



September 2, 2005

Troy R. Justesen
U.S. Department of Education
400 Maryland Avenue, SW
Potomac Center Plaza, Room 5126
Washington, DC 20202-2641

Dear Dr. Justesen:

On behalf of the National Association of School Psychologists (NASP), we thank the Department of Education for the opportunity to share our comments and recommendations on the proposed regulations for the Individuals with Disabilities Education Improvement Act (IDEA).

NASP represents over 22,000 school psychologists in schools and communities across the country. The NASP mission is to support school psychology with leadership to enhance the mental health and educational competence of all children by implementing research-based, effective programs that promote healthy behaviors, enhance independence, and promote optimal learning. This is accomplished through state-of-the-art research and training, advocacy, ongoing program evaluation, and caring professional service. We are particularly active in programs and services for school and community-based prevention efforts, including behavioral interventions and strategies to remove emotional, behavioral and academic barriers to learning.

School psychologists regularly work within many contexts of IDEA and the general education setting. We provide accurate and comprehensive assessments. We provide education and professional development for other educators and staff. We develop, implement, and evaluate individualized education programs and behavioral intervention plans. We provide community and school-based mental health counseling and psychological services; consult with parents, teachers, and school administrators on strategies to improve academic success; link students and families to resources within the community; and help design and implement projects to evaluate the effectiveness of academic and behavioral programs.

School psychologists often act as the bridge between special education and general education programs, school and community-based programs and services, and parents and the school community. Most importantly, we are specifically trained to link mental health and learning concerns to successful academic interventions and outcomes. For these reasons, we are integral players in successful and effective application of IDEA principles and practice and the implementation of NCLB.

As you finalize the regulations for the reauthorized IDEA, NASP urges you to support the role of school psychologists in improving academic success and promoting a healthy school climate for students with disabilities. Toward that end, NASP offers the following regulatory recommendations as our priority concerns:

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The Role of the School Psychologist in the Preamble (Page 35825) of the Proposed Regulations

NASP appreciates the assurances made by Troy Justesen, Deputy Assistant Secretary of the Office of Special Education Programs, during the IDEA Public Meeting in Washington D.C. on July 12, 2005 that the statement that costs to public agencies could be offset by a “*reduced need for psychologists*” to administer intelligence tests has been stricken.

NASP has been advocating for years through our training standards and models of best practices for the role of a school psychologist to be much more than just an IQ tester. Our concern with this statement in the Preamble is that States will not consider the comprehensive roles and functions that school psychologists have to offer in the ways of prevention, early intervention, crisis intervention, counseling, and educational consultation. The language reinforces a very narrow view of school psychologists that NASP has been advocating to change for many years.

§300.8 (4)(i) and (ii) Child with a Disability: Definition of Emotional Disturbance

The regulations continue to allow for students who are “socially maladjusted” to be excluded from eligibility but do not provide a definition for this term.

Recommendation: NASP recommends that the Department offer a research-based definition for the phrase “socially maladjusted” or eliminate this phrase completely from the regulations. This phrase is used in the definition of Emotional Disturbance (300.8 (c) (4) (ii) where it states, “Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance...”

Rationale: The term “socially maladjusted” is problematic to practitioners because there is no consistently agreed upon or accepted definition for this phrase found in the scholarly literature. In fact, the debate over what is and is not “social maladjustment” has raged for decades including whole journal editions being dedicated to the debate. (See *School Psychology Review*, 21 (1), 1992). Further, there is no valid or reliable instrument or methodology for identifying students who are or are not “socially maladjusted.” Defining or eliminating this exclusion will assist SEAs and LEAs in reducing misidentification that leads to complete exclusion, inappropriate placements in other categories, and the provision of inappropriate special education services. Given that the definition appears only in the proposed regulations and not in the statute, this is a critical opportunity for the Department to take action.

