



November 13, 2017

Ms. Jennifer Bell-Ellwanger  
U.S. Department of Education  
400 Maryland Avenue, SW, Room 6W231  
Washington, DC 20202

Re: Docket ID ED-2017-OS-0078- Secretary's Proposed Supplemental Priorities and Definition for Discretionary Grant Programs

Dear Ms. Bell-Ellwanger:

The National Disability Rights Network (NDRN) writes in response to the above referenced docket number.

NDRN is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the 57 P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

One critical area of focus for the P&A/CAP agencies is education. In 2016, the P&As worked on nearly 14,000 individual cases related to enforcing the civil rights of students with disabilities as well as hundreds of systemic cases. NDRN views the work of the U.S. Department of Education as crucial to the protection of students' rights. For that reason, the Department's proposed grant priorities must reflect the needs of students with disabilities and their families.

### **Rights Protection:**

As the Department considers its 2018 priorities, it is critical to be mindful of the important federal rights that protect marginalized students and to ensure that those

protections are continued and strengthened. Title VI prohibits discrimination against students based on race or ethnicity. Title IX prohibits discrimination based on sex. Under the Every Student Succeeds Act (ESSA), all students are to be included in statewide assessments and accountability systems. Under Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (ADA) students are to be free from discrimination based on disability. Finally, the Individuals with Disabilities Education Act (IDEA) guarantees all students with disabilities the right to a free appropriate public education (FAPE) in the least restrictive environment (LRE) pursuant to a written individualized education program (IEP).

It has been our experience that these protections for students have not been fully realized because, all too often, regular and special education teachers, do not have access to the evidenced based approaches that have been proven effective in meeting the needs of students with disabilities. We believe that rather than establishing priorities that would have the effect of draining resources away from the public schools, the priorities should focus on making sure that every public school teacher has the resources they need to be effective in meeting the academic and behavioral needs of all students.

### **Voucher Programs for Students with Disabilities**

As early as 1635, with the establishment of Boston Latin School, Americans have recognized the importance of education as a fundamental foundation of our society. Indeed, public schools have been a constant in the United States and since the passage of the Elementary and Secondary Education Act in 1965 provide **free** education to **all** students-- opportunity for all regardless of income. The IDEA and Section 504 are seminal statutes that require that services be provided to students with disabilities for free. However, a number of the voucher programs (private school vouchers, Education Savings Accounts and Tax Incentive Programs) currently under consideration, including those specifically for students with disabilities, do not provide sufficient publicly funded tuition for students to enroll and receive needed services, without an additional supplement from their families. This supplement is not possible for all families to provide, resulting in a system that is no longer free and available to all, thus eroding one of the very foundations of our society. In addition and of huge concern, many programs require students to waive their civil rights (including rights under the IDEA) in order to participate. For these reasons and others set out below, private school vouchers are not a panacea for students with disabilities and, in fact, may result in harm. NDRN recommends that the Department make clear that grant priorities will be given to innovative public school programs and not to programs which divert public money from public schools.

## **Proposed Priority 1: Empowering Families to Choose a High-Quality Education that meets their Child’s Unique Needs**

### **In General:**

NDRN and the P&A and CAP Network have long fought for the policies and practices which underlie both the IDEA and Section 504. We firmly stand behind these laws and strive, through legal advocacy, to ensure that all students with disabilities receive the benefits and protections provided to them through the IDEA and Section 504. As such, NDRN opposes the promotion of priorities which will weaken these civil rights protections in any form.

### **Recommendation:**

NDRN strongly recommends that the definition of Educational Choice found in the proposed definitions to read as below:

“Educational choice means the opportunity for a student (or family member on their behalf) to create a personalized path for learning that is consistent with applicable Federal, State, and local laws, ***restricts the flow of public funds to only public schools, is in the Least Restrictive Environment (as defined in the IDEA)***, is in an educational setting that best meets the student’s needs, and, where possible, incorporates evidence-based, strategies and intervention.

***Educational choice does not include a decision made by a placement team convened under the IDEA, 20 U.S.C. 1412(a)(10)(B), for a private school placement.***

Opportunities made available to a student through a grant program are those that supplement that which is provided by a student's geographically assigned school or the institution in which he or she is currently enrolled, and may include one or more of the options listed below:

- (1) Public educational programs or courses including those offered by traditional public schools, public charter schools, public magnet schools, ~~public online education providers~~, or other public education providers.
- (2) ~~Private or home-based educational programs or courses including those offered by private schools, private online providers, private tutoring providers, community or faith-based organizations, or other private education providers.~~
- (3) Internships, apprenticeships, or other programs offering access to learning in the ~~workplace~~-an integrated workplace at a competitive wage if compensated.
- (4) Part-time coursework or career preparation offered by a public or private provider in person or through the internet or another form of distance learning, that serves as a supplement to full-time enrollment at an educational institution, ~~as a stand-alone program leading to a credential~~, or as a supplement to education received in a homeschool setting.
- (5) Dual or concurrent enrollment programs or early college high schools (as defined in section 8101(15) and (17) of the Elementary and Secondary Education Act, as amended), or other programs that enable secondary school students to begin earning

credit toward a postsecondary degree or credential prior to high school graduation.

