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May 11, 2018

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

The U.S. Department of Education (“Department”) seeks comments on the potential delay of the Equity in IDEA rule, Docket ID ED-2017-OSERS-0128. I am writing to express my strong opposition to any delay of this important rule.

On the week of the 64th anniversary of the landmark 1954 U.S. Supreme Court *Brown v. Board of Education* decision, I am deeply troubled by your efforts to delay the rule that addresses widespread disparities between white students and students of color with disabilities. Significant disproportionality occurs when children of color are inappropriately identified for special education services, placed in more restrictive classroom settings, or disciplined at higher rates than their same-age White peers with disabilities. This is a national crisis that must be addressed.

The last two reauthorizations of the Individuals with Disabilities Education Act (IDEA), required states to annually report to the Department on significant disproportionality. Congress also required states to review and revise policies, practices, and procedures for identifying school districts with significant disproportionality. In 2013, the Government Accountability Office (GAO) conducted a review of significant disproportionality and found substantial differences in the way states define and report significant disproportionality.¹ GAO found that this variance led to only approximately two percent of school districts taking action despite pervasive and persistent disparities. The GAO report recommended a standardized approach.

In December of 2016, following the GAO report, the Equity in IDEA regulation was enacted to provide states with a standardized method to identify and address significant disproportionality. Any delay of the Rule will mean a return to an absence of a standardized method to identify and report the presence of significant disproportionality, and this crucial equity requirement of federal law will continue to be unfulfilled. Additionally, any action to delay this rule would violate the bipartisan will of Congress and betray our nation’s students and the promise of equity in education.

The disproportionate representation of children of color in special education contributes to segregation in our education system and perpetuates the school-to-prison pipeline. Children with disabilities, particularly African American students with disabilities, are suspended and expelled at

¹ <https://www.gao.gov/assets/660/652437.pdf>

disproportionately high rates. According to a recent report, 28 states experienced an increase in extreme racial disparities in the discipline of African American students with disabilities as compared to White students with disabilities from 2014-15 to 2015-16.² In my home state of Oregon, for every 100 students with special needs in the 2015-2016 academic year, African American students with disabilities lost 68 days of instruction because of suspensions, which was 29 more days than the number lost by White students with disabilities.³ These findings show a 3.4 percent increase in the discipline gap between Black and White students from the previous academic year.⁴ Additionally, although few school districts are annually identified as having significant disproportionality, an analysis run by the Department shows that nearly 50 percent of school districts in the United States experience disproportionality in one category using a standardized approach.⁵

Under IDEA, a school district with significant disproportionality is required to reserve 15 percent of its IDEA funds for comprehensive early intervention services, which may include professional development for teachers and other school staff; multi-tier systems of supports; or educational and behavioral evaluations, services, and supports. It is critical that districts experiencing significant disproportionality make the required reservation of funds to correct inequities and reduce the disparities. Evidence of practice proves that early intervention and culturally responsive practices prevent and reduce disproportionate representation in special education by providing services needed to overcome risk factors, including bias.⁶ Improved teacher training and culturally responsive behavior management strategies help school districts to intervene appropriately and prior to any misidentification or placement.⁷ Importantly, the Equity in IDEA regulation also provides districts with additional flexibility for the implementation of reserved funds to address disparities before disproportionality occurs, confronting the underlying causes of significant disproportionality.⁸

Working to dismantle inequities in education with urgency is critical to creating and promoting an education system that helps all children achieve their highest potential. As Secretary, it is your responsibility to protect and promote the civil rights of all students. Any delay of this regulation would be a dereliction of that responsibility and would impede current initiatives in states to address significant disproportionality. I urge you to maintain the Equity in IDEA regulation to fulfill the will of Congress and to make sure the provision of services to students of color with disabilities to help them receive a high-quality, equitable education to achieve their full potential.

Sincerely,



Suzanne Bonamici
Member of Congress

² <https://today.law.harvard.edu/wp-content/uploads/2018/04/disabling-punishment-report-.pdf>

³ Ibid.

⁴ Ibid.

⁵ <https://www2.ed.gov/programs/osepidea/618-data/LEA-racial-ethnic-disparities-tables/disproportionality-analysis-by-state-analysis-category.pdf>

⁶ <http://sped461.pbworks.com/f/skiba+2008.pdf>

⁷ <http://www.redalyc.org/html/2750/275020513038/>

⁸ <https://www.ed.gov/news/press-releases/fact-sheet-equity-idea>