

Hilary Malawer, Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue SW
Room 6E231
Washington, DC 20202

September 20, 2017

Docket ID ED-2017-OS-0074

Dear Ms. Malawer:

I respectfully submit these comments on the definition of significant disproportionality in the 2016 IDEA regulations, § 300.646(b). I am an economist and education policy researcher, as well as a public school parent.

New research by Morgan, Farkas, Hillemeier and Maczuga finds, once again, that once you take other student characteristics—notably family income and achievement—into account, racial and ethnic minority students are *less* likely to be identified for special education than white students.¹ Though this finding is by now well established, plenty of earlier research—with less convincing methods—has been interpreted as showing that *too many* blacks, especially black boys, are identified for special education.² This prior research clearly shaped the design of the 2016 IDEA disproportionality regulations, which require states to not only collect and monitor district-level data on racial- and ethnic-specific rates of special identification rates but to set numeric thresholds—risk ratios—for flagging districts with “significantly disproportionality” across groups. These unadjusted ratios are important for describing how student experience varies by race. But they do not tell us whether schools are giving black students the free and appropriate public education the Individuals with Disabilities Education Act guarantees them. To answer this question, we must compare the likelihood that a black student participates in special education with that of an otherwise identical white student. In other words, we don’t just want to know if black students are *more* likely to be in special education than whites; we want to know if blacks students are *too* likely to be in special education—or, as it turns out, not likely enough.

The research consensus on overrepresentation in special education

In a 2002 National Research Council study, Donovan and Cross reviewed the literature and data on differences in special education participation by disability and racial/ethnic group and cautioned against using unadjusted aggregate group-level identification rates to guide public policy.³ They crystallized the challenge of interpreting these differences: “If... we are asking whether the number identified is in proportion to those whose

achievement or behavior indicate a need for special supports, then the question is one for which no database currently exists.”⁴

Differences in aggregation, covariates, and samples generate different answers to the question of whether black students are over- or under-identified for special education.⁵ The most credible studies allow researchers to control for a rich set of student-level characteristics, rather than using data aggregated to the district level, and firmly establish that blacks are disproportionately under-represented.

In 2010, Hibel, Farkas, and Morgan used the Early Childhood Longitudinal Study – Kindergarten Cohort (ECLS-K) 1998 and its follow-up waves to come closer to the ideal Donovan and Cross described.⁶ While individual-level models controlling only for race and gender showed blacks more likely to be identified, adding a family socioeconomic status variable eliminated the effect of race for blacks, while Hispanics and Asians were significantly less likely to be in special education. Adding a student test score made blacks *less* likely to be identified; Hispanics and Asians remained less likely to be identified as well.

A follow up study found this result applied across the five disability classifications studied, notably including emotional disturbance and intellectual disability, stigmatizing categories in which black boys are overrepresented in the aggregate, unadjusted data.⁷ While some have questioned the generalizability of the ECLS-K results due to sampling,⁸ the qualitative result has been replicated using the National Assessment of Educational Progress (the 2017 Morgan et al. study), the Education Longitudinal Study of 2002,⁹ and the ECLS-Birth Cohort.¹⁰

Reporting by race and ethnicity is critical but setting numeric thresholds is dangerous

The 2016 IDEA disproportionality regulations require states to collect and review district-level data on how rates of identification—overall, by educational setting, and by disability category—vary across racial and ethnic groups, with no adjustments for variables that correlate with need for services. If the gaps between groups exceed state-determined thresholds for “significant disproportionality,” the state must examine local policies and require the district to devote more of its federal special education funds to early intervention.

The regulation acknowledges diversity in demographic distributions by race across states by allowing states to set their own cut-off risk ratios, but each state then must apply that one threshold to all its districts. That means a district in which blacks and whites have similar poverty rates will be subject to the same threshold as one (in the same state) in which blacks have much lower income than whites.

Data on identification by race and ethnicity are essential for revealing patterns and outliers. They can prod districts and states to examine their special education policies

and practices, potentially identifying ones that unintentionally yield discriminatory results, and shine a light on groups in need of greater early intervention resources.

