)(1)(i): "Promoting student access to and success in rigorous and engaging approaches to learning that are racially, ethnically, culturally, and linguistically inclusive and prepare students for college, career, and civic life, including one or more of the following: (i) Student-centered learning models that leverage technology to address learner variability (e.g., universal design for learning (as defined in this notice)..."

Rationale: CCD supports a focus on assuring that all students have access to flexible learning environments that anticipate learner variability and provide alternative routes or paths to success for *all* learners to access in-person, blended and online education. UDL provides a responsive framework to support educators in their professional learning and application in any teaching environment.

**Proposed Priority 3—Supporting a Diverse Educator Workforce and Professional Growth to Strengthen Student Learning.**
Recommendation 1: Priority 3: ED must do all it can to grow, strengthen and support a diverse and qualified education workforce, including specialized instructional support personnel and paraprofessionals

Rationale: As ED notes, "there is significant inequity in students' access to well qualified, experienced, and effective teachers, particularly for students from low-income backgrounds, students of color, and children or students with disabilities." And as shared in our comments to the Office for Civil Rights on July 23, 2021,

All members of the school community must be adequately prepared and have access to high-quality, ongoing professional learning opportunities to implement culturally competent, proactive approaches with students that are fundamentally fair and equitable. This includes the implementation of tiered intervention models to support access to and explicit instruction in social-emotional learning and creating school-wide positive expectations, evidence-based trauma-informed teaching strategies, de-escalation techniques, conflict resolution, peer mediation, and practices of restorative justice. Professional learning opportunities should also include universal design (UDL) for instruction and assessment, use of appropriate communications supports, as well as proper implementation of functional behavioral assessments (FBA) and behavioral intervention plans (BIP) to reduce the triggers for inappropriate school behavior before a problem occurs. The current critical shortage of teachers, particularly in special education, must be addressed in order to meaningfully ensure that students receive a fair and equitable education in a safe learning environment. Finally, we endorse CCSSO's Advancing Inclusive Principal Leadership (AIPL) State Initiative.[vi]

Recommendation 2: Add to (b) as follows (in **bold**):

(b) Increasing the number of teachers with certification in an educator shortage area, **dual certification,** or advanced certifications from nationally recognized professional organizations.

Rationale: Dual certification, particularly teachers certified in both general and special education, provides expanded opportunities for including students with disabilities in general education classroom which is shown to confer significant educational, behavioral and social benefits.

Recommendation 3: Priority 3(1)(iv): Correct terminology regarding students with the most significant cognitive disabilities. (in **bold**)

(iv) Meeting the needs of children or students with disabilities, including children or students with the most significant **cognitive** disabilities.

Rationale: ED must use terminology consistent with federal education law when it refers to students with disabilities including students with the most significant cognitive disabilities as included in the Every Student Succeeds Act and its regulations.[vii]

**Proposed Priority 4— Meeting Student Social, Emotional, and Academic Needs.**

We thank the Department for including this priority, and for the emphasis on supporting educator and school capacity. We specifically thank the Department for including the following sections that disproportionately impact children with disabilities:

(d) Providing multi-tiered systems of supports to meet students' academic, social, and emotional needs, including by offering evidence-based trauma-informed practices, to address learning barriers both in and out of the classroom, that enable healthy development and respond to students needs and which may include professional development for educators on avoiding deficit-based approaches.

(e)Developing or implementing policies and practices that prevent or reduce significant disproportionality on the basis of race or ethnicity with respect to the identification, placement, and disciplining of children or students with disabilities.

(g) Providing students equitable access to social workers, psychologists, counselors, nurses, or mental health professionals and other integrated services and supports, which may include in early learning.

**Proposed Priority 5—Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success.**

Recommendation 1: ADD NEW (m)(in **bold**)

**ADD NEW: (m) Supporting the development and implementation of comprehensive transition and postsecondary programs for students with intellectual disabilities (as defined in sec 760 of the Higher Education Act of 1965, as amended (HEA).**

Rationale: The proposed priority for postsecondary education fails to recognize the postsecondary programs for students with intellectual disabilities that was authorized in the HEA reauthorization in 2008. This program, housed within the Office of Postsecondary Education (OPE) and currently funded at $13.8 million, provides grants to create or expand model Transition and Postsecondary Programs for Students with Intellectual Disability (TPSIDs). Between 2010 and 2025, OPE funded 74 model demonstration projects called Transition and Postsecondary Programs for Students with Intellectual Disabilities (TPSIDs). As of July 2021, these grantees have created or expanded inclusive higher education programs, enrolling over 4,500 students with intellectual disability (ID) on 119 college or university campuses in 34 states. As of July 2021, there were 309 non-degree programs on university and college campuses across the country offering students with intellectual disabilities an opportunity to take college classes, engage in career development and independent living activities and participate in the social life of the campus. In addition, outcome data shows program participants are employed post-graduation at significantly higher rates with higher average wages. This important program should be added to Priority 5.

