

# United States Senate

WASHINGTON, DC 20510

April 17, 2019

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Secretary DeVos:

We write to request a detailed explanation on how the U.S. Department of Education (“the Department”) is enforcing the Equity in IDEA regulations, known as the “significant disproportionality” regulations.

The significant disproportionality rule was issued in 2016 in response to long-standing issues with the over-identification of students of color for special education services. This rule established a common standard and methodology for States to use in identifying potential over- or under-representation of students of color, or other groups, in special education. In February 2018, the Department proposed to delay this rule by two years, from July 2019 to July 2020. However, on March 9<sup>th</sup> the U.S. District Court for the District of Columbia ruled the delay violated the Administrative Procedure Act, finding that the Department “failed to provide a reasoned explanation for delaying the 2016 Regulations” thus requiring the 2016 regulation go into effect.<sup>1</sup> The Department’s attempted delay has created great confusion for states and districts, so it is vital that the Department adhere to this court ruling and immediately implement this rule.

When asked at a hearing to review the Department’s budget request, nearly a month after the decision was issued, you indicated that the Department is “reviewing the court’s decision,” but did not confirm whether the Department was following the law and complying with the rule. The U.S. District Court’s opinion, which is only 43 pages long, explicitly deems the delay of the special education rule to be “arbitrary and capricious.”<sup>2</sup> The Department did not seek a stay of the ruling. It thus, under the law, has no choice but to implement the regulations immediately.

There are numerous reasons, many of which were cited in the 2016 rule, for the swift implementation of this vital regulation. The over-identification of students of color for special education services leads to more children being placed in restrictive environments and fewer children having access to the rigorous academic programs they deserve access to. Prior to the 2016 rule, black students were 40 percent more likely to be identified as having disabilities than their peers and, therefore, more likely to be excluded from general education classes.<sup>3</sup> This over-

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<sup>1</sup> Civil Action No. 18-cv-1636 (TSC)

<sup>2</sup> Ibid.

<sup>3</sup> U.S. Department of Education. 38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2016. Retrieved from <https://www2.ed.gov/about/reports/annual/osep/2016/parts-b-c/38th-arc-for-idea.pdf>.

identification of students into special education also hinders the ability of students with disabilities to access appropriate educational support services.

The uniform standards and methodologies established in the 2016 significant disproportionality rule are critical to ensure that all students have access to the services they need and students are not unduly placed in overly restrictive settings. Before this rule was finalized, a 2013 GAO study found that districts and States had drastically different approaches for identifying significant disproportionality, including if and how districts addressed overrepresentation and when they were required to remedy the issue. This report recommended “a standard approach for defining significant disproportionality to be used by all States.”<sup>4</sup>

In order to ensure the swift implementation of this rule, we ask for your detailed response on how the Department will implement the existing regulation. We request you answer the following questions by May 1, 2019:

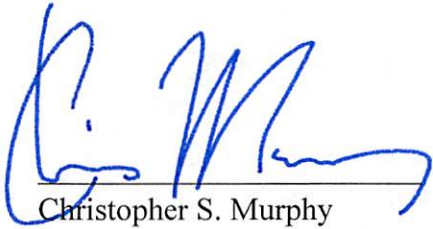
- How the Department will communicate and enforce to States their current responsibilities under the regulation and their current responsibilities to transition to the standard methodology immediately;
- How the Department will ensure that states immediately move forward with using the standard methodology to determine whether significant disproportionality is occurring in the State and in its local education agencies (LEAs);
- How the Department will communicate that States must address significant disproportionality in the incidence, duration, and type of disciplinary actions;
- How the Department will provide guidance to LEAs to ensure the appropriate review and revision of policies, practices, and procedures when significant disproportionality is found;
- What supports and guidance the Department will provide to states and LEAs in addressing significant disproportionalities;
- How the Department will require that LEAs identify and address the factors contributing to significant disproportionality as part of comprehensive coordinated early intervening services and allow these services for children from age 3 through grade 12, with and without disabilities;
- How the Department will make public information on each state’s risk ratio, alternate risk ratio, risk ratio threshold, and determinations of significant disproportionality.

We look forward to working with you on this important matter.

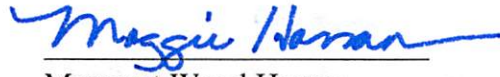
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<sup>4</sup> U.S. Government Accountability Office. “Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education.” Mar 29, 2013. Retrieved from <https://www.gao.gov/products/GAO-13-137>.

Sincerely,



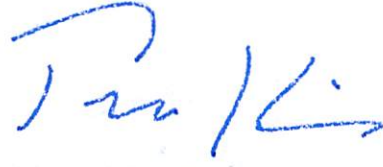
Christopher S. Murphy  
United States Senator



Margaret Wood Hassan  
United States Senator



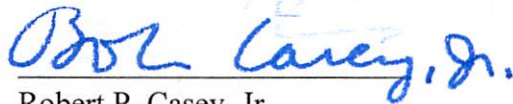
Elizabeth Warren  
United States Senator




Tim Kaine  
United States Senator



Richard Blumenthal  
United States Senator



Robert P. Casey, Jr.  
United States Senator



Tammy Duckworth  
United States Senator



Sherrod Brown  
United States Senator