Dear Secretary DeVos,

On behalf of The Leadership Conference on Civil and Human Rights and the 112 undersigned organizations, we write to offer our strong support for the robust enforcement of the Individuals with Disabilities Education Act (IDEA) provisions regarding significant disproportionality in the identification, placement, and discipline of students with disabilities with regard to race and ethnicity. This issue is of particular interest to the civil and human rights community given our long struggle to ensure educational opportunity, full inclusion, and appropriate supports and services for children with disabilities, boys and girls of color, English learners, and Native American, low-income, and LGBTQ students. We recognize that often students are members of multiple communities and experience unlawful and unjust discrimination within the intersections of these identities. We are committed to the robust enforcement of our nation’s civil rights and education laws and the freedom from discrimination and access to educational opportunity that they provide.

As parents, students, and advocates working to eliminate discriminatory practices that undermine equal educational opportunity, we know all too well that students of color are disproportionately misidentified for certain categories of special education, placed in restrictive learning environments at higher rates than their White peers with disabilities (where their outcomes are significantly worse than those of other students), and subjected to punitive discipline practices more often. We wholeheartedly support the collection of data on significant disproportionality, as it is an essential state obligation as required by the Individuals with Disabilities Education Improvement Act signed on December 3, 2004, and clarified by the regulations finalized on December 19, 2016. Moreover, we recognize that these data, once collected, should inform action to address systemic barriers to students’ success.

As you know, Politico published a draft Federal Register notice on October 26 seeking comment on whether to delay the compliance date for the 2016 regulation until July 1, 2020 (and postpone data collection regarding the rights of the youngest children until 2022). This notice suggests that the Department may be considering delaying or amending this important rule. We are reaching out to you, as advocates for children and their families, to express our continued support of the regulation that implements the IDEA’s significant disproportionality requirements and our opposition to any effort to delay implementation of this regulation.
This regulation was a direct response to the February 2013 U.S. Government Accountability Office (GAO) study\(^1\) showing widespread noncompliance by states with 20 U.S.C. Section 1418(d) of the IDEA requiring states to identify Local Education Agencies (LEAs) with significant disproportionality in areas related to special education: Identification; Restrictive Placement; and Discipline. Most states set thresholds for identifying disproportionate districts so high that no districts ever exceeded them, and, therefore, none were identified. Meanwhile states permitted districts to suspend students of color with disabilities at much higher levels than their White peers. Nationally, for example, in 2011, districts suspended more than one in every four Black students with disabilities, at least once. Rates of disciplinary removal for their disabled White peers were far lower.\(^{17}\) The GAO recommended that, “To promote consistency in determining which districts need to provide early intervening services, Education should develop a standard approach for defining significant disproportionality to be used by all states.”

During a request for public comment published in the Federal Register on June 19, 2014 on the actions that the Department should take to address significant disproportionality and following a notice of proposed rulemaking published on March 2, 2016, hundreds of individuals and organizations, including many signers of this letter, school district officials, and other stakeholders, weighed in on the appropriateness of a regulation to implement section 618(d) of the Individuals with Disabilities Education Act. The Department of Education published a final rule in the Federal Register on December 19, 2016.

In sum, numerous stakeholders representing a variety of constituents have taken the time to provide their thoughtful input to the Department, and their comments remain available for review. The statutory significant disproportionality requirement has been the law for 13 years, and states have adequate time to develop appropriate measures for determining racial and ethnic disparities in special education. The regulation was promulgated in December 2016; as such, the field should now be prepared to use its methodology in meeting their ongoing obligations under the IDEA. Further delay and review serves no meaningful purpose and will only result in harm to children and confusion and wasted resources on the part of the federal and state departments of education and school districts.

We stand committed to justice for children, enforcement of our laws, and equal access to educational opportunity in our nation’s public schools. For any questions or for additional information, please contact Liz King, Leadership Conference Director of Education Policy at king@civilrights.org or (202)466-0087 or Diane Smith Howard, National Disability Rights Network Senior Staff Attorney for Juvenile Justice and Education Issues at diane.smithhoward@ndrn.org or (207) 522-2871.

Sincerely,

National Organizations (57)
The Leadership Conference on Civil and Human Rights
National Disability Rights Network
The Advocacy Institute
African American Ministers In Action
American-Arab Anti-Discrimination Committee
PolicyLink
Southeast Asia Resource Action Center
Stand for Children
TASH
Teach For America
Teach Plus
TNTP, Inc
UnidosUS (formerly NCLR)
Wheelock College

State/Local Organizations (56)
A+ Colorado
AAUW of Georgia
The Arc of Aurora
Arkansas Advocates for Children and Families
Bucks County Down Syndrome Interest Group
California Down Syndrome Advocacy Coalition
CDCRC Inc
Center for Pan Asian Community Services (CPACS)
Center for Sustainable Communities
Children Now Coalition of Texans With Disabilities
Coleman Advocates for Children & Youth
Colorado Association for Bilingual Education
Colorado Children's Campaign
Community Inclusion & Development Alliance
Democracy Nashville/ Democratic Communities
Disability Activists and Allies of Maine (DAAM)
Down Syndrome Connection of the Bay Area
East Texas Down Syndrome Group
Education Justice Alliance
Education Law Center-PA
Fannie Lou Hamer Center for Change
Fort Wayne Urban League
Girls Inc. of Long Island
Greater Bridgeport NAACP
HawaiiKidsCAN
Indianapolis Urban League
Kern Down Syndrome Network
Knowledge & Information about Individuals with Down Syndrome (KIIDS)
Latino Memphis
Long Island Advocacy Center
Under IDEA section 618(d) (20 U.S.C. 1418(d)) and § 300.646, States are required to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the State and the LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. States must make this determination annually.


20 U.S.C. 1418(d)


See: [http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf)