

## **SUMMARY OF TODAY'S OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES (OSERS) STAKEHOLDER CALL REGARDING THE 72 RESCINDED IDEA AND RSA GUIDANCE DOCUMENTS THAT WERE ANNOUNCED ON FRIDAY 10/20**

*October 24, 2017* - OSERS officials talked about the fact that the recently rescinded documents were all outdated. Originally the list of rescinded documents they shared did not provide rationales for the rescissions but subsequently they shared an updated document with rationales. That can be found at <https://www2.ed.gov/policy/speced/reg/ea13777/ea13777-osers-outdated-guidance-list-reasons-20171020.pdf>. NDSC and other organizations have been reviewing the guidance documents and comparing them to subsequent guidance and regulations on the same topic. For example, the guidance on Preschool LRE that was rescinded is superseded by a later guidance containing everything from the earlier guidance and adding additional helpful information. This analysis is made more difficult because OSERS does not provide links to these updates. So far the consensus is that nothing substantive has been lost but it is difficult to be completely certain. See COPAA analysis at <http://www.copaa.org/news/371171/COPAA-Statement-on-OSERS-Decision-to-Rescind-Guidance-Documents-.htm>.

Of greater concern is the fact that subsequent phases of this review process will go beyond outdated documents and focus on those that are considered "unnecessary or ineffective." It was admitted on the call that the next phase would impact policy documents that are more substantive.

Once the call was opened up for questions, a number of stakeholders expressed concerns about the process, especially as we enter the next phase. NDSC was able to offer comments and ask a question. We made the point that just because there is more recent guidance or regulations does not mean the older document (as long as it is not inaccurate) should be rescinded because it may be more parent friendly than what came later. Why not note on it that there is more recent info and link to that information? We also pointed out that it is impossible to meaningfully comment in advance on all the possible guidance and regulations that they may think are unnecessary or ineffective and that the parent perspective on what falls in that category is very important. We asked whether they would share the actual proposed list for rescission for the next phase in advance of the decision with organizations representing families so we could provide detailed input. There was a public comment period earlier in the fall, but all anyone could make were broad statements without a narrowed down list of targets. We were told that they would think about whether to engage stakeholder in the way suggested. Paula Goldberg from PACER came after NDSC and expressed agreement with our request.

As this process moves forward it is important to know that although guidance documents (which explain the law but don't have the legal force of regulations) can be rescinded in this way, in the case of regulations, the Administrative Procedures Act requires the Department to go through a process involving stakeholder input on the specific set of regulations if any are proposed for repeal or replacement. It is also important to point out that that as much as it will hinder interpretation and implementation of the laws if more substantive policy guidance are rescinded in the next phase, the LAW still stands. Only Congress can change the law, and the rights conferred by the law.

OSERS has informed NDSC that they will post a transcript of the call (but no audio recording). The transcript will be posted at <https://www2.ed.gov/about/offices/list/osers/index.html>.