



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

July 6, 2021

Shalanda Young
Acting Director
Office of Management and Budget
Executive Office of the President
Washington, DC 20503

RE: 86 FR 24029 - Submitted via: www.regulations.gov

Dear Acting Director Young,

The Consortium for Citizens with Disabilities (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. The Education Task Force proactively monitors federal legislation and regulations that address the educational needs of children with disabilities and their families, including the 7.7 million infants, children, youth and young adults eligible under the Individuals with Disabilities Education Act (IDEA) who must be provided a free, appropriate public education (FAPE) and maintain their rights to an individualized education program (IEP) that is implemented in the least restrictive environment (LRE). We also advocate for the 1.3 million students eligible under Section 504 of the Rehabilitation Act of 1973 (Section 504) and ensure equal access to educational opportunity for all these students under the Americans with Disabilities Act (ADA). The Education Task Force advocates for enhanced opportunities for children under these laws.

CCD is providing input on the Office of Management and Budget (OMB) Request for Information (RFI) regarding *Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government*. Given the role and work of CCD, we first direct you to a collection of materials developed to advise and inform the Biden-Harris Administration on the safe, supportive reopening of schools for students with disabilities and their families, developed in 2021:

- [CCD Statement of Principles for Elementary and Secondary Education of Students with Disabilities During the COVID-19 Pandemic](#)
- [CCD Statement on Assessing Student Learning During the Pandemic](#)
- [CCD Priorities in the Biden Transition](#) (see page 7)

CCD will specifically address Sections 1 & 5 of the RFI; aligned with our goal and mission to promote and advance equity for students with disabilities, including students who are Black, Indigenous, or people of color (BIPOC).

Section 1: Equity Assessments and Strategies. Approaches and methods for holistic and program- or policy-specific assessments of equity for public sector entities, including but not limited to the development of public policy strategies that advance equity and the use of data to inform equitable public policy strategies.

To support students with disabilities the U.S. Department of Education (ED) must:

- I. Promote Equity, Access and Accountability for Outcomes for Students with Disabilities Across and Among All ED Programs; and
- II. Focus on the Intersectional Issues of Race, Income, Language and Disability to Promote Equity, Eliminate Discrimination and End Bias

Promote Equity, Access and Accountability for Outcomes for Students with Disabilities Across and Among All ED Programs

Recommendation: ED must promote and support inter-agency collaboration across all of its offices to support and improve equity and ensure improved academic, behavioral and functional outcomes for students with disabilities, including students of color, English Learners, and those with the most significant disabilities.

Rationale: CCD is aware of ED’s current efforts regarding accountability, assessments, COVID-19 response/federal relief policies, state waivers, and other efforts led by the Office of the Secretary, Office of Elementary and Secondary Education (OESE) and the Office for Civil Rights (OCR), which have included input and collaboration with the Office of Special Education and Rehabilitative Services (OSERS) and Office of Special Education Programs (OSEP). We strongly encourage ED to continue this work and urge that through the Office of the Secretary, all offices at ED understand that students with disabilities are expected to learn alongside their peers in the general classroom; their academic, emotional, and social challenges must be prioritized; and therefore, these students must be included in every policy discussion and decision made by ED.

Recommendation: ED must examine and improve the current system utilized to monitor and ensure state compliance with the Individuals with Disabilities Education Act (IDEA). To accomplish this, ED must:

- Address the issues identified in the National Council on Disability 2018 report, [*Federal Monitoring and Enforcement of IDEA Compliance*](#)
- Examine and seek improvements to OSEP-designed Results-Driven Accountability (RDA), the Annual State Determinations process, and Differentiated Monitoring and Support.

Rationale: Since the reauthorization of the IDEA, CCD has consistently provided input to OSERS regarding efforts to design and implement a system of monitoring and enforcement as required by the law. As we stated in a 2018 letter to OSERS,

Specifically, we have contributed input to proposed changes to the design and implementation of the State Performance Plan and Annual Performance Report (SPP/APR), the addition and provisions of the State Systemic Improvement Plan (SSIP) and all components of RDA since it was proposed in 2013. Our goal has always been to help OSERS implement and oversee a system that reflected the intent of Congress which said: “The new focus on substantive performance indicators under section 616 contrasts with previous statutory obligations to collect data that primarily addressed demographic issues. The purpose of these provisions is to shift the Federal monitoring and enforcement activities away from SEA and LEA administrative

process issues that have historically driven compliance monitoring, to a system that primarily focuses on substantive performance of students with disabilities.”¹

CCD also agrees with the NCD when it said,

It is disturbing that very little has actually changed since the passage of IDEA more than 40 years ago with regard to the use of monitoring as an effective tool to drive compliance with the law and systemic change that is demonstrated to have an effect on student learning and outcomes. There is still a heavy reliance on private enforcement resulting in underenforcement by OSEP. This continues to leave an unfair and arguably inequitable burden on children and families.²

CCD and its members are especially concerned with RDA because of the critical impact on students who take state alternate assessments aligned with alternate academic achievement standards (AA-AAAS). The RDA results matrix, which is a focus of making annual determinations whether states have met the requirements of IDEA, does not use measures that include these students. Part of the problem is the reliance on the National Assessment of Education Progress (NAEP), which excludes students who take an AA-AAAS. In addition, the results matrix does not measure performance or participation of students who are assessed via a state’s AA-AAAS.

