

April 29, 2019



The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Secretary DeVos,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 26 undersigned organizations, **we strongly urge the Department of Education (ED or the Department) to comply with the recent district court decision invalidating the two-year delay of the Equity in IDEA regulation and respond in a positive and proactive manner to implement it.**

The Department chose to delay the implementation of the Equity in IDEA regulation, over the objections of the National Association of State Directors of Special Education, Inc.,<sup>i</sup> the civil rights community,<sup>ii</sup> and many other interested entities. Students of color continue to confront gross inequities in our school systems and too often within special education.<sup>iii</sup> The overrepresentation of children of color in special education,<sup>iv</sup> troubling disparities<sup>v</sup> in school discipline, especially for Black students;<sup>vi</sup> and the disproportionate placement of children of color in restrictive and segregated learning environments<sup>vii</sup> all demand prompt and thorough action. These data are evidence that we have a long way to go to fulfill the full promise of IDEA and our civil rights laws.

On March 7, 2019, the U.S. District Court for the District of Columbia in *COPAA v. DeVos* set aside the Department's rule that delayed the compliance date of the Equity in IDEA regulation regarding significant racial and national origin disproportionality in the identification, placement, and discipline of students with disabilities.<sup>viii</sup> The court found that the Department had failed to provide a reasoned explanation for the delay and that it failed to consider the burdens the delay imposed on parents and their children with disabilities, State education agencies (SEAs), local education agencies (LEAs), and society.

It is past time for the Department to look forward and ensure compliance with the regulation. We appreciate the Department's belated notice to SEAs this month that "the 2016 regulation is currently in effect," and expect the Department will promptly revise several of its active webpages that still announce the delay.<sup>ix</sup> **We urge the Department to immediately, clearly, and actively notify SEAs and their state advisory panels that they are now required to comply with the 2016 Equity in IDEA regulation** (except for children ages 3 through 5, for whom compliance is not required until July 2020).

Circulating a few sentences in a notice will not suffice, particularly while the Department declares that it is still “reviewing the ruling and considering our options”<sup>x</sup> and continues to announce the delay on several active webpages addressing significant disproportionality. For those SEAs who relied on the delay regulation to stop preparing for compliance, we ask the Department to provide resources and technical assistance aimed to bring them into compliance immediately.

The SEAs need certainty about the expectation to implement the methodological requirements of the Equity in IDEA regulations, as well as requirements regarding disparities in discipline of students with disabilities, and requirements of what SEAs must do when significant disproportionality is found. There have been too many mixed signals. It is time to give SEAs a clear one, without lingering concerns that a new regulation is on the horizon that may undermine the impact of the resources we hope the SEAs will invest, and already have invested, in this effort. More importantly, the children who are currently being disproportionately identified, placed in restrictive settings, and disciplined need the regulation’s protections put in place to ensure they are receiving appropriate and equitable educational services. **We urge the Department not to appeal the district court’s decision and not to issue any proposal to further amend the Equity in IDEA regulation.**<sup>xi</sup>

The Equity in IDEA regulation, like the IDEA itself, recognizes the important monitoring role that the Department must play and the importance of transparency. **We urge the Department to obtain expedited clearance to collect all the data identified in Section 300.647(b)(7) of the regulation.** The Department previously initiated the information collection clearance process for these data<sup>xii</sup> and received positive public comments.<sup>xiii</sup> It is time to finish that process and start collecting that critical data and reporting it to the public.

Similarly, the Department must follow through on its commitment to evaluate the Equity in IDEA regulation “to assess its impact, if any, on how LEAs identify children with disabilities,” including “an examination of the extent to which school and LEA personnel incorrectly interpret the risk ratio thresholds and implement racial quotas in an attempt to avoid findings of significant disproportionality by States, contrary to IDEA.”<sup>xiv</sup> **We urge the prompt initiation of an evaluation of the impact of the Equity in IDEA regulation.** While we disagree (as did the district court) with the Department’s view that the Equity in IDEA regulation will result in de facto racial or ethnic quotas, it is important to understand how teachers and administrators are, in practice, responding to the regulation. Without such an evaluation, it is impossible to know what additional guidance or technical assistance is necessary to further reduce the risk of students of color being over-, under- or mis-identified as students with disabilities, improperly placed, and improperly disciplined because of their race or national origin.