We thank the Department for including this section regarding students in postsecondary education receiving access to vocational rehabilitation services and IDEA services, as appropriate. There continues to be confusion as to when and what vocational rehabilitation or IDEA funding  can or should cover for students in inclusive postsecondary programs for students with intellectual disability despite federal guidance, FAQs, and regulatory language.  Emphasis here will continue to raise that issue.

**Proposed Priority 6—Strengthening Cross-Agency Coordination and Community Engagement to Advance Systemic Change.**

ED must promote and support inter-agency collaboration across all of its offices to  support and improve equity and ensure improved academic, behavioral and functional outcomes for  students with disabilities, including students of color, English Learners, and those with the most  significant disabilities.

**Definitions**

Recommendation 1: Add 'Technology' to Definitions and assure terminology is consistent with revisions recommended above.

Definitions: ADD new definition: Technology. (in **bold**):

**Technology:** *Technology means* **technology developed or used under these proposed priorities that are universally designed and fully accessible, including in the use and interoperability with assistive technology for English learners and individuals with disabilities in accordance with Sections 504 and 508 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Elementary and Secondary Education Act of 1965, and Title II of the Americans with Disabilities Act, as applicable.**

Rationale: Because the Priorities and Definitions proposed by the Secretary prioritize programs that will "support a comprehensive education agenda…" focused on "providing all students with access to high-quality schools" in all settings including "high quality remote settings," it is imperative that ED include a comprehensive definition of technology. The definition must also include accurate references to assistive technology that are grounded in the requirements of federal education and civil rights laws.

Recommendation: Add the language in bold to the definition of children or students with disabilities: Children or students with disabilities means children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) or students with disabilities, as defined at section 7(37) of the Rehabilitation Act of 1973 (29 U.S.C. 705(37)) 705(37)) **and which includes children or students with the most significant cognitive disabilities.**

Rationale: Although technically the existing definition covers students with the most significant cognitive disabilities, this population of students often does not get addressed in grant programs that include other students with disabilities. An example would be assessment grants that cover the state's general assessment but do not consider the state's alternate assessment. States are talking about increasing the use of interim assessments even though these interim assessments are not designed for the accessibility needs of students with significant cognitive disabilities or students with sensory disabilities. This brief from the National Center on Educational Outcomes discusses this issue https://nceo.umn.edu/docs/OnlinePubs/NCEOBrief23.pdf. By emphasizing the inclusion of students with the most significant cognitive disabilities in the definition, we hope that grants proposed under any of the Secretaries priorities will also include these students.

The CCD Education Task Force appreciates the opportunity to provide these recommendations to ED. We look forward to working with you to assure equity in education for all infants, children, youth, and young adults with disabilities. If we can provide additional information, please contact the CCD co-chairs listed below.

Sincerely,

American Printing House for the Blind
American Psychological Association
Autistic Self Advocacy Network
Autism Society of America
Association of University Centers on Disabilities
Center for Learner Equity
Christopher & Dana Reeve Foundation

Council of Administrators of Special Education
Council for Learning Disabilities
Disability Rights Education & Defense Fund
American Council of the Blind
Council for Exceptional Children
Council of Parent Attorneys and Advocates
Division of Learning Disabilities
Easterseals
Higher Education Consortium for Special Education
National Association of State Directors of Special Education
National Association of School Psychologists
National Center for Learning Disabilities
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
National PLACE
National PTA
RespectAbility
Teacher Education Division of the Council for Exceptional Children
The Advocacy Institute
The Arc of the United States


For more information, please contact the CCD Education Task Force Co-Chairs:

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*The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The Education Task Force of CCD monitors federal legislation and regulations that address the educational needs of children and youth with disabilities and their families, including regulatory efforts under federal law such as the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). The Education Task Force advocates for high expectations for children with disabilities under these and other laws.*
www.c-c-d.org

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[i] Ibid.
[ii] See: P.L. 114-95, Section 1111, (b)(2)(B)(vii)(II).
[iii] See: P.L. 108-446, Sections 300.105 and 300.324; and 29 23 U.S.C. 794d.

[iv] See: P.L. 108-446, Section 1462(b)(2)(A)(i).

[v] Natanson, H. and W. Wan, *Lacking teachers, Fairfax delays summer school for hundreds of students with disabilities*, (June 26, 2021) at: https://www.washingtonpost.com/education/2021/06/26/lacking-teachers-fairfax-delays-summer-school-hundreds-students-with-disabilities/

[vi] See: CCD Comments to Reyes, July 23, 2021

[vii] See: P.L. 114-95 and § 200.6(a)(2)(iii)