



December 5, 2017

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

Secretary DeVos,

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Education Taskforce write to express our strong support for the robust enforcement of the disproportionality regulations for the Individuals with Disabilities Education Act (IDEA).

CCD is the largest coalition of national disability organizations and the CCD Education Task Force advocates for Federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society. The CCD Education Task Force sees these principles as critical elements in a society that recognizes and respects the dignity and worth of all its members.

The “disproportionality” regulations, 34 CFR 300.646- 300.647, implement a key provision of the IDEA ( [20 U.S.C. 1418\(d\)](#)). In the spring of 2016, the Department requested comment on a proposed formula to calculate disproportionality in the provision of services within the special education program. That formula was intended to supplement the current regulations with additional information for stakeholders. The CCD Education Taskforce and many others commented in support of the formula. The formula that was added as a result of the 2016 NPRM is necessary for effective and consistent compliance with the statutory requirement.

The disproportionality provisions were added to the IDEA because data showed that some specific groups of students with disabilities were negatively impacted by inequitable practices in the identification, placement and discipline of students under IDEA. Some are over, under and mis-identified in special education on the basis of race, ethnicity and gender, while others are deprived of a Free Appropriate Public Education (FAPE) due to disproportionate discipline and placement practices. To uphold the integrity of the special education system as a whole, the undersigned strongly recommend that the regulations be implemented as originally planned and that implementation not be delayed

This regulation was a direct response to the February 2013 U.S. Government Accountability Office (GAO) study<sup>1</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 over one in every four Black students with disabilities, at least once. Rates of disciplinary removal for their disabled White peers were far lower.<sup>ii</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.”

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>iii</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.

When the CCD Education Taskforce submitted its comments in May of 2016, we included the following paragraph expressing our support:

“We applaud the Department’s efforts and commitment to regulating those provisions in the Individuals with Disabilities Education Act (IDEA) which are meant to address the misidentification and disproportionate over representation of students on the basis of race, ethnicity and gender. CCD believes that through effective regulation on significant disproportionality, IDEA can come closer to providing a “free appropriate public education in the least restrictive environment.”

The undersigned members of the CCD Education Taskforce strongly support state and local efforts to mitigate problematic racial disproportionality in special education in the three distinct areas of identification, placement in restrictive settings, and discipline. The regulations are needed to accomplish that goal.

The undersigned strongly recommend that the regulations be implemented as originally planned and that implementation not be delayed. Indeed, the statutory significant disproportionality requirement has been the law for 13 years, and states have had adequate time to develop appropriate measures for determining racial and ethnic disparities in special education. The regulation was promulgated in December 2016 after two notice and comment periods; 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.

Please feel free to reach out to the co-chairs and/or the undersigned organizations for any additional information.

Sincerely,

American Civil Liberties Union  
American Psychological Association  
American Speech-Language-Hearing Association  
Association of University Centers on Disabilities  
Autism Society  
Autistic Self Advocacy Network  
Center for Public Representation  
Council for Exceptional Children

Council for Learning Disabilities  
Council of Administrators of Special Education  
Council of Parent Attorneys and Advocates  
Disability Rights Education & Defense Fund  
Easterseals  
Higher Education Consortium for Students with Disabilities  
Institute for Educational Leadership  
Judge David L. Bazelon Center for Mental Health Law  
Learning Disabilities Association of America  
NAMI, National Alliance on Mental Illness  
National Association of Councils on Developmental Disabilities  
National Association of School Psychologists  
National Association of State Head Injury Administrators  
National Center for Learning Disabilities  
National Center for Special Education in Charter Schools  
National Disability Rights Network  
National Down Syndrome Congress  
National PTA  
School Social Work Association of America  
Teacher Education Division of the Council for Exceptional Children  
The Advocacy Institute  
The Arc of the United States

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

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

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