For the sake of all children, we urge you to ensure compliance with these critical protections under IDEA and take action to address racial disparities. If you have any questions, please contact Leadership Conference K12 Program Analyst Anum Malik at [malik@civilrights.org](mailto:malik@civilrights.org) or 202.548.7171.

Sincerely,

The Leadership Conference on Civil and Human Rights  
African American Ministers in Action  
American Civil Liberties Union  
American Federation of Teachers  
American-Arab Anti-Discrimination Committee  
Association of University Centers on Disabilities (AUCD)  
Autism Society of America  
Autistic Self Advocacy Network  
Clearinghouse on Women's Issues  
Disability Rights Education and Defense Fund (DREDF)  
Education Law Center-PA  
GLSEN  
Hispanic Federation  
Judge David L. Bazelon Center for Mental Health Law  
Lawyer's Committee for Civil Rights under Law  
NAACP Legal Defense and Educational Fund  
National Alliance for Partnerships in Equity (NAPE)  
National Center for Learning Disabilities  
National Center for Lesbian Rights  
National Center for Special Education in Charter Schools  
National Center for Youth Law  
National Disability Rights Network  
National Down Syndrome Congress  
People for the American Way  
Sargent Shriver National Center on Poverty Law  
Teach for America  
The Arc of the U.S.

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<sup>i</sup> See: <http://www.nasdse.org/LinkClick.aspx?fileticket=G8dNhd4UhPw%3d&tabid=36>

<sup>ii</sup> See <https://civilrights.org/devos-proposes-delay-vital-special-education-rule/>

<sup>iii</sup> See: <https://civilrights.org/comments-enforcement-significant-disproportionality-provisions-individuals-disabilities-education-act-idea/> and <https://www2.ed.gov/programs/osepidea/618-data/LEA-racial-ethnic-disparities-tables/disproportionality-analysis-by-state-analysis-category.pdf>

<sup>iv</sup> See: <https://www2.ed.gov/about/reports/annual/osep/2016/parts-b-c/38th-arc-for-idea.pdf>

<sup>v</sup> See:

<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1553&context=jgspl>

<sup>vi</sup> See: <http://www.indiana.edu/~equity/docs/Skiba%20et%20al%20Race%20is%20Not%20Neutral%202011.pdf>

<sup>vii</sup> See: <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf> and

<https://www2.ed.gov/about/reports/annual/osep/2016/parts-b-c/38th-arc-for-idea.pdf>

<sup>viii</sup> *COPAA v. DeVos* See: [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2018cv1636-31](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv1636-31)

<sup>ix</sup> See: <https://sites.ed.gov/idea/topic-areas/#Significant-Disproportionality> and <https://sites.ed.gov/idea/idea-files/significant-disproportionality-equity-in-idea-essential-questions-and-answers-and-a-model-state-timeline/>

<sup>x</sup> See: <https://sites.ed.gov/idea/update-on-judicial-decision-regarding-significant-disproportionality/>

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<sup>xi</sup> The Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions indicated that the Department was considering issuing a notice of proposed rulemaking regarding the Equity in IDEA regulation in February 2019. <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1820-AB80>.

<sup>xii</sup> The Department initially sought approval to collect these data as part of the clearance of its Annual State Application under Part B of the IDEA, OMB Control No. 1820-0030, 82 Fed. Reg. 31,954-55 (July 11, 2017); and its State and Local Education Agency Record and Reporting Requirements under Part B of the IDEA, OMB Control No. 1820-0600, 82 Fed. Reg. 31,955 (July 11, 2017). The Department later abandoned its requests for these data in both collections. See Information Collection Request Reference No. 2017-07-1820-002, *Supporting Statement for 1820-0030* (Nov. 29, 2017), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=78801301>; Information Collection Request Reference No. 2017-07-1820-001, *Supporting Statement for 1820-0600* (Nov. 29, 2017), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=78800901>.

<sup>xiii</sup> Information Collection Request Reference No. 2017-07-1820-002, *Response to Public Comments on 1820-0030*, (Nov. 8, 2017), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=78801601>; Information Collection Request Reference No. 2017-07-1820-001, *Response to Public Comments on 1820-0600* (Nov. 8, 2017), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=78713100>.

<sup>xiv</sup> 81 Fed. Reg. 92,376, 92,385 (Dec. 19, 2016); see also *id.* at 92,395 (“we plan to evaluate the impact of these regulations, including the implications of using risk ratios to compare racial and ethnic groups”).