

**IDEA Regulations Input**  
Washington, DC Meeting  
July 12, 2005

Good afternoon. My name is Paul Marchand. I appear before you today on behalf of The Arc of the United States and United Cerebral Palsy, two national organizations with rich histories in disability policy development, in particular IDEA. The constituents we represent constitute a significant portion of those students served under IDEA. We thank you for the opportunity to present our views on the Department's proposed regulations to implement the 2004 Amendments to IDEA.

I want to commend the Department and its leadership for extraordinary outreach, this input process and the prompt development of these rules. Unfortunately this praise is tempered by serious concerns about the Department's recent special education policies and its responsiveness to families and advocates.

Today, 68 days after the Consortium for Citizens with Disabilities Education Task Force sent a detailed letter to the Secretary on the 2% rule, we have yet to receive a response, prompting several national organizations to explore litigation to put some common sense to the implementation of this policy since the educational futures of over 1 million students with disabilities are at stake. In a related matter, our communication regarding appropriate representation on the growth model task force has met a similar fate. Our concern is compounded by the recent decision of this Administration to flip flop the Federal government's position in the Schaffer litigation, which would put the burden of proof on parents who file due process complaints. President Bush has often cited his goal of enhanced parental involvement in special education and we applaud that goal. I guess putting the burden of proof in due process on parents is one way to increase parental participation but that's hardly what The Arc and UCP anticipated. Thus we look at these proposed rules primarily from the lens of students and their families.

Although our analysis is by no means complete, we have reached a conclusion, sadly, that these proposed rules are hardly student and parent friendly.

Given the lack of responsiveness by the Department of Education to many of our concerns about departmental policy, we have some hope, but not much, that our views really count. I'd like to spend a couple of minutes addressing a few big picture issues regarding the proposed rules.

First, about the general plan and structure as spelled out in the preamble. It lists 5 factors the Department used in crafting the proposed rules. Among these factors is a provision contained in the 2004 amendments requiring the Secretary to not publish final regulations that would procedurally or substantively lessen the protections provided to children with disabilities except to reflect clear and convincing intent of Congress. Too often, the proposed rules breach this standard.

We would offer two other factors, contained in the purpose section of the new law, that should also be considered. They are improved educational opportunities and the fostering of employment, further education, and independent living for children with disabilities.

We are also concerned that the Department has selectively used conference report language in various parts of the proposed rules. When it is used, we believe, in most instances, that this practice serves to tilt the policy toward LEAs and not families and students. If the Department is going to use report language, it should use it all or at least treat all parties fairly.

We also find very problematic numerous deletions of current regulations that have nothing to do with the 2004 amendments. It will be most difficult, if not impossible, for typical families to realize that important protections are lost through this virtually hidden procedure. On the other side of the coin are new regulatory provisions that have no basis in the new law or the current regulations.

Again, several of these provisions would harm children. Finally, we want to express our serious concern with the lack of proposed rules to cover Part C of the law. Families and children involved in the Part C Early Intervention program, as all parties involved in Part C, deserve better treatment. Part C should not be IDEA's stepchild. When will these proposed rules be published and how will the Department not short change the process now in use to get comments on Parts A&B? We will be providing many detailed comments by Labor Day to back up our concerns. Thank you.