



The Council of Parent Attorneys and Advocates, Inc.
Protecting the Legal and Civil Rights of Students with Disabilities and Their Families

November 13, 2017

Jennifer Bell-Ellwanger
U.S. Department of Education
400 Maryland Ave., S.W. Room 6W231
Washington, D.C. 20202

RE: Docket ED-2017-OS-0078: Secretary’s Proposed Supplemental Priorities and Definitions for Discretionary Grant Programs

Dear Ms. Bell-Ellwanger:

The Council of Parent Attorneys and Advocates (COPAA) is an independent, nonprofit organization of parents, attorneys, advocates, and related professionals. COPAA members nationwide work to protect the civil rights and secure excellence in education on behalf of the 6.5 million children with disabilities under the Individuals with Disabilities Education Act (IDEA) and over 700,000 children with 504 plans under Section 504 of the Rehabilitation Act of 1973 in America. COPAA’s mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares him or her for meaningful employment, higher education and lifelong learning, as well as full participation in his or her community. COPAA is writing in response to the U.S. Department of Education’s (ED) request for public comment on the Secretary’s Proposed Supplemental Priorities and Definitions for Discretionary Grant Programs.

COPAA appreciates that ED has included students with disabilities as a distinct priority among the eleven priorities identified for discretionary grant consideration. We agree that the priorities [and definitions] must be designed to “encourage grantees to empower parents and educators; reduce red tape; utilize and build evidence of what works; and most importantly, take strides toward ensuring equal access to the high-quality, affordable education every American student deserves in an educational environment that is safe and respectful of all viewpoints and backgrounds.” COPAA has long advocated for federal investments in research, innovative practices, and educational programs that ensure that every eligible child is provided a free, appropriate, public education (FAPE) in the least restrictive environment; is held to the same high-standards as all other children; and, is provided access to the same post-secondary opportunities.

To reinforce and support the meaningful ways students with disabilities can benefit from discretionary grant programs, COPAA makes the following recommendations:

Overarching:

- **Add a new priority focused on Early Learning. The priority would assure federal investments are made in projects focused on all young children and their families and the early intervention, special education and other early learning and education opportunities designed to meet their individual needs and promote their optimal development.**

Rationale: Improving education begins with services and supports to children and their families starting at birth. Through the Individuals with Disabilities Education Act (IDEA) and other federal

education statutes such as the Every Student Succeeds Act (ESSA), COPAA strongly urges ED to ensure the discretionary grants programs address young children and families and the critical early learning experiences that affect the rest of their lives. Science continues to document that children’s success in school and later in life is greatly enhanced by their learning experiences prior to kindergarten. Early investments in children and their families yield maximum returns to society.

- Strike and amend [throughout the priorities] “~~where possible,~~ incorporates evidence-based activities, strategies and interventions.”

Rationale: COPAA strongly recommends that any discretionary grant program funded by ED must promote only evidence-based approaches.

By Priority:

Proposed Priority 1—Empowering Families to Choose a High-Quality Education that Meets Their Child’s Unique Needs

COPAA reminds ED that key grant programs, funded and administered by the federal government, **MUST** be consistent with and uphold all provisions of applicable federal, state and local laws. The Department cannot use a discretionary grant funded program to attempt to skirt or lessen obligations under the federal and state laws.

COPAA opposes the use of public education funds to pay for federal school choice programs.

With those overarching principles in mind, we request the following changes to Priority #1.

- Amend the definition *Educational Choice* as indicated (in **bold** and with strikethrough).

