



January 7, 2020

Christie Weaver-Harris
Policy Manager
Office of the State Superintendent of Education
1050 First Street N.E., 5th Floor
Washington, D.C. 20002

RE: Comments on Special Education NPR

Dear Ms. Weaver-Harris:

The National Center for Special Education in Charter Schools (the Center) is dedicated to ensuring that students with disabilities have equal access to charter schools and that public charter schools are designed and operated to enable all students to succeed. The Center believes that the nearly 7,000 charter schools serving over 300,000 students with disabilities across 43 states and the District of Columbia, can create effective, inclusive learning environments and can be exemplars of educational equity, quality, and innovation.

As a leader and partner with state charter authorizers, charter networks, and charter schools across the U.S. and the leading national voice regarding educating students with disabilities in the charter sector, we offer comments to the Office of the State Superintendent of Education's posted Notice of Proposed Rulemaking proposing amendments to Chapter 30 of Title 5-A in the District of Columbia Municipal Regulations governing the education of students with disabilities. In particular, our comments are focused on OSSE's proposed regulations that address five topics: parent empowerment (§§3006.10, 3009.4 and 3042), paraprofessional training requirements (§3031), discipline, including disciplinary removal (§3044) and restraint and seclusion (§§3045, 3046 and 3047), charter school closure procedures (§§3001.12) and changes to the multiple disabilities category (§3011.8). We also include a note about the importance of a plan to ensure implementation of these proposed regulations.

I. PARENT EMPOWERMENT

Every student deserves a successful educational experience. For students with disabilities, partnerships between parents and educators, where each parent is empowered to meaningfully participate in the planning and implementation of their child's IEP, are critical to that success. The new regulations are filled with language that empowers parents, and we applaud OSSE for recognizing the importance of parent participation. While most of the rights set forth in the regulations are already guaranteed in federal and/or state law, including them in the Municipal Regulations both elevates awareness about the rights and signals that OSSE values parental

input. Examples of parental empowerment are spread throughout the proposed regulations, but we would like to highlight a few here.

THE PROPOSED REGULATIONS:

Section 3006. Evaluation Procedures:

3006.10(b): Upon completion of the evaluation, the group described in §3006.2 of this chapter shall:

....

(b) Provide a copy of the evaluation report, and any underlying assessments, at no cost to the parents, no later than five (5) business days before the eligibility meeting.

Section 3009. Parent Participation in IEP Team Meetings:

3009.4. The LEA shall provide, at no cost to the parent, an accessible copy of any evaluation, assessment, report, data chart, or other document that will be discussed at the meeting. Such accessible copies shall be provided no fewer than five (5) business days before a scheduled IEP Team meeting, if the purpose of which is to discuss the child's IEP or eligibility for special education and related services. However, if a meeting is scheduled fewer than five (5) business days before it is to occur, such accessible copies shall be provided no fewer than twenty-four (24) hours before the meeting.

Section 3042. Parent Observation:

3042.1 Upon request, the LEA shall provide timely classroom access, either together or separately, to the following persons for the purpose of observing a child's current or proposed special education program:

(a) The parent of a child with a disability;

(b) A designee appointed by the parent of a child with a disability, that is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation; and

(1) who has professional expertise in the area of special education being observed so long as the LEA has written consent of the parent on file prior to the parent's designee's observation of a child; or

(2) who is necessary to facilitate an observation for a parent with a disability or provide language translation assistance to a parent.

3042.2 The LEA shall develop and issue a written policy regarding child observation as follows:

(a) The LEA shall not impose any conditions or restrictions on such observations except that necessary to ensure that :

(1) The safety of the children in the program is maintained;

- (2) *The confidentiality of the other children in the program is protected by prohibiting observers from disclosing confidential and personally identifiable information in the event such information is obtained in the course of an observation by the parent or a designee; and*
- (3) *Any potential disruption to the learning environment arising from multiple observations is avoided.*

- (b) *The LEA may require advance notice of parent observation;*
- (c) *The LEA policy may require the designation of a parent's observer to be in writing; and*
- (d) *The LEA shall make its written policy regarding child observation publicly available.*

THE CENTER'S COMMENTS: We applaud OSSE for including these proposed regulations which, if implemented, will enable parents/legal guardians to fully participate in both the evaluation and IEP development processes and to continue to meaningfully participate in the education of their children.

