



June 12, 2023

Ms. Katherine Neas  
Deputy Assistant Secretary,  
U.S. Department of Education  
Office of Special Education and Rehabilitative Services  
400 Maryland Ave SW,  
Washington, DC 20202

RE: Docket ID ED-2023-OSERS-0057

Dear Deputy Assistant Secretary Neas,

On behalf of the Consortium for Constituents with Disabilities (CCD) Education Task Force, we are pleased to provide comments to the U.S. Department of Education (ED). CCD is the largest coalition of national organizations working together to advocate 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, free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance. In support of CCD's overall mission, the Education Task Force advocates for federal legislation, regulations, and guidance that protect civil rights, ensure high expectations, and address the educational, as well as the social and emotional needs of infants, children and youth with disabilities and their families. In this work, we focus on the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and other applicable laws.

CCD is pleased to provide recommendations regarding ED's Proposed Priority and Requirements for Technical Assistance on State Data Collection via a new National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Data To Address Significant Disproportionality (The Center). Our recommendations build from [CCD's comments in 2016](#) regarding implementation of the Equity in IDEA Regulations (on Significant Disproportionality) **where CCD said:**

While CCD has deep concerns about over- or under-representation of particular groups of students in special education, we also believe the focus should be on proper referral, evaluation, placement, and provision of services to eligible students. Critically important, is that a full array of services be provided to all eligible students to ensure students have the supports they need to succeed. Having a workable formula may assist in ensuring the right students are served.

However, we believe a purely mathematical approach to determining disproportionality will not necessarily address the issue.

The Department should provide guidance and technical assistance focused on the following:

- Staff training regarding when it is appropriate to refer a student for special education evaluation.
- Professional development for IEP team members in best practices in performing evaluations and reading results to determine eligibility for services and what services are necessary.
- Training on the appropriate use of alternate assessment based on alternate achievement standards
- Understanding the importance of having a full complement of specialized instructional support personnel to ensure services are available to students in general and special education.
- Utilizing schoolwide approaches such as positive behavioral interventions and supports to ensure respect for all students and attention to their individual needs.
- Developing multi-tiered systems of support to address academic concerns at the earliest stages and provide more intensive services before referral to special education.
- States must conduct Child Find activities, and screening for “invisible” disabilities is one way of identifying children in need of special education and related services. Such screening and identification, coupled with appropriate services, can prevent problems in school. (See: <https://c-c-d.org/fichiers/CCD-Disproportionality-comments-May16.pdf>)

Given that CCD has previously proposed that further TA be provided by ED to states to collect, report, analyze and use accurate data to address significant disproportionality, in addition to the above, and in response to the notice, we urge the following:

**Recommendation:** Uphold the stated Purpose of The Center including and emphasized (in **bold**),

“accurately collect, report, analyze, and use section 618 data to address issues of significant disproportionality. The Center will **also work to increase the capacity of State educational agencies (SEAs), and local educational agencies (LEAs) through their work with SEAs, to use their data to conduct robust root cause analyses and identify evidence-based strategies for effectively using funds reserved for comprehensive coordinated early intervening services (CCEIS).**”

CCD agrees that there is great need for The Center to help states collect, report and use accurate data to address significant disproportionality under the IDEA that is separate and distinct from the data collected as part of the State Performance Plan/Annual Performance Review (SPP/APR). (See: Background information, pgs. 18281-18282). Additionally, independent research experts further validate this need:

The variety of concerns go well beyond identification rates, it is important to consider how the patterns of disproportionality in special education are nested within our broader understanding of inequity in general education, and further with a close analysis of district level data. Just as with general education, where districts show wide variance on many outcomes, districts do differ dramatically in terms of their rates of identification, use of restrictive settings, and their discipline of students as well as in the quality of special education supports and services they provide. This is why IDEA's requirement that states review district level racial disproportionality in identification, restrictive placement and discipline is such an important aspect of federal monitoring and enforcement of the IDEA pursuant to 20 U.S.C. 1418(d). However, in light of the findings in this report, and in our 2018 report *Disabling Punishment: : The need for remedies to the disparate loss of instruction experienced by Black students with disabilities* the fact that when states conduct this review approximately half identify no districts with sufficient racial disparities in discipline is highly problematic and a persistent problem. (See: Losen et.al, [Disabling Inequity](#) (2021, pg. 93)

