



Via E-mail at: comments@ed.gov

February 24, 2006

Mr. Troy Justesen
U.S. Department of Education
400 Maryland Avenue, SW
Potomac Center Plaza, Rm 5126
Washington, D.C. 20202-2641

RE: The National Disability Rights Network's Comments to The Individuals with Disabilities Education Act Multi-Year Individualized Education Program Demonstration Program

The National Disability Rights Network ("NDRN"), formerly the National Association of Protection and Advocacy Systems ("NAPAS") is the membership association of protection and advocacy ("P&A") agencies which are located in all 50 states, the District of Columbia, Puerto Rico, and the territories (the Virgin Islands, Guam, American Samoa and the Northern Marianas Islands). P&As are mandated under various federal statutes to provide legal representation and related advocacy services on behalf of all persons with disabilities in a variety of settings. As a network, the P&As provide free assistance to over 20,000 families per year in cases involving the IDEA and Section 504 of the Rehabilitation Act of 1973 and have a unique and significant interest in regulations that will affect the rights of children with disabilities to obtain a free appropriate public education. The P&A system comprises the nation's largest provider of legally based advocacy services for persons with disabilities.

NDRN appreciates the opportunity to submit comments on the Multi-Year IEP Proposal. NDRN's main concern is that the purpose of the Pilot Program – improving educational and functional results of children with disabilities by increasing resources and classroom instruction time—will be realized. We urge the Department to fully consider and amend the proposal based on our comments so that the goal of increasing services and outcomes for students can be met.

NDRN's comments follow:

I. Background for Proposed Requirements and Selection Criteria

1. Problem: The background section states that the Institute of Education Sciences will evaluate the outcomes of the Multi-year Individual Education Plan Pilot using a "quasi-

experimental design” that collects data in four categories. Currently, the U.S. Department of Education (Department) encourages schools to use research-based instruction, while at the same time the Department is establishing an experimental design that is not defined and that may not provide meaningful outcome information. Further, one of the Department’s own agencies—Institute of Education Sciences—will conduct the evaluation of the Department’s own proposal.

Recommendation: The Department should contract with an outside agency to develop a research-based design that will produce reliable information about the effectiveness of the multi-year Individual Education Plan (IEP) Pilot.

Rationale: Congress established the Multi-Year IEP Program as a pilot program to give the Department the opportunity to develop guidelines for the Program and to gather data and information on the implementation of Multi-Year IEPs. The intent is that information gathered from the pilot program will be used to determine if and how a federal law on Multi-Year IEPs will be crafted. The basis for this determination must be reliable and based on a proper protocol. Without an independent agency conducting the evaluation with a proper protocol the actual results could be incorrect and lead to statutory construction that is unhelpful to parents, children and schools.

2.Problem: The Department lists four areas for the Institute of Education Sciences to collect data on outcomes. These outcomes are based on the requirements of the Individuals with Disabilities Education Act (IDEA) Section 1414(d)(5)(B)(v), which requires the Department to submit a report to Congress and include in that report specific recommendations for “ensuring satisfaction of family members.” However, the Department’s proposed quasi-experimental design does not include information on parent satisfaction—one of the requirements of Section 1414(d)(5)(B)(v).

Recommendation: The evaluation of the Multi-Year IEP Pilot must include data collection on the outcome of “family member satisfaction” including parents as defined in Section 1401(23).

Rationale: The statute at Section 1414(d)) requires the Department to report on the satisfaction of “family members.” The Department must follow the statute in its procedures and therefore should change the language in this section as described above.

II. Proposed Additional Requirements for Multi-Year IEP Programs.

1.Problem: In item number 3a the Department requires States when submitting a proposal to provide “assurances” that before an LEA seeks informed consent from a parent that the LEA inform the parent in writing of the difference between an annual IEP and an multi-year IEP. Mere “assurances” does not provide the level of acceptable scrutiny needed to ensure compliance with this section.

Recommendation: The Department should change the language in (a) to read: The LEA will have available for review by the State and Department documentation signed by the

parent that indicates that before an LEA requested the parent's informed consent to the development of a multi-year IEP, the LEA will inform the parent in writing of the requirements in Proposed Additional Requirement 3(a)(i) and (ii) [difference in annual IEP and multi-year, right to revoke consent and LEA's requirement to hold an IEP meeting if consent is revoked.]