II. PARAPROFESSIONAL TRAINING REQUIREMENTS

Paraprofessionals are an integral part of the education of students with disabilities, and the students with the highest needs are also often the students who rely most heavily on paraprofessional support. Therefore, we strongly support the inclusion of this proposed new section on paraprofessional supervision and training.

THE PROPOSED REGULATIONS:

3031 PARAPROFESSIONALS:

3031.1 *The LEA shall ensure each paraprofessional or aide is sufficiently supervised by a certified or licensed teacher, related service provider, or other qualified personnel responsible for implementing the special education and related services designated in a child's IEP.*

3031.2 *Instructional support services designated in a child's IEP shall be provided by a paraprofessional who meets the employment requirements of the LEA and possesses the education, training, or experience required to instruct children with disabilities in the content areas identified in the child's IEP, verified by:*

(a) Completion of a post-secondary degree, to include at minimum an associate's degree, in education or a related field; or

(b) Attainment of a high school diploma, GED, or other equivalency recognized by the District or LEA and completion of one (1) school year of classroom experience, either in a teaching capacity or teacher support capacity.

3031.3 Behavioral support services designated in a child’s IEP may be provided by a paraprofessional who meets the employment requirements of the LEA and possesses the education, training, or experience required to provide behavioral support services to children with disabilities, verified by:

(a) Completion of a post-secondary degree, to include at minimum an associate’s degree, in education, child development, or a related field; or

(b) Attainment of a high school diploma, GED, or other equivalency recognized by the District or LEA and completion of one (1) school year of classroom experience in behavioral management, including experience in any of the following:

(1) Implementing the requirements of a Behavior Intervention Plan (BIP);

(2) Utilizing positive behavioral intervention strategies (PBIS); or

(3) Employing non-violent crisis intervention de-escalation techniques.

3031.4 Health support services designated in a child’s IEP shall be provided by a paraprofessional who meets the employment requirements of the LEA and possesses the appropriate education, training, or experience directly related to providing health or medical services to children with disabilities, verified through at least one (1) of the following:

(a) Completion of a post-secondary degree, to include at minimum an associate’s degree, in health services, nursing, or a related field; or

(b) Completion of one (1) year of work experience providing health services in a school or medical setting.

THE CENTER’S COMMENTS: While federal regulations require that paraprofessionals be “appropriately trained and supervised”, 34 C.F.R. 300.156, the current Municipal Regulations appear to be silent regarding any standards for paraprofessional education, training or experience. Thus, we applaud OSSE for proposing these minimum qualifications for paraprofessionals, which we consider an important step toward ensuring that all students with disabilities have access to qualified paraprofessional support. At the same time, we recognize that identifying and hiring appropriate support staff is complicated and challenging. Therefore, we encourage OSSE to monitor the implementation of these new standards and to be prepared to amend them as needed to best support students.

III. DISCIPLINE (DISCIPLINARY REMOVAL AND RESTRAINT & SECLUSION)

Perhaps the most significant difference between the current and proposed regulations is the proposed regulations’ inclusion of limitations on discipline related to both disciplinary removals and restraint and seclusion. We applaud OSSE for emphasizing limitations on discipline in the proposed regulation, and we support the inclusion of these new sections. We address them separately below.

DISCIPLINARY REMOVAL (SUSPENSION AND EXPULSION):

THE PROPOSED REGULATIONS:

3044 DISCIPLINARY REMOVAL:

3044.1 *A child with a disability may be held to and disciplined under the same code of student conduct as a child without a disability, subject to the requirements of this section.*

3044.2 *An LEA may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, provided that:*

- (a) A child with a disability shall only be removed from their current placement to the extent those removals are applied to children without disabilities; and*
- (b) The removal does not constitute a change in placement.*

3044.3 *A change of placement occurs if the removal is for more than ten (10) consecutive school days or the child has been subjected to a series of removals that constitute a pattern. A pattern of removals occurs if:*

- (a) The series of removals total more than ten (10) school days in a school year;*
- (b) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and*
- (c) Additional factors, including the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another, indicate a pattern.*

3044.4 *The LEA shall determine on a case-by-case basis whether a pattern of removal constitutes a change in placement and shall document each such determination.*

3044.5 *An LEA shall only remove a child from their current placement to an interim alternative educational setting as a result of a disciplinary action in accordance with this chapter.*