### **CCD Responses to Questions Posed by ED (2023)**

#### **2. What supports do SEAs require in providing for the required review of policies, practices, and procedures in LEAs identified as having significant disproportionality?**

- Assistance in understanding the types and components of policies, practices and procedures that lead to significant disproportionality across all areas of IDEA (identification, eligibility, classification, placement, discipline, alternate assessment, etc.) and at all levels, from the school to district to state level and including the role of family understanding and engagement in decisions that lead to significant disproportionality – this includes teacher, evaluator and administrator perceptions; overall race/ethnicity of the school/district and extent to which minorities are represented in the overall student population, impact of behavior on referrals and decision-making, etc.

The literature shows that special education classifications and variations in outcomes “are born from the relationship between individual actors within schools and districts as well as local policies and practices (i.e., agency), which are surrounded by contextual, sociohistorical, and political factors (i.e., structure).” (See: Understanding Disability: High-Quality Evidence in Research on Special Education Disproportionality, <https://journals.sagepub.com/doi/10.3102/0091732X20985069?icid=int.sj-abstract.similar-articles.1>)

- Assistance in understanding the role of explicit and implicit bias in decision-making (by teachers, administrators, evaluators, etc.) across all areas of IDEA and at all levels.
- Assistance in meaningfully engaging stakeholders including families and students, especially those who face the greatest disproportionality, teachers, administrators, other school staff,

advocacy groups, Parent Centers and other parent organizations, and community members in reviewing policies, practices, and procedures.

- Assistance in understanding the role of culturally responsive teaching, universal design for learning, and culturally sensitive screening and diagnostic assessments in avoiding or reducing significant disproportionality, and conversely, the role of culturally unresponsive teaching, failure to use universal design, and biased screening and diagnostic assessments in contributing to disproportionality in special education.
- Careful and close monitoring of the substance and results of their review by ED.

3. **What supports do SEAs require to assist, as needed, LEAs identified as having significant disproportionality in conducting their root cause analyses to identify the potential causes and contributing factors of the significant disproportionality?**

- Assistance in helping LEAs (including charter schools that act as an LEA) understand the types and components of policies, practices and procedures that lead to significant disproportionality across all areas of IDEA (identification, eligibility, classification, placement, discipline, alternate assessment, etc.) and at all levels, from the school to district to state level and including the role of family understanding and engagement in decisions that lead to significant disproportionality – this includes teacher, evaluator and administrator perceptions; overall race/ethnicity of the school/ district and extent to which minorities are represented in the overall student population, impact of behavior on referrals and decision-making, etc. As noted by Losen et.al,

...it is important to note that in 2004, when Congress reauthorized the IDEA it expressed concerns with three areas of racial over-representation: identification, restrictive placement, and discipline, which are distinct areas of analysis for racial disproportionality at the district level pursuant to the IDEA. Of these three, the disparities in discipline (which can be impacted by inappropriate eligibility and placement) is the area where CCRR has documented the most extreme racial disparities and is the one area of the three where the degree of disparity unequivocally indicates a higher exposure to harm. (See: Losen et.al, [Disabling Inequity](#) (2021, pg. 92)

- Assistance in helping LEAS meaningfully engage stakeholders including families and students, especially those who face the greatest disproportionality, teachers, administrators, other school staff, including charter school leaders, advocacy groups, Parent Centers and other parent organizations, and community members in reviewing policies, practices, and procedures that may contribute to disproportionality.
- Assistance in helping LEAs understand the role of explicit and implicit bias in decision-making by teachers, administrators, evaluators, etc. across all areas and at all levels.
- Assistance in helping LEAs understand the role of culturally responsive teaching, universal design for learning, and culturally sensitive screening and diagnostic assessments in avoiding or reducing significant disproportionality, the conversely, the role of culturally unresponsive

teaching, failure to use universal design, and biased screening and diagnostic assessments in contributing to disproportionality in special education.

- Careful and close monitoring by ED of the substance and results of SEA work with LEAs, including root causes analyses.
- Assistance in ensuring that students who take the state alternate assessment on alternate academic achievement standards (AA-AAAS) are educated in the least restrictive environment and are not disproportionately segregated. [Data indicates](#) that only 3% of students who take an AA-AAAS are educated in the general education classroom. In addition, the demographic data from state waivers requests for the 1% cap show that [students of color are often disproportionately participating in the AA-AAAS](#).