Educational choice means the opportunity for a student (or a family member on their behalf) to create a personalized path for learning that is consistent with **all** applicable Federal, State, and local laws, is in an educational setting that best meets the student’s needs, and, ~~where possible,~~ incorporates evidence-based activities, strategies, ~~and~~ interventions, **modifications and accommodations as required by law.**

Opportunities made available to a student through a grant program are those that supplement what is-provided by a student’s geographically assigned school or the institution in which he or she is currently enrolled **and must cover all fees associated with the new institution especially for high needs students; assure parents have comprehensive enrollment information to make an authentic choice; includes an evaluation on metrics of representative enrollment, student growth, academic outcomes of high needs students, and parent satisfaction; that have a demonstrated track record of enrolling a proportionate share of high needs students (as defined by this notice) and achieving academic gains. Grants may not include federal-to-state formula education funding** and, may include one or more of the options listed below:

Rationale: Currently, the majority of state funded choice programs do not allow students with disabilities to maintain their rights under the Individuals with Disabilities Education Act (IDEA), are not required to adhere to accountability requirements under the Every Student Succeeds Act (ESSA), and are known to selectively choose which students they will/will not educate, and do not

uphold the federal and civil rights protections afforded to students with disabilities.ⁱ Programs specifically targeting students with disabilities and providing them with a private school education can quickly devolve into creating a separate education system for students with disabilities, hidden costs frequently become a burden to families (e.g. transportation, services, therapies, supports) and public-school districts are relinquished from responsibility for these students. Thus, ED must assure that any federal incentive to provide school choice must require that all federal, state and local laws to apply. COPAA advocates that every student should be able to attend a high-quality school that meets their needs and seeks to assure that every child with a disability and their family is assured all rights under the IDEA and all other civil rights statutes.

Proposed Priority 3—Fostering Flexible and Affordable Paths to Obtaining Knowledge and Skills

- Add the following language (in **bold**) to the opening sentence of the priority:

Projects that are designed to address one or more of the following priority areas **for all individuals, including those with disabilities, and incorporate the principles of Universal Design for Learning**

Rationale: Currently, some of the initiatives in priority areas (a) through (f) do not consider the needs of individuals with disabilities. Therefore, it is necessary to specifically address such individuals in this priority. Also, there are barriers in education and the workplace that prevent many individuals, including those with disabilities, from earning the credentials, gaining the skills and knowledge, and/or succeeding in the work-based experiences described in priority areas (a) through (f). Thus, it is important to ensure that these barriers are addressed with Universal Design for Learning, which is recognized in federal laws (including the Higher Education Opportunity Act and the Every Student Succeeds Act) and policies (including the National Educational Technology Plan). For informational purposes, we have provided the statutory definition of UDL below:

Universal Design for Learning

- A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and
- B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited in English proficiency.

- Add a new priority area (g) as provided below:

(g) Examining barriers to obtaining industry-recognized and other workforce credentials for individuals with disabilities, including individuals with an intellectual disability who may need modified instruction and assessment; developing and disseminating strategies to address these barriers; and developing credentials based on employment support approaches (including Supported Employment and Customized Employment as defined in the Workforce Innovation and Opportunity Act of 2014) and providing technical assistance regarding the use of such credentials.

Rationale: Individuals with disabilities who are quite capable of performing jobs often have difficulty with showing what they know on written and other credential assessments. To meet the Secretary's goal of expanding approaches to learning, "including those that allow students to more easily demonstrate their knowledge and skills" it is important to identify and address barriers to learning and credential assessment for individuals with disabilities. This is especially true for individuals with intellectual disabilities who face barriers to participation in apprenticeships and in

receiving certain employment services, due to challenges in obtaining a “recognized postsecondary credential” as defined in the Workforce Innovation and Opportunity Act (WIOA), although these individuals are achieving success in obtaining a postsecondary education credential offered by a Comprehensive Transition and Postsecondary Program (CTP) as defined in the Higher Education Opportunity Act, and obtaining employment. In addition, it is important that this priority addresses opportunities to earn a credential using supported employment and customized employment as defined in the WIOA.

Proposed Priority 5 – Meeting the Unique Needs of Students and Children, including those with Disabilities and/or with Unique Gifts and Talents

- Amend priority area (a) as follows:
 - (a) Ensuring students with disabilities are ~~offered the opportunity to meet challenging objectives~~ instructed **on the challenging State academic content standards for the grade in which they are enrolled** and receive an educational program **including the accommodations and modifications** that ~~is~~ **are** both meaningful and appropriately ambitious in light of each student's circumstances by improving all ~~one or more~~ of the following:
 - (i) Academic outcomes.
 - (ii) Functional outcomes.
 - (iii) Development of skills leading to competitive integrated employment or independent living.
 - (iv) Social or emotional development.