§ 300.156 Personnel Qualifications

NASP greatly appreciates the general personnel qualifications that specify that the SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. The NASP Standards for the Provision of School Psychological Services clearly delineates that agencies employ service providers that are fully credentialed.

We commend the Department for including the qualifications for related services personnel and paraprofessionals that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

NASP further supports that the regulations clarify that “related services personnel who deliver services in their discipline or profession have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.” Clearly all special education personnel are to meet the full set of requirements for their profession, not a watered down version of the necessary formal training.

Recommendation: The use of paraprofessionals and assistants should not be a means of circumventing the State-recognized certification and licensing requirements. Such practices would undermine the law’s requirements as well as best practice for service delivery. Guidance from the Department on the proper use and limitations on the role of paraprofessionals is critical.

Rationale: Psychological services should be delivered by qualified personnel; anything less than this could be a misuse of IDEA dollars and provide lower quality of service to students.

Recommendation: We recommend that the Department provide further recommendations to state education agencies regarding the types of “measurable steps [needed] to recruit, hire, and retain highly qualified professionals,” such as loan forgiveness programs, adequate working conditions, release time and financial support for continuing professional development activities, and salary supplements for nationally certified personnel.

Rationale: Participation in continuing professional development activities and the maintenance of high professional standards and practice are ongoing obligations of all personnel providing special education or related services to children with disabilities.

§300.174 Prohibition on Mandatory Medication

NASP supports the proposed language under paragraph (b) *Rule of Construction* that states, “Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic and functional performance, or behavioral in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111.”

Recommendation: NASP recommends that the Department consider adding language to Section 300.174 (a) that clarifies that when a LEA, at the request of the parent, agrees to assist in payment for medication for a child with a disability, that this support is not equivalent to “mandating the use” of the medication.

Rationale: There may be cases in which a school district is forced by the courts or voluntarily agrees to assist families in the payment of medication taken by a student during

the school day. The act of making this payment should not be viewed as the equivalent of making a recommendation or a requirement for the use of a medication that would be in violation of the federal statute and regulations.

§ 300.226 Early Intervening Services

We greatly appreciate the inclusion of *behavioral* interventions as part of early intervening services to students not yet identified as needing special education or related services under IDEA.

We also appreciate that educational and *behavioral* evaluations, services, and supports are included in this section of the proposed regulations. We strongly support the use of professional development funds to ensure that scientifically based academic as well as behavioral interventions are implemented consistently. We applaud the fact that “other school staff” are included in the professional development for delivering scientifically based academic and behavioral interventions.

Recommendation: NASP strongly supports inclusion of regulation language to say that related services personnel, including school psychologists, should be involved in developing and delivering these academic and behavioral interventions identified in 300.226 (a) and (b) (2).

Rationale: School districts should be aware that they have available a cadre of related services personnel whose specialized training includes developing a wide variety of interventions. Specifically, school psychologists are trained to develop academic and behavioral interventions that are directly linked to improved academic achievement and emotional well-being.

Utilizing current school personnel, particularly those specially trained to recognize students in need of additional services, can also improve collaboration between general and special education staff. This should allow for more efficient use of IDEA dollars and improved coordination and implementation of NCLB and IDEA programs.

§ 300.301 Evaluations and Reevaluations-Initial Evaluations

The IDEA statute and proposed regulations set forth a 60-day timeframe within which students should receive an evaluation, unless the state establishes its own timeframe.

Recommendation: We ask that the Department clarify in regulations that the state’s timeline should be 60 *school* days.

Rationale: NASP recommends that the wording clarify “school” days in an effort to assist year-round school models that incorporate vacations over the 12-month calendar year in meeting these requirements. In these school settings students are often in school for 9 weeks and then on vacation for 3 weeks. It is important to specify that the regulations refer to actual school days in order not to place an undue compliance burden on evaluation teams.

