



To: U.S. Department of Education
From: Alliance for Excellent Education
Date: July 28, 2014
Re: Request for Information on Addressing Significant Disproportionality under section 618(d) of the Individuals with Disabilities Education Act (IDEA)

The Alliance for Excellent Education (the Alliance) appreciates the opportunity to comment on the U.S. Department of Education's (ED's) Request for Information on Addressing Significant Disproportionality under section 618(d) of the Individuals with Disabilities Education Act (IDEA). Accurate and responsive student identification for special education, in addition to fair, effective, and equitable discipline policies, are critical for increasing the number of students who graduate from high school ready for college and a career.

There is significant evidence, and a history of legal action in response to this evidence, regarding the overrepresentation of students of color and English language learners in special education.¹ This overrepresentation may be due to the ambiguity and subjectivity in certain special education categories, particularly in learning disabilities and emotional/behavioral disorders.² Inequitable, ineffective, and extremely consequential discipline policies are particularly harmful to students with disabilities, and students of color with disabilities, making the issue of over-identification particularly troubling. The following is true, according to an analysis of recent data, which includes data collected by ED's biannual Office for Civil Rights Data Collection:

- Students with disabilities are twice as likely as nondisabled students to be disciplined.³
- One out of every four African American students with disabilities was suspended during school year (SY) 2009–10, and students with disabilities in general were more likely to be suspended multiple times in the same year.⁴
- Discipline disparities exist between students of color with disabilities and white students with disabilities, including the following:
 - ♦ Fourteen percent of African American students with disabilities received out-of-school suspensions two or more times during SY 2009–10, compared to 7 percent of African American students without disabilities.⁵ During this same time, 4 percent of white students with disabilities and fewer than 2 percent of white students without disabilities received out-of-school suspensions two or more times.⁶
 - ♦ The rates of suspension vary across states; in states with a significant number of African American students, the suspension rate for African American students with disabilities is often two or three times the rate of white students with disabilities.⁷ For example, during SY 2009–10, Illinois suspended nearly 42 percent of all African American students with disabilities compared

to 8 percent of white students with disabilities. In Connecticut, the rates are 32 percent compared to 5 percent, respectively; Alabama suspended 22 percent compared to 9 percent, respectively; and Texas suspended 25 percent compared to 8 percent, respectively.⁸ (For additional state and district comparisons, by subgroup and school level, the Civil Rights Project at University of California, Los Angeles provides a tool to find data on suspension rates at U.S. schools nationwide at <http://www.schooldisciplinedata.org/>.)

Significant disproportionality, in combination with inequitable and ineffective discipline policies, negatively impacts the nation's efforts to increase the number of students, across all subgroups, who graduate from high school ready for college and a career. Specifically, the following is true:

- Being suspended just once in ninth grade is associated with doubling the risk of a student dropping out of high school, from 16 percent to 32 percent. The rate increases to 42 percent if a student is suspended twice in ninth grade.⁹
- There is a strong relationship between being suspended, being retained at a grade level, and dropping out of school. Out-of-school suspensions increase students' probability of both dropping out of school and being at risk for future incarceration.¹⁰

In effort to address significant disproportionality, the Alliance makes the following recommendations:

- (1) ED should issue regulations requiring states to use a standard approach to determine which local education agencies (LEAs) have significant disproportionality (see item 4a below). Further, states should be required to use this approach to determine whether significant disproportionality exists for individual schools within the LEA. This will ensure that in larger school districts, individual schools with significant disproportionality are not masked by LEA averages. ED should develop a protocol to ensure that state definitions are aligned with the standards set by ED.
- (2) ED should ensure that all states are complying with ED's regulations regarding calculating the high school graduation rate as defined in 34 CFR 200.19(b). All diplomas awarded by the state must be fully aligned with the state's college- and career-ready standards. Recent legislation passed by the Louisiana legislature, as well as large increases in the graduation rates for students with disabilities reported by several states, indicates that ED should proactively monitor state compliance with this regulation.
- (3) Schools identified for intervention under the Elementary and Secondary Education Act (ESEA) flexibility requests should be required to analyze both special education and discipline referral data, including at the classroom level. These schools should be required to describe the efforts they will take to address these disparities, including revising schools discipline policies and how Coordinated Early Intervening Services (CEIS) and ESEA Title II funds will be used to provide professional development to support teachers in properly identifying students and providing the necessary supports and interventions. Evidence of disproportionality in specific disability categories, placement in particular settings, and/or the incidence, duration, or type of disciplinary actions should trigger examination of whether students with disabilities are receiving a free, appropriate, public education.¹¹
- (4) The Alliance fully supports the recommendations submitted by the Civil Rights Project at University of California, Los Angeles, which include



