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DEPARTMENT OF EDUCATION

34 CFR Part 300

[Docket ID ED-2017-OSERS-0000]

Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Notice.

SUMMARY: The Department seeks comment on whether to extend by two years the compliance date of these regulations from July 1, 2018, to July 1, 2020, and, if so, whether to extend the date for including children ages three to five in the analysis of significant disproportionality from July 1, 2020, to July 1, 2022.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

*Federal eRulemaking Portal:* Go to [www.regulations.gov](http://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 the "Help" tab.

*Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments in response to this request, address them to Kimberly M. Richey, Acting Assistant Secretary, Office of Special Education and Rehabilitation Services, U.S. Department of Education, 400 Maryland Avenue, SW., room 5138, Potomac Center Plaza, Washington, DC 20202-2500.

**Privacy Note:** The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kate Friday, U.S. Department of Education, 400 Maryland Avenue, SW., room 5104, Potomac Center Plaza, Washington, DC 20202-2500. Telephone: (202) 245-7605, or by email at: [Kate.Friday@ed.gov](mailto:Kate.Friday@ed.gov).

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

**SUPPLEMENTARY INFORMATION:**

On February 24, 2017, President Trump signed Executive Order 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. Section 3(a) of the Executive Order directed each Federal agency to establish a regulatory reform task force, the duty of which is to evaluate existing regulations and "make recommendations to the agency head regarding their repeal, replacement, or modification."

On June 22, 2017, the Department published a notice in

the Federal Register (82 FR 28432) seeking input on regulations that may be appropriate for repeal, replacement, or modification. That comment period closed on September 20, 2017.

As part of this regulatory review exercise, OSERS is reviewing its Equity in IDEA regulations, which we published in the *Federal Register* on December 19, 2016 (81 FR 92376). Primarily, those regulations establish a standard methodology States must use to determine whether significant disproportionality based on race and ethnicity is occurring in the State and in its local educational agencies (LEAs).

If a State determines that there is significant disproportionality occurring in an LEA, the IDEA requires the LEA to reserve 15 percent of its Part B funds to be used for comprehensive coordinated early intervening services (CEIS). The regulations require the LEA to identify and address the factors contributing to significant disproportionality as part of comprehensive CEIS. The regulations also expand the populations of children eligible for these services to include children, with and without disabilities, from age 3 through grade 12.

The regulations became effective January 18, 2017, but States are not required to begin using the standard methodology until July 1, 2018, and are not required to include children ages three through five in their analyses until July 1, 2020.

The Department seeks public comment on whether it should postpone the compliance date for implementing the standard methodology to July 1, 2020, and, if so, whether to extend the compliance date for including children ages three to five to July 1, 2022.

From comments the Department has received in response to the June 2017 request for input, in listening sessions OSERS has conducted, and in conversations with State officials and staff, OSERS has learned that States are in various stages of readiness for implementing the regulations on July 1, 2018, and for including children ages three to five by July 1, 2020. Postponing the compliance dates will provide those States that need it with additional time so that they may, for example, continue conversations with stakeholders (including the State Advisory Panel), assess reasonable risk ratio thresholds, update data systems, or train staff.

At the same time, so that States would have the full benefit of efforts already made, we repeat our invitation for early implementation that we made in the final regulation. States that are or will be ready to implement the standard methodology and comprehensive CEIS on July 1, 2018, would be welcome to do so. States would also be welcome to implement comprehensive CEIS without the standard methodology (81 FR 92378-379).

The Department would use the additional time, and the data submitted by States that implement early, to assess the regulations. As we noted in our response to comments on the regulations, "we agree ... that additional study of the standard methodology after the regulations are in place, rather than before, is appropriate. Accordingly, we plan to evaluate the impact of these regulations, including the implications of using risk ratios to compare racial and ethnic groups." (81 FR 92395.)

The Department intends to analyze the data produced by those States that have already begun implementing the regulations in anticipation of the July 1, 2018, compliance date. The Department intends to assess the quality of the collected data and its utility for stakeholders, policy makers, and the public; to assess the extent to which the standard methodology appropriately identifies significant

disproportionality in identification, placement, and discipline of children with disabilities by race or ethnicity; and to assess the extent to which there are any unintended consequences or burdens that occur as a result of the rule. In short, the Department intends to use the data produced by States to inform a decision whether to continue the regulations unchanged, modify them, replace them, or remove them. In so doing, the Department intends to provide States with the most appropriate regulation for identifying significant disproportionality so that they can ultimately determine whether students, with and without disabilities, are receiving the services they need.

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

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Dated:

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Kimberley M. Richey,  
Acting Assistant Secretary.