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November 1, 2019

Mr. Curtis Culwell
Executive Director
Texas School Alliance
curtis@texasschoolalliance.org

Re: TSA Federal Update

Dear Dr. Culwell:

The following information is provided relative to the federal activities of the TSA.

A. FEDERAL FISCAL ISSUES

Due to the impending impeachment actions, there is little hope that substantive actions on any education legislation currently pending will take place prior to March or April, 2020. The national organizations are focusing on the loss of education funding mainly due to the poor odds of the spending bills' passage in the Senate and the threat of a CR (Continuing Resolution) lasting until the end of the 116th Congress.

As of November 1, 2019, a massive spending package that would fund the military and the bulk of domestic programs, including the Education Department, has stalled in the Senate. But the attempt to advance it is likely to fail amid Democrat opposition.

— Senate Majority Leader Mitch McConnell filed cloture on October 28, 2019 on the motion to proceed to a House-passed spending package, H.R. 2740, which includes fiscal 2020 funding for the Education Department (detailed below). Senate leaders packaged together the two most expensive funding measures: one that provides money to the Pentagon and another that funds the departments of Labor, Health and Human Services, and Education.

— If successful, a Senate vote on the package would allow Republicans to swap in their own text and begin debate on the biggest chunks of government funding. But Democrats will likely oppose the effort, having demanded higher funding levels for the Labor-HHS-Education measure for weeks, among other unresolved issues.

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AASA staff members have told me that Congressional leaders are coalescing around a decision to pass a CR that would push funding for the US. Department of Education until February or March of 2020. The time that may be required in both chambers to devote to impeachment proceedings is the main impetus for crafting a longer-term CR although negotiations are also said to be at a standstill because there is no agreement as to how to fund the President's border wall.

Multiple continuing resolutions is challenging because it gives districts less time to plan for forthcoming funding for the 20-21 school year. Politically it is problematic as well because the temptation to pass a year-long CR (which is level funding) is higher the longer that funding bills are delayed. While many people describe a year-long CR as level funding it's important to remember that a CR does not adjust for inflation so in reality it is a cut in terms of buying power. Given where we started this year with House Democrats recommending $1 billion in additional funding for both IDEA and Title I it would be really disappointing to end up with no funding increases for these key formula programs. As a result, most organizations are focusing on spending issues and the need for additional funding.

Lawmakers have a Nov. 21 deadline to enact funding for fiscal 2020 but likely face passage of another stopgap spending bill in the form of the CR discussed above.

As stated above, the House bill, H.R. 2740 contained over $1 billion of ADDITONAL funding in IDEA and Title 1 alone. Relative to education spending, it contained the following provisions:

In general, H.R. 2740 totals $982.8 billion and consists of the Fiscal Year 2020 Labor-Health and Human Services-Education, Defense, State-Foreign Operations, and Energy and Water Development spending bills.

Department of Education (ED) – The bill provides a total of $75.9 billion in discretionary appropriations for ED – $4.5 billion above the 2019 enacted level and $11.9 billion above the President's budget request.

- K-12 Education – Overall, the bill provides $42.2 billion for K-12 education programs, including the Individuals with Disabilities Act, an increase of $3.4 billion above the 2019 enacted level and $8.1 billion above the President's budget request. Of this amount, the bill includes: $16.9 billion for Title I Grants to Local Educational Agencies, an increase of $1 billion above the 2019 enacted level and the President's budget request.
- $14.5 billion for Special Education, an increase of $1.05 billion above the 2019 enacted level and $1.07 billion above the President's budget request. Within this amount, the bill provides:
- $13.4 billion for Part B Grants to States, an increase of $1 billion above the 2019 enacted level and President's budget request, and

- $21 million for Special Olympics education programs, an increase of $3.5 million above the 2019 enacted level. The President's budget initially proposed to eliminate this program and subsequently requested funding for it through a Budget amendment.
- $2.6 billion for Supporting Effective Instruction State Grants (Title II-A), an increase of $500 million over the 2019 enacted level. The President's budget proposed to eliminate this program.
- $980 million for English Language Acquisition, an increase of $243 million above the 2019 enacted level and the President's budget request.

$1.3 billion for Student Support and Academic Enrichment State Grants, an increase of $150 million above the 2019 enacted level. The President's budget proposed to eliminate this program.