Rationale: In order to ensure a parent is fully informed of his or her rights, the LEA must provide complete information to a parent and seek informed consent. Parents, in order to participate meaningfully in IEP meetings, must be fully informed about their rights. If the LEA is providing parents with an explanation in writing of the difference between an annual IEP and a multi-year IEP, it will be simple for a LEA to institute a plan that documents parents were provided with this information and that the information was properly explained to them.

Problem: We support the Department's requirement in item number 3a(ii) that requires the school to inform the parent they have the right to revoke consent to a multi-year IEP. However, the section does not clarify that a parent may revoke consent at any time.

Recommendation: Item number 3a(ii) should read: "the parent's right to revoke consent at any time and the LEA's responsibility to conduct, within 30 calendar days..."

Rationale: To avoid any confusion the Department should clarify that a parent has the right to revoke consent to a multi-year IEP at time and thereafter a school must hold an IEP within 30-days of the revocation.

3. Problem: The Department does not require IEP teams to revisit and adjust a student's IEP accordingly when a student is not progressing with his or her current IEP goals.

Recommendation: Under the "Additional Requirements" section of the multi-year IEP program add a new 3(b) and re-name the current 3(b),(c) and (d) to 3(c),(d) and (e) respectively. The new 3(b) should read: A State must have in place a system to monitor a child's IEP performance during the school year. If the student is not making meaningful progress toward their learning objectives and/or goals, this must trigger the LEA to hold an IEP meeting for the child to review, in detail the child's needs and revisit his or her IEP goals.

Recommendation: Although the multi-year IEP pilot requires annual reviews, if those reviews are conducted without a full IEP team, the child may go years without a fully attended IEP meeting. This could lead to gaps in the child's program and gaps in the understanding of what the child needs. If a child begins to fall behind or is unable to meaningfully progress with the goals set in his or her IEP, the State should have a mechanism that triggers a full IEP meeting instead of a truncated review. Otherwise, students could go through 3 years of their educational career without a full IEP, while at the same time still not making sufficient progress with their goals.

4.Problem: 3(c)The Proposed Additional Requirement by the Department requires a description of how the State obtained input from school and district personnel and parents in developing the list of required elements for each Multi-year IEP and the description of the

process for the review and revision of each multi-year IEP. However, the Requirement does not clarify that the States must comply with IDEA Section 1412(19) public participation requirement, nor does this section require States to indicate what input was received or what suggestions were accepted and who those suggestions came from. Merely accepting input and reporting such does not go far enough.

Recommendation: We support the Department's requirement that States obtain stakeholder input, but the requirement must clarify that States must follow IDEA Public Participation requirements of Section 1412(19) and that States must go one step further and provide a summary of the input and require the State to indicate what input they incorporated into their plan and who or what organization provide the suggestion. The Department should add a (b)(1) that states: A description of the suggestions received, who provided the suggest; and an indication whether or not the suggestion was incorporated into State's list of required elements for each multi-year IEP.

Rationale: Obtaining input from stakeholders is only one part of the process. If a State were to collect input broadly and then did not draft, revise or edit any part of the State plan based on this input, the requirement for input is an exercise in futility. States must genuinely consider input of parents and other stakeholders and make changes as appropriate.

5.Problem: Proposed Additional Requirement 3(d)(i) requires the State to ensure the evaluator has access to student's IEPs, but not require that the State ensure all privacy concerns and laws adhered to properly.

Recommendation: Add a sentence to the end of (ii) that states the following: The State and LEA will comply with any and all privacy law and requirements including but not limited to IDEA and Family Educational Rights and Privacy Act (FERPA) before providing evaluators access to IEPs.

Rationale: Parents and students have a right to privacy regarding a child's educational records including a child's IEP. A child's right to privacy must be maintained throughout the Multi-year IEP evaluation process.

6. Problem: Proposed Additional Requirement (d)(v) requires the State to provide the evaluator with data from parents including interviews and responses to surveys. However, this is only required "if necessary" to the final design of the evaluation. The design of the evaluation must include parental input. In addition, the word parent is too limiting.

Recommendation: We recommend the Department delete the phrase "if necessary to the final design of the study" and instead require States to provide assistance to the evaluator when needed to collect data from parents... Throughout this section (and through the proposal as a whole) the word "parent" must refer to the definition of parent in 20 U.S.C.§1401(23).

Rationale: The statute at 20 U.S.C. §14014(d)(5)(B)(v) requires that the Secretary, in her annual report to Congress include information on five specific issues, one being the satisfaction of family members. The Department should take measures to ensure that every

State and LEA within each State that is participating in the Multi-year IEP, seeks input from family members including parents as defined in IDEA.

