

**Testimony on:**  
**Lessons Learned: Charting the Path to Educational Equity Post-COVID-19**  
**Subcommittee on Early Childhood, Elementary and Secondary Education**  
**U.S. House of Representatives**

**By:**  
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Good afternoon Chairman Scott, Chairman Sablan, Ranking Member Foxx, Ranking Member Owens, and members of the subcommittee, I am Selene Almazan, legal director for the Council of Parent Attorneys and Advocates (COPAA) and I am also a parent. Two of my three children have disabilities and attended Maryland public schools. On behalf of COPAA, I appreciate the opportunity to testify today.

COPAA is a national nonprofit organization of parents, attorneys, advocates, and related professionals who work to protect the civil rights and secure excellence in education on behalf of the 7.7 million children ages 0 through 21 eligible for special education services under the *Individuals with Disabilities Education Act* (IDEA) and the 1.4 million K-12 students with disabilities protected by Section 504 of the Rehabilitation Act across the United States. I appreciate the opportunity to testify and hope to work with the committee to discuss and develop proactive policy solutions that keep equity for students at the center of Congress' work and to support the oversight activities and vital funding needed to promote, protect, and support children with disabilities from birth to college, career training and employment while putting an end to any form of discrimination.

**Equity and Why It Matters to Students with Disabilities**

Much has been made of the difference between equity and equality. While equality means treating every student the same, equity means making sure every student has the support they need to be successful. Equity in education requires putting systems in place to ensure that every child has an equal chance for success. Whether we are talking about disability, race, socioeconomic status, city of residence, or any number of intersections of identities, we know that identity plays a significant role in the access and opportunities available to people in this country.

COPAA recently finished our 2020 Virtual Summit and our opening keynote, Kori Hamilton Biagas founder of Just Educators, eloquently stated the struggle when she said:

...people with disabilities have been fighting for access, support, and protections to be able to receive education in the least restrictive environment without being restrained or excluded, to be able to move about the country and the world freely, to be seen as people

first, who are capable of contributing to and leading in our society. Now, fortunately, we have evolved from the age when our children with disabilities were fully excluded from school and other parts of our society. But many of those stigmas and stereotypes remain part of the fabric of our society. And although many of our students with disabilities are able to attend school, we still often find them segregated, whether they're self-segregating as Senator Murphy shared that story, where a student is removing himself from the class because he is not receiving the supports that we need, and he is feeling humiliated and isolated. Or whether they're relegated to some bungalow in the back of the campus somewhere. And the pandemic has just exacerbated these challenges and stress that are associated with physical and emotional care. [In this time] we must lean in even more deeply to the provisions provided under the Civil Rights Act, IDEA, ADA, Title II, Title VI, Title IX, and discrimination laws so our students can get what they need, even in a pandemic, and especially in a pandemic<sup>1</sup>.

### **Civil Rights Protections and Educational Promise Under Federal Law**

Our nation's civil rights and education laws work in concert to support individuals with disabilities to have equitable access to and benefit from not only their education, but to all aspects of society. I will provide a basic overview of each law including the Civil Rights Act, the IDEA, Section 504, the Americans with Disabilities Act and the Elementary and Secondary Education Act (ESEA) currently known as the Every Student Succeeds Act.

**The Civil Rights Act of 1964** enacted July 2, 1964 is a landmark civil rights and labor law that outlaws discrimination based on race, color, religion, sex, national origin, and later sexual orientation and gender identity<sup>2</sup>. It prohibits unequal application of voter registration requirements, racial segregation in schools and public accommodations, and employment discrimination. Many agree that the act remains one of the most significant legislative achievements in American history.

**The IDEA** enacted in 1975 is a civil rights and access law which governs how states, U.S. Territories (herein collectively referred to as "states") and public agencies provide early intervention, special education and related services to eligible infants, toddlers, children, and youth with disabilities. IDEA ensures states do the following:

1. Conduct Child Find to ensure that all children with disabilities from birth through age 21 and are in need of special education and related services are identified, located, and evaluated. This includes children who are homeless or are wards of the state, children attending private schools, as well as migrant children.

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<sup>1</sup> COPAA 2021 Virtual Summit Keynote Address at [www.copaa.org](http://www.copaa.org)

<sup>2</sup> Reference at: [https://en.wikipedia.org/wiki/Civil\\_Rights\\_Act\\_of\\_1964#cite\\_note-4](https://en.wikipedia.org/wiki/Civil_Rights_Act_of_1964#cite_note-4)

2. Provide a free appropriate public education (FAPE) to eligible children with disabilities ages 3-21 under *IDEA* Part B and early intervention services to infants and toddlers with disabilities birth through thirty-six months and their families under *IDEA*, Part C.
3. Ensure parents understand the civil rights of their children with disabilities under the law.

Each state is required to establish regulations aligned with the federal law to help schools determine whether a child is eligible for special education under one or more of the *IDEA*'s 13 disability categories which include: autism; deaf-blindness; deafness; emotional disturbance; hearing impairment; intellectual disability; multiple disabilities; orthopedic impairment; other health impairment; specific learning disability; speech or language impairment; traumatic brain injury; or visual impairment.

