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DeVos rollbacks could hit schools hard

According to a recent news source, the U.S. Department of Education is considering delaying, changing or eliminating altogether a rule that is intended to protect overrepresentation of minority students in special education. Since the Individuals with Disabilities Education Act was reauthorized in 2004, states have been required to identify local education agencies with significant disparities in suspension and expulsion rates and in identification of students with disabilities by race or ethnicity. 300 CFR Section 300.170; 34 CFR Section 300.173.

On March 23, 2016, under the Obama administration, the education department released proposed amendments to the rule that would increase the rigor and impact of these requirements. However, the department now appears to be moving in the opposite direction.

In a climate where advocacy groups are seriously questioning the department and its seeming continued efforts to roll back regulation, a delay or elimination of this rule could cause an even greater uproar among education and disability advocates.

The amendment to the 2004 "significant disparity" rule came about after the department released a report in February 2016 examining education agencies and schools reporting of significant disproportionality nationwide.

The 2004 regulations require school districts to report to their states instances wherein they are identifying students of any racial or ethnic group as eligible for special education, placing them outside of the general education classroom or disciplining them at higher rates than their peers.

However, the 2004 regulations do not specify how this information must be collected or reported, leaving states flexibility in regulating schools' reporting of significant disparities. The department reported that, due to the 2004 regulations' lacking reporting protocols, hundreds of school districts with significant disparities are going unidentified.

The new regulation, which has been submitted to the Federal Register for publication, details four key components to addressing the issues related to reporting significant disparities.

First, the new regulations will require states to adopt a standard methodology for determining whether a significant disproportionality of students of a specific race or ethnicity are being identified as students with disabilities and/or are being disciplined more than their peers from other backgrounds.

Second, states must use the same statutory remedies to address any identified significant disproportionality.

Third, states must identify any reviews of policies, practices or procedures when a significant

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disproportionality is found.

Finally, the fourth component requires the school districts or agencies to address factors contributing to disproportionality through coordinated early intervening services, accessible to children ages 3 to 12, with or without disabilities. States will be required to show compliance with the new regulations for children ages 6 to 12 as of July 1, and then, by July 1, 2010, will be required to show compliance for children ages 3 to 5, as well.

Currently, coordinated early intervening services are available for children who are kindergarten through grade 12, with a particular emphasis on children in grades kindergarten through third, who are not identified as needing special education and related services, but are in need of additional academic or social-emotional support in order to access the general education environment.

School districts and agencies are required to allocate a percentage of their disability act

funds in the program to coordinate early intervening services and to identify specific programming targeted at providing additional resources to struggling students, in an effort to avoid over-identification of students with disabilities.

The estimated cost of enforcing the new regulation would be between \$47.5 million and \$87.2 million over 10 years, plus additional transfers between \$298.4 million and \$552.9 million. Currently, the cost of special education is approximately \$13 billion, one of the largest allocations of funding administered by the education department.

Since Education Secretary Betsy DeVos has taken office, the department has communicated an intent to roll back this regulation. Unfortunately, at this time, it is unclear what this will mean for school districts.

If the new regulations are enforced, school districts will need to begin planning for the expansion of coordinated early intervening services and the implementation of a delineated methodology for collecting information related to the discipline and identification of students with disabilities by race and ethnicity.

However, if the current administration either postpones or eliminates altogether the proposed amendments, it is unclear how the department will address issues related to regulating such disparities.