



March 9, 2020

Dr. Susan Bunting
Secretary of Education
Delaware Department of Education

via email: Susan.Bunting@doe.k12.de.us

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RE: Serious Concerns Regarding Treatment of Black Students with Disabilities in Delaware

Dear Dr. Bunting:

We understand that under your leadership, the Delaware Department of Education (DDOE), the school districts and the educators and staff of Delaware public schools are working hard to “empower every learner with the highest-quality education through shared leadership, innovative practices, and exemplary services” as described in the mission of the State’s ESSA Plan. For over fifty years, the Lawyers’ Committee for Civil Rights Under Law has continued to advocate for underserved students of color and families in several areas, including education. Working with communities, we have played an instrumental role in helping state and local governments meet the needs of underserved students of color through policy-making collaboration, advocacy, and, when necessary, litigation.

As the Director of the Educational Opportunities Project at the Lawyer’s Committee, I am writing to you today to help ensure that the State’s mission is accomplished for the its most vulnerable children. In response to concerns raised by partners with our organization, we want to share three potential issues impacting Black students with disabilities attending Delaware public schools, as reflected in state and school-level data reviewed (see further below).

First, as you may be aware, Black children with disabilities face an especially acute problem with being served appropriately, often being subjected to disparate discipline punishment compared to their White-non-Hispanic peers, as recognized in a 2019 report by the U.S. Commission on Civil Rights.¹ Nationally and in Delaware, Black students tend to face more severe consequences for similar or less serious conduct than their White² peers, from in-school suspensions to out-of-school-suspensions to expulsions. In turn, this often results in the loss of learning time, which not only affects their academic achievement but also their socio-emotional behavior, especially for students with disabilities.

¹ See, e.g., U.S. Commission on Civil Rights (2019). “Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities” (available at: <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>).

² For purposes of this letter, “White students” refers to White-non-Hispanic students.

Second, Black students may face over-identification for placement in special education in Delaware, especially for certain disabilities.³ The Lawyers' Committee recognizes the critical role that IDEA serves in ensuring that schools provide a free and appropriate education for students with disabilities, including students of color. Students identified as requiring educational plans under IDEA for various disabilities and schools must work with parents in carrying out this work. Thus, it is imperative that all students requiring such services are, in the first instance, correctly identified for such services. Some research has even shown that students of color are *less likely* than White students to be identified for special education, *after* controlling for certain student characteristics, including achievement.⁴ That, of course, is a concern for the Lawyers' Committee but so too is the concern that Black students may be identified for special education based on racial biases and lack of cultural competencies from educators and, more broadly, institutions.

Third, schools may be placing Black students with disabilities in segregated school settings, both between schools and within schools. This issue was highlighted in the case, *Coalition for Education Reform v. Indian River Sch. Dist.* In that case, the plaintiffs alleged that the district's George Washington Carver Academy had operated as an alternative setting with deplorable learning conditions primarily for Black males ages 3 to 18. Over 1,000 Black male students were subjected to these conditions over a 20-year period. As part of the settlement, the district agreed to close the Academy after 2019-20.⁵

After receiving concerns from partners in the community with the possible discriminatory treatment of Black students and Black students with disabilities in Delaware, we reviewed related state and school data from the Department of Education's Civil Rights Data Collection (CRDC). Our review revealed several troubling snapshots, including:

Statewide Observations

Across the State, Black students appear to be over-identified as students with disabilities and disciplined far more harshly than their White peers. Observations include:

- Black students constitute 31% of total enrollment but 39% of students with disabilities; White students constitute 48% of total enrollment but 43% of students with disabilities.
- 24% of Black male students with disabilities were subjected to out-of-school suspensions compared to 9% of White male students with disabilities.
- 14% of Black female students with disabilities were subjected to out-of-school suspensions compared to 4% for White female students with disabilities.

³ U.S. Department of Education (2016). "38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Act, 2016," Office of Special Education and Rehabilitative Services (available at: <https://www2.ed.gov/about/reports/annual/osep/2016/parts-b-c/38th-arc-for-idea.pdf>).

⁴ Gordon, N. (2017) "Race, poverty, and interpreting overrepresentation in special education," Brookings Institution. Available at: <https://www.brookings.edu/research/race-poverty-and-interpreting-overrepresentation-in-special-education/> (Citing 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 (available at: <https://journals.sagepub.com/doi/abs/10.3102/0013189X17726282>).