- $1.3 billion for 21st Century Community Learning Centers, an increase of $100 million above the 2019 enacted level. The President's budget proposed to eliminate this program.
- $260 million for a Social-Emotional Learning (SEL) Initiative to support SEL and "whole child" approaches to education. Within this amount, the bill provides:
- $170 million within the Education Innovation and Research program for grants for evidence-based, field-initiated innovations that address student social, emotional, and cognitive needs;
- $25 million within the Supporting Effective Educator Development (SEED) grant program for teacher professional development and pathways into teaching that provide a strong foundation in child development and learning, including skills for implementing SEL strategies;
- $25 million within the School Safety National Activities program to make schools safer through a new competition that will help local educational agencies (LEAs) directly increase the number of mental health and child development experts in schools; and
- $40 million for Full-Service Community Schools to provide comprehensive services and expand evidence-based models that meet the holistic needs of children, families, and communities.

• **Student Financial Assistance** – The bill provides $24.9 billion for Federal student aid programs, $492 million above the 2019 enacted level and $2 billion above the President's budget request. Within this amount, the bill provides: o $6,345 for the maximum Pell Grant, an increase of $150 over the 2019 enacted level and the President's budget request. The increase will help the maximum award keep pace with inflation.

- $1 billion for the Federal Supplemental Educational Opportunity Grant program, an increase of $188 million above the 2019 enacted level. The President's budget request proposed to eliminate this program.
- $1.4 billion for Federal Work Study, an increase of $304 million above the 2019 enacted level and $934 million above the President's budget request.

•**Higher Education** – The bill provides $2.7 billion for higher education programs, an increase of $436 million above the 2019 enacted level and $1.2 billion above the President's budget request.

- Within this amount, the bill provides $917 million, an increase of $251 million over the 2019 enacted level and $378 million over the President's budget request, to assist primarily Minority Serving Institutions (MSIs) in the Aid for Institutional Development account, including: □□$375 million for Historically Black Colleges and Universities, an increase of $93 million above the 2019 enacted level and the President's budget request.
- $150 million for Hispanic Serving Institutions, an increase of $26 million above the 2019 enacted level. The President's budget proposes to consolidate this and other MSI programs into a single MSI grant program, which the bill rejects.
- $51 million for Tribally Controlled Colleges and Universities, an increase of $19 million above the 2019 enacted level and $23 million over the President's budget request.

The bill also provides investments in the following higher education programs:

- $1.2 billion for Federal TRIO programs, an increase of $100 million above the 2019 enacted level and $210 million above the President's budget request.
- $395 million for GEAR UP, an increase of $35 million above the 2019 enacted level. The President's budget proposed to consolidate the program into the TRIO programs.
- $53 million for Teacher Quality Partnerships, an increase of $10 million above the 2019 enacted level. The President's budget request proposes to eliminate this program.
- $60 million for the Child Care Access Means Parents in School, an increase of $10 million above the 2019 enacted level and $45 million above the President's budget request.
- $10 million to restart the Centers of Excellence for Veterans Student Success Program. The President's budget request did not include funding for this program.

B. LEGISLATION UPDATE

Because of the quagmire regarding funding issues, it may make sense for TSA to consider focusing support on the following bills which separately address funding issues. Letters of support similar to the AASA letter of October 29, 2019 could be provided to each bill sponsor for their use.

Bills to consider writing a letter in support:

1. H. R. 3934 (By Brady)

What it does: Amends Title II of the Social Security Act to replace the windfall elimination provision with a formula equalizing benefits for certain individuals with non-covered employment, and for other purposes.

2. S. 86 (By Van Hollen, MD)

What it does: Amends Part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part.

3. H. R. 2315 (By Lee, CA)

What it does: Requires full funding of part A of title I of the Elementary and Secondary Education Act of 1965 and the Individuals with Disabilities Education Act.

4. H. R. 1878 (By Huffman, CA)

What it does: Amends Part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part.

5. H.R. 3665: School Violence Prevention and Mitigation Act of 2019 (By Williams, TX)

What it does: The School Violence Prevention and Mitigation Act of 2019 authorizes $2 billion over 10 years for schools to first identify security risks and then address any shortfalls.

1. Independent Facility Security Risk Assessments
   - Establishes a grant program, administered by the Director of the Office of Community Oriented Policing Services (COPS), that funds independent facility security risk assessments, conducted by experts, for individual public schools.
   - The grant will cover 100% of the cost to conduct the assessment.

2. Hard Security Improvements
   - Establishes a grant program, administered by COPS, that funds hard security improvements for individual public schools based upon a previously conducted assessment.

- The grant will cover 50% of cost, unless the school receives a financial hardship waiver from the COPS Director.

3. All schools will be required to install at least one silent panic alarm for use in a school security emergency, like an active shooter situation. The panic alarm, when activated, will directly alert the closest law enforcement agency of an emergency.

6. H. R. 865 (By Scott, VA)

What it does: Provides for the long-term improvement of public school facilities, and for other purposes.