3044.6 *For disciplinary changes in placement that exceed ten (10) consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability in accordance with this chapter, the LEA may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, as set forth in § 3044.8.*

3044.7 *After a child with a disability has been removed from his or her current placement for ten (10) cumulative school days in the same school year, the LEA shall provide services during any subsequent days of removal. The child shall receive:*

- (a) Educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and*

(b) As appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

3044.8 *During periods of removal, the LEA shall provide services to a child with a disability if the child has been removed from his or her current placement for ten (10) school days or fewer in that school year, if it provides services to a child without disabilities who is similarly removed.*

3044.9 *The LEA may remove a child to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:*

(a) Carries a weapon, as defined by 34 CFR § 300.530(i)(4), to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(b) Knowingly possesses or uses illegal drugs, as defined by 34 CFR § 300.530(i)(2), or sells or solicits the sale of a controlled substance, as defined by 34 CFR § 300.530(i)(3), while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(c) Has inflicted serious bodily injury, as defined by 34 CFR § 300.530(i)(3), upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

3044.10 *The LEA shall notify the parent of the decision to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, as follows:*

(a) Written notification to the parent shall be provided within one (1) day of the decision.

(b) The notification shall include a copy of the procedural safeguards notice.

3044.11 *Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team shall hold a manifestation determination meeting to review all relevant information in the child's file, including the child's IEP, teacher observations, and relevant information provided by the parents, to determine if the conduct in question was a manifestation of the child's disability in accordance with either of the following:*

(a) The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(b) The conduct in question was the direct result of the LEA's failure to implement the IEP.

3044.12 *If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall:*

(a) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred;

(b) Implement a behavioral intervention plan for the child or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it as necessary to address the behavior; and

(c) Return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

THE CENTER'S COMMENTS: While this new section of the proposed regulations is derived directly from IDEA and does not provide any additional protections for students related to disciplinary removals, we applaud OSSE for including the specific federal requirements for removal in the proposed regulation. Including the detailed requirements will ensure that LEAs are aware of their legal obligations in regard to these removals and will make enforcement easier. With data showing that students with disabilities are disproportionately suspended and expelled, it is important for LEAs to know the requirements of the law and to abide by them. We hope including these mandates in the regulations will help.

RESTRAINT AND SECLUSION

THE PROPOSED REGULATIONS:

3045 RESTRAINT:

3045.1 *The LEA shall not use any form of mechanical restraints, as defined in this chapter.*

3045.2 *The LEA shall not use any form of prone restraints, as defined in this chapter.*

3045.3 *The LEA shall not use any form of chemical restraints. A drug ordered by a licensed physician as part of ongoing medical treatment plan or determined by a licensed physician to be medically necessary is not considered a chemical restraint.*

3045.4 *The LEA shall not use any form of physical restraints, as defined in this chapter, except:*

(a) When the intervention is necessary in emergency circumstances, as defined in this chapter, to protect the child or other person from imminent, serious physical harm and other less intrusive, nonphysical interventions have failed or been determined inappropriate; or

(b) Where the use of restraint is included in the child's IEP to address specific behaviors under defined circumstances, and the use by appropriate staff is therefore consistent with the child's IEP.

3045.5 *Physical restraints shall be applied only by LEA personnel who are trained and certified in the appropriate use of specific, evidence-based techniques. The LEA shall maintain copies of training certifications.*

3045.6 *The use of physical restraints in cases of an emergency shall be limited to the use of reasonable force and to the shortest time period necessary to protect the child or other person from imminent, serious physical harm, as follows:*

(a) The restraint shall end as soon as the child or other person is no longer in imminent danger;

(b) LEA personnel shall provide the child with an explanation of the behavior that resulted in the restraint and instructions on the behavior required to be released from the restraint; and

(c) The LEA staff member shall personally observe the child during the entire duration of the use of the restraint in order to assess the need for continued restraint.

3045.7 *The LEA shall not use restraints as a means of coercion, discipline, convenience or retaliation by staff.*

3045.8 *Physical restraint is prohibited as a means of punishment or as a response to property destruction, disruption of school order, a child's refusal to comply with a directive, or language that does not constitute a threat of imminent, serious physical harm.*

3045.9 *The use of restraints is limited or prohibited as follows:*

(a) No physical restraint shall be administered in such a way that the child's breathing or speaking is restricted. During the restraint, an LEA staff member shall continuously monitor the physical status of the child, including skin color and respiration. The restraint shall be released immediately upon a determination by the LEA staff member that the child or other person is no longer at risk of causing imminent, serious physical harm, or the authorized use of restraint in a child's IEP has been satisfied. A staff member shall continuously assess the child to determine if medical attention is required.