Once a child is found eligible, *IDEA* requires the child's parent, or legal guardian to be an integral part of the team responsible to develop the child's Individualized Family Service Plan (for children ages 0 through 2) and the Individualized Education Program (IEP) (for children ages 3-21); herein referred to as the IEP. Parents<sup>3</sup> play a vital role as they know their child best and can help the team decide the specially designed instruction, supplementary aids, interventions, related services, accommodations and other supports a child needs to succeed. Since the law's inception, parents and schools have engaged in a process to develop a child's IEP that in the best of circumstances assures the child receives the services required but in the worst of circumstances can result in a legal battle over the appropriateness of the child's IEP.

Importantly, in the unanimous 2017 *Endrew F.* decision Chief Justice Roberts noted, *IDEA* requires IEPs "will be informed not only by the expertise of school officials, but also by "the input of the child's parents and guardians." The IEP is reviewed annually by the IEP team and provides the roadmap for schools to provide individualized supports and services and for families to be assured a plan unique to their child is in place. "School authorities should offer a "cogent and responsive explanation for their decisions." The *Endrew F.* decision also highlighted important aspirations to promote equity, stating that each child with a disability needs to have "appropriately ambitious goals, a chance to meet challenging learning objectives...an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Also, "IEP goals must be aligned with grade level content standards for all children with disabilities, and...for most children, a FAPE will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade."<sup>4</sup>

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<sup>3</sup> Parents includes natural, adoptive, or foster care parents, legal guardians, surrogate parents. 20 U.S.C. 1401 (23).

<sup>4</sup> *Endrew F. v. Douglas County School District RE-1*, 580 U.S. \_\_\_\_ (2017) at: <https://www.justice.gov/crt/file/887601/download>

As is clear from its title, the IDEA is a person-centered law, in which the educational program for each student is individualized for that student's needs. The law explicitly rejects a one-size-fits-all approach to the education of students with disabilities.

**Section 504** is a civil rights law under the Rehabilitation Act of 1973 that prohibits discrimination against individuals with disabilities. Section 504 ensures that the child with a disability has equal access to an education. While a child not eligible under the IDEA may receive accommodations and modifications to support their access to an education through Section 504, all students eligible under the IDEA enjoy the anti-discrimination protections of Section 504. The U.S. Department of Education's Office for Civil Rights is responsible to ensure there is no discrimination.

**The ADA** passed in 1992 and amended in 2008 prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations (including in higher education), commercial facilities, and transportation. Both ADA and Section 504 provide that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities provided by the school district<sup>5</sup>. For purposes of students in elementary and secondary education in government-funded schools, the protections of the ADA and 504 are identical.

**The Elementary and Secondary Education Act (ESEA)** currently known as the Every Student Succeeds Act was passed in 1965 and is our nation's most important civil rights law for promoting educational achievement and protecting the rights and interests of students disadvantaged by discrimination, poverty, disability, ethnicity/race, and other conditions that may limit their educational opportunity. Students with disabilities have benefited greatly from the ESEA's focus on student outcomes which since 2001 has included students with disabilities as one of the four student subgroups included in state assessment, reporting and accountability systems. As a result of the alignment between ESEA and the IDEA, more students with disabilities have been afforded the opportunity to learn and master grade level academic content, have been meaningfully included in statewide assessment systems and to have achieved key academic outcomes including graduating from high school with a regular diploma.

### **Education Funding**

When IDEA became law in 1975, Congress promised to provide 40 percent of the annual per pupil expenditure (APPE) to assist districts with the cost of providing a FAPE to eligible students. Outside of a doubling of funds under the American Recovery and Reinvestment Act in 2009 for one-time use, annual federal appropriations have never exceeded 18 percent [in 2005] yet the number of students served and the national average per pupil expenditure have continued to rise. Currently, Congress funds IDEA at about 13 percent of the APPE. For Fiscal Year (FY)

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<sup>5</sup> 28 CFR Sec. 35.130, 34 CFR Sec. 104.4

2021 Congress has provided a total of \$16.7 billion for IDEA, including an additional \$2.5 billion provided through the American Rescue Plan. This level of funding however still requires states and districts to make up for the \$21 billion gap in federal funding for this school year alone. The ongoing decline of federal contribution to the costs of educating students with disabilities coupled with the pandemic, has illuminated what the unfortunate funding gap means – that students with disabilities are in greater jeopardy of losing access to the instruction, services, interventions and supports they need.

Title I of the ESEA has also been critically underfunded since its passage in 1965. These funds are relied upon by public schools that educate children in lower income neighborhoods. Title I provides resources key to districts and schools in meeting the requirements and purpose of ESEA which is to “provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”<sup>6</sup> In FY 2019, Title I was underfunded by \$29 billion<sup>7</sup>.

### **Children with Disabilities**

Students with a wide range of disabilities, including intellectual disabilities, are making great educational strides including meaningful academic and social gains alongside their peers. This is the purpose of the IDEA – to provide for the education of all children with disabilities and the promise is that all students with disabilities, no matter their challenge, can graduate ready to enter post-secondary education and/or gain career skills that lead to an independent and meaningful life.

A few data points can ground us in understanding who children with disabilities are:

- Students with disabilities served under IDEA represent 14% of the public-school enrollment<sup>8</sup> and another 2.7% are served under Section 504.
- The number of IDEA-eligible children has grown by 462,000 students between 2015-2019<sup>9</sup> an increase of almost 7 percent while total school enrollment has barely increased<sup>10</sup>.
- 74% of 4<sup>th</sup> grade students with disabilities scored *below basic* in reading on the 2019 National Assessment of Educational Progress (NAEP), compared with 29% of students without disabilities<sup>11</sup>.

