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July 28, 2014

Larry Ringer
U.S. Department of Education
400 Maryland Avenue SW.
Washington, DC 20202-2600

Re: Comments to Docket ID ED-2014-OSERS-0058

Dear Mr. Ringer:

The Council for Exceptional Children (CEC) – an international community of educators, administrators, related service personnel, higher education faculty and researchers – is the voice and vision of special education. Our mission is to improve the quality of life for individuals with exceptionalities and their families through professional excellence and advocacy.

CEC appreciates the opportunity to provide feedback on the Request for Information issued on June 19, 2014 to receive public comment on the actions that the Department should take to address significant disproportionality based on race and ethnicity in the identification, placement, and discipline of children with disabilities. This is a critical issue that has been plaguing the education field and our society as a whole; and it must be confronted and remedied immediately.

Through this ROI, the Department asks the public to provide comment on three questions. In working collaboratively with our members and expert content divisions, particularly CEC's Council for Children with Behavioral Disorders, we are pleased to provide feedback in the following pages. Please do not hesitate to contact me or Kim Hymes, Senior Director of Policy and Advocacy at kimh@cec.sped.org or 703-264-9441.

Sincerely,

A handwritten signature in cursive script that reads "Deborah A. Ziegler".

Deborah A. Ziegler, Ed.D
Associate Executive Director, Policy & Advocacy
Council for Exceptional Children
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Question: 1

Should the Department issue proposed regulations requiring States to use a standard approach to determine which LEAs have significant disproportionality? If so, how might a standard approach properly account for State differences (e.g., population size, population composition, and LEA size)? If so, what should be included in such a standard approach?

CEC Response: Yes, the Department should establish a standard approach to determine the presence of significant disproportionality, while also allowing for states to apply for a variance from the national standard based on State differences in population size and composition, LEA size, and degree of disproportionality.

As the Government Accountability Office found in its 2013 report, *IDEA: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education*, states calculate significant disproportionality in vastly different ways resulting in only 2.4% of school districts nationwide in 2010-2011 to be identified. Alternatively, numerous other data sources – such as the Office of Civil Rights, Civil Rights Data Collection -- reveal a contrary story whereby African American students are over-represented in special education and in certain disability categories, and Asian American students are under-represented.

In moving forward with establishing a standard approach, the Department should consider the following:

1. *Set a national criteria.* We would recommend setting national criteria involving both a risk ratio and risk index measure. One might, for example, require that any district with a risk ratio above 2.5 *and* a risk index above the state average for any racial/ethnic group be identified as significantly disproportionate. It is important to note that any national criteria is simply a *first step* in eliminating disproportionality: *It should be made clear to SEAs that the national criteria will be progressively strengthened over time to increasingly equitable levels.*
2. *Establish a formal process wherein states may request a variance from the national standard, including strict conditions under which such variances will be accepted, such a process may include:*
 - a. States must specify the alternate standard it proposes to use, along with a statistical justification (e.g. from the OSEP Technical Assistance Manual on Disproportionality Identification) for that criteria. Estimate, based upon past data, how many LEAs would be identified using the alternate proposed criteria.

- b. Provide the specific reasons for the proposed variance. In particular, what are the detailed reasons why the national standard would be inappropriate for this particular state?
- c. Describe how the proposed alternate standard will enable the state to make an appropriate level of district identification *without* reducing the number of LEAs identified to an inappropriate level.
- d. If the alternate standard proposed by the State is more lenient than the federal standard, what is the proposed timeline for the State's standard to become increasingly rigorous and approach the federal standard over time?

Question: 2

What actions, apart from requiring a standard approach, should the Department take to address the very small number of LEAs identified with significant disproportionality, despite data (including the data the Department collects under section 618 of the IDEA, data collected by the Department's Office for Civil Rights, and the information in the GAO report) showing significant disparities, based on race and ethnicity, in the identification of children for special education, including by disability category, educational placements, and disciplinary actions?

CEC Response: Consistent with the findings of the GAO report, our hope is that establishing national criteria should result in a more honest reflection of the number of LEAs identified with significant disproportionality. If variances to the national standard are to be allowed, these should be monitored closely to ensure that SEAs with such variances do not identify an inappropriately low number of (or 0) LEAs.

However, having a more accurate calculation of significant disproportionality will not address the underlying issues that contribute to the problem in the first place.

As a first step, the Department must consider addressing other issues of federal monitoring that have plagued the enforcement of both significant disproportionality and disproportionate representation from the outset. The Council for Children with Behavioral Disorders (CCBD, 2013) and previous research (Albrecht, Skiba, Losen, Chung & Middelberg, 2013) have documented a host of issues of enforcement of IDEA 2004 disciplinary provisions that most likely contribute to the under-identification of disproportionality under either the significant disproportionality or disproportionate representation provisions. The GAO noted in its report

that state and school district officials found DOE's IDEA indicators to be "complicated, resource-intensive, and duplicative." It is possible that this confusion contributes to States setting criteria to identify fewer LEAs, since doing so would reduce the confusion and burden within SEAs and LEAs. By conducting a thorough review and revision of all its disproportionality monitoring policies, the Department could establish a set of procedures that were more clear and direct, thereby encouraging SEAs to identify a higher number of LEAs. Both CCBD's position paper (CCBD, 2013) and the Albrecht et al. (2012) study are attached: We believe that implementation of the recommendations contained in these papers would result in a more effective system of monitoring that could have a significant effect on the number of LEAs identified under IDEA disproportionality provisions.