H.R. 865 proposes to authorize $70 billion in grants and facilitate $30 billion in school infrastructure tax credit bonds to be used toward the construction and repair of public elementary and secondary school facilities. Funds would be allocated to states proportionally based on their prior-year share of grant allocations under Title I-A of the Elementary and Secondary Education Act (ESEA), a grant program designed to provide educational and related services to low-achieving and other students attending schools with relatively high concentrations of students from low-income families. States are directed to award grant funds provided through the bill to local educational agencies (LEAs) with the highest numbers or percentages of students who are "counted" in the formulas used to allocate ESEA Title I-A grants—and among LEAs meeting this criterion, to those prioritizing improvement of facilities of public schools that serve the highest percentages of students who qualify for free or reduced price lunches. Additional consideration in the awarding of grants to LEAs may be given to those with school facilities that pose a severe health or safety threat. Funds would also be authorized under H.R. 865 for Impact Aid construction for FY2020 through FY2023 at levels substantially higher than current authorization of appropriations levels.

H.R. 865 would place certain restrictions on how funds from grants or bonds may be used. For instance, it specifies for each fiscal year a certain percentage of covered funds that must be used for construction or renovation that is consistent with "green" standards. Additionally, LEAs that receive covered funds from grants or bonds authorized by the bill would be required to ensure that any iron, steel, and manufactured products used in projects are produced in the United States. However, the Secretary of Education would have authority to waive this requirement under certain circumstances.

The bill would also require the Institute of Education Sciences to carry out and submit to the appropriate congressional committees a comprehensive study of the physical condition of all public schools in the United States at least once every five years.

In addition to those bills to consider for support, I would note the following bills to be aware of:

1. S. 1442: School Security Enhancement Act (By Cruz)

What it does: Allows ESSA funds in part to be used for school security enhancement

2. S. 924: Jenna Quinn Law (By Cornyn)

What it does: Amends the Child Abuse Prevention and Treatment Act to require training and education to teachers and other school employees, students, and the community about how to prevent, recognize, respond to, and report child sexual abuse in primary and secondary education

3. S. 468 (By Cornyn)

What it does: Amends Title II of the Higher Education Act of 1965 to provide for teacher, principal, and other school leader quality enhancement.

4. H. R. 3827 (By Castro)

What it does: Promotes and supports collaboration between Hispanic-serving institutions and Hispanic-serving school districts, and for other purposes.

5. H.R. 838: Threat Assessment, Prevention, and Safety Act of 2019 (By Babin)

What it does: The Threat Assessment, Prevention, and Safety (TAPS) Act would implement Behavioral Threat Assessment and Management across the federal government, and provide grants to states that voluntarily implement it on a state level.

The legislation's final page clarifies that it is not one of the "red flag" laws, which permit the government to confiscate a weapon lawfully owned by a person considered dangerous. 17 states have implemented such laws, though none exist on a federal level.

The House version was introduced on January 29 as bill number H.R. 838, by Rep. Brian Babin (R-TX36). The Senate version was introduced the same day as bill number S. 265, by Sen. Marco Rubio (R-FL). The bill currently has 150 House Sponsors.

Specific to schools, the bill makes recommendations relating to a Behavioral Threat Assessment and Management School Violence Prevention Program for educational entities, which shall—

(A) train and support a multi-disciplinary and multi-jurisdictional behavioral threat assessment and management process, including the coordination of information sharing;
(B) consult on real-world complex behavioral threat assessment and management cases or programs;
(C) support collaboration between educational entity behavioral threat assessment and management units; and
(D) disseminate to educational entities published research materials on behavioral threat assessment and management and the prevention of targeted violence within educational entities

6. H.R. 2706: Feeding Hungry Students in Schools Act of 2019 (By Castro)

What it does: Allows schools to donate surplus food to charitable organizations under certain conditions.

Reauthorization of the Higher Education Act

The College Affordability Act passed out of the House Education and Labor Committee on October 31, 2019 and now goes to the full House before going on eventually to the Senate. Democrats on the House Education and Labor Committee passed the College Affordability Act out of committee on Thursday, October 31, 2019 with a 28 to 22 vote.

The College Affordability Act – introduced by Chairman Rep. Bobby Scott and other committee members two weeks ago – is the first attempt at a comprehensive overhaul of higher education legislation since Higher Education Act reauthorization in 2008. The bill seeks to make college more affordable with a plan for tuition-free community college, a $500 increase to the maximum Pell grant award, a repeal of the ban on Pell grants for incarcerated students and more.

The version of the bill that left committee has over 40 proposed amendments.
Amendments include a $625 increase to the Pell grant, subsidized loans for graduate education and required Government Accountability Office investigations into racial and socioeconomic gaps in public higher education, among others.