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<sup>6</sup> Sec. 1001. 20 U.S.C. 6301

<sup>7</sup> National Education Association Federal Funding Guide, 2020 at: <https://www.nea.org/resource-library/esea-title-i-part-grants-local-educational-agencies-leas>

<sup>8</sup> *42nd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, 2020, Office of Special Education and Rehabilitative Services, U.S. Department of Education

<sup>9</sup> Ibid.

<sup>10</sup> Projections of Education Statistics to 2028, National Center for Education Statistics, U.S. Department of Education at: <https://nces.ed.gov/programs/PES/section-1.asp#2>

<sup>11</sup> Nation’s Report Card, 2019 National Assessment of Educational Progress at: <https://www.nationsreportcard.gov/>

- On average, just 11% of high school students with disabilities score proficient on state assessments in reading and only 7% in math<sup>12</sup>.
- 29% of students with disabilities were subjected to some form of disciplinary removal<sup>13</sup>.
- Black students with disabilities represent 18% of students with disabilities yet account for 35% of students with disabilities suspended or expelled from school<sup>14</sup>.
- 78% of students subjected to seclusion are students with disabilities<sup>15</sup>.
- Black students comprise 15% of the student population yet they represent 22% of students subjected to seclusion and 34% of students subjected to mechanical restraint<sup>16</sup>.
- 67.1% of students with disabilities graduate from high school with a regular diploma as compared to 85% of students without disabilities<sup>17</sup>.

With these important data in mind, my testimony today intends to accomplish two priorities:

1. Underscore the disparate impact of COVID-19 on students with disabilities and outline the key role the U.S. Congress and the U.S. Department of Education (Department) play in ensuring requirements of federal education and civil rights laws are upheld; and,
2. Make recommendations to ensure equity for students with disabilities during the pandemic and beyond.

**1. Underscore the disparate impact of COVID-19 on students with disabilities and outline the key role the U.S. Congress and U.S. Department of Education play in ensuring requirements of federal education and civil rights laws are upheld.**

The COVID-19 outbreak has placed a tremendous and unprecedented strain on states, districts, educators, families, and students. Despite the challenges facing us all, we know students with disabilities are best served when diverse stakeholders come together and share resources, innovative ideas, and promising practices. For many students and their school teams this was the case. Since the pandemic hit, COPAA has partnered with the Council of Chief State School Officers, state directors of special education, the Consortium for Citizens with Disabilities (CCD), civil rights advocates, and other partners to develop resources that support and encourage schools and families to work together to find solutions that allow children to receive equitable access to an education and the services that help without weakening or undoing civil and educational rights.

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<sup>12</sup> *42nd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, 2020, Office of Special Education and Rehabilitative Services, U.S. Department of Education

<sup>13</sup> *OSEP Fast Facts: Black or African American Children with Disabilities*, 2019, U.S. Department of Education, EDFacts Data Warehouse (EDW): “IDEA Part B Child Count and Educational Environments Collection,” 2018-19. <http://go.usa.gov/xdp4T>

<sup>14</sup> *42nd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, 2020, Office of Special Education and Rehabilitative Services, U.S. Department of Education

<sup>15</sup> Civil Rights Data Collection, 2018, U.S. Department of Education at: [https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

<sup>16</sup> Ibid.

<sup>17</sup> Common Core of Data, National Center for Education Statistics at: [https://nces.ed.gov/ccd/tables/ACGR\\_RE\\_and\\_characteristics\\_2016-17.asp](https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2016-17.asp)

In spring 2020, you and other Congressional champions for children with disabilities helped ensure that Congress did not provide states or districts the ability to waive the requirements and protections of the IDEA; fully protecting the educational rights and opportunities of all children with disabilities ages 0-21. Thank you. This action combined with guidance from the Department - reminding states and districts of their obligation to provide eligible students with FAPE as embodied in the individualized education program (IEP) - helped steer several misguided districts and a handful of states back into compliance. We had received reports of districts and states withholding educational services altogether or hand-picking which students would be served. Unfortunately, even with the current guidance, we continue to hear of families who when meeting about their child's IEP are asked to waive/sign away their rights to a free appropriate public education and any future rights to compensatory education services. These types of waivers are against public policy and subvert the intention of civil rights laws when students without disabilities are not being asked to sign similar waivers to access hybrid instruction due to COVID-19 closures.

It is important to note, however, that COPAA did not agree with guidance issued by the Office of Special Education on March 12, 2020 stating that school districts do not have to provide FAPE to students with disabilities if they are not providing an education to any student in the district<sup>18</sup>. This position is contrary to years of guidance from the Department and directly violates IDEA including guidance issued by the Department during the Ebola outbreak and in subsequent communications to charter schools which states:

If a child with a disability is absent from school for an extended period of time because ... the school has been dismissed at the request of public health authorities, then school administration officials and the child's IEP Team (or appropriate personnel under Section 504), in collaboration with public health authorities, must determine whether the child is available for instruction and could benefit from homebound services such as instructional telephone calls, homework packets, Internet-based lessons, and other distance-based learning approaches, to the extent available<sup>19</sup>.

