



May 14, 2018

Johnny W. Collett
Assistant Secretary
Office of Special Education and Rehabilitation Services
U.S. Department of Education
400 Maryland Ave., SW
Room 5107, Potomac Center Plaza
Washington, DC 20202-2500

RE: Docket ID ED-2017-OSERS-0128

Dear Assistant Secretary Collett,

On behalf of The Leadership Conference on Civil and Human Rights and the 38 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.ⁱ In particular, we are writing to oppose any delay in the implementation of the Equity in IDEA regulationsⁱⁱ as suggested in the notice of proposed rulemaking published in the Federal Register on February 27, 2018. 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.ⁱⁱⁱ 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^{iv} signed on December 3, 2004, and clarified by the regulations finalized on December 19, 2016.^v Moreover, we recognize that these data, once collected, should inform action to address systemic barriers to students' success. **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**

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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^{vi} 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.^{vii} 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. Similarly, on December 7, 2017, 112 national, state, and local organizations signed a letter opposing any delay to the regulation’s implementation.^{viii}

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.

Sincerely,
The Leadership Conference on Civil and Human Rights
African American Ministers In Action
American Federation of Teachers
The Arc of the United States

Association of University Centers on Disabilities
Autistic Self Advocacy Network
Children's Defense Fund
Children's Rights Clinic, Southwestern Law School
Civitas ChildLaw Center, Loyola University Chicago School of Law
Clearinghouse on Women's Issues
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund
Education Law Center - PA
Feminist Majority Foundation
Girls Inc.
Human Rights Campaign
Judge David L. Bazelon Center for Mental Health Law
Lawyers' Committee for Civil Rights Under Law
Legal Aid Justice Center
NAACP Legal Defense & Educational Fund, Inc.
National Alliance for Partnerships in Equity (NAPE)
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Center for Transgender Equality
National Center for Youth Law
National Council of Jewish Women
National Disability Rights Network
National Down Syndrome Congress
National Education Association
National Indian Education Association
National LGBTQ Task Force
OCA -Asian Pacific American Advocates
People For the American Way
Southeast Asia Resource Action Center
Southern Poverty Law Center
Teach For America
The Ounce of Prevention Fund
UnidosUS formerly NCLR
Union for Reform Judaism

ⁱ 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.

ⁱⁱ 34 CFR 300, See: <https://www.regulations.gov/document?D=ED-2015-OSERS-0132-0318>

ⁱⁱⁱ See, for example, sources cited here: http://www.indiana.edu/~equity/docs/CCBD_Policy_Disproportionality.pdf
as well as <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1553&context=jgspl>,
<http://www.indiana.edu/~equity/docs/Skiba%20et%20al%20Race%20is%20Not%20Neutral%20202011.pdf>,
<http://www.indiana.edu/~equity/docs/ParsingDisciplinaryDisproportionality.pdf>,
<http://journals.sagepub.com/doi/abs/10.1177/0741932513507754>,



<http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>, <https://eric.ed.gov/?id=EJ951099>, <https://www2.ed.gov/programs/osepidea/618-data/LEA-racial-ethnic-disparities-tables/disproportionality-analysis-by-state-analysis-category.pdf>, and <http://digitalcommons.library.tmc.edu/cgi/viewcontent.cgi?article=1224&context=childrenatrisk>.

^{iv} 20 U.S.C. 1418(d)

^v 34 CFR 300, See: <https://www.regulations.gov/document?D=ED-2015-OSERS-0132-0318>

^{vi} See: <http://www.gao.gov/products/GAO-13-137>

^{vii} See: <https://ocrdata.ed.gov/downloads/crdc-school-discipline-snapshot.pdf>

^{viii} See: <https://civilrights.org/letter-re-enforcement-idea-provisions-regarding-significant-disproportionality/>