Rationale: In priority area (a) the Department is quoting *Andrew F. v. Douglas County School District*, which we are pleased to see. However, it is also important to use the language in ESSA and its implementing regulations, which state that “challenging objectives” for students with disabilities (and every other student) are the challenging state academic content standards for the grade in which they are enrolled.ⁱⁱ In order for the Department to fulfill its commitment to “to ensuring that students with disabilities have equal access to a high-quality education, consistent with applicable requirements in Federal and State law, are held to high standards, and are prepared to lead productive, independent lives,” it is necessary for any grant under this priority to simultaneously work on multiple goals that do not improve outcomes in the absence of the others. Therefore, a grant should not address functional outcomes in the absence of academic outcomes, or the other critical skills mentioned under (a). All goals must be met as part of implementing the general education curriculum for the grade in which the student is enrolled, using the services, supports and accommodations etc. that are written into the student’s Individualized Education Program (IEP) and all other requirements under IDEA, ESSA and the Workforce Innovation and Opportunity Act (WIOA).

- Amend the priority area (b) by adding the following words (in **bold**).
 - (b) Ensuring coursework, books, or other materials **and technology**, are accessible, **consistent with the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, the Rehabilitation Act, the Communication Act, and the Web Content Accessibility Guidelines (WCAG2 AA)**, to students who are children with disabilities and/or individuals with disabilities under Section 504.

Rationale: Technology should be specifically mentioned since it is often used to deliver instructional content. Also, it is important to reference all the statutes that impact the accessibility of instructional materials, including technology, in this priority area.

- **Add a new (d): Ensuring that students with disabilities have access to fully prepared and profession-ready teachers who can deliver evidence-based instructional strategies.**

Rationale: For students with disabilities to achieve positive academic outcomes and be prepared for post-secondary opportunities as well as good citizenship, they must have access to educators who are skilled in evidence-based strategies which will yield the results we all seek.

Proposed Priority 6—Promoting Science, Technology, Engineering, and Math (STEM) Education, With a Particular Focus on Computer Science.

- Amend the background information to add the following language (in **bold**).
...Technology used for educational purposes must be accessible to students who are children with disabilities and/or individuals with disabilities, consistent with the requirements of the **Individuals with Disabilities Education Act**, Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. **Accessibility provides options for representing, expressing and engaging with instructional materials, and is essential for some learners and provides options for all others.** The provision of assistive technology devices and services is also integral to the education of children with disabilities under the IDEA. Technology can enable adult learners to fit courses into their work schedule or to learn and earn new credentials that prepare them to further their careers regardless of where they live.

Rationale: The IDEA should be mentioned with respect to the broader issue of accessibility, since it is not limited to assistive technology. Also, accessibility is more than physical access to the materials. Therefore, the reference to “options for representing, expressing and engaging with instructional materials” is important.

- Amend the opening sentence for the priority to add the following language (in **bold**):
Projects designed to improve student achievement in science, technology, engineering, math and computer science, or other educational outcomes, **including through the incorporation of the principles of Universal Design for Learning**, and are designed to address one or more of the following priority areas:

Rationale: Universal Design for Learning is critically important for improving achievement for all students in every academic area, including STEM. There have been studies specifically on the benefits of Universal Design for Learning for STEM education for all students.ⁱⁱⁱIn the background section of this priority Ed’s 2017 National Educational Technology Plan is discussed. There are numerous references to Universal Design for Learning throughout ED’s plan.

- Amend priority area (d) by adding the following language (in **bold**).
(d) Expanding access to and participation in rigorous computer science (as defined in this notice) coursework for traditionally underrepresented students such as racial or ethnic minorities, women, **students with disabilities**, or students in communities served by rural local educational agencies (as defined in this notice).

Rationale: As noted in the study referenced above, very few students with disabilities pursue STEM careers. Therefore, it is important to add them to the list of traditionally underrepresented students.

Priority 7—Promoting Literacy

- Amend the introductory sentence as follows (in **bold**).
Projects that are designed to **incorporate comprehensive literacy instruction (as defined by Section 2221(B)(1) of the Every Students Succeeds Act (ESSA))**.