COPAA recommends the Biden Administration correct this violation of the IDEA by issuing clarifying guidance to ensure students with disabilities do not experience any lag in essential services and supports even when schools may be completely closed due to COVID-19.

### **FAPE During COVID-19**

As the year has unfolded with some states and districts reopening schools, some moving to hybrid learning or others remaining completely virtual, the status of students with disabilities has been in great flux. Even when schools reopened, some parents have opted to keep their child(ren)

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<sup>18</sup><https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

<sup>19</sup> See: Office of Special Education and Rehabilitative Services, Preparing for Infectious Disease: Ebola Department of Education Questions and Answers on Providing Services to Children with Disabilities During Extended Student Absence or School Dismissal, December 2014

home due to concern about the virus. Multiple factors impact this decision including the student's age, nature of their disability, physical or mental health status, and other risk factors. Many students with disabilities have complex medical issues that make them especially vulnerable to the potential impact of COVID-19. Students of color were far more unlikely to attend in-person school than were white students.

If a parent chooses not to send their student with a disability back to school, the IEP team is obligated to offer a FAPE and appropriate accommodations through distance, hybrid, or home-based learning to the maximum extent possible. While the Department has clarified that FAPE applies to all children with disabilities when an education is being offered to all students during COVID-19, we do not believe that sufficient guidance has been provided on this issue of opting out as was done during the H1N1 virus. COPAA issued a statement<sup>20</sup> in July 2020 and formally requested the Department to provide clarifying guidance as was done during that health crisis. We have shared our request also with the Biden Administration and are hopeful action will be taken on this point.

No student with a disability should be deprived of all special education and related services because the student's family and/or physician does not think it safe to return the student to the school building. Parents and guardians who voluntarily choose for students to temporarily engage in learning from home for any reason need to be supported. In addition to the requirements of the IDEA, the ADA also requires schools to provide reasonable accommodations which may include safe in-person supports as well as equal access to virtual or remote education. The Department should help states develop temporary support options for students who continue remote learning from home, including but not limited to offering families robust educational support and special education which ensures the student is offered FAPE.<sup>21</sup> As stated in the CCD Principles in Reopening Schools,

...every student and educator who chooses to return to in-person learning must have adequate access to personal protective equipment and other COVID-19 transmission mitigation measures and have the support and training necessary to feel safe in their school. Regardless of where educators and students are teaching and learning—in person, virtually, or in a hybrid setting—schools must ensure students with disabilities have the same instructional and other opportunities as students without disabilities, and to be provided with disability-related accommodations and services if necessary to ensure equitable access in the same range of instructional settings offered to nondisabled students. Districts must continue to provide high-quality educational opportunities and

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<sup>20</sup> *Recommendations on the Provision of FAPE When A Parent Opts to Keep Their Child Home From School*, at: [https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2020\\_docs/2ndrecommendations\\_on\\_the\\_pr.pdf](https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2020_docs/2ndrecommendations_on_the_pr.pdf)

<sup>21</sup> A number of parents of students with disabilities may want to continue with remote learning, either because of the continued presence of the disease or because the student did better without the distractions of school. Guidance will be needed to address these ongoing concerns.

access in line with federal laws and must meaningfully collaborate with families to provide students the best opportunities for success<sup>22</sup>.

Students with disabilities are disproportionately impacted by a lack of access to appropriate technology; limited connectivity to the Internet, no home devices or too few devices for the family. The reality is that many students with disabilities require specialized assistive technology that allows them to ‘plug in’ and access anything virtual or electronic such as the school website, curriculum and other learning materials, online teacher notes, virtual workgroups and more. Because most students with disabilities use their assistive technology while they are in class, when the school doors closed, they precipitously lost access to the very devices they need to fully participate with their peers in virtual or hybrid learning. So, for these students, their learning loss began immediately on day one. Schools and districts have worked to help these students, but we know that for some, help has not come or it has come extremely late this year.

Teachers and school systems trained in universal design for learning (UDL) -which ensures flexible design of materials and increases accessibility to all learners including students with disabilities, English Learners, students not yet reading at grade level or others – have had greater success in connecting with and engaging their students. We urge states to use their education stimulus funding to equip teachers in evidence-based teaching practices such as UDL, purchase updated assistive technology devices and accessible materials for students with disabilities and update as well as upgrade websites -so they are fully accessible- so that every student can learn regardless of their educational environment.

### **Statewide Assessment During COVID-19**

As noted above, the ESEA is one of our nation’s most important civil rights law because it specifically promotes educational achievement and protects the rights and interests of students disadvantaged by discrimination, poverty, disability, ethnicity/race, and other conditions that may limit their educational opportunity. The important intersectionality of the IDEA with the ESEA is critical to ensuring the academic success of students with disabilities.