The marked up bill will now be considered by the full House of Representatives.

Republicans, meanwhile, strongly objected to the measure, which carries an estimated price tag of $400 billion over 10 years. The "partisan" legislation "throws billions and billions of dollars at a failing system," said Foxx, the committee's highest-ranking Republican. Pennsylvania Rep. Lloyd Smucker, the top Republican on the committee's Higher Education and Workforce Investment Subcommittee, echoed the sentiment, saying it "doubles down on failed policies that are hurting students and American taxpayers."

Virginia's Cline agreed. "We need to massively overhaul the system, get the federal government out of the way and create more workable options," he said. Michigan Republican Rep. Tim Walberg, meanwhile, accused Democrats of trying to "dictate every choice a student can make along the path of their post-secondary education."

There have been several piecemeal bills introduced by Sen. Alexander in the Senate addressing the Higher Education Act but so far no comprehensive legislative effort has been undertaken by the Senate.

C. DEPARTMENT OF EDUCATION UPDATE

A primary contact for TSA has left the Department. Johnny Collett had been Assistant Secretary of the Education Department's Office of Special Education and Rehabilitative Services since the Senate confirmed his nomination to the post in late 2017. The office is tasked with overseeing the federal government's implementation of the Individuals with Disabilities Education Act and other laws. He will be succeeded by Mark Schultz, who has been commissioner of the Education Department's Rehabilitation Services Administration since August.

Collett was an advocate for regulatory simplification and we worked closely with his office on proposed revisions to special education regulations (see attached letter to Collett, December 14, 2018.).

Schultz came to the Education Department's Rehabilitation Services Administration after serving as a deputy commissioner at the Nebraska Department of Education. Though Schultz will take on Collett's responsibilities, he would need to be nominated by President Donald Trump and confirmed by the Senate in order to officially assume the role of assistant secretary. We will continue to work with AASA (as well as other national interested groups) on the regulatory changes pertaining to special education as proposed in the letter. Collett's departure at this time, however, is disappointing.

TSA has continuing issues with state implementation of federal accountability mandates as described here:

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Issue #2: ESSA Federal Accountability → Closing the Gaps Domain

1. Graduation Rate Methodology: High performing high schools with graduation rates already above the state's final goal of 94%, who do not show at least a one-tenth percentage point increase from the prior year, earn 0 points in the Closing the Gaps Domain for the graduation rate category, and can penalize a campus by lowering their numeric score.
   a. 2019 Accountability Manual, Chapter 4, page 36, states, *"For the Class of 2018, the four-year graduation target is 90 percent of students graduate with regular high school diploma in four years. Student groups that are at or above 90 percent are required to exceed that rate by at least a tenth of a percent in the following year(s)."*
   b. The state's final graduation rate goal (as Texas ESSA Plan Appendix A) is 94%.

   Recommendation: TEA and the USDE adjust the requirement for the Four-Year Graduation Rate Target for Closing the Gaps to read: "...Student groups that are at or above 90 percent are required to exceed that rate by at least a tenth of a percent in the following year(s), *until they surpass the final graduation rate of 94% for any student group included in the accountability system. Districts and campuses that surpass the final graduation rate of 94% for any student group must maintain a rate equal to or higher than 94% to received credit for the student group in the accountability system for the Closing the Gaps Domain."*

2. Alternative Education Accountability: ATAC has offered a variety of solutions. To date, the agency has not agreed to implement any of ATAC's proposed solutions.

   Recommendation: Redefine AEA campus performance targets in the Closing the Gaps Domain and include the use of extended graduation rates.

3. Recommended Amendments / Waivers to Texas' ESSA Plan:
   a. **"ALL" student group.** Use as a report only indicator. The "All" student group reflects state demographics and performance targets. A campus can meet other student group targets and miss "All" target.

   b. **EL exemption.** ELs who are year one in U.S. schools are excluded from accountability performance calculations. ELs who are in their second year in U.S. schools are included in accountability. TSA wants the EL exemption extended for 3 years. i.e. If the state wants a lower IGC rate for ELs, then extend the EL exemption for high school students and allow them time to learn English.

   c. **SIFE/Asylees / Refugees.** Unschooled asylees, unschooled refugees, and students with interrupted formal education (SIFEs) are not included in state accountability until their sixth year of enrollment in U.S. schools. TSA wants this provision extended to federal accountability / ESSA / Closing the Gaps Domain.

   d. **No Double Testing for accelerated students in grades 5 – 7.** USDE /TEA memo propose that hyper-accelerated middle school students be double-tested. Take grade-level STAAR for accountability and EOCs for graduation.

   e. **Expand grades 3 – 8 indicators beyond STAAR.** See next section.

   f. **TSIA.** Designate the TSIA as an approved state test (like EOCs are an approved state test).