⁵ Woodard, F. (Nov. 7, 2019) "Indian River School District Will Discontinue Special Needs Program" (available at: <http://www.wboc.com/story/41284987/indian-river-school-district-will-discontinue-special-needs-program>).

- 56.5% of Black students with IDEA plans were subjected to in-school suspensions, 24.7 percentage points higher than the national average.
- 564 students with disabilities in the 2013-14 school year were referred to law enforcement in the state of Delaware; 248 students, or 58% of them, were Black students.

School-level Observations (excluding specialized schools)

At the school level, there are several concerning findings regarding the over-representation of Black students as students with disabilities. This raises concerns about possible over-identification and segregative placement of Black students in Delaware school districts. Observations include:

- Out of approximately 109 nonspecialized schools in the OCR database, 38 schools identify more than 25% of Black students as IDEA students, compared to a statewide rate of 15%.
- Of the 38 schools, 20 schools identify more than 10% of Black-IDEA students compared to White-IDEA students. For example, Dunbar Elementary School-Laurel School District identified 46% of its total Black students as IDEA compared to only 7% of its total White students. Milton Elementary School-Cape Henlopen School District identified 45% of its total Black students as IDEA compared to only 8% of its total White students.
- More than half of the Indian River School District and Red Clay Consolidated School District schools enrolled more than 20% of Black-IDEA students, including Indian River High School at 36% compared to only 15% White-IDEA students and Marbrook Elementary-Red Clay at 35% Black-IDEA students compared to 17% White-IDEA students.

Specialized Schools Observations⁶

Data on the specialized schools also raised serious concerns. While the State may have limited authority in supporting these separate learning environments with specialized support, concerns are noted, which may reflect unjustified disproportionate enrollment rates for Black-IDEA students and disparate discipline practices among Black and White students. Observations include:

- At the Delaware School for the Deaf, Christina School District, Newark, DE, which serves students who are deaf or hard of hearing, Black students comprise 29.3% of the student body. However, they account for 41.7% of in-school suspensions, 66.7% of out-of-school suspensions and 66.7% of referrals to law enforcement.
- NCC Detention Center identifies 63% of its total Black students as IDEA compared to only 23% of its total White students as IDEA.
- Christina Early Education Center-Christina School District identifies 66% of its Black students as IDEA and 73% of its total White students as IDEA. Comparable data for the District's other early learning center at Stubbs Elementary was not available.

These observations only reflect a snapshot of larger data that we highlighted as part of our internal review. While some of these observations may be readily justified for actual educational

⁶ "Specialized schools" refer to those schools that appear to be serving students based on their mental or physical disability and/or their status as an alternative learning or correctional facility.

reasons, the grave nature of these findings should, at the least, raise serious concerns with not only the DDOE, but the state and communities of Delaware. As with other students, Black students with and without disabilities have considerable potential and aspirations of achieving their highest potential with a high-quality education. Unfortunately, they must overcome not only a sordid state history of segregation and discrimination but also systemic and individual discrimination and biases of today. They are among the State's most promising children, but also among the most vulnerable children. We understand the DDOE intends to help create welcoming, equitable schools for all children but it is apparently falling short of achieving this goal for these children.

Conclusion and Requests

Given the stark disparities noted above, we respectfully ask that you and the DDOE respond to the following requests. In turn, we can help educate community partners on this important matter and any steps that the DDOE is taking, or will be taking, to address the concerns noted above.

1. Whether, and if so how, the DDOE is addressing disproportionate overidentification and overrepresentation of Black students for special education by schools and school districts, including but not limited to steps required under federal regulations?
2. Whether, and if so how, the DDOE is addressing disparate disciplinary punishment and consequences for Black students with disabilities by schools and school districts?
3. Whether, and if so how, the DDOE is ensuring that schools and school districts are not segregating Black students with disabilities from students without disabilities in inclusive learning environments or the least restrictive education settings?

We understand the answers may not be readily retrievable and may require deeper internal discussions. Accordingly, we ask that you share your responses no later than 30 days from the date of this letter. If you have any questions, feel free to email me at dhinojosa@lawyerscommittee.org or call me at 202-662-8307. Thank you and we look forward to hearing back from you soon.

Sincerely,

/s/ David G. Hinojosa

David G. Hinojosa
Director of the Educational Opportunities Project
Lawyers' Committee for Civil Rights Under Law

cc: Governor John Carney
Delaware State Board of Education