

May 11, 2018

Johnny W. Collett
Assistant Secretary, Office of Special Education and Rehabilitation Services
U.S. Department of Education
400 Maryland Avenue SW, Room 5107
Potomac Center Plaza, Washington, DC 20202-2500

Dear Secretary Collett:

The Autistic Self Advocacy Network (ASAN)¹ appreciates the opportunity to submit comments on the Department of Education (DOE)'s Notice of Proposed Rulemaking (NPRM), which would delay enforcement of the "Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities" regulations (often referred to as the "Equity in IDEA" or the "significant disproportionality" regulations) by two years.²

ASAN opposes the proposed delay. Timely enforcement of the 2016 regulations is vital. The regulations do not alter existing law or impose any new obligations on state and local school districts. They clarify what a school district must do in order to accurately determine whether there is significant disproportionality in the identification, placement, and discipline of children with disabilities, as required by 20 U.S.C. § 1418(d), part of the Individuals with Disabilities Education Act (IDEA). The regulations create a standard methodology which school districts must use in their disproportionality calculations. School districts are also required to calculate whether identification and placement disparities exist in six separate disability categories, and in specific placements (such as placement in a segregated school or classroom).³

The regulations were created in response to widespread state noncompliance with 20 U.S.C. § 1418(d) of the IDEA. A 2013 report by the Government Accountability Office found that state metrics for calculating disproportionality were so different from one another that it was difficult to determine whether significant disproportionality was being appropriately

¹ For more information on ASAN, view its website at: <http://autisticadvocacy.org/>

² Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 83 Fed. Reg. 8396, 8396-97 (proposed Feb. 27, 2018) (to be codified at 34 C.F.R. § 300) (proposed delay of implementation of regulations).

³ 34 C.F.R. § 300.646; 34 C.F.R. § 300.646 (2017) (significant disproportionality regulations).

identified.⁴ The GAO also found that in some states, the standard for disproportionality counting as “significant” was so high that no school district in the state could meet it.⁵

These state standards existed despite a substantial body of evidence — from federal and state agencies, research articles and reviews, and nonprofit agencies — showing that significant disproportionality is a pervasive institutional problem in our nation’s schools. For example, according to the 2013-2014 Civil Rights Data Collection issued by the U.S. Department of Education’s Office for Civil Rights (OCR), Black students are three times more likely than White students to be suspended or expelled from school.⁶ Suspended students were also more likely to be students with disabilities.⁷ The racial and ethnic disparities in the application of school discipline contribute to the referral of students of color with disabilities into the criminal justice system at disproportionately high rates.⁸ Children of color may be more likely to be over-identified as children with disabilities or misidentified as having the wrong disability (such as a diagnosis of emotional disturbance or ADHD instead of a diagnosis of autism).

The clarity the 2016 regulations provide is critical if state and local policymakers are to obtain accurate data that informs future attempts to reduce the impact of educational disparities on students of color with disabilities. Advocacy groups like ASAN also rely on disparity data in order to identify trends in how children with disabilities are being educated, and then to make recommendations to schools and administrators based on those trends.

Delaying the implementation of the regulations will harm students with disabilities presently in school, as for the next two years students in noncompliant school districts will not receive the “comprehensive coordinated early intervening services” they would be entitled to if disproportionality were correctly identified in these districts, nor will the school districts be required to change any policies and procedures having a discriminatory effect upon these students.⁹ Delaying the implementation of the 2016 regulations will also further

⁴ See United States Government Accountability Office, GAO-13-137, Individuals with Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education at 10-13, 15, 22 (February 2013), <https://www.gao.gov/assets/660/652437.pdf> (finding that one state required the disparity in identification or placement to be three times greater than that of other students for three consecutive years for it to count as “significant,” while in another state the disparity was required to only be twice that of other students for a single year for it to count as “significant”).

⁵ *Id.*

⁶ U.S. Department of Education Office of Civil Rights, Issue Brief No. 1, Civil Rights Data Collection Data Snapshot: School Discipline 1 (Mar. 21, 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.

⁷ *Id.*

⁸ For more information on this phenomenon, See Amanda Merkwae, *Schooling the Police: Race, Disability, and the Conduct of School Resource Officers*, 21 Mich. J. Race & L. 147, 151 (2015) (describing the school-to-prison pipeline).

⁹ 20 U.S.C. §1418 (d).

confuse school administrators and school districts who were prepared to comply with the 2016 regulations by July 2018.

ASAN urges the Department of Education to rescind this NPRM and consider other means of assisting school districts in complying with the IDEA and the 2016 regulations. For more information on ASAN's policy positions with respect to educational disparities and disproportionality, please contact Samantha Crane, our Director of Legal and Public Policy, at scrane@autisticadvocacy.org.