For example, the preamble to the disproportionality regulations notes that unequal autism identification rates across groups may reflect disparities in access to medical care, suggesting that the district offer early developmental screenings. Indeed, research shows that among Medicaid-eligible children with autism diagnoses, white children are diagnosed over a year earlier than black children.¹¹ The district-level reporting by race and ethnicity is important. *It is the numeric cutoff that presents a problem.*

The Department of Education's guidance notes that significant disproportionality could result from "appropriate identification, with higher prevalence of a disability, among a particular racial or ethnic group;" in other words, it notes that exceeding the risk ratio could be appropriate and acceptable.

But this level of nuance could easily be missed. It is one Q&A in the non-regulatory policy guidance, while the state's numeric threshold will likely remain far more salient to districts.¹² These thresholds will present incentives for states and districts to produce equal rates of identification across groups—by denying services to students who need them.

Thank you for your consideration.

Sincerely,

Nora Gordon, Ph.D.

¹ Morgan, P.L., Farkas, G., Hillemeier, M.M., & Maczuga, S. 2017. Replicated Evidence of Racial and Ethnic Disparities in Disability Identification in U.S. Schools. *Educational Researcher*, 46:6, 305-322. From: <http://journals.sagepub.com/doi/abs/10.3102/0013189X17726282>

² Artiles, A. J., Kozleski, E.B., Trent, S.C., Osher, D., & Ortiz, A. 2010. Justifying and Explaining Disproportionality, 1968-2008: A Critique of Underlying Views of Culture. *Exceptional Children*, 76:3, 279-299. From: http://aartiles.faculty.asu.edu/publications_files/2010_Artiles-et-al_Culture-Disproport-EC.pdf

³ National Research Council, 2002. Minority Students in Special and Gifted Education. The National Academies Press. From: <https://www.nap.edu/catalog/10128/minority-students-in-special-and-gifted-education>

⁴ Ibid., p. 35

⁵ Morgan, Paul L., George Farkas, Michael Cook, Natasha M. Strassfeld, Marianne M. Hillemeier, Wik Hung Pun, and Deborah L. Schussler. 2017. Are Black Children Disproportionately Overrepresented in Special Education? *Exceptional Children* 83:2. From: <http://journals.sagepub.com/doi/full/10.1177/0014402916664042>

⁶ Hibel, J., Farkas, G., & Morgan, P.L. 2010. Who Is Placed into Special Education? *Sociology of Education*, 83:4, 312-332. From: <http://journals.sagepub.com/doi/abs/10.1177/0038040710383518>

⁷ Morgan, P.L., Farkas, G., Hillemeier, M.M., Mattison, R., Maczuga, S., Li, H., & Cook, M. 2015. Minorities Are Disproportionately Underrepresented in Special Education. *Educational Researcher*, 44:5, 278-292. From: <http://journals.sagepub.com/doi/abs/10.3102/0013189X15591157>

⁸ Skiba, R.J., Artiles, A.J., Kozleski, E.B., Losen, D.J., & Harry, E.G. 2016. Risks and Consequences of Oversimplifying Educational Inequities. *Educational Researcher*, 45:3, 221-225. From: <http://journals.sagepub.com/doi/full/10.3102/0013189X16644606>

⁹ Shifrer, D., Muller, C., & Callahan, R. 2014. Disproportionality and Learning Disabilities: Parsing Apart Race, Socioeconomic Status, and Language. *Journal of Learning Disabilities*, 44:3, 246-257. From: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4133990/>

¹⁰ Morgan, Paul L., George Farkas, Marianne M. Hillemeier, and Steve Maczuga. 2012. Are Minority Children Disproportionately Represented in Early Intervention and Early Childhood Special Education? *Educational Researcher* 41:9, 339-351. From: <https://www.ncbi.nlm.nih.gov/pubmed/24683265>

¹¹ Mandell, D.S., Listerud, J., Levy, S.E., & Pinto-Martin, J.A. 2002. Race Differences in the Age at Diagnosis Among Medicaid-Eligible Children With Autism. *Journal of the American Academy of Child and Adolescent Psychiatry*, 41:12, 1447-1453. From: [http://www.jaacap.com/article/S0890-8567\(09\)60739-5/abstract](http://www.jaacap.com/article/S0890-8567(09)60739-5/abstract)

¹² U.S. Department of Education. Significant Disproportionality, 2016, 2. From: <https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17-1.pdf>