It is our opinion that we should begin by meeting with DOE official Assistant Secretary Frank Brogan and his staff to initiate these proposed changes. It is important that we have a TSA accountability expert with us to ensure that the full issue can be adequately explained. It is not likely that this can be addressed legislatively as there is little appetite in DC to open up any significant portion of the ESSA statute for changes. There is, however, a major push to de-regulate across the executive branch agencies and it seems possible that our concerns might be able to be addressed through the regulatory channel. It would be helpful to obtain the DOE support for such issues even if they cannot be addressed through federal regulatory changes, however, as such support could help with discussions with TEA staff.

Very truly yours,

Christopher P. Borreca
On behalf of Thompson & Horton LLP

CPB:ld

cc: David Thompson

AASA
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December 12, 2018

Johnny W. Collett
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Dear Assistant Secretary Collett:

The purpose of this letter is to provide input on regulations issued by the U.S. Department of Education which are of concern to school districts. AASA has developed this document after consulting with the law firm of Thompson & Horton LLP, a law firm that works closely with many school districts and AASA members in Texas. This document also echoes the excellent comments from the National School Board Association submitted in response to the Department's Request for Comments on Evaluation of Existing Regulations Docket ID ED-2017-OS-0074 on September 17, 2017.

The following document outlines how there are specific Individuals with Disabilities Education Act (IDEA) regulations that impede the ability of school districts to practicably implement high quality programs for all students with disabilities. Depending on the regulation we may be asking the Department to clarify, amend or rescind the regulation to better ensure districts are able to meet the needs of students with disabilities and comply with IDEA.

1. ***300.154(d)(2)(iv) Parental Consent to Access Public Benefits or Insurance (e.g., Medicaid)***

(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that—

(A) Meets the requirements of § 99.30 of this title and § 300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.

(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with § 300.503(c), to the child's parents, that includes—

(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;

(B) A statement of the "no cost" provisions in paragraphs (d)(2)(i) through (iii) of this section;

(C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible

for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

ISSUE: Despite positive improvements to the regulation in 2013, mandating parental consent for school districts to bill Medicaid remains a redundant and confusing administrative burden for districts. There is no reference in the statute for this regulation and there were no reported issues of districts accessing Medicaid on behalf of a child prior to 2006 that would spur the need for a regulation. Simply put, a district's decision to bill Medicaid for an education related service for a child with an IEP does not influence a child or family's ability to continue accessing Medicaid or impact; decrease available lifetime coverage or any other insured benefit; result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school; increase premiums or lead to the discontinuation of benefits or insurance; or risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures. Thus, a parent should have no reason to object to a district's decision to bill Medicaid which merely acknowledges that these things will not happen regardless of whether the consent is signed. It creates confusion, and in some instances may discourage parents from allowing school districts to obtain the resources that are needed in order to provide mandated services to their child.

With the revision of the free-care rule, districts have an expanded opportunity to bill Medicaid for health-services for children who lack an IEP and in order to do this they simply need to comply with FERPA's requirement to share personally identifiable information with a third-party. The same exact standard should be applied in situations where districts access Medicaid reimbursement for services provided to a child with an IEP. ED should take steps to make it easier for districts to receive reimbursement for services they are mandated to provide to children with disabilities and to create one administrative system for sharing information that is applicable to all Medicaid-eligible children regardless of disability.

2. § 300.303 Reevaluations.

(a)General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311 -

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation. (emphasis added)

ISSUE: This regulation provides an affirmative right for a parent or a teacher to request *AND RECEIVE* a reevaluation of a child with a disability and stands in conflict with 300.305 which states that the reevaluation is only necessary following a request from a parent or a determination by the IEP team or other qualified professionals that a reevaluation is necessary. This does not account for the situation where the child's teacher alone requests an evaluation. It also stands in conflict with 300.300 which states that reevaluations may not take place unless parental consent is first obtained. Clarification is also needed in at least two areas surrounding consent for reevaluation or even initial evaluations. First, case law has long supported the concept that a parent who does not consent to a reevaluation forfeits the child's right to FAPE and that such a child no longer may be properly considered to be a "child with a disability". *SeeAndress v. Cleveland Independent School Dist.,* 64 F.3d 176 (5th Cir. 1995) (A parent who desires for her child to receive special education services from the school must allow the school to reevaluate the child, and that there is no exception to this rule); *see also Shelby S. v. Conroe ISD*, (5th Cir.) (medical evaluations case). Second, the regulations do not account for the parent who applies restrictions upon the evaluation or reevaluation process. Case law has supported the doctrine that consent with such restrictions is not actually consent. This is happening with increased frequency, often with parents who do not wish an eligibility of "emotional disturbance" or "intellectual disabilities" to be identified. Signed consent is often provided with disclaimers for any evaluations in such areas of assessment. Stronger language is necessary to clarify that consent is "all or none" and that a qualified consent amounts to a refusal of consent.