(6) Access to services or programs for aspiring or current postsecondary students not offered by the institution in which they are currently enrolled to support retention and graduation.

(7) Other educational services including credit-recovery, accelerated learning, and tutoring.

**Rationale:**

NDRN firmly believes that public money should flow to public schools. Public schools are a bedrock of our society and are legally bound to uphold the IDEA and Section 504. Public schools should not be weakened by diverting money that could and should go to strengthening those institutions to private schools, private online learning providers or other private education providers. Too often such private education providers are not a viable option for students with disabilities who live in rural communities, demand the parent act as a de facto educator, require additional money to fill in service gaps, and in fact may not be delivered in an accessible platform. Such mechanisms for diverting public funds, which NDRN opposes, include, but are not limited to, private school vouchers, Education Savings Accounts, and Tax Incentive Programs.

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

**In General:**

Educational quality is of paramount importance. However, it is not necessary to remove children from public school in order to achieve it. Indeed, this is the backbone of the IDEA found in the Least Restrictive Environment (LRE).LRE Policy makers must avoid a false dichotomy, one that requires that children with unique needs and gifts must be removed from the public school they would otherwise attend in order to receive a quality education.

**Recommendation:**

Policy makers should be wary of any proposals that are based on the erroneous belief that removal from public school is necessary or beneficial to children with disabilities. This is especially true for youth who are dually eligible (gifted and IDEA) as removal from the regular education classroom often results in limited access to challenging academic and extracurricular content. In addition, they should be wary of any proposals that are solely focused on vocational planning for youth with disabilities when they leave school.

**Rationale:**

With sufficient training and resources (and compliance enforcement when needed), most children’s needs are well met in the regular classroom, as required by the IDEA’s principle of LRE. This has been shown by successful outcomes for students over the decades since the IDEA was passed initially. In addition, the field now has access to evidenced based approaches for students with disabilities, including but not limited to, positive behavior interventions and supports, restorative practices, and trauma informed

care for students with behavioral needs. Evidenced practices are also available to meet the academic needs of students. These approaches widen the choices educators may employ to ensure that students' needs are met with success.

The goal for students with disabilities in the IDEA and 504 is full participation in the community upon school completion. While vocational education and financial self-sufficiency are key concepts, "transition" to post school activities under the IDEA means more than a reduced dependence on public benefits. Young adults graduating or aging out of IDEA eligibility should be engaged as full members of their communities, a complete part of civic and social life.

### **Priority 8 - Proposed Priority 8--Promoting Effective Instruction in Classrooms and Schools.**

#### **In General:**

NDRN agrees with the Department that school leaders and teachers play a pivotal role in the successful education of students. This is particularly true for teachers who teach students with disabilities.

#### **Recommendation:**

NDRN recommends that any grant program which focuses on staffing or compensation models should be cognizant of the voice and representation of teachers and school leaders in these decisions. While rethinking staffing and compensation models may be helpful at times, NDRN believes that this should be done in concert with teachers, school leaders, and the organizations which represent them. If anything, staffing and compensation models which increase the pay and prestige of teachers should be emphasized.

#### **Rationale:**

Policy makers should be wary of any priority which focuses solely on the disruption of staffing and compensation models in schools without acknowledging the critical need of the voices and influence of teachers and school leaders into those decisions. If we are to attract and retain effective teachers and school leaders into the teaching field, then we must provide widespread stakeholder input (from the field) into any decisions which affect the very livelihoods of those we entrust to educate the nation's students.

### **Proposed Priority 10—Encouraging Improved School Climate and Safer and More Respectful Interactions in a Positive and Safe Educational Environment**

#### **In General:**

Administrative leadership is key to a safe and healthy school climate. Staff and students respond to a positive school community that values individuals and promotes problem solving over violence, exclusion, and bullying by any member.

#### **Recommendation:**

Grant programs should be prioritized that demonstrate improved leadership through

positive methods that intervene and resolve bullying of students by staff and peers and do not utilize: 1) school removal/long term suspension; 2) restraint; 3) seclusion, 4) aversive techniques, or 5) law enforcement for any actions other than they would be used in the community.

**Rationale:**

As described above in Priority 5, the field now has access to evidenced based approaches for students and staff that can improve school climate without the use of violence or exclusion through techniques such as positive behavior interventions and supports, restorative practices, and trauma informed care.

NDRN appreciates the opportunity to comment of on the Secretary's Proposed Supplemental Priorities and Definition for Discretionary Grant Programs. Should you have any questions, please do not hesitate to contact Amanda Lowe (amanda.lowe@ndrn.org ) with any questions or concerns.

Sincerely,



Curt Decker  
Executive Director