While the IDEA has required that states assess all students with disabilities since 1997, it was not until the reauthorization of the ESEA in 2002 (known then as the No Child Left Behind Act) and that law’s new requirements that states and districts must: assess all students in grades 3-8 and once in high school in reading, mathematics; assess specific student subgroups; and, be held accountable (now according to state-designed systems), that students with disabilities were also included. With this new requirement to assess 95 percent of students under ESEA, including students with disabilities as a specific subgroup, came the availability of academic data on the performance of students with disabilities in schools, districts, and states. This change in federal law also ended the discriminatory and common practice where schools invited children with

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<sup>22</sup> *Statement of Principles for Elementary and Secondary Education of Students with Disabilities During the COVID-19 Pandemic*, 2021, Consortium for Citizens with Disabilities Education Task Force at: <http://www.c-c-d.org/fichiers/CCD-Ed-TF-Revised-reopening-principles-March-2020.pdf>

disabilities to stay home on test day or administered a below grade level test to students rather than ensuring they were included in either a grade level assessment designed against state-set standards or an alternate assessment on alternate grade level standards [for students with the most significant cognitive disabilities]. The historic and practical value of this data to individual families, to advocates and to policy makers cannot be understated and is well documented. We have come a long way since 1997. States have developed valid and reliable reading, math, and science assessments accessible to all students, but as with every hard-won right, sometimes we must be reminded from whence we came. Therefore, we want everyone to know how important it is to continue to require statewide annual assessments and to ensure all students are included. To underscore this point, students with disabilities are general education students first and therefore should be afforded the same educational opportunities.

This February, together, with 40 civil rights, social justice, disability rights, immigration policy, business and education organizations COPAA thanked the Department for the policy decision to uphold core tenets of ESEA and require states to conduct statewide annual assessments and stated, “Data on multiple measures, including school climate, student access to resources and opportunities, and student learning outcomes, are essential tools to address systemic inequities in our education system, as well as to gauge the quality of instruction and support offered under COVID-19 restrictions. with some flexibility.”<sup>23</sup> COPAA also told the Department directly,

[Due to COVID-19]...To remediate for all students and to compensate students with disabilities, we need to know the details of the educational loss. We need to know those areas in which students have failed to progress or have regressed and those areas in which students have held their own. This can only be done through objective, valid testing. As the Department considers requests for waivers of testing by states, it needs to ensure that legitimate methods of assessing present levels of performance of all students are put in place.

For students with disabilities, decisions about the nature and extent of compensatory education need to be made by school teams that include parents, as full members, as a part of updating Individualized Education Plans (IEPs). End of year assessments - in reading and math - inform that conversation. While the pandemic is and continues to pose challenges for schools and families, we also know that states and districts must maintain high standards for education including for children with disabilities. Any action on waivers by the Department must not lower standards and expectations for students with disabilities. Parents of students with disabilities need to know how their children are performing. Having key data on both individual children and subgroups of children is

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<sup>23</sup> Response From Civil Rights, Social Justice, Disability Rights, Immigration Policy, Business, and Education Organizations to the U.S. Department of Education’s Updated Guidance on Key ESSA Provisions in 2020–21, February 2021 at: <https://edtrust.org/press-release/response-from-civil-rights-social-justice-disability-rights-immigration-policy-and-education-organizations-to-the-u-s-department-of-educations-updated-guidance-on-key-essa-provisions-in/>

critical to helping schools target resources and interventions and to facilitate remedial learning<sup>24</sup>.

Therefore, we encourage the Committee to support the Department as it carefully approves limited waivers of key ESEA requirements for statewide assessment. The Department must ensure states and districts approach data gathering in comprehensive and meaningful ways and do not shirk their responsibilities and obligations under ESEA. To reiterate what we told the Department last month, “Billions of federal dollars are being provided to districts to mitigate the impact of COVID-19, including for instructional loss for all students. It is incumbent upon states and districts to assess where students are and support schools to develop plans to help children with disabilities, through their IEPs, to make up any losses experienced this year.”<sup>25</sup>

### **Exclusionary Discipline and Disproportionality During COVID-19**

Schools must be safe havens that facilitate learning for all students. Bullying, discrimination, harassment, racial injustice, aggression, restraint, seclusion, violence, and abuse all defeat education. The data already shared regarding the disproportionate and harsh impact of exclusionary discipline practices used against students with disabilities is alarming; the rash of school shootings is frightening, and schools must take appropriate steps to reduce harsh discipline and prevent further violence including providing a trauma-informed supportive approach to assist parents and students.

The realities pre-COVID-19 regarding the use of harsh discipline against students with disabilities only make the post pandemic world even more bleak. COPAA is concerned because school districts continue to allow the use of punitive discipline approaches that ignore the complex issues that arise when children feel threatened, exhibit challenging coping behaviors, (reactivity, aggression, or social withdrawal) and/or develop clinical disorders. We know of at least one school that inquired about technical assistance in the proper use of protective personal equipment for staff while restraining a student with a disability. There is a sad irony to this given the stress that all are under. COPAA believes that schools must take a whole child and whole school community approach and provide coordination of care as well as restorative justice practices to ensure schools are safe for students and for personnel.

COPAA calls upon Congress to support a bevy of school climate bills that seek to eliminate corporal punishment, out-of-school suspension, expulsion, seclusion, prone, supine, chemical and mechanical restraint, police in schools, and school-based arrests for anything other than a serious felony. This improved school climate can be achieved with staff trained in techniques that are student-centered, trauma-informed, promote social and emotional well-being, and foster student participation in learning. We also call upon schools, districts, and states to examine discipline policies, eliminate zero tolerance codes of conduct, end contracts with law enforcement, and begin an immediate transition away from reliance on school resource officers

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<sup>24</sup> COPAA Statement on the U.S. Department of Education Statewide Assessment Flexibility Policy, February 2021.

