



December 7, 2017

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 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.<sup>i</sup> 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.<sup>ii</sup> 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<sup>iii</sup> signed on December 3, 2004, and clarified by the regulations finalized on December 19, 2016.<sup>iv</sup> 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).<sup>v</sup> 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.**

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This regulation was a direct response to the February 2013 U.S. Government Accountability Office (GAO) study<sup>vi</sup> 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.<sup>vii</sup> 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](mailto: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](mailto: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

American Civil Liberties Union  
Asian Americans Advancing Justice | AAJC  
Augustus F. Hawkins Foundation  
Autism Society  
The Center for Civil Rights Remedies at UCLA's Civil Rights Project  
Center for Law and Education  
Center for Leadership, Equity, and Research (CLEAR)  
Children and Adults with Attention-Deficit Hyperactivity Disorder  
Children's Defense Fund  
Clearinghouse on Women's Issues  
Council of Parent Attorneys and Advocates  
Democrats for Education Reform  
The Dignity in Schools Campaign  
Disability Rights Education & Defense Fund  
The Education Trust  
Educators for Excellence  
Feminist Majority Foundation  
Genders & Sexualities Alliance Network  
GLSEN  
Judge David L. Bazelon Center for Mental Health Law  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
National Alliance for Partnerships in Equity (NAPE)  
National Association of Councils on Developmental Disabilities  
National Association of Social Workers  
National Bar Association  
National Black Child Development Institute  
National Black Justice Coalition  
National Center for Learning Disabilities  
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)  
National Center for Youth Law  
National Council of Jewish Women  
National Down Syndrome Congress  
National Education Association (NEA)  
National Indian Education Association  
National Juvenile Justice Network  
National Organization for Women  
National Urban League  
National Women's Law Center  
National Youth Employment Coalition  
Partners for Each and Every Child  
People For the American Way  
PFLAG National

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  
African Caribbean American Parents of Children with Disabilities, Inc.  
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

Long Island Unitarian Universalist Social Justice Roundtable  
LULAC-IL  
Maine Parent Federation  
Michigan Alliance for Special Education  
NAACP CO MT WY State Conference  
NAACP, Anchorage, Alaska  
Native Hawaiian Education Council  
North Carolina Justice Center  
The Northside Achievement Zone  
Our Family Coalition  
Padres & Jovenes Unidos  
Parent Education and Advocacy Leadership (PEAL) Center  
Parent Support Arizona  
Quality Education for Every Student  
Statewide Parent Advocacy Network (NJ)  
Student Advocacy, Inc.  
Teach Plus Indiana  
Teach Plus Texas  
Tennessee State Conference NAACP  
The Urban League of Greater Atlanta  
Urban League of Greater Pittsburgh  
Urban League of Springfield  
UU Legislative Ministry of Virginia  
Western Connecticut Association for Human Rights, WeCAHR

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<sup>i</sup> 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.

<sup>ii</sup> See, for example, sources cited here: [http://www.indiana.edu/~equity/docs/CCBD\\_Policy\\_Disproportionality.pdf](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%202011.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>.

<sup>iii</sup> 20 U.S.C. 1418(d)

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

<sup>v</sup> See: <https://www.politicopro.com/education/story/2017/10/devos-weighs-special-education-delay-163922>

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

<sup>vii</sup> See: <https://ocrdata.ed.gov/downloads/crhc-school-discipline-snapshot.pdf>