In addition, School districts and personnel (particularly school psychologists) who conduct evaluations will be undergoing a variety of system-wide changes due to implementation of problem solving models and early intervening services. For states such as Maryland that have a current evaluation timeframe longer than 60 days, the additional and drastic change down to a 60-day timeframe would create tremendous challenges for such personnel, to the detriment of the students' best interests. In an effort to strengthen the system over time, long-term goals to make a uniform evaluation timeframe of 60 school days nationwide should be phased in over time for states that have been utilizing a current timeline of 90 days.

Recommendation: We ask the Department to clarify when the evaluation timeline officially begins and how it relates to the period of time necessary for implementing and evaluating the effectiveness of the use of scientific, research-based interventions.

Rationale: The LD Roundtable's recommendations suggested that the timeline for evaluations be adhered to unless extended by mutual written agreement by the child's parents and a team of qualified professionals. For example, there may be an instance where investigating scientific, research-based interventions and completing other steps in a comprehensive evaluation requires more than 60 school-days.

§ 300.307 to 300.311 Additional Procedures for Evaluating Children with Specific Learning Disabilities

As a member organization of the LD Roundtable, NASP is pleased that the Department incorporated many of the LD Roundtable's recommendations into the proposed regulations.

NASP appreciates the new emphasis on the need for scientific research-based interventions to be implemented and evaluated within general education settings as part of the evaluation process. We support the language in 300.307 (a) (2) and (3) that shifts the emphasis of an evaluation away from the use of a discrepancy formula and toward a process that includes investigating the effectiveness of interventions for remediating academic and learning concerns.

NASP appreciates the emphasis on and the description of the professional competencies of the group members who determine if a child has a specific learning disability that are outlined for the first time in section 300.308.

We strongly support the change in section 300.310 [Observations] that states that someone *trained* in observation, shall observe the child, *and the learning environment*.

Recommendation: NASP asks the Department to accept the revisions being suggested to the proposed regulations in the joint letter submitted by the LD Roundtable organizations.

Rationale: The organizations of the LD Roundtable represent over 400,000 parents, special educators, other special education professionals and related services personnel. The recommendations of the LD Roundtable were developed over the past two years through a consensus building process and they reflect the expertise and experience of this diverse group of organizations.

Recommendation: NASP suggests that “speech language pathologist” be reinserted into Section 300.308 (c) so that the original language and intent found in the current regulations (300.540 (b)) be preserved.

Rationale: Knowledge of speech-language disorders is frequently a critical element to determining the presence of a specific learning disability. Multi-disciplinary assessment information, including speech-language, psychological, and academic evaluation data and interpretations, assists a staffing team in clarifying specific academic needs and processing deficits. The collaboration between speech-language pathologists, school psychologists, teachers, and learning specialists is essential to the process.

Recommendation: § 300.309 *Determining the existence of a specific learning disability.* NASP suggests that “ability level” be added to this section 300. 309 (a) (1) to read, “the group described in 300.308 may determine that a child has a specific learning disability if the child does not achieve commensurate with the child’s age *and ability levels* in one or more of the following areas...”

Rationale: Consideration of a child’s ability level is critical to the team’s understanding of the child’s achievement, rate of learning, and progress towards meeting State-approved standards. Both a child’s age and their ability levels are important achievement markers.

Recommendation: NASP also recommends that eligibility teams be required to consider both sections 300.309 (a) (2) (i) *and* 300.309 (a) (2) (ii) in determining if a child has a specific learning disability.

Rationale: It is critical that the word “and” should be used between these two requirements ensuring that teams that utilize a process to determine whether a child responds to scientific, researched-based interventions also consider relevant, empirically validated patterns of strengths and weaknesses in achievement, performance or both relative to intellectual development.

Recommendation: Guidance from the Department should be offered to state education agencies on the new provision that allows for the use of a scientific, research-based intervention process as part of the SLD evaluation procedures. In particular, the importance of documenting that the interventions used were data-based and implemented with fidelity is essential.