<sup>25</sup> Ibid.

and other contract police whom research shows do more harm than good.<sup>26</sup> Finally, states and districts need expanded federal funding to eliminate the well documented shortage of well-trained and fully certified special educators as well as specialized personnel including school psychologists, school counselors, nurses, social workers, speech-language/occupational therapists and others integral to the success of students<sup>27</sup>.

In March 2019, in *COPAA v. DeVos*<sup>28</sup>, the U.S. District Court for the District of Columbia ruled the Department had engaged in an ‘illegal delay’ of the 2016 Equity in IDEA regulations. Those regulations, which were supposed to go into effect on July 1, 2018, implement the IDEA requirements relating to significant racial disproportionality. The federal court’s ruling required the 2016 final regulations to immediately go into effect. Data released this week continues to indicate huge racial disparities in rates of out-of-school suspension among secondary students with disabilities. Perhaps most alarming, Black secondary students in hundreds of large districts are referred to law enforcement at rates that far surpass other students with disabilities from other racial groups and at levels that should raise concerns<sup>29</sup>.

COPAA has asked the Biden Administration to ensure states are moving forward to implement the regulations and that both monitoring and data collection occur as required under the law. We encourage Congress to assure that states will be required to help their districts who have historically discriminated against children, especially Black, Hispanic, Native American, Asian and Pacific Islander, and other students who data shows need social and emotional supports and therapeutic intervention services rather than ordering their suspension and expulsion from school.

## **2. Make recommendations to ensure equity for students with disabilities during the pandemic and beyond.**

COPAA provides the following recommendations to Congress as it initiates priorities in response to the pandemic and in support of America’s students.

- **Fully fund the IDEA and Title I of the ESEA.** As documented, the IDEA and the ESEA are both significantly underfunded. We urge Congress to support a Fiscal Year 2022 budget recommendation that will put IDEA and Title I each on a glide path to full

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<sup>26</sup> Criminology and Public Policy: *Effects of school resource officers on school crime and responses to school crime*, 2020, U.S. Department of Justice at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12512>

<sup>27</sup> UCLA Civil Rights Project, *National Analysis Details Troubling Levels of Pre-existing Education Inequities for Students with Disabilities*, 2021, at: <https://www.civilrightsproject.ucla.edu/news/press-releases/2021-press-releases/national-analysis-details-troubling-levels-of-pre-existing-education-inequities-for-students-with-disabilities>

<sup>28</sup> *COPAA v. DeVos* Civil Action No. 18-cv-1636 (TSC) at: [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2018cv1636-31](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv1636-31)

<sup>29</sup> UCLA Civil Rights Project, *National Analysis Details Troubling Levels of Pre-existing Education Inequities for Students with Disabilities*, 2021, at: <https://www.civilrightsproject.ucla.edu/news/press-releases/2021-press-releases/national-analysis-details-troubling-levels-of-pre-existing-education-inequities-for-students-with-disabilities>

funding. The short-term nature of the money in the ARP does not permit hiring needed staff or instituting strong and sustainable education programs.

- **Expand federal funding to eliminate the shortages of counselors, social workers, nurses, school psychologists and well-trained fully certified special education teachers.** Additionally, Congress must provide incentives for state funding to cover students experiencing trauma and for 504-only students.
- **Provide oversight to assure COVID-19 stimulus K-12 funding includes and will also address the learning loss of students with disabilities.** While roughly \$3 billion for the IDEA was included to support special education in the American Rescue Plan, states and districts will need to utilize other K-12 funding to assure students with disabilities are afforded access to the same programs and opportunities as all other students, in addition to receiving special education services according to their IEP. We cannot permit the special education funds included in the ARP to become a ceiling, rather than a floor.
- **Support the Department to help states administer summative statewide assessments.** To understand the effects of the COVID-19 crisis and ensure this pandemic does not undermine the futures of students across the country, we must collect accurate, objective, and comparable data that speaks to the quality of education in this moment, including data from statewide assessments. Without this, state and district leaders will not be equipped with information about the disparate impact of unfinished learning; nor will they be able to equitably allocate resources, personnel, and services that accelerate learning.
- **End the use of seclusion and restraint through passage of the Keeping All Students Safe Act.** As I have noted, the abuse and trauma against students in schools is horrific and a federal law is needed to end it.
- **End exclusionary discipline and eliminate police in schools by passing a suite of school climate bills.** COPAA with civil rights, disability and education partners are collaborating on a suite of bills that comprehensively would: end corporal punishment in schools, prevent and reduce suspensions and expulsions including pushing girls out of school, stop the flow of federal dollars to states and districts that support contracts with school-based law enforcement, promote restorative justice practices and more.
- **Assure the Department is equipped to enforce the Equity in IDEA Regulations.** The regulations went into effect in 2019 and state implementation assures students of color are not disproportionately impacted by decisions made by schools in the identification of children as eligible for special education, in placement decisions regarding where children receive their classroom instruction and in exclusionary discipline such as suspension, expulsion, referrals to law enforcement, seclusion and restraint.

