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

Re: Opposition to the Proposed Delay of Significant Disproportionality Regulations ([34 CFR §300.646](https://www.gpo.gov/fdsys/pkg/CFR-2017-title34-vol2/xml/CFR-2017-title34-vol2-sec300-646.xml) and [34 CFR § 300.647](https://www.gpo.gov/fdsys/pkg/CFR-2017-title34-vol2/xml/CFR-2017-title34-vol2-sec300-647.xml))

Dear Assistant Secretary Collett,

I write today to express my strong opposition to the Notice of Proposed Rulemaking (NPRM), [Docket ID ED-2017-OSERS-0128](https://www.federalregister.gov/documents/2018/02/27/2018-04102/assistance-to-states-for-the-education-of-children-with-disabilities-preschool-grants-for-children), which seeks to delay the required compliance date for the Individuals with Disabilities Education Act’s disproportionality regulations (codified at 34 CFR 300.646- 300.647) from July 1, 2018 to July 1, 2020 and for children ages three to five from July 1, 2020 to July 1, 2022.

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1418 (d), requires that states determine whether or not significant disproportionality based on race and ethnicity is occurring in the State, and in the Local Educational Agencies (LEAs) of the State, with respect to the identification, placement, discipline, suspension, and expulsion of children with disabilities. If significant disproportionality is identified, the IDEA requires that the State and any LEAs review its policies, procedures and practices to ensure that they comply with the IDEA’s requirements. They must also utilize the maximum amount of funding required by law to provide “comprehensive coordinated early intervening services,” in order to address disproportionality. The requirements are clearly set forth in the statute.

The 2016 final regulations were a direct response to a February 2013 U.S. Government Accountability Office (GAO) study, which indicated that there was widespread noncompliance by states with 20 U.S.C. Section 1418(d) of the IDEA. Most states set thresholds for identifying disproportionate districts so high that no districts ever exceeded them, and, therefore, none were identified. Meanwhile states permitted districts to suspend students of color with disabilities at much higher levels than their White peers. Nationally, for example, in 2011, districts suspended over one in every four Black students with disabilities, at least once. 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. Rates of disciplinary removal for their disabled White peers were far lower. The vast majority of suspensions are for minor infractions of school rules, such as disrupting class, tardiness, and dress code violations, rather than for serious violent or criminal behavior. The GAO recommended that the Department of Education “develop a standard approach for defining significant disproportionality to be used by all states.”

Delaying these regulations will increase the likelihood that students with disabilities who are students of color will be subject to inappropriate educational segregation, will be removed from school unnecessarily, and denied services which they need and to which they are entitled. There are actual children who will be harmed by a two year delay in the implementation -- those children currently in school or about to enter school in districts which are failing to provide services to them, and/or who are unfairly suspended and expelled. They will not receive services that would be provided to them as a result of changes to school policies and procedures, or due to the expenditure of funds caused by a finding of significant disproportionality per Section 1418(d)(2), for two additional years.

Of additional concern is the fact that many states have already moved forward with implementation of these regulations in anticipation of the July 1, 2018 start date finalized in the 2016 regulations. To now delay implementation of these regulation will result in additional burden to states as well as unnecessary confusion at the state and local level. Indeed, as stated in a letter to Secretary DeVos sent on February 6, 2018 by the National Association of State Directors of Special Education (NASDSE), “"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."

I firmly believe that the proposed delay in these regulations must not be mistaken for a harmless administrative change. Indeed, a delay of these regulations would be in direct opposition to the spirit of the IDEA, and therefore call on the Department to begin implementation of the 2016 final regulations as originally planned.

Sincerely,