

May 10, 2018

Johnny W. Collett
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202-2500

RE: ED-2017-OSERS-0128/RIN 1820-AB77

Dear Assistant Secretary Collett,

AASA, The School Superintendents Association, which represents over 13,000 local school system leaders, appreciates the opportunity to comment on the proposed delay of the significant disproportionality regulations that address racial and ethnic disproportionality in the identification, placement, and discipline of children with disabilities. We respectfully submit our comments below.

While IDEA reauthorization is nine years overdue it is still the law and IDEA is clear that states are to determine when significant disproportionality is occurring in districts. The issue of significant disproportionality is an important one and deserves to be addressed in the context of a completely revised law and AASA feels very strongly that Congress must reconsider how states calculate significant disproportionality when a reauthorization occurs. While we agree and disagree with various aspects of the 2016 regulations issued under the Obama Administration we do not quibble on whether the Department had the authority to determine a methodology for findings of significant disproportionality including setting an “n” size for districts and assessing whether a risk-ratio threshold is reasonable. The Department did not have the legal authority to issue these regulatory provisions. Furthermore, the 2016 significant disproportionality regulations vary considerably from prior regulation and the underlying statute. After careful review we support a delay and reconsideration of the 2016 significant disproportionality regulations by the Trump Administration.

There are many reasons why we support the delay of these regulations, but chief among them is the cost savings to districts. According to the NPRM, 320 fewer LEAs would be required to set-aside 15% of their IDEA funds in the 2018-2019 school year if the regulation was delayed by one year. Given that FY18 Omnibus is still funding IDEA at less than 15% of the promised 40% Congress promised school districts for each special education student, the regulation’s financial redirection of funding away from special education personnel and programs is deeply concerning to districts that are trying to maintain IDEA compliance. Without considerable new financial and technical support from the States a new

requirement for hundreds of districts to address significant disproportionality will either not be fulfilled or will be met with lackluster results. It could even disrupt the current programs and services students with disabilities receive that are paid for by IDEA, jeopardizing the educational outcomes for children currently receiving special education supports.

Another major problem with the regulation is that the new standard for determining significant disproportionality does not adequately consider LEA population differences and the circumstances that may reflect these demographic differences. The regulations should have clarified that States have the authority to exempt any district from setting aside Part B funds for early intervening services or performing any other corrective actions related to significant disproportionality if one or more of the following is present: 1) an exceptionally low student population where the addition or subtraction of a few students results in meeting/not meeting the State's risk ratio, 2) a school serving a specific subgroup of students with disabilities, 3) a highly regarded program for students with disabilities that attracts students from across the State or region, 4) residential facilities or group homes within the district, 5) a recent environmental catastrophe specific to the region that has substantially impacted the health of children throughout the district, or 6) very low rates of special education identification, restrictive placements or exclusionary discipline for all students.

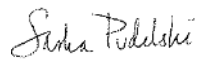
We also worry about the unintended consequences of requiring States to adopt a calculation for significant disproportionality that could lead to a large percentage increase in the number of districts that must set-aside Part B funds for CEIS. It is well understood that the reason for adopting of a low standard for identifying significant disproportionality in the past was based on concerns for how the set-aside for CEIS would impact districts financially. An inappropriate or excessive system for determining disproportionality that the Department mandates a State to adopt to adopt could lead to unintended consequences at the local level. Specifically, determining disproportionality based on how many students are identified in certain disability categories could lead to a quota system for special education and deny services to students who truly need those supports. If the State cannot thoroughly support districts in addressing significant disproportionality and districts continue to lack the know-how and resources to address this complex issue locally then one must assume districts will take whatever action is necessary to preclude the set-aside of precious Part B funds.

Finally, as the Department acknowledges in the NPRM, under-identification in special education is a real and substantial issue and this NPRM could undermine the work done to address underrepresentation in special education. Across 10 peer-reviewed studies analyzing over 40 nationally representative samples of children attending elementary, middle, and high schools in the U.S., there are widespread and longstanding under-identification issues. Of particular consideration is the work by Dr. Paul Morgan and Dr. George Farkas' which consistently finds that racial and ethnic minority students are

underrepresented in special education. As they write, “The wrong way to ensure equity in IDEA is by establishing quota-like systems designed to keep ‘too many’ minority children from receiving additional services to which they may have a civil right.” Instead, they propose that the Department looks at whether, among similarly achieving children attending the same schools, those who are Black are more or less likely to be identified than those who are White. This “differential treatment” standard is used to examine for racial discrimination by both the National Research Council and the U.S. Department of Education’s Office of Civil Rights. These data allow for comparisons between children within states who are otherwise similar in their academic achievement as well as in other background characteristics. States and localities increasingly collect these type of data, which might be used as well. AASA would support the Department’s effort to monitor disproportionality in this fashion.

We think the Department is right to consider delaying the regulation for two years and to re-examine its legal and policy appropriateness. Superintendents take their responsibility to appropriately serve students with disabilities seriously, and hope the Department contemplates the issues we have raised.

Sincerely,



Sasha Pudelski
Advocacy Director