Rationale: This aligns the priority with language in ESSA referencing the definition of “comprehensive literacy instruction” (Section 2221(B)(1)). We believe this change will better support the Secretary’s goals of improving all students’ literacy skills, including students with disabilities, resulting in stronger academic achievement and preparation for employment, responsible citizenship and fulfilling lives.

- Modify (a) and (d) as follows (in **bold**).
“(a) Promoting literacy interventions supported by strong evidence (as defined in 34 CFR 77.1) **that increase the literacy skills of struggling students from birth to grade 12, including those who struggle with reading due to a disability, including through the use of comprehensive literacy instruction (as defined by Section 2221(B)(1) of ESSA and** by supporting educators with the knowledge, skills, professional development...”

(d) Integrating **comprehensive** literacy instruction (as defined by Section 2221(B)(1) of ESSA) into content-area teaching...”

Rationale: We appreciate the focus on integrating literacy instruction into content-area teaching as well as the emphasis on teacher training and professional development. However, there must be alignment between this priority and ESSA, which uses the term “comprehensive literacy instruction.” Comprehensive literacy instruction includes several important components such as: developmentally and age-appropriate, contextually explicit, and systematic instruction; instruction in phonological awareness, phonic decoding, vocabulary, language structure, reading fluency, and reading comprehension; and differentiated instructional approaches. Comprehensive literacy instruction is critical to the success of students with disabilities, especially those students who struggle with reading due to their disability. The National Center on Improving Literacy has been established to increase access to and support the use of these evidence-based approaches instructing students with literacy-related disabilities and can be a critical resource in ensuring that comprehensive literacy instruction is increasingly used in schools.

Proposed Priority 8 – Promoting Effective Instruction in Classrooms and Schools

- Amend priority (f) by adding the following language (in **bold**):
(f) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of **literacy, science, technology, engineering, and math subjects, as well as special educators, which incorporates the principles of Universal Design for Learning.**

Rationale: Literacy instruction is necessary for learning any subject area, including STEM education, and should be included in this priority area. Knowledge about how to implement the intentional, proactive design principles within Universal Design for Learning to improve student

achievement in all subject areas, including literacy, science, technology, engineering, and math, is essential to ensure effective instruction for all students. Universal Design for Learning is included in ESSA and the Higher Education Opportunity Act. In addition, other innovative practices (such as competency based learning, personalized learning, multi-tier system of supports, etc.), which are addressed in ESSA, as well as in most states plans to implement ESSA, rely on proper implementation of Universal Design for Learning.

- Add a new (g) as follows (in **bold**):

Developing innovative high quality robust preparation programs to address the critical special education teacher shortage, such as high school teaching academies, one-year pre-service residencies, paths for paraprofessionals to become special education teachers and dual enrollment programs.

Rationale: There are proven strategies to expand the pool of fully prepared special educators. Some university special education preparation programs partner with high schools to offer dual enrollment and early college credit for high school students who want to be special educators – particularly in high need areas such as rural areas. One-year pre-service residency programs are a well-established strategy for preparing teachers who are ready on day one and fully engaged in the communities where they will teach prior to assuming their role as a teacher. Supporting paraprofessionals, who may be from the communities where high need schools are located, so that they can become special education teachers is another effective approach. Teachers prepared with these robust strategies are also more likely to stay in the field longer than those who become special educators without full preparation.

Priority 9—Promoting Economic Opportunity

- Amend priority (c) by adding the following language (in **bold**): “(c) Creating or supporting alternative **meaningful and rigorous** paths to a regular high school diploma”

Rationale: While we recognize that not all students follow the same educational path to a regular high school diploma or to the workforce, we caution against setting different standards or alternative pathways for certain groups of students. Historically, students with disabilities have been placed on different trajectories than their peers without disabilities, often held to lower standards and not given the opportunity to graduate with the rigorous credentials needed to pursue meaningful work, college or career opportunities. Research shows that high expectations in school and receiving a regular high school diploma are the key factors that result in competitive employment.^{iv}

