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Racial Inequality in Special Education: U.S. Department of Education Releases Regulations and Guidance

The U.S. Department of Education Office for Civil Rights ("OCR") issued a *Dear Colleague Letter: Preventing Racial Discrimination in Special Education* on December 12, 2016. In this Guidance, OCR states that it continues to find (1) over-identification of students of color as having disabilities; (2) under-identification of students of color who do have disabilities; and (3) delays in evaluating students of color for special education services. If racial discrimination leads to a failure to timely identify, evaluate and provide special education services to a student, there are serious long term consequences for the student. On the other hand, racial discrimination that leads to inappropriate identification in special education, provision of unnecessary services, and more restrictive placement limits the educational opportunities of

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students.

The Dear Colleague Letter cautions schools against making discriminatory referrals for special education services by relying on stereotypes or biased perceptions, such as referring African American and Latino students for evaluations, but not referring white students with similar behavioral and academic records. OCR also suggests that general education interventions, such as Response to Intervention, should be used when students are performing poorly for reasons unrelated to disability, but must not be used as a substitute or precondition for a special education evaluation. When evaluating students for special education services, OCR explains that schools must not use different evaluation procedures for different races, require different documentation for different races, or use procedures in ways that have an adverse impact on a certain racial group. Once qualified for special education services, schools must not discriminate against students based on race, color, or national origin in the provision of such services, or any related services.

The Department of Education also released final regulations on equity under the Individuals with Disabilities Education Act

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("IDEA") that become effective on January 18, 2017. According to statistics, children of color, particularly African American and American Indian children, are identified to have disabilities at a substantially higher rate than their peers. To address inequity and under and over-representation of students of color in special education, the regulations set forth a methodology that states must use to identify school districts with "significant disproportionality" in race and ethnicity in the identification of students for special education, placement of these students in restrictive settings and the incidence, duration and type of disciplinary removals, including suspensions and expulsions. School districts that are found to have significant disproportionality must review and revise their policies, practices and procedures and may use Comprehensive Coordinated Early Intervening Services (CEIS) funds to provide professional development and to remedy the disproportionality.

If you have additional questions about the Dear Colleague Letter, the regulations, or your district's policies and procedures, please contact one of our attorneys in Flossmoor (708799-6766) or Oak Brook (630-928-1200).