3. *§ 300.320 Definition of individualized education program.*

(a)General. *As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include -*

(1) *A statement of the child's present levels of academic achievement and functional performance, including -*

(i) *How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or*

(ii) *For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;*

(2)

(i) *A statement of measurable annual goals, including academic and functional goals designed to -*

(A) *Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and*

(B) *Meet each of the child's other educational needs that result from the child's disability;*

(ii) *For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;*

(3) *A description of -*

(i) *How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and*

(ii) *When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;*

(4) *A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child -*

(i) *To advance appropriately toward attaining the annual goals;*

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6)

(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why -

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

***(b)Transition services.** Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include -*

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

***(c)Transfer of rights at age of majority.** Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.*

***(d)Construction.** Nothing in this section shall be construed to require -*

(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or

(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

ISSUE: IEPs take many forms in various school districts and among the states and have grown to 50-75 pages in length. The growth in commercial IEP form vendors has been exceptional and shows no sign of stopping, with IEPs becoming "electronic" and being offered on-line. Their use is inconsistent from state to state and in a growingly mobile world, the intrastate and interstate adoption of various IEP forms has only increased the chance of error and misinformation. The time has come for the Department to take the bold step to *mandate* one consistent form to be used by all LEAs. Other agencies of the government have no problem mandating the use of certain forms (IRS, INS, Social Security, etc.). Subsection (d) has not been adhered to by the Department nor the SEAs monitoring the LEAs and a mandated form consistent with subsection (d), as stated above, would simply put an end to this controversy. Doing so would be a bold but important step for the Department to take and would clarify many issues simply by mandating a consistent means of reflecting the student's program in writing.

4. *§ 300.518(d) Child's status during proceedings.*

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

ISSUE: Courts have required that a school district pay for the costs of maintaining a child in a private placement during the pendency of an appeal of a due process hearing through the circuit court level even when the district court and the circuit court later agree that the hearing officer erred in his or her findings and that the placement was inappropriate. *See M.R.& J.R. on behalf of E.R. v Ridley School District*, No. 12-4137, 3d Cir. Feb 20, 2014). This regulation has been the source of such logically inconsistent rulings and there is no authority under the authorizing statutory language for this requirement. The statute refers to "then-current placement", meaning the placement of the child when the due process hearing is filed. There is a split in the circuits, in fact, holding opposite from the later-written regulation but interpreting the same statutory language. *See Andersen ex rel. Andersen v. District of Columbia*, 877 F.2d 1018 (D.C. Cir. 1989). It should be removed from the regulations.

5. *§ 300.300 Parental consent.*

(b)Parental consent for services.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency -

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320and 300.324 for the child for further provision of special education and related services.

ISSUE: This provision, added to the regulations in 2008, has no authority in the statute and has proven to be problematic for school districts and parents alike. The issue of whether a school district should discontinue services for a child (where services have already begun) should be left to the IEP team and not the parent. In practical terms, this revocation has been used as a "sword" to prevent school districts from implementing programs which should properly be contested in a due process hearing. While it hasn't been a daily occurrence, it happens often enough to be of concern to school districts and there is no logical reason why the child's need should not be paramount to the parents. The statute makes clear that the override provisions may not be used by the school district to contest the parent's refusal to initially consent to services. The revocation of consent, however, after services have begun has proven to be confusing and a needless source of controversy for school districts and parents who may be confused with their obligations. The other problem has been inconsistent treatment from the courts as to whether a parent who revokes consent should then be offered services under Section 504. The earlier OCR "Letter to McKethan" has not been universally adopted by courts around the country and schools remain perplexed as to whether or not Section 504 services should (or even can) be provided to children whose parents have revoked IDEA consent. Confusion also exists as to when the school district should offer IDEA services again. Meeting child find obligations subsequent to the revocation has been treated differently by courts , the Department and even internally within the regulation itself. It is a regulation which should be removed.

6. 300.11 Definition of "Day" under IDEA regulations

300.11 Day; business day; school day.

(a) Day means calendar day unless otherwise indicated as business day or school day.

(b)Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.148(d)(1)(ii)).

(c)

(1)School day means any day, including a partial day that children are in attendance at school for instructional purposes.

(2)School day has the same meaning for all children in school, including children with and without disabilities.

