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DEPARTMENT OF EDUCATION

[Docket No. ED-2014-OSERS-0058]

Request for Information on Addressing Significant Disproportionality under Section 618(d) of the Individuals with Disabilities Education Act (IDEA)

AGENCY: Office of Special Education and Rehabilitative Services, U.S. Department of Education

ACTION: Request for Information

SUMMARY: The U.S. Department of Education (Department) is requesting 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. Specifically, we are requesting input from the public on actions the Department should take related to: (1) significant disproportionality based on race and ethnicity in the (a) identification of children as children with disabilities, including identification by disability category; (b) placement of children with disabilities in particular educational settings; and (c) the incidence,

duration, and type of disciplinary action taken with respect to children with disabilities; and (2) ensuring that funds reserved for comprehensive, coordinated early intervening services (CEIS) under Part B of the IDEA are used to effectively address significant disproportionality.

DATES: Responses must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term "CEIS and Significant Disproportionality" at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to this site?"

U.S. Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Larry

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Ringer, Attention: IDEA Determinations RFI, U.S. Department of Education, 400 Maryland Avenue, SW., room 4032, Potomac Center Plaza (PCP), Washington, D.C. 20202–2600.

Privacy Note: The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

Submission of Proprietary Information: Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines "confidential commercial information" as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify any specific information in your comments that you consider confidential

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commercial information. Please list the information by page and paragraph numbers.

Note: This Request for Information (RFI) is issued solely for information and planning purposes and is not a request for proposals (RFP), a notice inviting applications (NIA), or a promise to issue an RFP or NIA. This RFI does not commit the Department to contract for any supply or service whatsoever. Further, the Department is not now seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI.

If you do not respond to this RFI, you may still apply for future contracts and grants. The Department posts RFPs on the Federal Business Opportunities Web site (www.fbo.gov). The Department announces grant competitions in the Federal Register (www.gpo.gov/fdsys). It is your responsibility to monitor these sites to determine whether the Department issues an RFP or NIA after considering the information received in response to this RFI.

The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

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FOR FURTHER INFORMATION CONTACT: Larry Ringer, U.S. Department of Education, 400 Maryland Avenue, SW., room 4032, PCP, Washington, D.C. 20202–2600. Telephone: (202) 245-7496.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background:

In section 601(c)(12)(A) and (B) of the IDEA, Congress found that, "[g]reater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities," and that, "[m]ore minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population." The IDEA and its implementing regulations include specific requirements to address those findings.

Specifically, section 618(d)(1) of the IDEA and the implementing regulations in 34 CFR 300.646(a) require each State to collect and examine data to determine if significant disproportionality based on race and ethnicity

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is occurring in the State and the local educational agencies (LEAs) of the State with respect to:

1. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the IDEA;

2. The placement in particular educational settings of children with disabilities; and

3. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions, taken with respect to children with disabilities.

In cases where a determination of significant disproportionality is made in one or more of these areas based on the collection and examination of data, States must: (1) provide for the review and, if appropriate, revision of policies, procedures, and practices used in identification, placement, or disciplinary actions to ensure compliance with the requirements of the IDEA; (2) require any LEAs identified as having significant disproportionality to reserve the maximum amount of funds under IDEA section 613(f) and 34 CFR 300.226 to provide CEIS to children in the LEA, particularly children in groups that are significantly overidentified; and (3)

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require the LEA to publicly report on the revision of policies, procedures, and practices used in identification, placement, and disciplinary actions. Section 618(d)(2) of the IDEA and 34 CFR 300.646(b); see also, Analysis of Comments and Changes, Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities; Final Rule, August 14, 2006 (71 FR 46540, 46738); and OSEP Memorandum 07-09, April 24, 2007, Disproportionality of Racial and Ethnic Groups in Special Education. http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep07-09disproportionalityofracialandethnicgroupsinspecialeducation.pdf.

The IDEA and its implementing regulations allow LEAs that are not required to reserve funds for CEIS to voluntarily use up to 15 percent of their IDEA Part B funds to provide CEIS to children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic or behavioral support to succeed in a

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general education environment. Section 613(f)(1) of the IDEA and 34 CFR 300.226(a).

Neither the IDEA nor the regulations define the term "significant disproportionality." As stated in the preamble to the final IDEA Part B regulations published in the Federal Register on August 14, 2006, "[w]ith respect to the definition of significant disproportionality, each State has the discretion to define the term for the LEAs and for the State in general. Therefore, in identifying significant disproportionality, a State may determine statistically significant levels." (Analysis of Comments and Changes, Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities; Final Rule, August 14, 2006 (71 FR 46540, 46738).)

