Johnny W. Collett
Assistant Secretary
Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202

May 2018

RE: NPRM to Delay Equity in IDEA Regulations: Docket ID ED-2017-OSERS-0128

Dear Assistant Secretary Collett

The Autism Society of America writes in response to the notice of proposed rulemaking proposing to delay the “disproportionality” or “Equity in IDEA” regulations for the Individuals with Disabilities Education Act (IDEA) (34 CFR 300.646-300.647). The Autism Society urges the Department not to delay these important regulations. Instead, we urge the Department to support the robust enforcement of the regulation in addition to providing vigorous technical assistance to state and local educational agencies to ensure that they are successful.

The Autism Society is a national organization representing approximately 100 affiliates nationwide that support and serve people with autism and their families.

It has been well-documented for many years that children of color are identified as students with disabilities at substantially higher rates than their peers. This disproportionality remains among the most significant and intransigent problems in the field of special education. 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 more than three times more likely than white students to be suspended or expelled from school.¹ Some are over, under and misidentified in special education on the basis of race, ethnicity and gender, while others are deprived of a Free Appropriate Public Education (FAPE) due to disproportionate discipline and placement practices. The results of these inequities are lower academic performance, higher school dropout rates, failure to graduate on time, decreased academic engagement, future disciplinary exclusion, and entering the juvenile justice system.

IDEA was last reauthorized in 2004. The new law address these inequities by requiring states to develop policies and procedures designed to prevent the over identification or disproportionality of children. States receiving funds under IDEA are required to provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring in the state and the local educational agencies (LEAs) of the state with respect to the identification of children as children with disabilities; placement in particular educational setting of such children; and the incidence, duration and type of disciplinary actions, including suspensions and expulsions.

In the case of a determination of significant disproportionality, with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children the state is required to provide for the review and revision of the policies, procedures and practices; and the local educational agency must reserve the maximum amount of funds to provide comprehensive coordinated early intervening services.

Unfortunately, a 2013 U.S. Government Accountability Office (GAO) study found widespread noncompliance by states with these provisions. Most states had set thresholds for identifying disproportionate districts so high that no districts ever exceeded them, and, therefore, none were ever identified or resolved. Meanwhile, states permitted districts to suspend students of color with disabilities at much higher levels than their white peers. The GAO 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 final Rule sets a common standard for identifying significant disproportionality in representation of students within special education, segregated school settings, and in receipt of disciplinary actions. The Rule also ensures that school districts where disproportionality is found must carefully review their policies and practices to determine the causes and whether changes are needed. They are also required to reserve Part B funding to serve these children.

The U.S. Department of Education has provided technical assistance on the use of evidence-based practices as an alternative to suspensions and harsh discipline procedures, including but not limited to, positive behavioral interventions and supports and restorative justice practices. These techniques have been proven to be especially successful for students with autism, some of whom exhibit behaviors that impede learning. Understanding the root of the behaviors is important to helping children with autism be most productive. Training schools and teacher on the development of functional behavior assessments (FBAs) and behavior intervention plans (BIPs) based on the assessments have been found to be very successful for these students. In addition, proper referrals, evaluations, placements, and provision of services to students eligible for special education are also critical elements which help to ameliorate misidentification and significant disproportionality in special education.

The Autism Society is very concerned that any delay in implementing this regulation will only lead to children being denied their rights to a free and appropriate education. A delay is morally wrong.

Thank you for taking our concerns into consideration. We strongly urge the Department to prevent any delay in these important regulations.

Sincerely yours,

Scott Badesch
Executive Director and CEO
Autism Society

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2 See for example the technical assistance material provided at [https://www.pbis.org/](https://www.pbis.org/)