ISSUE: There are numerous issues with defining day in IDEA by calendar day and we believe the default definition of "day" in IDEA regulations should return to school day." When a request for due process is filed immediately preceding an extended break in the school calendar, school districts experience substantial burden and expense in meeting the requirement to respond in 10 calendar days and to hold a resolution meeting in 15 calendar days. School staff must be called in to gather records and to assist with drafting the response. School buildings may be closed, making it difficult to find needed records. Staff and service providers may be off contract during the break, requiring the district to pay these personnel for the time they are needed to assist with a response or resolution meeting or to prepare for the actual hearing. Necessary staff may be completely unavailable due to prior commitments such as summer jobs or travel. "Calendar day" should be specifically stated as the appropriate measure where is the Department's intention.

7. 300.203(a)-(c) Local Educational Agency Maintenance of Effort (MOE) Requirement

ISSUE: The current regulations in 300.203 should be rescinded as it lacks statutory support and lacks the flexibility necessary for districts to adjust to changing economic circumstances and provide more cost-efficient services for children. The regulations set out four methods by which school districts can meet the eligibility and compliance standards with respect to MOE under the IDEA. In addition, a reduction in expenditures is permitted for 1) the voluntary departure of staff (for example, by retirement); (2) the costs of a special education student who has left the district, graduated, or aged out of the program; (3) the costs of a specific special education student who no longer requires the specific services; and (4) the cost of capital equipment purchased in prior years. The regulations also require that when a school district fails to meet the MOE standard, its compliance in subsequent years must be measured against the most recent preceding year in which the district met MOE, not against the deficient amount from the immediately preceding year.

We believe additional flexibility must be granted to districts and ED could do so in the following ways: 1) expand exceptions to allow for expenditure reductions when school districts find ways to operate more efficiently and can demonstrate no reduction in services to students; 2) provide waivers in the event of uncontrollable or exceptional circumstances, such as a natural disaster or unforeseen decline in a school district's financial resources; and/or 3) allow districts to apply the same MOE percentage under IDEA as permitted under ESSA.

8. 300.502(b) Independent Education Evaluation (IEE)

(b)Parent right to evaluation at public expense.

> *(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.*
>
> *(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either -*
>
> > *(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or*
> >
> > *(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.*
>
> *(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.*
>
> *(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.*

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

ISSUE: The IDEA statute requires states and school districts, as a condition of receiving federal funding for special education programs, to adopt procedures that afford students and parents "procedural safeguards" with respect to FAPE. These procedures must include " (1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, *and to obtain an independent educational evaluation of the child.*"

The Department regulation on independent educational evaluations (IEEs) goes beyond the statute's requirement that parents be allowed to obtain an IEE, and affirmatively requires school districts to pay for such evaluations upon a parent request, or initiate a due process complaint. IEEs requested by parents can result in substantial expense to a school district, even after it has conducted its own appropriate evaluation. In light of these potential costs, the regulation should be amended to:

- place on parents the burden of showing that the challenged evaluation does not comply with specific provisions of the IDEA;
- require parents to make any request for an IEE within 30 days after the challenged evaluation is considered by the IEP team;
- where a school district refuses the IEE request, require parents to bring any due process hearing
- seeking the IEE at public expense within 30 days of the school district's refusal;
- clarify the meaning of "an" IEE does not include a separate evaluation of each area of need considered by the school district's evaluation nor does it cover an annual IEE; and
- clarify that the purpose and content of any IEE are limited to determining the child's eligibility under the IDEA and the type and extent of special education and related services needed to address the child's disability(ies); specific placement recommendations and determinations of district liability are beyond the scope of an evaluation and should be excluded.

9. 300.508(5) and (6) Specificity of Due Process Complaints under IDEA

(a)General.

(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b)Content of complaint. The due process complaint required in paragraph (a)(1) of thi section must include -

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the school the child is attending;

(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time

ISSUE: Districts need more specificity beyond what is outlined in the regulation before moving forward with a complaint. Specifically, the regulation should be amended to require that the problems identified in the due process complaint match specific requests made at an IEP meeting and that parents demonstrate that the school district refused to meet the requests so that a genuine impasse exists and require that a "case conference" be held on an open record basis before the due process hearing may begin; during the case conference, or shortly thereafter, allow the district to make on the record offers to resolve the dispute.

10. 300.518(d) Stay-put Placement

(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

ISSUE: IDEA requires a child to remain in his or her "then current educational placement" during the pendency of due process proceedings, except in limited circumstances involving discipline or the parties agree otherwise. The Department's regulation at 300.518(d) requires that a hearing officer's decision in favor of the parents transforms the parents' desired placement into the child's stay-put placement in the event of subsequent appeals by treating the decision as an agreement between the state and the parent as to placement. Depending on the legal interpretation by a Circuit Court, a district can be obligated to pay the cost of parent's unilaterally selected placement until appeals are completed even when the school district is ultimately found to have provided FAPE. This result conflicts with the IDEA provision that clearly states school districts are not obligated to pay for private unilateral placements except where they have denied FAPE. We ask that this regulation be rescinded.