Another issue with RDA, which impacts all students with disabilities, is the lack of focus on LRE. OSEP should use the [TIES Center report](#) on states’ LRE policies to investigate and intervene in states where state regulations or administrative codes have interpreted LRE in a manner that does not comply with the IDEA. At the same time, OSEP should seek to incorporate LRE data into the Compliance Matrix used to make annual state determinations. TIES has found that only 3 percent of students who take the AA-AAAS are being educated in the general education classroom. It should be noted that based on states’ requests for a waiver of the 1 percent cap on the use of the AA-AAAS, students who participate in this assessment are often disproportionately Black.

Note: [Extensive comments on monitoring and compliance requirements](#) were submitted to OSEP by CCD and its member organizations and can provide further detail on the need to improve monitoring and compliance under the IDEA.

Recommendation: ED must provide guidance on practical methods and strategies that ensure access to a free appropriate public education (FAPE) under IDEA, access to necessary supports and services under Section 504, access to opportunity under the ADA, and ongoing accountability for all students with disabilities.

Rationale: Students with disabilities must remain entitled to FAPE under the IDEA, have access to accommodations, supports and services under Section 504 as well as equal access and opportunity under the ADA, even if they cannot return to school buildings. The Elementary and Secondary Education Act, now known as the Every Student Succeeds Act (ESSA) also requires accountability for the academic outcomes and assessment of students with disabilities. Therefore, guidance from ED is needed to clarify that students with disabilities must be provided the same opportunities as students without disabilities to access instruction and assessment in different settings, including in school buildings, remotely, or in hybrid settings. Such guidance must ensure students with disabilities:

- Have access to instruction and assessment safely from home even when a school district has decided to shift instruction and assessment back to school buildings

¹ Senate report to accompany S. 1248. At: <https://www.gpo.gov/fdsys/pkg/CRPT-108srpt185/html/CRPT-108srpt185.htm>

² IDEA Series: *Federal Monitoring and Enforcement of IDEA Compliance*, National Council on Disabilities, (2018), pg. 49. At: https://ncd.gov/sites/default/files/NCD_Monitoring-Enforcement_Accessible.pdf

- Be provided services, supports, and accommodations to ensure FAPE and equal access and opportunity
- Have direct access to assistive technology including for students with vision, hearing, speech, and other types of disabilities, including significant cognitive disabilities
- Be provided in-person supports needed to assure equitable access to instructional opportunities that nondisabled students are provided
- Be assured they do not have to fit into a one-size-fits-all school or district policy that indiscriminately imposes how instruction, services, and accommodations are delivered.

Focus on the Intersectional Issues of Race, Income, Language and Disability to Promote Equity, Eliminate Discrimination and End Bias

Recommendation: ED must ensure full implementation and provide technical assistance to states regarding the *Equity in IDEA* regulations (aka significant disproportionality).

Rationale: The impact of decisions made in schools and allowed by districts and states regarding the identification, placement and discipline of children, especially students of color, requires new scrutiny and targeted attention by ED. CCD and its members have commented extensively on the [Equity in IDEA regulations](#) and the need for states to address the documented abuses, bias, discrimination and profound inequities occurring in our schools. As stated in CCD’s 2019 letter to ED,

...the impact of lax state policies to identify significant disproportionality in districts has led to egregious practices that are harmful to students including in the over and under identification for special education; placement decisions that segregate students from their peers; and, the overuse of harsh disciplinary practices, including suspension, expulsion, and the use of aversives such as seclusion and restraint. The data are both clear and overwhelming that states must do more to help districts end these discriminatory practices.³

In addition to these known data, we also point to a report released in March 2021. The data analysis conducted by the UCLA Civil Rights Project shows that students with disabilities in 181 districts are experiencing disproportionate rates of school removals compared to their peers, but 28 states flagged none of their districts for that purpose.⁴ Joint work must occur between and among OESE, OSERS and OCR to address state implementation of the law.

Recommendation: ED must use its resources to provide guidance to eliminate the use of exclusionary discipline practices including district and school use of seclusion and restraint to discipline students of students of color and students with disabilities.