The Department has afforded States broad discretion in defining significant disproportionality and in establishing procedures for identifying significant disproportionality within their States. Consequently, there is wide variation in how significant disproportionality is defined and identified in LEAs across States.

Data collected by the Department's Office of Special Education Programs (OSEP) and Office for Civil Rights (OCR)

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show significant racial and ethnic disparity in the identification of children for special education, including identification by disability category, educational placement, and disciplinary action. Based on these data, the Department has been concerned about the very small number of LEAs that have been identified by their States as having significant disproportionality, and the resulting limited funds that LEAs are required to use for CEIS to address that significant disproportionality. The Department is also concerned that the definitions and procedures for identifying LEAs with significant disproportionality that many States have established may set the bar so high that even LEAs with significant racial and ethnic disparities in the identification of children for special education are not identified as having significant disproportionality.

In February 2013, the Government Accountability Office (GAO) issued a report on CEIS, particularly as it relates to racial and ethnic overrepresentation in special education, which reinforced the Department's concerns. The GAO report, titled "Individuals with Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education (GAO-13-

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137), can be found at www.gao.gov/products/GAO-13-137. In this report, the GAO examined the numbers and characteristics of LEAs that provide CEIS, how States determine which LEAs are required to provide CEIS, the types of CEIS provided, and oversight by the Department and States. Specifically, the GAO: (1) examined data on CEIS for school years 2009-10 and 2010-11; (2) reviewed 16 States' methods for identifying LEAs with significant disproportionality, including States that did and did not require LEAs identified with significant disproportionality to provide CEIS services; (3) visited State educational agencies (SEAs) and LEAs in four States; and (4) interviewed Federal, State, and local officials. GAO found that, "the discretion that States have in defining significant disproportionality has resulted in a wide range of definitions that provides no assurance that the problem is being appropriately identified across the nation." According to the GAO report, "[a]mong the almost 15,000 school districts nationwide that received IDEA funding in school year 2010-2011, states required 356 (2.4 percent) districts to use these funds for early intervening services due to significant disproportionality."

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"To better understand the extent of racial and ethnic overrepresentation in special education and promote consistency in how States determine the districts required to provide early intervening services," the GAO recommended that the Department "develop a standard approach for defining significant disproportionality to be used by all states. This approach should allow flexibility to account for state differences and specify when exceptions can be made."

Context for Responses and Information Requested:

Given the discretion a State currently has to define the term "significant disproportionality" for the State and its LEAs, the Department requests public comment on how best to address significant disproportionality based on race and ethnicity in the identification of children for special education, including identification by disability category, educational placements, and disciplinary actions. In addition to this request for public comment, the Department will be collecting through EDFacts (the portal through which OSEP collects special education and other data from States) State definitions of significant disproportionality and information on the categories (as set forth in the IDEA) in which States have determined that

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a significant disproportionality based on race and ethnicity exists in the identification of children for special education, including identification by disability category, in placement of children with disabilities in particular educational settings, and in disciplinary action taken with respect to children with disabilities.

The Assistant Secretary for Special Education and Rehabilitative Services invites the public, including States, LEAs, parents, advocacy groups, researchers, and professional organizations, to provide comment on, and offer proposals for: (1) addressing significant disproportionality; (2) encouraging greater voluntary use of funds for CEIS in LEAs showing significant disparities (but no determination of significant disproportionality) by race and ethnicity in the rates of identification of children for special education, including identification by disability category, educational placements, and disciplinary actions; and (3) encouraging more effective, targeted 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. The Department will review the data collected under

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section 618 of the IDEA and by the Department's Office for Civil Rights, together with the information in the GAO report and all of the input and information received in response to this RFI, to determine what, if any, actions the Department should take to address significant disproportionality.

The Assistant Secretary requests comment on the following questions:

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?

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

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identification of children for special education, including by disability category, educational placements, and disciplinary actions?

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; and (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?

You may provide comments in any convenient format (i.e., bullet points, charts, graphs, paragraphs, etc.) and may also provide relevant information that is not

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responsive to a particular question but may nevertheless be helpful.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) upon request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

PROGRAM AUTHORITY: 20 U.S.C. 1413(f)(1) and 1418(d)

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Dated:

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Michael K. Yudin,
Acting Assistant Secretary for Special Education and Rehabilitative Services.

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