(b) If the child uses sign language or an augmentative mode of primary communication, the child shall be permitted to have the child's hands free of restraint for brief periods, unless the LEA staff member determines that such freedom appears likely to result in harm to self or others. The restraint shall end as soon as the child is no longer at risk of causing imminent, serious physical harm or the authorized use of restraint in a child's IEP has been satisfied.

(c) Except in emergency circumstances or as authorized in a child's IEP, the use of restraint practices with a child whom the LEA knows has been sexually or physically abused is prohibited.

(d) Except in emergency circumstances or as authorized in a child's IEP, no physical restraint shall be administered if the child has a medical or psychological condition contraindicative to restraint.

3046 SECLUSION

3046.1 *The LEA shall not use any form of seclusion except in emergency circumstances, as defined in this chapter.*

3046.2 *A space used for seclusion shall:*

- (a) Be free of objects and fixtures with which a child could self-inflict bodily harm;*
- (b) Provide LEA personnel an adequate view of the child from an adjacent area in accordance with this Section; and*
- (c) Provide adequate lighting, ventilation, and appropriate temperature controls.*

3046.3 *In the event of seclusion, LEA personnel shall view a child placed in seclusion at all times by remaining within sight of the child, consistent with § 3046.5, and shall provide the child with an explanation of the behavior that resulted in the seclusion and instructions on the behavior required to be released from the seclusion.*

3046.4 *Seclusion shall only be applied by LEA personnel who are trained in the proper use of appropriate techniques supported by written policies and procedures established by the LEA and consistent with regulations and guidance issued by the SEA.*

3046.5 *LEA personnel shall continuously monitor a child placed in seclusion and speak with the child every ten (10) minutes at minimum. After thirty (30) minutes, the Director, Head of Special Education, or other senior LEA personnel shall personally observe the child to assess the need for continued seclusion. No seclusion shall continue longer than one (1) hour.*

3046.6 *If the space used for seclusion has a locking mechanism, it shall only be engaged when it is held in position by a person, or if electronically engaged, shall automatically release if the building's fire alarm system is activated.*

3047 RESTRAINT AND SECLUSION: REPORTING

3047.1 *If any form of restraint or seclusion is used, the LEA shall prepare a written report consistent with the requirements of this section.*

3047.2 *A written incident report shall include the following information:*

- (a) The child's name;*
- (b) The date of the incident;*
- (c) The beginning and ending times of the incident, and beginning and ending times of actual restraint or seclusion;*
- (d) A description of relevant events leading up to the restraint or seclusion;*
- (e) A description of any interventions used prior to the implementation of restraint or seclusion;*
- (f) A log of events during the restraint, including the restraint technique(s) used;*

- (g) A log of events during the seclusion;
- (h) A description of any injuries (whether to children, personnel, or others), property damage, or both;
- (i) A list and signatures of the LEA personnel who participated in the implementation, monitoring, and supervision of the restraint or seclusion event; and
- (j) A description of the short-term planned approach to addressing the child's behavior in the future.

3047.3 *The written incident report shall be prepared for each individual incident involving a restraint or seclusion and placed in the child's record within one (1) business day of the incident.*

3047.4 *A copy of the written incident report shall be sent within one (1) business day of the incident to the child's parent.*

3047.5 *If the restraint or seclusion incident involved physical injury to, or caused by, a child, the LEA shall report the incident in writing within one (1) business day to the parent and other District of Columbia agency involved in the child's placement, by facsimile or other electronic transmission.*

3047.6 *The IEP team shall meet within ten (10) school days of the incident to consider the need for a FBA and BIP and to discuss non-physical and non-restrictive de-escalation strategies. If the child has a BIP in place, the IEP team shall review and revise as appropriate. If the child is unable or unwilling to attend the IEP team meeting, the LEA shall meet with the child individually to discuss the incident as appropriate.*

3047.7 *If additional incidents of restraint or seclusion occur within ten (10) school days of the original incident, the LEA and parent may agree to consolidate meetings and discuss all incidents at a meeting to be scheduled no later than fifteen (15) school days after the original incident.*

