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July 25, 2011

Ms. Elizabeth McFadden
Deputy General Counsel for Ethics, Legislative Counsel, and Regulatory Services
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Docket ID ED-2011-OGC-0004

Dear Ms. McFadden:

On behalf of the 40,000 special education teachers, special education administrators, higher education faculty, related service personnel and other professionals who are members of the Council for Exceptional Children (CEC), I am writing to express our concern about the U.S. Department of Education's request for information regarding the *Preliminary Plan for Retrospective Analysis of Existing Rules* (Docket ID ED-2011-OGC-0004) as published in the Federal Register on July 6, 2011.

CEC appreciates the need to review and reflect on the impact of regulations and guidance documents to ensure that information collected and presented to the public is necessary, relevant, and supports student achievement and developmental growth. The special education field depends on timely and relevant regulations and guidance from the Department to support the implementation of policies and practices impacting children and youth with disabilities and the professionals who work on their behalf.

As you know, the special education community is active, engaged and passionate about the academic and developmental success of children and youth with disabilities. Indeed, during the regulatory process for the Individuals with Disabilities Education Act 2004 – Part B, the Department received over 5,000 comments to the proposed regulations. In fact, CEC's recommendations were nearly 50 pages in length. Clearly, stakeholders have been engaged in the rulemaking process.

It is with this level of engagement in mind that CEC approaches the Department's *Retrospective Analysis of Existing Rules* with great caution. While CEC agrees and understands that circumstances may arise when certain regulations must be revisited outside of the typical rulemaking process, CEC believes these changes should be made in answer to extreme circumstances and only when a broad stakeholder community and the Department deem it necessary.

The process outlined in the *Retrospective Analysis of Existing Rules* must uphold the integrity of the rulemaking process by reinforcing and supporting opportunities for stakeholder input. The *Retrospective Analysis of Existing Rules* seems to be soliciting feedback only on the plan the Department will pursue to revisit regulations and/or guidance documents. It is unclear whether the Department will seek any future stakeholder input on the specific changes to the regulations that the Department will consider. The



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typical process followed for the release of regulations has allowed for appropriate stakeholder input and reinforced a process that places an emphasis on transparency and a value on feedback from the community. As such, **CEC urges the Department to clarify that it will provide the public with an appropriate public commenting period to review, analyze and comment on any proposed regulatory changes.**

Additionally, CEC understands that the process to reauthorize legislation may stall in Congress and therefore prompt stakeholders and the Department to consider revisiting existing regulations. Of course no system should be so rigid that it cannot adapt to the changing needs of the field. However, CEC does not believe that a regulatory overhaul is appropriate without a statutory authorization. Instead, changes to existing regulations should be made only under extreme circumstances and with the same transparency of the typical regulatory process.

CEC looks forward to working with you to ensure that the educational system raises expectations for students with disabilities and ensures that all educators are prepared to meet their needs.

Sincerely,

A handwritten signature in cursive script that reads "Deborah A. Ziegler".

Deborah A. Ziegler, Ed.D
Associate Executive Director
Policy and Advocacy Services