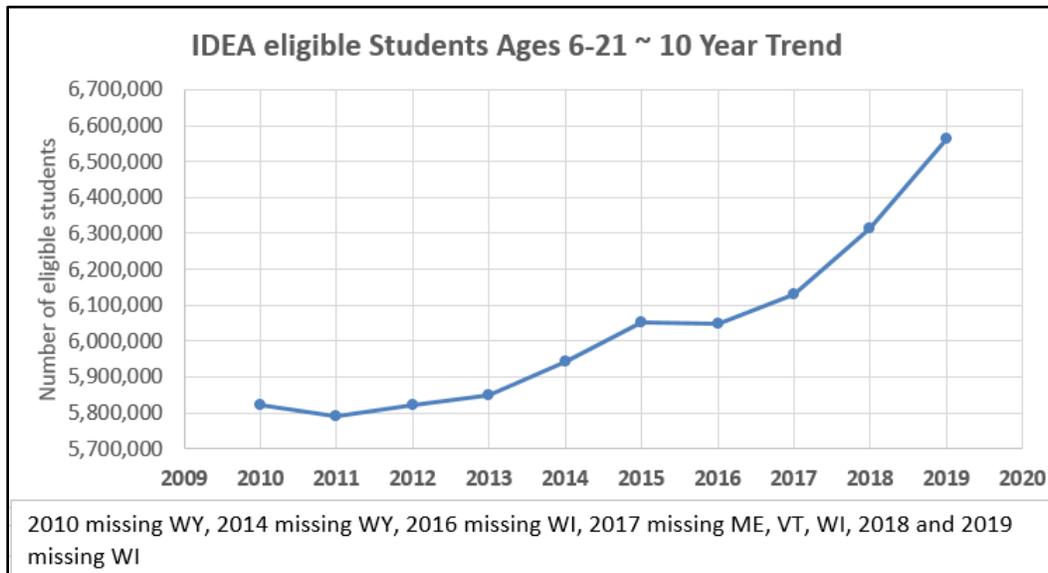
COPAA appreciates the opportunity to raise these issues and discuss a path forward. The pandemic has laid bare the inequities for many students in this country, students with disabilities and English Learners, students who live in poverty and shelters, students in foster care, Black and Brown students, rural students, Native America students for example. COPAA has and will

continue to work with partners in the disability, civil rights, education, and advocacy communities to support families, states, and schools as everyone works together to tackle the many challenges and embrace the unique opportunities resulting from the pandemic. We must ensure that all students impacted by COVID-19 because of disability, race, ethnicity, foster care status, homelessness and poverty are given resources to recover learning losses and ensure equity for all.

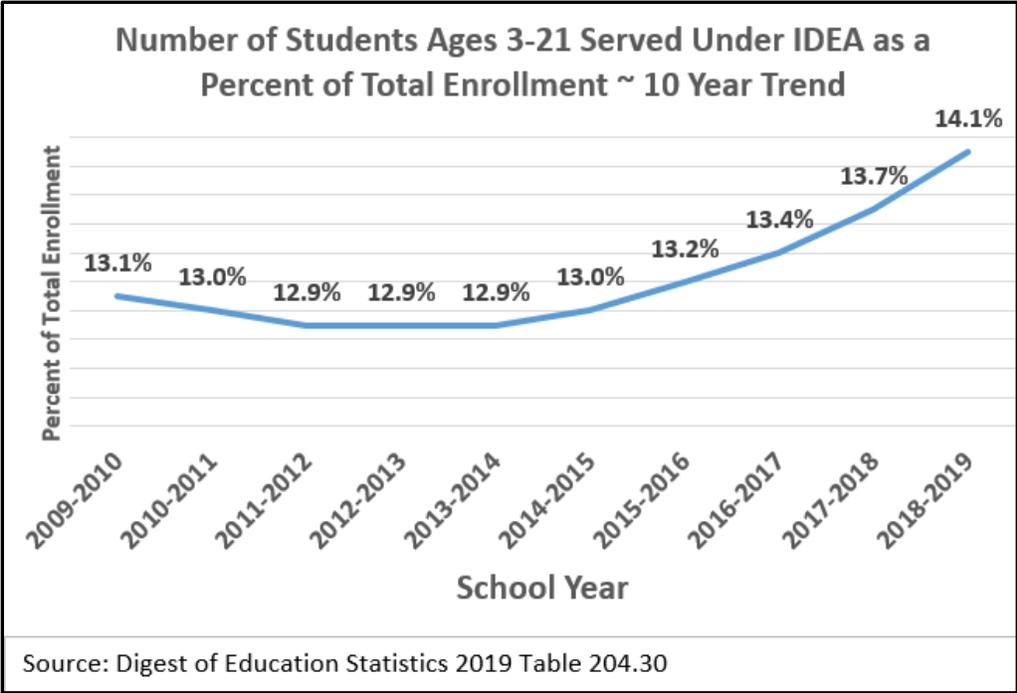
I appreciate the opportunity to speak to you today and look forward to your questions.