Rationale: We have concerns over the inappropriate use of exclusionary discipline practices on students with disabilities, including students of color. Our concerns existed pre-COVID-19 and has been heightened when students may have difficulty abiding by COVID safety protocols. Their real and/or perceived challenges with safety protocol compliance must not result in their segregation from their peers or denial of instruction or services to which they are entitled. CCD has advocated that districts and schools should anticipate and be prepared to meet increased behavioral needs, respond to any trauma, and support students in an appropriate, strength-based manner and with evidence-based, culturally affirming, bias-free and trauma-informed practices and programs.

³ Letter to Director of Information, Consortium for Citizens with Disabilities, Education Task Force, (2019). At: <http://www.c-c-d.org/fichiers/CCD-letter-on-Significant-Disproportionality-Survey-2019.pdf>

⁴ D. Losen, P. Martinez et. al., *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies*, UCLA Civil Rights Project, (2021). At: <https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies>

CCD especially supports the elimination of the use of seclusion and initiatives aimed to reduce and prevent the use of physical restraint. As ED knows, data from the [Civil Rights Data Collection](#) make clear why federal guidance is necessary. It is well documented that exclusionary discipline practices disproportionately impact the students with disabilities and their families who are Black, Indigenous or people of color. Therefore, CCD urges the Office of the Secretary, OCR, OESE and OSERS to work together to provide both guidance and technical assistance that encourages a “prohibition of seclusion, limitation of physical restraint to true emergencies; and use of de-escalation techniques, conflict management and evidence-based positive behavioral interventions and supports.”⁵ CCD wants school personnel to receive training and resources to support students in ways that are culturally competent and free from bias, and to safely address behaviors that may not be appropriate in school. In doing so, this will ensure better results for everyone in the school and the classroom. CCD will comment further upon the need for this guidance as part of ED’s RFI to inform Policy Guidance on Discipline.

Recommendation: ED must review and implement the recommendations put forward in the report, [Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies](#).

Rationale: The new report by the Center for Civil Rights Remedies provides a thorough analysis of several factors facing students with disabilities including lack of Section 504 compliance, discipline disparities and chronic absenteeism, all of which contribute to the continuing poor performance of students with disabilities. Thus, we encourage ED to review and consider implementation of the report’s recommendations to improve civil rights enforcement and ED oversight such as looking into why over 3,000 school districts don’t have a single student identified as eligible under Section 504.

Section 5: Stakeholder and Community Engagement. Approaches and methods for accessible and meaningful agency engagement with underserved communities.

Recommendation: ED must assure that every initiative requires meaningful input from parents, who are critical stakeholders for children with disabilities especially where disability intersects with race, ethnicity, income, language, or other factor(s) known to impact equity and access.

Rationale: As experts regarding how their child has developed and learns and behaves across life domains, parents play a critical role and are an integral factor in making policy decisions impacting children with disabilities. States must ensure districts and schools meaningfully collaborate with families to provide infants, toddlers, children, youth, and young adults with disabilities the best opportunities for success. ED can lead by example by increasing outreach to the parent advocacy community and by continuing to require states and districts to do so for every [current] initiative it plans to examine and for all initiatives contemplated by the Administration. Respect and appreciation for the role of families as partners and decision-makers needs to be highlighted and emphasized by ED. Frequent communication and collaboration between families and schools and service providers is more important than ever, and families must have access to the information they need to make good decisions, regardless of setting. States and districts must help schools provide tools for families to monitor delivery of services, progress towards goals and objectives, and make up for the loss of skills. States and districts should also assist schools in proactively engaging families in decisions about IEP development and implementation regardless of where education services are being delivered.

⁵ Letter to Chairman Sablan, Consortium for Citizens with Disabilities, Education Task Force, (2019). At: <https://www.aapd.com/wp-content/uploads/2019/02/CCD-to-Sablan-Allen-on-seclusion-and-restraint-2019.pdf>

The CCD Education Task Force appreciates the opportunity to provide these recommendations to OMB. We look forward to working with you and the U.S. Department of Education to assure equity in education for all infants, children, youth, and young adults with disabilities. If we can provide additional information, please contact the CCD co-chairs listed below.

Sincerely,

American Association on Intellectual and Developmental Disabilities
American Music Therapy Association
Association of People Supporting Employment First
Association of University Centers on Disabilities
Autism Society of America
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
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
Easterseals
Learning Disabilities Association of America
National Association of Councils on Developmental Disabilities
National Association of School Psychologists
National Center for Learning Disabilities
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
The Advocacy Institute
The Arc of the United States

CCD Education Task Force Co-Chairs

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www.c-c-d.org