

September 6, 2005

Dr. Troy Justesen  
U.S. Department of Education  
400 Maryland Avenue, SW  
Potomac Center Plaza, Room 5126  
Washington, DC 20202-2641.

RE: Comment on Proposed IDEA-Part B Regulations

Dear Dr. Justesen:

On behalf of the Software & Information Industry Association (SIIA), I write to submit comments on the proposed regulations for implementation of the Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446) as included in the June 21, 2005 Federal Register. We are especially concerned about provisions of the early intervening program under section 613(f). We appreciate the opportunity to provide our perspective on this important law.

SIIA is the principal trade association of the software and digital content industries, representing more than 700 leading high-tech companies. Many SIIA member companies develop educational software applications, digital curriculum, computer based assessments, and other e-learning and related technology products and services important to addressing the unique learning needs of special education students. All SIIA members depend on the nation's schools for a skilled high-tech workforce, and view technology as critical to meeting the nation's education and workforce goals.

As you know, the early intervening program is intended to provide early instructional support to struggling students, including students in grades K-3 with reading challenges. Our organizations are concerned that, because of confusion in the field generated by the "scientifically based research" requirements of the No Child Left Behind Act, school districts will be incorrectly led to believe that they are prohibited from using IDEA and IDEA early intervening funds for supplemental instructional resources.

We therefore urge that the IDEA regulations clarify this situation. In Section (b)(2) as shown below, we recommend adding the following language: "**... and the use of appropriate supplemental instructional materials.**"

Section 300.226 Early intervening services

Section (b) (2) Providing educational and behavioral evaluations, services, and support, including scientifically-based literacy instruction **and the use of appropriate supplemental instructional materials.**

SIIA and our member companies support the goal of basing educational decisions and interventions, including for instructional materials, on scientifically-based research. However, in many cases, these provisions, especially under the Reading First program, have been interpreted as restricting

use of funds to a select few programs such as those approved in the static and incomplete review process undertaken by various federally-funded technical assistance centers and incorporated into state Reading First plans.

These practices and perceptions of acceptable uses of funds if applied to IDEA early intervening services would fall short of meeting IDEA goals and student needs by failing to recognize that:

1. No single instructional material or program – primary or supplemental; electronic or print – is sufficient to address the unique learning needs of each student, and especially the unique needs of special education students. In fact, in many cases, these students may be struggling because their school’s particular material or program is not sufficient for them. Use of multiple and supplemental learning resources and media expands instructional options and allows for reinforcement, remediation, differentiated instruction, and the filling of curriculum and pedagogical gaps. Electronic learning resources are particularly beneficial for students who learn at a different pace or learn best through alternative modalities.

2. Congressional direction on this issue, as included in the Conference Committee Report, 108-779, allows for and encourages the use of supplemental instructional materials as follows:

“The Conferees believe that early intervening services should make use of supplemental instructional materials, where appropriate, to support student learning. Children targeted for early intervening services under IDEA are the very students who are most likely to need additional reinforcement to the core curriculum used in the regular classroom. These are in fact the additional instructional materials that have been developed to supplement and therefore strengthen the efficacy of comprehensive core curriculum. Per the requirements of NCLB, core curriculum must meet standards of scientific rigor. As supplementary materials to these core programs, they are aligned with and designed to reinforce the skills taught in these comprehensive research-based texts.”

3. Supplemental instructional materials often incorporate an instructional design that aligns them with comprehensive programs including in reading, which themselves are grounded in scientifically-based research. This alignment, in conjunction with direct scientifically-based research upon which supplemental resources are based and proven effective, provides the basis for a supplemental material to meet the scientifically-based research standard called for in the early intervening program.

Thank you for considering SIIA's comments regarding the IDEA proposed regulations around early intervening services. SIIA and our member companies look forward to working with you on these and related issues to ensure IDEA, and the instructional resources it funds, best meet the unique needs of special education students. If we can be of further assistance, please contact me or Mark Schneiderman, SIIA’s director of education policy, at (202) 789-4444 or [marks@siia.net](mailto:marks@siia.net).

Sincerely,



Kenneth A. Wasch  
President

