Public Comments to OSERS
Evaluation of Existing Regulations and Guidance

Good afternoon, my name is Amanda Lowe, Senior Public Policy Analyst at the National Disability Rights Network (NDRN). Thank you for the opportunity to provide input on the Department’s evaluation of existing regulations and guidance that have a policy impact. For more details on my comments today, please read NDRN’s written comments submitted on August 23.

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&As and CAPs were established by 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, and there is a P&A and CAP affiliated with the Native American Consortium 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.

Two critical areas of focus for the P&A/CAP agencies are education and vocational rehabilitation. In 2016, the P&As worked on nearly 14,000 individual cases and hundreds of systemic cases related to enforcing the educational rights of students with disabilities and the CAPs worked on nearly 18,000 cases related to vocational rehabilitation. Both of these issues are under the jurisdiction of the U.S Department of Education. This means that the P&A’s and CAP’s work is inextricably linked to the Department. NDRN views the work of the Department as critical, and this large scale and hurried effort to repeal, replace or modify existing regulations and guidance as irresponsible and a grave disservice to those it serves.
For nearly 50 years, the civil rights of students, including those with disabilities – from infancy into adulthood – have been the focus of key federal laws passed by Congress. These key laws we believe are the most significant to correcting discrimination and sustaining equity in our education system. NDRN firmly stands behind these laws, their carefully promulgated federal implementing regulations and non-regulatory guidance, which are essential to ensuring states and school districts fulfill their obligations to students with disabilities and their families.

NDRN rejects the notion that the process the Department is engaging in, in response to Executive Order 13777, will benefit the 50.4 million K-12 students it serves and will aid the Department in fulfilling its stated mission to “promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.”

It is important to note that the normal process of promulgating regulations and guidance already takes the concerns underlying the issuance of the Executive Order into account. Each regulation was carefully reviewed at the time of its promulgation, with an opportunity for input from all stakeholders. Undoing this work is inefficient with regard to government resources and loses the benefit of all prior input. Federal regulations and non-regulatory guidance help states and school districts fully implement our federal civil rights laws, which are critical to Secretary DeVos’ promise to “educate every student.” Stakeholders rely on these authorities to assist them in understanding and complying with the statutes. As such, none should be modified or rescinded.

I would like to briefly touch on two:

**Disproportionality Regulations**

The disproportionality regulations were added to the Individuals with Disabilities Education Act (IDEA) because data showed that some specific groups of students with disabilities were prevented from obtaining the benefit of special education, and in effect
the system only existed in full for certain students. NDRN strongly supports state and local efforts to mitigate problematic racial disproportionality in special education in the three distinct areas of identification, placement in restrictive settings, and discipline. The regulations are needed to accomplish that goal.

**NDRN opposes any changes to this regulation.**

**Definition of a “Competitive, Integrated Employment (CIE) Outcome**

The definition for Competitive Integrated Employment (CIE) found in the Workforce Innovation and Opportunity Act (WIOA) regulations is *completely consistent with the statutory language* and does not contradict such language in any way. Therefore, it would be incorrect to alter the regulatory definition.

NDRN realizes that there has been some pushback about this definition from individuals who support the segregated, “enclave” employment model. The enclave model is absolutely inappropriate and moves away from full integration and inclusion which our disability rights laws promote. Integration should be evident in all aspects of the workplace. Altering the CIE definition so that it would correspond with the characteristics of an enclave would change its power, meaning, and the underlying purpose of the statutory provision.

Most importantly, changing the definition would contradict the statute. *Based upon the statutory language, it would be impossible to simultaneously meet the criteria for an enclave and the criteria for competitive, integrated employment.* Stakeholders are seeking leadership from the Department that will make regulations clearer, not less so.

**NDRN opposes any changes to this regulation**

We appreciate the opportunity to provide public comments on the Department’s evaluation of existing regulations and guidance. We look forward to providing any
additional information the Department may request.