Rationale: It is critical that the Department provide guidance to state education agencies that reflects current research and best practice procedures to aid in the development of new approaches to SLD identification.

§ 300.324 Development, Review, and Revision of IEP

We greatly appreciate the emphasis within Section 300.324 (a)(2)(i) that positive behavioral interventions and supports must be considered for children whose behavior impedes the learning of self or others. Given the extensive research on the effectiveness of positive behavior supports, interventions, and services and the benefits of their use, we

encourage the Department to also promote continued research on effective behavioral interventions and assessments.

§300.530 Discipline Procedures

NASP is pleased that the discipline procedures outlined in the proposed regulations maintain many of the safeguards and protections for students with disabilities.

Recommendation: NASP is concerned that the language in 300.530 (a) permitting school personnel to consider *any unique circumstances on a case-by-case basis when determining a change in placement* may result in schools applying this provision to cases for which it was not intended, potentially resulting in a denial of FAPE. NASP recommends that the Department include the House Report language clarifying that this provision applies to the situation when school personnel are considering the placement of a child with a disability in an interim alternative educational setting due to the violation of a code of conduct.

Rationale: We found only two previous references to this provision by Congress, and it seems that it was not intended to be applied to all cases of violations of a code of student conduct. The first reference was in the *House Report 2003* stating:

*(B) ADDITIONAL AUTHORITY- Subject to subparagraph (C), and notwithstanding any other provision of this Act, school personnel under this section may order a change in the placement of a child with a disability who violates a code of student conduct policy to an appropriate interim alternative educational setting selected so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP, for not more than 45 school days (to the extent such alternative and such duration would be applied to children without disabilities, and which may include consideration of **unique circumstances on a case-by-case basis**), except that the change in placement may last beyond 45 school days if required by State law or regulation for the violation in question, to ensure the safety and appropriate educational atmosphere in the schools under the jurisdiction of the local educational agency.*

This implies that the intent of this provision by the House was to allow schools to extend the removal to an IAES beyond 45 school days, where appropriate.

The second situation where this provision should apply is when school personnel may consider any unique circumstances on a case-by-case basis and decide *NOT* to discipline a child. In the document entitled “IDEA: Guide to Frequently Asked Questions” by the Committee on Education and the Workforce, Subcommittee on Education Reform (February 17, 2005), the following reference to “unique circumstances on a case-by-case” basis is noted:

Does a school have to discipline a child with a disability in every instance? No. When a student has violated a code of conduct, school personnel may consider any unique circumstances on a case-by-case basis to determine whether a change of placement for discipline purposes is appropriate.

This clearly implies that the provision was intended to protect children with disabilities from unnecessary removals. We recommend that the provision be limited to these two situations, as originally intended by Congress.

§300.536 Discipline: Change of Placement Because of Disciplinary Removals

Recommendation: NASP recommends that in Section 300.536 (2) requires clarification in order to prevent confusion about the meaning of the phrase “substantially similar.”

Rationale: In Section 300.536 (b) (2) it is likely that a behavior manifestation determination would be required in order to discern if the behaviors for which a child was disciplined were “substantially similar.” For example, in the case of a child with a severe Conduct Disorder who is classified as ED, would separate incidents of noncompliance, stealing, and cheating (all related characteristics of the disability) be considered “substantially similar” or must the behavior be the exact same behavior? Without clarification, it seems that this provision could result in a great deal of confusion for practitioners about what constitutes a change of placement resulting from removals based upon “substantially similar” behavior.

Thank you for your consideration of these comments concerning the proposed regulations for IDEA. NASP welcomes the opportunity to work with the Department in assisting with implementation of this vital piece of legislation. For further information, please contact Stacy Skalski, NASP Director of Public Policy, at sskalski@naspweb.org, or Mary Beth Klotz, NASP Director of IDEA Projects and Technical Assistance, at mbklotz@naspweb.org.

Sincerely,



Susan Gorin, CAE
Executive Director