THE CENTER'S COMMENTS: Ideally, restraint and seclusion of students with disabilities would be banned in all public schools. In the absence of a complete ban, we commend OSSE for expanding to all public schools the limitations of restraint and seclusion that previously only applied to nonpublic schools. According to the U.S. Department of Education Office of Civil Rights' (OCR) Civil Rights Data Collection from the 2015-2016 school year, restraint and seclusion are disproportionately used to discipline students with disabilities as opposed to students without disabilities¹. These dangerous practices, which should not be used as forms of discipline or punishment, have led to student injury, trauma, and even death. In the absence of a complete ban, we would suggest that OSSE at a minimum consider strengthening these regulations in the following ways:

¹ U.S. Department of Education, 2015-16 Civil Rights Data Collection, School Climate and Safety (April 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>

1. **Remove the provision contained in Section 3045.4(b) that allows restraint to be included in a student’s IEP.** When restraint is allowed to be included in IEPs, it often results in discrimination against students with disabilities. Guidance from 2016 from the U.S. Department of Education citing the Code of Federal Regulations stated that “a school district discriminates on the basis of disability in its use of restraint or seclusion by (1) unnecessarily treating students with disabilities differently from students without disabilities; (2) implementing policies, practices, procedures, or criteria that have an effect of discriminating against students on the basis of disability or defeating or substantially impairing accomplishment of the objectives of the school district’s program or activity with respect to students with disabilities; or (3) denying the right to a free appropriate public education (FAPE)”.² We respectfully suggest that OSSE should work to remove any loopholes that could lead to the discriminatory use of restraint and seclusion towards students with disabilities, including the allowance of restraint in student IEPs.
2. **Add a reporting requirement for LEAs to report all incidents of restraint and seclusion to OSSE, with OSSE making the data from those reports publicly available.** We applaud the robust reporting requirements contained in Section 3047. Requiring detailed reports to be sent to parents within 24 hours and also to be placed in the child’s file is a great step towards transparency and accountability regarding the use of restraint and seclusion. However, requiring the additional step of submitting a copy of that same report to OSSE would provide the oversight necessary to best ensure that restraint and seclusion are not abused, and a public reporting of the data around restraint and isolation would further ensure public awareness and LEA accountability. We believe these two small additions to the reporting requirement would have a large impact.

IV. CHARTER CLOSURE PROCEDURES

Charter school closures cause families and the community to experience significant confusion and stress. Therefore, we strongly support the inclusion of these proposed new requirements for charter schools to follow when closing.

THE PROPOSED REGULATIONS:

3001. PROVISION OF FREE APPROPRIATE PUBLIC EDUCATION.

3001.12 *If a public charter school LEA closes or ceases to operate, in full or in part, for any reason, including without limitation voluntary relinquishment or revocation of its charter by the chartering authority, the public charter school LEA shall adhere to charter closure procedures established by the SEA and the chartering authority, as follows:*

(a) Within fourteen (14) days of the official action taken by the chartering authority to revoke, not renew, or acknowledge the relinquishment of a charter, the LEA shall make and document reasonable efforts to notify:

² U.S. Department of Education, Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities (December 28, 2016), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>; 34 C.F.R. §§ 104.4, 104.33-35

(1) *The parents of all enrolled children with disabilities, including children with disabilities placed at a nonpublic special education school or program, of the parent's responsibility to enroll the child with a disability in another LEA; and*

(2) *Each nonpublic school where the LEA has placed students to inform the school of the timing and full implications of the closure and the nonpublic school's responsibility to assist the LEA in communications with parents regarding the LEA closure and the parent's responsibility to enroll the child with a disability in another LEA;*

(b) *The LEA shall ensure all student records are updated in the state-level special education data system, including reviewing and revising any IEP that has expired or will expire within thirty (30) days of the closure of the public charter school;*

(c) *The LEA shall provide to the parent a copy of the child's IEP and other documentation relevant to the provision of special education or related services prior to the last day of school or within ten (10) business days of a request by the parent, if earlier; and*

(d) *The LEA shall address or resolve all outstanding child-level findings of noncompliance made by the SEA, a court of competent jurisdiction, or an impartial hearing officer pursuant to the IDEA.*

THE CENTER'S COMMENTS: We applaud OSSE'S efforts to set forth specific procedures for charter schools to follow if they are closing. Delineating the exact process provides LEAs with a roadmap and also gives parents the information they need to move forward with enrolling their children in other schools. However, we encourage OSSE to include in the regulation, or at a minimum in policy or guidance, a plan for implementing these requirements, including consequences that will occur if the process is not followed. While specific closure procedures and timelines can alleviate confusion and stress, if there is no mechanism in place ensure that the schools follow the requirements, the regulation is meaningless.

