



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

July 12, 2019

Director of Information
Collection Clearance Division
U.S. Department of Education
550 12th Street SW, PCP, Room 9086
Washington, DC 20202-0023

RE: ED-2019-ICCD-0065

Dear Director:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Education Task Force write to make comments on the U.S. Department of Education (ED) proposed Significant Disproportionality State Survey (Survey).

The CCD Education Taskforce has consistently supported policies that seek to raise expectations and improve outcomes for students with disabilities. Since the last amendments were made to the Individuals with Disabilities Education Act (IDEA) CCD has consistently provided input to ED regarding the need to require states to improve both policies and practices to identify significant disproportionality. Indeed, CCD formally supported the implementation of the December 2016 regulations to improve equity for students with disabilities otherwise known as the Equity in IDEA regulations. (See: CCD Letter to Collett, 2017 and CCD Statement to the Press, May 2019). Therefore, our comments today are intended to both raise significant concerns with the proposed Survey and to provide recommendations to improve it.

As ED is fully aware, the impact of lax state policies to identify significant disproportionality in districts has led to egregious practices that are harmful to students including 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^{i, ii, iii, iv, v, vi}.

CCD opposes implementation of the proposed Survey in its current form because the purpose and the timing of the Survey are not consistent with the Equity in IDEA regulation requirements and are not well-aligned with existing federal data collection sources; raising several concerns. First, the current Survey design appears to be based solely on a goal to aid in the development of a legal defense to justify making changes to the final Equity in IDEA regulation. Second, given that all states are currently required to implement the Equity in IDEA regulation, it is confusing that ED is surveying states just as they are coming into full compliance. To that point, ED should be fully focused on identifying the states that are not in compliance and providing the technical assistance (TA) both current data and experience

demonstrate that states need. ED knows from existing data collection where the most egregious problems with significant disproportionality lie.

While the Survey does inquire about state need for TA, it also includes confusing questions (e.g. Introductory Questions 1 and 2 and all of parts II and III) which run counter to assuming states should be in full compliance and prepared to seek TA from ED and support districts who need it. Third, the Survey is not mandatory for all states which leaves CCD to believe that ED is neither interested in identifying the states that are out of compliance, enforcing compliance with the regulations, nor gathering comprehensive and meaningful data. As presently designed, the respondents most likely to reply will be those states that have held off redesigning their methodology for determining significant disproportionality as required by the Equity in IDEA regulation.

It is also unclear in the Survey whether it is intended to be conducted annually or otherwise. Supporting Statement A, Section 6 says it is: “planned as a reoccurring Survey.” CCD wishes to point out that in later years, a Survey of this type, should be designed with the capacity to compare trends from year to year and to be adapted to try and answer important questions such as: how have districts reacted to being on the list of significant disproportionality districts? And, how have districts that are close to being identified reacted? Any data collected via this Survey will not provide ED with a fully formed picture of state challenges, especially regarding ED’s primary role, which is to provide technical assistance to states, nor will it provide the basis for important trend data. Finally, by developing and proposing a Survey that only includes the perspective of a handful of states, ED is missing an important opportunity to also survey parents, parent advocates, teachers and others. These critical stakeholders have a vested interest in districts changing policies and practices to ensure full compliance with IDEA in support of students with disabilities.

Assuming ED will proceed with the Survey, we strongly urge that both the timing and the Survey design be given significant reconsideration. Therefore, we offer the following recommendations:

I. Identify statutory authority for the collection and require all states to respond.

Rationale: ED must clarify that collection will occur under 20 USC Sec. 1418(a)(3), and therefore be mandatory (not voluntary) for SEA participation. ED and States must also make responses public.

II. Clarify the collection will be conducted annually and redesign the Survey.

Rationale: ED must establish that the Survey will be conducted annually and then re-design the questions to ensure that it: (a) meets the current requirements of the Equity in IDEA regulations; (b) includes questions about current state methodology to determine significant disproportionality in districts [consistent with the regulation]; and (c) anticipates [future] answers to important questions such as: how districts have reacted to being identified as having significant disproportionality? How have districts that are close to being identified reacted? What are states doing to support each? What impact are districts experiencing through the use of Coordinated Early Intervening Services funds?

III. Survey parents, parent advocates, teachers and specialized support personnel.

Rationale: ED must follow through with the commitment made in the Preamble of the Equity in IDEA regulations to conduct “an examination of the extent to which school and LEA personnel incorrectly interpret the risk ratio thresholds and implement racial quotas in an attempt to avoid findings of

significant disproportionality by States, contrary to IDEA.^{viii} ED must include key stakeholders in the Survey. Parents in particular must be included in the outreach and information gathering with regard to the important compliance issues regarding significant disproportionality. CCD encourages recruitment strategies geared to teacher and parent participation. Further, we recommend surveying of Parent Training and Information Centers and the Protection and Advocacy Network at a minimum. Additionally, CCD members are also a viable resource to gain the diverse input parents and teachers and other specialized support personnel can provide.

In conclusion, it is imperative that ED help all states come into compliance with the Equity in IDEA regulations. CCD and its member organizations are prepared to help in any way.

Sincerely,

American Civil Liberties Union
American Physical Therapy Association
American Speech Language Hearing Association
Autistic Self Advocacy Network
Autism Society of America
Bazelon Center for Mental Health Law
Brain Injury Association of America
Center for Public Representation
Children and Adults with Attention-Deficit/Hyperactivity Disorder
Council for Learning Disabilities
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund
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
National Down Syndrome Congress
School Social Work Association of America
TASH
The Advocacy Institute
The Arc of the United States

The Consortium for Citizens with Disabilities, headquartered in Washington DC, 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. Since 1973, CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society.

Education Task Force Co-Chairs:

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ⁱ Government Accountability Office, *Discipline Disparities for Black Students, Boys, and Students with Disabilities*. (2018). At: <https://www.gao.gov/assets/700/690828.pdf>

ⁱⁱ U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Dollection: School Discipline for SY 2015–16* (2018), as reported by Child Trends. At: <https://www.childtrends.org/publications/black-students-disabilities-out-of-school-suspensions>

ⁱⁱⁱ U.S. Department of Education, Office of Special Education, *Racial and Ethnic Disparities in Special Education*. (2016). At: <https://www2.ed.gov/programs/osepidea/618-data/LEA-racial-ethnic-disparities-tables/disproportionality-analysis-by-state-analysis-category.pdf>

^{iv} Government Accountability Office *Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education*-GAO-13-137. (2013). At: <https://www.gao.gov/products/GAO-13-137>

^v Hensel, Wendy Fritzen, *Sharing the Short Bus: Eligibility and Identity Under the IDEA*. (2007). *Hastings Law Journal*, Vol. 58, No. 6, 2007; Georgia State University College of Law, Legal Studies Research Paper Series No. 2008-04. At: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1004731

^{vi} Losen, Dan, *Disabling Punishment: The Growing Racial Gap in Lost Instruction*. (2018). At: <https://today.law.harvard.edu/wp-content/uploads/2018/04/disabling-punishment-report-.pdf>

^{vii} 81 Fed. Reg. 92,376, 92,385 (Dec. 19, 2016); *see also id.* at 92,395 (“we plan to evaluate the impact of these regulations, including the implications of using risk ratios to compare racial and ethnic groups”)