- a. creating a model definition of significant disproportionality against which state definitions would be evaluated and approved or rejected;
- b. requiring the state to publicly report data by state and district level;
- c. allowing disparately disciplined groups to benefit from CEIS funds by encouraging voluntary use of IDEA funds for CEIS to address significant racial disproportionality;
- d. ensuring that the students whose experiences of racial or ethnic disparities trigger required expenditures for CEIS actually receive the benefits;
- e. ensuring impacted students with disabilities receive appropriate special education services; and
- f. requiring states to use a similar metric for identification, placement, and discipline.

Unless significant disproportionality is addressed, it will be impossible to close high school achievement and graduation rate gaps. Closing these gaps requires comprehensive efforts to meet the academic, social, and emotional needs of every student. These efforts include ensuring that all educators have the capacity to properly identify students for additional services, provide those services, and implement discipline policies that are inclusive and support positive behavior.¹²

The Alliance can provide additional evidence or information in support of the comments if needed.

Notes

- ¹ For a detailed analysis, see B. Harry and J. Klingner, *Why Are So Many Minority Students in Special Education?: Understanding Race and Disability in Schools* (New York, NY: Teachers College Press, 2006) and M. J. Coutinho and D. P. Oswald, *Disproportionate Representation of Culturally and Linguistically Diverse Students in Special Education: Measuring the Problem* (Tempe, AZ: National Center for Culturally Responsive Educational Systems, 2006, <http://www.ldonline.org/article/5603?theme=print> (accessed August 10, 2013).
- ² B. Harry and J. Klingner, "Discarding the Deficit Model," *Educational Leadership* 64, no. 5 (2007), <http://www.ascd.org/publications/educational-leadership/feb07/vol64/num05/Discardingthe-Deficit-Model.aspx> (accessed August 10, 2013).
- ³ R. Skiba, "Are Zero Tolerance Policies Effective in Schools?" (Washington, DC: American Psychological Association, 2006), <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf> (accessed August 6, 2012).
- ⁴ D. J. Losen and J. Gillespie, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School* (Los Angeles: Center for Civil Rights Remedies, Civil Rights Project, University of California, Los Angeles, August 2012).
- ⁵ Ibid.
- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ Ibid.
- ⁹ R. Balfanz, V. Byrnes, and J. Fox, "Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade," paper presented at the Closing the School Discipline Gap: Research to Practice conference, Washington, DC, January 10, 2013.
- ¹⁰ Losen and Gillespie, *Opportunities Suspended*.
- ¹¹ Under IDEA, free appropriate public education (FAPE) is defined as an educational program that is individualized to a specific child, designed to meet that child's unique needs, provides access to the general curriculum, meets grade-level standards established by the state, and from which the child receives educational benefit. To provide FAPE to a child with a disability, schools must provide students with an education, including specialized instruction and related services that prepare the child for further education, employment, and independent living. For example, the responsibility would be that of the school to provide objective data that disciplinary actions are carried out in accordance with the individualized education program (IEP) and that their use produces improvements in IEP objectives for socioemotional or behavioral outcomes.
- ¹² For specific strategies, see the Alliance's "Climate Change" series of papers found at http://all4ed.org/?s=climate%2Bchange&search_scope=site&submit=&show_only=reports (accessed July 22, 2014) and joint U.S. Department of Justice and ED guidance found at <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html> (accessed July 22, 2014).