5. **What supports do SEAs require to assist, as needed, LEAs identified as having significant disproportionality in expending IDEA funds on comprehensive coordinated early intervening services (CCEIS) to address the causes and contributing factors of the significant disproportionality?**

- Assistance in clearly understanding what is required and what is allowed in terms of expending IDEA funds on comprehensive coordinated early intervention services to address the causes and contributing factors of significant disproportionality.
- Assistance in identifying evidence-based early intervening services that can meaningfully and appropriately address the areas where significant disproportionality is occurring (identification, eligibility, classification, placement, discipline, alternate assessment) for the population(s) that are experiencing either significant overrepresentation or underrepresentation.

**CCD Recommendations to Expand and Strengthen the TA Center Priority**

**Recommendation:** Proposed Priority: **Add NEW** expected outcome (e) (in **bold**)

**NEW: (e) Improved capacity of SEAs to assist LEAs to engage parents, families, advocates and other stakeholders to use data to address disparities revealed in the data they collect.**

**Recommendation:** Proposed Priority: **Add NEW** expected outcome (h) (in **bold**)

**NEW: (h) Improved capacity of SEAs and LEAs to provide data in timely, usable, accessible, and understandable formats for parents, families, advocates and other stakeholders.**

**Rationale:** CCD has consistently urged ED to ensure SEAs and LEAs actively engage with families and key stakeholders to identify and address disparities related to significant disproportionality. While ED has included families as *examples* of stakeholders under both the *Quality of the Project* and the *Quality of the Management Plan*, we do not believe these mentions adequately addresses the key role parents, families and stakeholders play in ensuring significant disproportionality is addressed by districts and

states. Additionally, the data collected and used by both SEAs and LEAs must be made available in timely, usable, and accessible formats for the stakeholders whose communities are directly impacted by any disparity identified.

**Recommendation:** Proposed Priority: Significance: **ADD ADDITIONAL TA Centers** to (iv)(E) **(in bold)**

EDIT: (E) Its proposed plan for collaborating and coordinating with Department funded projects, including those providing data-related support to States, such as the IDEA Data Center, the Early Childhood Data Center, the Center for IDEA Fiscal Reporting, the Center on the Integration of IDEA Data, the National Center for Systemic Improvement, the EDFacts Initiative, and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, **and its proposed plan for collaborating and coordinating with Department funded TA centers including the Center on PBIS, the AEM Center, the CITES Center, the IRIS Center, the Charter School National Resource Center, Regional Equity Assistance Centers, Center for Parent Information and Resources, the Early Childhood Personnel Equity Center and others as appropriate** in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

**Rationale:** Given the need and focus on developing products and services to support SEAs to assist LEAs in addressing disparities in significant disproportionality, and to coordinate effective uses of CEIS funds, The Center must utilize all of the resources of existing TA Centers whose purpose is to support equity, access and educational outcomes for students, including those most impacted by significant disproportionality in the identification, placement and discipline of students with disabilities.

CCD appreciates the proposal to establish The Center and welcomes a TA center focused on assisting SEAs and LEAs in valid and meaningful implementation of the Equity in IDEA regulations. Thank you for the opportunity to comment. If you have any questions or require additional information, please contact the CCD cochairs listed below.

Sincerely,

Access Ready

American Music Therapy Association

American Occupational Therapy Association

American Therapeutic Recreation Association

Autism Society of America

Autistic People of Color Fund (APOC)

Autistic Self Advocacy Network

Autistic Women & Nonbinary Network

Center for Learner Equity

Children and Adults with Attention-Deficit/Hyperactivity Disorder

CommunicationFIRST  
Council for Exceptional Children  
Council for Learning Disabilities  
Council of Parent Attorneys and Advocates  
Disability Rights Education & Defense Fund  
Division for Learning Disabilities - Council for Exceptional Children  
Learning Disabilities Association of America  
Muscular Dystrophy Association  
National Association of Councils on Developmental Disabilities  
National Center for Learning Disabilities  
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)  
National Disability Rights Network (NDRN)  
National Down Syndrome Congress  
Perkins School for the Blind  
RespectAbility  
The Advocacy Institute  
The Arc of the United States

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