



July 28, 2014

Mr. Larry Ringer  
Associate Division Director  
Office of Special Education and Rehabilitative Services  
Attention: IDEA Determinations RFI  
U.S. Department of Education  
400 Maryland Avenue, S.W., Room 4032  
Potomac Center Plaza  
Washington, DC 20202-2600

**Re: Docket No. ED-2014-OSERS-0058**

Dear Mr. Ringer,

As a national campaign comprised of 84 organizations from 22 states, including parents, students, educators, and advocates, the Dignity in Schools Campaign (DSC) opposes overly punitive and exclusionary discipline practices that push students out of school and into the juvenile justice system or into poverty. We welcome the opportunity to provide recommendations to the Department of Education (the Department) on significant disproportionality under IDEA Part B,<sup>1</sup> specifically related to the alarming discipline disparities impacting children of color with disabilities.

These disparities are among the most troubling trends in education. Recent data show that more than one out of four boys of color with a disability receives an out-of-school suspension and nearly one in five girls with a disability receives an out-of-school suspension.<sup>2</sup> Further, African-American children represent 19 percent of disabled students, but 36 percent of those restrained at school through a mechanical device or other means.<sup>3</sup> Therefore, we know that the confluence of race and disability puts students at particular risk for harsh discipline.

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<sup>1</sup> 20 U.S.C. §§ 1413(f)(1) and 1418(d)(2)(B)).

<sup>2</sup> Civil Rights Data Collection 2011-2012, Data Snapshot: School Discipline, Issue Brief No. 1 (March 2014), available at [ocrdata.ed.gov](http://ocrdata.ed.gov), at 4.

<sup>3</sup> *Id.*

But, instead of providing these students with the supports and services needed to succeed, schools across the country are penalizing them and pushing them out. We believe that the Department must act to hold states accountable for allowing such disparities to continue and we recommend that the Department improve its oversight and enforcement of states to ensure that these disparities are remedied.

**Specifically, we recommend that the Department create a uniform standard for identifying racial or ethnic significant disproportionality to ensure that states do not undermine the intent of the 2004 IDEA Reauthorization (the 2004 IDEA) to address significant disproportionality.** Despite the alarming and widely reported discipline disparities impacting children of color with disabilities, states have not been held accountable for these harmful practices. This is due in part to too much flexibility in the language of the 2004 IDEA that allows states to define significant disproportionality in ways that avoid accountability for disparities.

As you know, Congress included a provision in the 2004 IDEA that requires each state to create a formula to determine if significant disproportionality related to race or ethnicity is occurring in the identification, placement, or discipline of students with disabilities.<sup>4</sup> Upon a finding of significant disproportionality, states are required to provide students with coordinated early intervening services (CEIS) to address academic needs.<sup>5</sup>

However, the Government Accountability Office (GAO) found in 2013 that very few states were actually identifying significant disproportionality,<sup>6</sup> despite data showing real racial disparities related to children with disabilities.<sup>7</sup>

We believe that states have used their flexibility to create measures of significant disproportionality that all but ensure that significant disproportionality will never be identified. For instance, Mississippi requires a racial or ethnic group to show representation at a rate that is four times that of other racial or ethnic groups per year in order to constitute significant disproportionality.<sup>8</sup> Consequently, only 35 of Mississippi's districts were required to provide CEIS during the 2009-10 school year,<sup>9</sup> despite data showing that African-American students with disabilities were subject to almost twice the rate of corporal punishment and over twice the

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<sup>4</sup> 20 U.S.C. § 1418(d).

<sup>5</sup> *Id.*

<sup>6</sup> *Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education*, Government Accountability Office, Report to the Chairman, Committee on Health, Education, Labor, and Pensions U.S. Senate (GAO-13-137)(February 2013), at 7.

<sup>7</sup> Civil Rights Data Collection 2011-2012, Data Snapshot: School Discipline, Issue Brief No. 1 (March 2014), available at [ocrdata.ed.gov](http://ocrdata.ed.gov), at 4.

<sup>8</sup> *Supra* note 6, at 11.

<sup>9</sup> *Id.*

rate of out-of-school suspensions than their white peers with disabilities.<sup>10</sup> When a state is able to set a high bar for proving significant disproportionality, what results is an inaccurate picture of the prevalence of racial disparities for children with disabilities. DSC supports the GAO report's recommendation for the Department to develop a standard approach for defining significant disproportionality for all states.<sup>11</sup>

**The Department must act immediately to hold states accountable for discipline disparities related to children of color in special education by creating a national standard for disproportionality.** A national standard, allowing for some flexibility to reflect state population and resources, is needed to ensure that the intent of the 2004 IDEA is not undermined, and so that the Department can ensure states end harmful discipline practices unfairly impacting children of color with disabilities. To accomplish this, we recommend that:

- The Department consult with researchers, parents, advocates, discipline reform organizations, students, policymakers, and school administrators to develop a workable and transparent national standard to accurately identify and remedy these disparities.
- Once a national standard is finalized, the Department provide guidance and ongoing support to districts to meaningfully implement the standard and identify disparities.

**In addition, we recommend that the Department work with districts identified as having high racial or ethnic discipline disparities to properly implement CEIS or other interventions to remedy them.** For instance, in its investigation, GAO found that Prince George's County School District in Maryland was working to address student behavioral and emotional needs by placing behavior specialists in the middle and high schools with the highest number of suspensions to identify alternative discipline approaches.<sup>12</sup> In Chicago, Illinois, parents worked to implement a mandatory recess period as a physical outlet and break from the school day, especially for children with hyperactive and sensory development disorders.<sup>13</sup> This was a response designed to address the needs of and improve outcomes for children with IEPs, but it's an intervention that benefits all students. We encourage the Department to work with districts to develop meaningful, location-specific, and culturally-responsive interventions to curb discipline disparities for children of color with disabilities.

We applaud the Department's efforts to highlight disparities affecting children of color with disabilities. We appreciate your consideration of these comments. DSC continues to work to reform harsh disciplinary practices that contribute to the school-to-prison pipeline and push

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<sup>10</sup> Civil Rights Data Collection, 2009-10 National and State Estimations, *available at* [http://ocrdata.ed.gov/StateNationalEstimations/Projections\\_2009\\_10](http://ocrdata.ed.gov/StateNationalEstimations/Projections_2009_10).

<sup>11</sup> *Supra* note 6, at 23.

<sup>12</sup> *Id.* at 16.

<sup>13</sup> "Teachers and other school personnel shall not use physical activity (e.g., running laps, push-ups, as a punishment) or withhold opportunities for physical activity (e.g. withholding recess or physical education), as punishment. Chicago Public Schools Policy Manual, Local School Wellness Policy For Students, Section 704.7, Board Report: 12-1024-P01 Date Adopted: October 24, 2012.

students out of school. We appreciate your consideration of these comments and look forward to the Department's continued action and engagement on this issue. If you have any questions, please contact Janel George with the NAACP Legal Defense and Educational Fund, Inc. at [jgeorge@naacpldf.org](mailto:jgeorge@naacpldf.org). Thanks.

Sincerely,

Dignity in Schools Campaign