Priority 10—Encouraging Improved School Climate and Safer and More Respectful Interactions in a Positive and Safe Educational Environments

- Amend the background information as follows: ...Additionally, victimization rates have greatly declined between 1992 and 2015, falling from 181 per 1,000 students to 33 per 1,000 students. Thus, schools are becoming physically and emotionally safer for students; however, **schools continue to report use of disciplinary tactics that disproportionately impact children or students with high needs^v, including students with disabilities and students of color and** more needs to be done to stop bullying, **harassment and the use of aversive behavioral interventions that compromise student health and safety such as seclusion and restraint** and ensure that every child is **treated with dignity and respect so they can learn in a safe environment.**

Rationale: Given the requirement of ESSA Sec. 1111(g)(1)(C) that states are required to indicate in their state plan how they will support districts to improve school conditions for student learning, including through reducing incidences of bullying and harassment; the overuse of discipline practices that remove students from the classroom; and the use of aversive behavioral interventions that compromise student health and safety, the background provided and subsequent projects must reflect what school-reported data tell us – that students with disabilities are disproportionately impacted by schools’ use of harsh disciplinary practices, including seclusion and restraint. To further emphasize this point and the agreement that exists in Congress that more must be done to support students, the Bi-Partisan Conference Report of the Every Student Succeeds Act states: “It is the Conferees’ intent that each State describes how it will support local educational agencies and schools by providing resources and guidance, professional development, and technical assistance to reduce techniques, strategies, interventions, and policies that compromise the health and safety of students, such as seclusion and restraint.”^{vi}” We urge ED to appropriately acknowledge the problem, fund discretionary grant programs that seek to improve the situation and fully include students with disabilities as children or students with high needs in this priority.

- Modify the priority as follows: “(a) Creating positive and safe learning environments **that support the needs of all students, including students with disabilities, and effectively address and prevent the disproportionate discipline of students of color and students with disabilities,** including by providing school personnel with effective strategies **that include frameworks such as positive behavioral interventions and supports (PBIS) developed within a comprehensive, professionally-developed plan of behavioral accommodations, supports, and interventions.”**

Rationale: See above.

We appreciate the opportunity to comment on the priorities outlined by ED. Please feel free to contact me with any questions or for further information.

Sincerely,



Denise Marshall
Executive Director

COPAA is an independent, nonprofit organization of parents, attorneys, advocates, and related professionals. COPAA members nationwide work to protect the civil rights and secure excellence in education on behalf of the 6.5 million children with disabilities in America. COPAA’s mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares him or her for meaningful employment, higher education and lifelong learning, as well as full participation in his or her community.

www.copaa.org

ⁱ Almazan, S., Marshall, D. (2016). School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice, Council of Parent Attorneys and Advocates at: <http://www.copaa.org/page/Voucher>

ⁱⁱ Title I—Improving the Academic Achievement of the Disadvantaged— Academic Assessments, U.S. Department of Education (2106) at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-08/pdf/2016-29128.pdf>

ⁱⁱⁱ Basham, J., Marino., M., Understanding STEM Education and Supporting Students through Universal Design for Learning <http://journals.sagepub.com/doi/abs/10.1177/004005991304500401?journalCode=tcxa>

^{iv} Balfanz, B. et al., Building a Grad Nation: Progress and Challenge in Ending the High School Drop Out Dilemma (2015) at: http://gradnation.americaspromise.org/sites/default/files/d8/18006_CE_BGN_Full_vFNL.pdf

^v Students with disabilities are more than twice as likely to receive an out-of-school suspension (13%) than students without disabilities (6%). More than one out of four boys of color with disabilities — and nearly one in five girls of color with disabilities — receives an out-of-school suspension. See: Rethinking School Discipline 101, U.S. Department of Education, retrieved at: <https://www2.ed.gov/policy/gen/guid/school-discipline/files/rethinking-school-discipline-101-why-it-matters-transcript.pdf>

^{vi} Every Student Succeeds Act Conference Report, See: page 451 <https://www.congress.gov/114/crpt/hrpt354/CRPT-114hrpt354.pdf>.