April 16, 2018

Johnny W. Collett  
Assistant Secretary  
Office of Special Education and Rehabilitation Services  
Department of Education  
400 Maryland Avenue SW  
Room 5107  
Potomac Center Plaza  
Washington, DC 20202-2500

Submitted Electronically

Re: Proposal to Delay Implementation of Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities Regulations

Dear Assistant Secretary Collett:

On behalf of our more than 100,000 member physical therapists, physical therapist assistants, and students of physical therapy, the American Physical Therapy Association (APTA) is pleased to submit comments to the Office of Special Education and Rehabilitation Services (OSERS), US Department of Education’s proposed rulemaking, Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities (Equity in IDEA). The mission of APTA is to build a community to advance the physical therapy profession to improve the health of society. Physical therapists play a unique role in society in prevention, wellness, fitness, health promotion, and management of disease and disability by serving as a dynamic bridge between health and health services delivery for individuals across the age span. While physical therapists are experts in rehabilitation and habilitation, they also have the expertise and the opportunity to help individuals improve overall health and prevent the need for otherwise avoidable health care services. Physical therapists’ roles may include education, direct intervention, research, advocacy, and collaborative consultation. These roles are essential to the profession’s vision of transforming society by optimizing movement to improve the human experience.

More than 6 million students with disabilities are eligible for essential special education and related services, thanks to the Individuals with Disabilities Education Act (IDEA).
For each child, IDEA requires the development of an Individualized Education Plan (IEP) that is tailored to meet each child’s unique educational needs. For children who require physical therapy to benefit from education, physical therapists not only promote motor development but also support students’ participation in everyday activities. For these reasons, our members are invested in the outcome of this rulemaking and its impact on students.

APTA Comments
APTA has concerns that the proposal to delay school districts’ compliance with the Equity in IDEA regulations will prolong the long-recognized disproportionality that exists across states in the education of students with disabilities. Please consider our detailed comments below.

Delayed Compliance Will Prolong Disproportionate Representation of Certain Student Populations in Special Education Programs
The disproportionate representation of children from racial, cultural, ethnic, and linguistic minority backgrounds in special education programs is well-established. Data from OSERS’ annual reports to Congress on the implementation of IDEA illustrate the continuing overrepresentation of minority students in special education. In a 2003 Report to Congress, OSERS stated that minority students were clearly overrepresented in certain special education categories compared with the national student population as a whole. In some cases, students were not placed in special education programs early enough, necessitating increased special education services later. In other instances, states’ procedures for identifying students with special education needs may have unintentionally placed a greater number of minority students in special education programs. In turn, in 2004 Congress required that school districts address the overrepresentation of certain racial and ethnic groups in special education programs: districts with significant disproportionality based on race and ethnicity must spend 15% of their IDEA funds to provide early-intervening services to school-age children who need additional academic and behavioral support.

OSERS has proposed to delay the compliance dates established by the Equity in IDEA regulations by 2 years. The Equity in IDEA regulations were developed in an effort to create a standard methodology by which states would determine whether a “significant disproportionality” based on race and ethnicity existed in states’ local education areas (LEAs) with respect to the identification, placement, and discipline of children with disabilities.

These regulations were developed directly in response to the February 27, 2013, GAO Report on IDEA to the Chairman, Committee on Health, Education, Labor, and Pensions, US Senate. GAO’s report highlighted the need for a standard approach to defining significant disproportionality, as few states were complying with 20 U.S.C. Section 1.

2 Id.
1418(d) of the IDEA, which requires states to identify LEAs with significant disproportionality in areas related to special education. GAO noted that in 2010, “states required about 2% of all districts to use IDEA funds for early intervening services to address the overrepresentation of racial and ethnic groups in special education.” Based on its findings, GAO recommended that the Department of Education “develop a standard approach for defining significant disproportionality to be used by all states.”

In spite of the overwhelming evidence for the need to promote consistency in determining which districts need to provide early-intervening services, OSERS now seeks to walk back the regulations that were developed to better promote equity under IDEA. If the proposal to delay these regulations is finalized, the very inequities that OSERS previously cited in communications to Congress would be further prolonged and possibly exacerbated due to inaction.

Therefore, APTA recommends that OSERS continue its course to implement and enforce the Equity in IDEA regulations, to ensure that states take timely action to identify disproportionate representation of minorities in their special education programs, where applicable.

Current Regulations Grant Sufficient Flexibility to States
APTA supports the Equity in IDEA regulations, which require states to use a standard methodology to determine whether significant disproportionality based on race and ethnicity is occurring in the state and its LEAs; clarify that states must address significant disproportionality in the incidence, duration, and type of disciplinary actions; clarify requirements for the review and revision of policies and practices when significant disproportionality is found; and require that LEAs identify and address the factors contributing to significant disproportionality as part of comprehensive coordinated early intervening services and allow these services for children from age 3 through grade 12, with and without disabilities.

The standard methodology requires states to determine when there is a disproportionate overrepresentation of 1 racial or ethnic group in the state’s special education programs and whether any racial or ethnic group receives more disciplinary actions than the state’s average rates for the student population overall. If a state identifies a disproportionality, the regulations require the states to use a percentage of its special education funding to identify what factors led to the disproportionality and take action to address it. Additionally, states have the flexibility to use any data sources they see fit to identify significant disproportionality, including academic data and environment data from a specific LEA. This ensures that the methodology is functional across states while allowing states to tailor the methodology to suit their student populations.

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4 *Id.*
APTA applauds OSERS’ development of the standard methodology and the flexibility it affords states in making determinations of disproportionality. We urge OSERS to implement the regulations as finalized, including enforcement of the July 2018 compliance date, with which states are already equipped to comply.

**Conclusion**
APTA opposes any postponement of implementation of the Equity in IDEA regulations. Further delay will result in further disproportionate representation of children from racial and ethnic minority backgrounds in special education programs. We believe the Equity in IDEA regulations are a positive step for the nation’s students, and we urge OSERS to move forward with implementation.

Once again, APTA thanks OSERS for the opportunity to respond to the proposed rule concerning the Equity in IDEA regulations. If you have any questions regarding our comments, please contact Sharita Jennings, senior regulatory affairs specialist, at sharitajennings@apta.org. Thank you for your time and consideration.

Sincerely,

![Signature]

Sharon L. Dunn, PT, PhD
Board-Certified Orthopaedic Clinical Specialist President

SLD:sdj