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May 4, 2018

Johnny W. Collett, Assistant Secretary, OSERS
U.S. Department of Education
400 Maryland Avenue, SW – Room 5107
Potomac Center Plaza
Washington, DC 20202-2500

Re: Docket ID: ED-2017-OSERS-0128

Comments submitted via Regulations.gov

Dear Assistant Secretary Collett:

The National Down Syndrome Congress (NDSC) is submitting comments on this Notice of Proposed Rule Making (NPRM) to oppose any delay in the implementation of the regulations addressing significant disproportionality. NDSC is a member-sustained, nonprofit organization, which works to promote the interests of people with Down syndrome and their families through advocacy, public awareness, and information.

There are many arguments against the delay of the significant disproportionality regulations, but the one of primary importance is the negative impact on students who have already waited far too long for significant disproportionality to be addressed. Children currently in school or about to enter school in districts which are failing to provide services to them, and/or who are unfairly segregated, suspended or expelled will be harmed by the delay. They may not receive services that would be provided to them as a result of changes to policies and procedures or the expenditure of funds caused by a finding of significant disproportionality under the Individuals with Disabilities Education Act (IDEA) Section 1418(d)(2) for two additional years. Also, disproportionality data for preschool students will not begin to be collected during that period. There is also the even greater concern that a delay could lead to the rescission of the regulations

IDEA 2004 is clear in its provision to protect students against significant disproportionality. States are required to report certain data to the U.S. Department of Education (ED). The reason for this collection was a concern, based on reported data, that students from certain groups are treated unfairly in terms of being over or under identified for IDEA services and being overidentified in certain categories of disability. Overrepresentation in special education hurts the students who have been inappropriately identified for IDEA services and also diverts funding from students who actually have disabilities. In addition, certain groups of students

with disabilities (especially students of color) are being placed in segregated classes and subjected to suspension and expulsion from school at a much greater rate than other groups of students. If the data collected and reported shows that there is “significant disproportionality “in any of these critical areas, the state and school district involved must take steps to address the problem. However, data shows that many districts that should have been identified as having significantly disproportionate practices were not being identified by states because the thresholds were set too high.

The regulations ED seeks to delay were written to assist states and school districts to implement the law consistently and were in direct response to a February 2013 U.S. Government Accountability Office (GAO) study¹ showing widespread noncompliance by states with these provisions. The GAO study published in March 2018² and the recently released 2015-16 school year Civil Rights Data Collection³ demonstrate that this problem persists and that students are paying the price. The 2013 GAO study 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.” The resulting regulations provide a standard methodology; but permit each state to set its own thresholds so long as they are “reasonable.” This is NOT federal overreach as some have suggested, but very important federal oversight.

The significant disproportionality regulations went through the regulatory approval process, including the public comment period, and stakeholders had their opportunity to raise any concerns at that time. Since that time states have been working on systems to comply with the regulations’ original deadline, which is close at hand. To seek to delay implementation of the regulations, after the approval process has been completed and the regulations are set to be implemented, creates unnecessary confusion and inequity. The regulations purpose is to ensure consistency, so that states are treated fairly and that the statute is implemented effectively, while providing a wide berth for state self-determination.

Organizations representing state special education administrators such as the Council of Administrators of Special Education (CASE) and the National Association of State Directors of Special Education (NASDSE), whose members are charged with the implementation of these regulations, have written to ED asking that the implementation of the regulations NOT be delayed. NASDSE’s letter asserts that all states have been moving forward to implement the regulations and says: “Postponing implementation not only stops work already in motion, but it suggests that the identification and redress of significant disproportionality can be put on hold. NASDSE does not believe that addressing equity should ever be put on hold.”

NDSC joins all the organizations and families who agree that equity should not be put on hold. There is no legal or factual argument, which justifies turning away from our commitment to

¹ <http://www.gao.gov/products/GAO-13-137>

² <https://www.gao.gov/assets/700/690828.pdf>

³ <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2015-16.html>

ensure educational opportunities and academic success for children of color and children with disabilities and to create a positive school climate for all children. Therefore, we urge ED not to delay the implementation of the significant disproportionality regulations. We appreciate the opportunity to comment on these important regulations. Please do not hesitate to contact NDSC's Senior Education Policy Advisor, Ricki Sabia, (ricki@ndscenter.org) with any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Richelle (Ricki) Sabia".

Richelle (Ricki) Sabia
Senior Education Policy Advisor
National Down Syndrome Congress