V. MULTIPLE DISABILITIES CLASSIFICATION

Given the complexities involved in determining which disability categories apply in each given student's situation, we applaud the additional details added in the disability classification section of the proposed regulations. We believe that the category most in need of clarity is the multiple disabilities category.

THE PROPOSED REGULATIONS:

3011. DISABILITY CATEGORIES

3011.8 Multiple disabilities. *In determining eligibility on the basis of multiple disabilities, the following shall apply:*

(a) Multiple disabilities shall mean concurrent impairments, such as intellectual disability-blindness or intellectual disability-orthopedic impairment, the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness;

(b) The IEP Team shall consider assessments and child data related to:

(1) Whether the child meets all eligibility criteria required for two (2) or more of the following disability categories as defined in this section: (A) Autism; (B) Emotional disturbance; (C) Hearing impairment, if not concurrent with visual impairment; (D) Intellectual disability; (E) Orthopedic impairment; (F) Other health impairment; (G) Specific learning disability; (H) Speech or language impairment; (I) Traumatic brain injury; or 35 (J) Visual impairment, if not concurrent with hearing impairment;

(2) Whether the combination of coexisting impairment is so severe, complex, and interwoven that identification in a single category of disability cannot be determined; and

(3) Whether the impairment results in multisensory or motor deficiencies and delays in the cognitive, affective, or psychomotor areas designed solely to address single impairments;

(c) The IEP Team may consider and use as the basis for its determination any other sources of existing data indicating eligibility for multiple disabilities, including medical documentation or a medical diagnosis, if available;

(d) The IEP Team shall confirm that the child-level data demonstrates that the child's educational performance has been adversely affected by multiple disabilities and not any of the inappropriate determinant factors as listed § 3010.2; and

(e) Multiple disabilities shall be treated as a separate and distinct classification from all other disability categories, and shall not be utilized due merely to the child not meeting the criteria of other categories.

THE CENTER'S COMMENTS: Multiple disabilities can be a confusing category. We support the clarification in 3011.8(b)(2) specifying that the IEP team should consider whether the combination of coexisting impairment is so severe, complex, and interwoven that identification in a single category of disability cannot be determined and the one in 3011.8(e) specifying that Multiple Disability is a distinct category and not merely one that is to be used when another category does not fit or when the child has concurrent disabilities. However, given that students in Washington, D.C. are identified under the Multiple Disability category at a rate that is five times the national average, we would suggest even stronger language to specify that if identification in a single disability category *can* be determined or if another category sufficiently describes the child's situation, then the student should not be classified with multiple disabilities. We believe that this change would help address the current over-classification in this category and ensure that students are properly identified. Given that over-classification increases the risk of students being placed in more restrictive environments with less access to the general education curriculum, we strongly encourage OSSE to adopt this small change.

A NOTE ON IMPLEMENTATION:

We are encouraged by the robustness of the proposed regulations in the categories listed above. Through these proposed regulations, OSSE is showing a clear commitment to improving the education of students with disabilities in the District of Columbia. However, we would be remiss if we did not take a moment to emphasize the importance of having a robust implementation and oversight plan for these regulations. The best regulations have no effect without proper implementation. While these proposed regulations show much promise, they will mean little if LEAs do not follow them. Therefore, we encourage OSSE to develop a detailed plan for implementation and oversight. We mentioned in our comments suggestions for oversight related to charter closure and restraint and seclusion. We hope that OSSE adopts those suggestions and develops a detailed plan to ensure that LEAs are adequately supported and held accountable for implementing all of the proposed changes.

CONCLUSION

The Center appreciates the opportunity to provide input to the proposed amendments to Chapter 30 of Title 5-A. We encourage you to consider our recommendations and look forward to working with you to ensure the success of students with disabilities in the District of Columbia.

Sincerely,



Lauren Morando Rhim, Ph.D.
Executive Director and Co-Founder
National Center for Special Education in Charter Schools