8. Problem: Proposed Additional Requirement (d)(v) requires the State to provide the evaluator with data from parents including interview and responses to surveys. However, this section does not require data collection across disability and classification and across socio-economic groups.

Recommendation: This section should require the State to seek a cross section of interviews, surveys and information of parents of children from all 13 disability categories of IDEA and from varying minority and socio-economic groups.

Rationale: The pilot program is established to glean outcomes and data that will be used to determine if multi-year IEP's should be expanded beyond 15-pilot States. One important criteria to consider when making this decision is the Pilot's effect, if any, on students with different disabilities, minority students and student from varying socio-economic groups. If the Pilot has a greater impact on certain students with disabilities, minority groups or socio-economic groups this should be examined and considered before proceeding further with the multi-year program.

III. Proposed Selection Criteria

1.Problem: The selection criteria 1(b) requires the Department to consider the likelihood that the proposed project will result in improvements in the IEP process, especially long-term planning and address the need to reduce the paperwork burden associated with IEPs. However, the selection criteria does not require consideration of whether or not the proposal reduces teachers non-instructional time and the likelihood that the proposal will improve positive outcomes for children with disabilities.

Recommendation: Create a section 2(d) that states: The extent to which the proposal is likely to reduce the amount of non-instructional time spent by teachers; and create a section 2(e) that states: The extent to which the proposal is likely to improve positive outcomes for children with disabilities.

Rationale: The statute at 20 U.S.C. §14014(d)(5)(B)(i)(II) and (iii) requires that the Secretary, in her annual report to Congress include recommendations how to reduce non-instructional time of teachers and improve outcomes for children with disabilities. Because Congress is interested in these goals, the Department should look to States to try to achieve good results in these areas. If these goals are not part of the selection criteria then a State could meet the requirements for selection, yet fail to focus on these issues.

2.Problem: IDEA at Section 1414(d)(5)(A)(iii)(II) provides certain content requirements that a State's proposal shall include, yet the Department's Selection Criteria are not based, even in part, on a State meeting these content requirements.

Recommendation: Create a number 4 under Selection Criteria that states: Compliance: "The Secretary shall consider if the States proposal complies with the content requirements

of Section 1414(d)(5)(A)(iii)(II). If a State fails to meet these requirements the proposal shall be rejected.”

Rationale: The Department recognizes in its introduction that States must comply with the statutory requirement but then fails to require compliance with these in its outlined criteria. Unless the Department includes these requirements in its assessments of a State’s proposal the State may meet all of the Department’s Selection Criteria, yet not meet the requirements of the Act.

3. Problem: The Department does not base selection of a State’s proposed plan on the support of stakeholders in the State’s pilot program proposal.

Recommendation: The Department should add a selection criteria that heavily weighs whether or not the State has broad stakeholder support in the pilot proposal.

Rationale: Stakeholders will be affected greatly by this pilot program, and their opinion and support of the program must be considered before awarding a State the approval to move forward with a proposal. Stakeholders should include, but not be limited to parents, advocates, family members and school personnel.

4.Problem: The Department developed its own Proposed Requirements that States must meet when submitting a proposal to the Department for consideration, yet the Department does not include compliance with these Additional Requirements in its Selection Criteria.

Recommendation: Create a number five under Selection Criteria that:

- (a) Evaluates how the State obtained stakeholder input and whether or not stakeholders approve of the State’s proposal.
- (b) Evaluates the system proposed to ensure parents receive a written explanation of the difference between an annual IEP and a multi-year IEP before a school seeks informed consent from the parent.
- (c) Evaluates how a State plans to recruit districts or schools to participate in the multi-year IEPs; and
- (d) How the State will assist the evaluator in parental input in determining the outcome of the pilot project.
- (e) Evaluates how the state will trigger reviews of a child’s multi-year IEP when the child is not making progress towards his or her IEP goals.

Rationale: The Department adds additional requirements to the statutory requirements that States must follow when seeking to be part of the Multi-Year IEP program, but then fails to require compliance with these in its outlined selection criteria. Unless the Department includes these requirements in its assessments of a State’s proposal the State may meet all of the Department’s Selection Criteria, yet not meet the Department’s Additional Requirements.

If you have any questions or comments, please feel free to contact Elizabeth A. Greczek, Education Staff Attorney at Elizabeth.greczek@ndrn.org. Thank you for the opportunity to comment.

Sincerely,

Curtis Decker,
Executive Director