Question: 3

What actions, including research- or evidence-based actions, should the Department take to: (a) Encourage greater voluntary use of funds for CEIS in LEAs showing significant disparities (but no determination of significant disproportionality, pursuant to 34 CFR § 300.646), by race and ethnicity, in the rates of identification of children for special education, including identification by disability category, educational placements, and disciplinary actions; (b) assist LEAs in more effectively targeting their use of funds for CEIS to address significant disproportionality in both districts required to use funds for CEIS (as a result of a determination of significant disproportionality) and districts choosing to use funds for CEIS, in a manner that is both consistent with the requirements of the IDEA and which will help to address the causes and effects of significant disproportionality?

CEC Response: To encourage a greater voluntary use of CEIS funds, the Department should: 1) substantially increase its FY 2016 IDEA budget request; 2) issue guidance that permits CEIS funds to be used to support whole-school initiatives – such as Positive Behavioral Interventions and Supports – which benefit both students with and without disabilities; and 3) provide expanded technical assistance and support to help states and school districts identify root causes and actions to rectify disproportionality.

- **Increase FY 2016 IDEA Budget Request:** As the Department is well aware, States and school districts continue to be negatively impacted due to the federal government failing to live up to its 39-year commitment to fully fund IDEA. In fact, the Administration's FY 2015 budget only proposed funding IDEA at 15.8% of the 40% needed to reach full funding. In 2013, a national survey conducted by CEC of 1,000 special educators revealed that 83% reported cutting special education services due to the impact of the poor economy. States and school districts may be more apt to voluntary use the IDEA CEIS funds if they had adequate funding to support students with disabilities. CEC –

together with numerous national education and disability organizations—have been calling on the Administration and Congress to reverse course and put IDEA on a path to reach full funding in 10 years.

- **Issue guidance clarifying IDEA’s Coordinated Early Intervention Services funding can be used to support school-wide initiatives, such as Positive Behavioral Interventions and Supports.** CEC – and the special education field – appreciated the [2008 guidance](#) provided by the Department regarding the use of CEIS funds, which further articulated the statute and regulations that such funds were to be used to support children who are not identified as having a disability, but who need additional academic and behavioral supports to succeed in the general education classroom.

While this guidance provided some clarity, it also has raised some questions regarding whether CEIS can be used to support school-wide initiatives focusing on academic and behavioral supports, such as Positive Behavioral Interventions and Supports. Indeed, the guidance cites PBIS as an acceptable way to use CEIS funding. In the six years since the guidance was written, PBIS has become known for its whole-school approach, rather than an intervention for just a selected group of children. As a result, the field would like additional clarity regarding the use of CEIS funding for school-wide initiatives like PBIS, which by their very nature are intended to support the academic and behavioral needs of all students, particularly those who are struggling.

Evidence-based, school-wide initiatives are both consistent with the approach of the Department – as seen in the recent award of the School-Wide Integrated Framework for Transformation (SWIFT) Center – and with the intent of the IDEA statute, and therefore CEC urges the Department to issue additional guidance clarifying school-wide, evidence-based initiatives are an appropriate use of CEIS funds.

- **Expand Technical Assistance to support states and school districts in identify root causes and actions to rectify disproportionality by engaging in activities such as:**
 - Requiring that districts identified as significantly disproportionate engage in a root cause analysis and develop a corrective action plan that demonstrates how the CEIS funds will be expended specifically to address the factors identified in the root cause analysis as contributing to disproportionality.
 - Providing a directory of evidence-based resources, including PBIS, restorative practices, relationship-building interventions (e.g., *My Teaching Partner*), social-emotional learning, and culturally responsive pedagogy and classroom management designed to address disproportionality.

- Developing institutional structures or grant-funded opportunities to increase the access for LEAs identified evidence-based resources and to experts in addressing disproportionality throughout the country. OSERS could, for example, establish a National Center on Disproportionality to encourage TA and PD for SEAs and LEAs, and establish support networks. That center might, for example, develop a national registry of effective programs/content experts that districts might access. Another method to increase available resources for LEAs may be to develop an IES Research-to-Practice competition requiring SEA/IHE collaboration to provide evidence-based TA and PD both to districts identified as significantly disproportionate and those that choose to voluntarily devote CEIS funds to address disproportionality proactively.
- States should be encouraged to report on ways in which they are encouraging greater voluntary use of CEIS funds to address issues of disproportionality. In the state of Indiana, for example, the Department of Education, in conjunction with the Equity Project at Indiana University, has developed a website allowing all LEAs to access and monitor their own statistics with respect to significant disproportionality and disproportionate representatives. LEAs that come close to exceeding the State disproportionality criteria receive a notice that they may be at risk for non-compliance in the following year, and are encouraged to take corrective action to prevent future non-compliance.