In summary, these are just a few identified issues within the current regulations governing the implementation of IDEA which we believe deserve your close attention. Thank you for the opportunity to raise these concerns with you at this time. Please reach out to Chris Borreca at Thompson & Horton for questions.

Sincerely,

Sasha Pudelski
Advocacy Director
AASA, The School Superintendents Association

CC: Christopher Borreca

AASA
THE SCHOOL SUPERINTENDENTS ASSOCIATION

AESA
ASSOCIATION OF EDUCATIONAL SERVICE AGENCIES

NREAC
National Rural Education Advocacy Coalition

NATIONAL RURAL EDUCATION ASSOCIATION

October 29, 2019

The Honorable Bobby Scott
Chairman
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Virginia Foxx
Ranking Member
House Education and Labor Committee
2101 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Scott and Ranking Member Foxx:

On behalf of AASA, The School Superintendents Association, the Association of Educational Service Agencies, the National Rural Education Advocacy Coalition, and the National Rural Education Association, representing public school system leaders across the country, I write to express our support for introducing H.R. 4674, the College Affordability Act. At a time when our nation's schools are facing acute teacher and school leader shortages the bill makes substantial progress towards providing our public schools with profession ready educators who are able to provide our students with a 21st century education.

Specifically, we are in favor of the bill's effort to preserve and expand the resources for future and current teachers and school system leaders through the reauthorization of the Teacher Quality Partnership (TQP) grants, which enable Institutes of Higher Education (IHE) and State Education Agencies (SEA) to partner with a high needs districts to create cohort-based teacher and school leader residency, mentoring, and induction models that offer students clinical experience in school settings. From our perspective, this is a common-sense approach for updating Title II of the Higher Education Act. Moreover, AASA also supports the Committee's decision to expand the allowable uses of TQP grants to establish "Grow Your Own" programs, which has been an effective strategy to improve the diversity of the educator workforce.

Additionally, the College Affordability Act takes critical steps at incentivizing teachers and school system leaders to enter the profession through its reforms to the Public Service Loan Forgiveness (PSLF) program. As has been reported by various news outlets, PSLF has come under fire for its over-complicated eligibility criteria that have prevented swaths of borrowers from having their federal student loans forgiven due to confusion about the Income-Driven Repayment plans. Therefore, we support the Committee's decision to include language in the act that creates one Income-Driven Repayment (IBR) plan, in an attempt to address the current implementation's shortfalls. AASA also supports improvements to the PSLF program that enables teachers to count loan payments for the Teacher Loan Forgiveness program at the same time as PSLF, thereby reducing the number of monthly payments needed towards PSLF.

AASA was also pleased to see that the bill attempted to address the poor management and administration of the TEACH grants program by delaying loan conversion until 7-years after the completion of a baccalaureate or associate program, redirecting the programs' aid to junior and senior teacher prep candidates, and expanding the maximum award amount to $8,000 per year. However, we are concerned that new data collection and accountability requirements under the act could disincentivize educator preparation institutions from applying for TEACH grants --as these programs have been facing reductions in enrollment and funding in recent years-- and ultimately, exacerbate the nation's teacher shortage.

AASA was also pleased to see that the bill emphasized programs that assist and develop students entering and completing college and postsecondary programs through its decision to increase the authorized spending levels of the TRIO and GEAR UP programs from $900,000,000 to $1.2B. We were also pleased to see the simplification of the Free Application for Federal Student Aid that will make the financial aid process more assessable for students. Furthermore, we were pleased the bill rejects the admiration's proposed Title IX rewrite and maintains the 2001 Title IX guidance.

Although AASA is disappointed in the lack of bipartisanship that lead to the creation of H.R. 4674, it is undeniable that the bill takes steps to address educator and school leader shortages and increases access to post-secondary programs for all students. Moreover, the College Affordability act would represent a step forward for future teachers and school systems, and thus, enable the nation to establish an actionable plan to reduce educator recruitment and retention problems in schools throughout the country. That said, we urge the committee to address the data collection and reporting critiques, mentioned earlier in this letter, to mitigate the unintended consequences from the act. Thank you for your leadership on these critical issues, and we look forward to working with you as this process continues. Please do not hesitate to contact Chris Rogers at crogers@aasa.org or 703-203-3105 for questions or comments.

Sincerely,

Christian Rogers

Christian Rogers

Policy Analyst