Addendum:

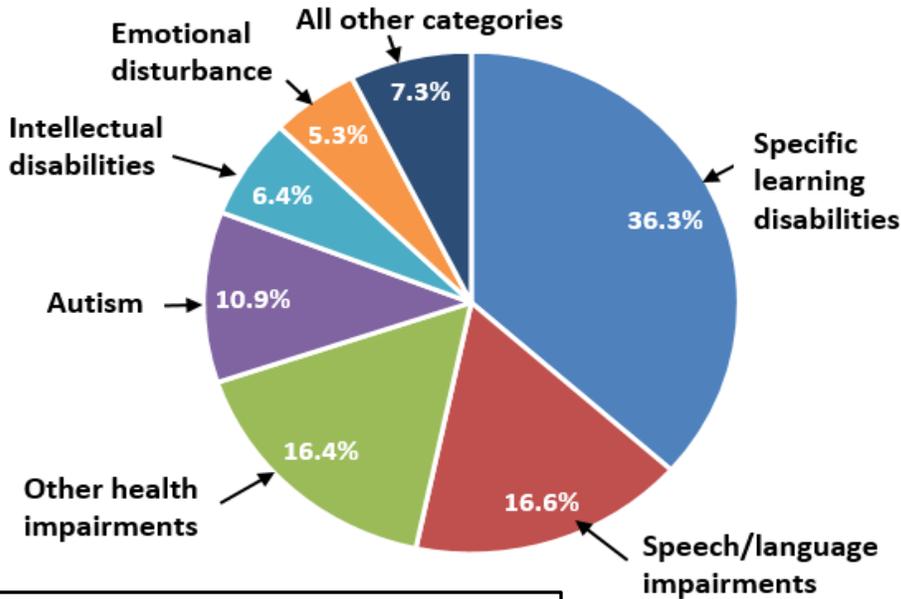
Data on students with disabilities served under the IDEA comes from the Annual Report To Congress required under Section 618 of the Act. These are 2019 data, released February 2021. Available at [www2.ed.gov/programs/osepidea/618-data/state-level-data-files](http://www2.ed.gov/programs/osepidea/618-data/state-level-data-files)



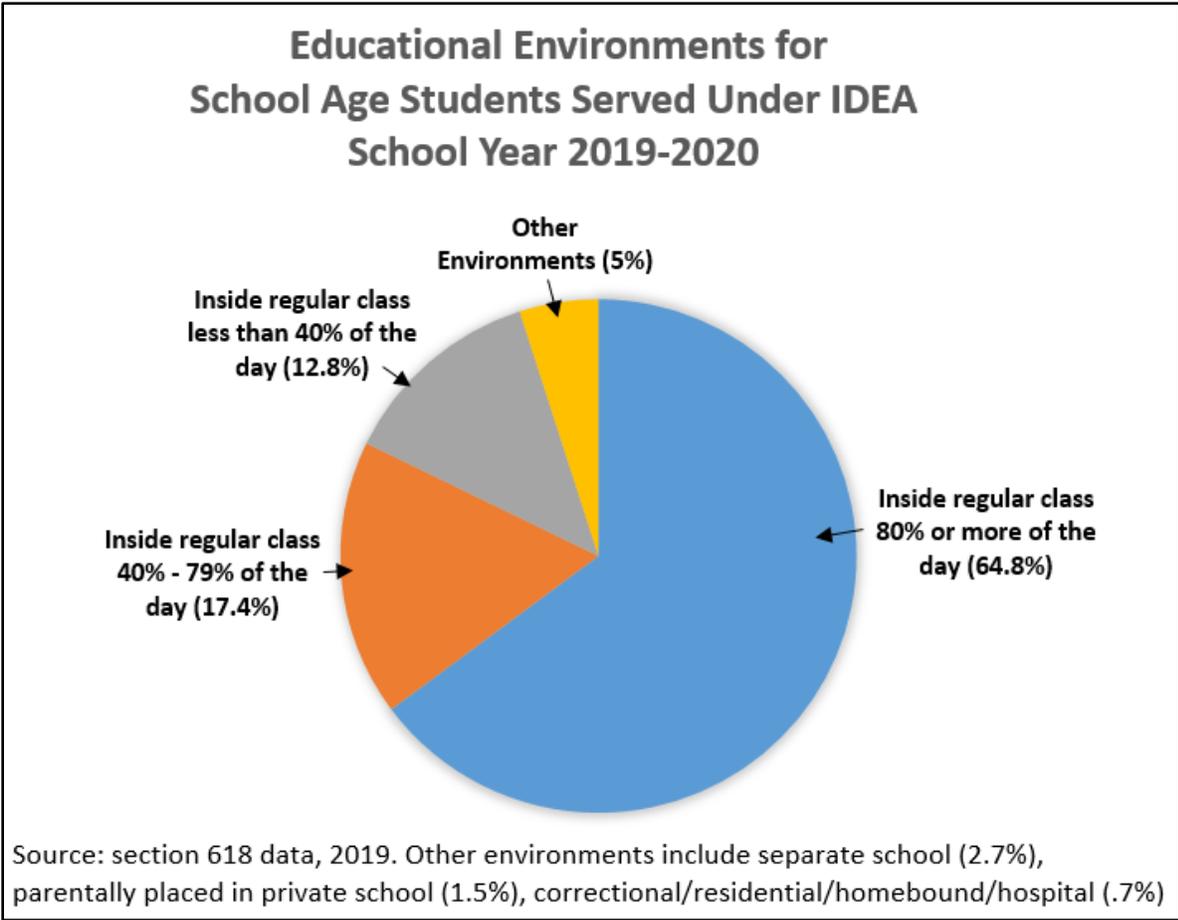
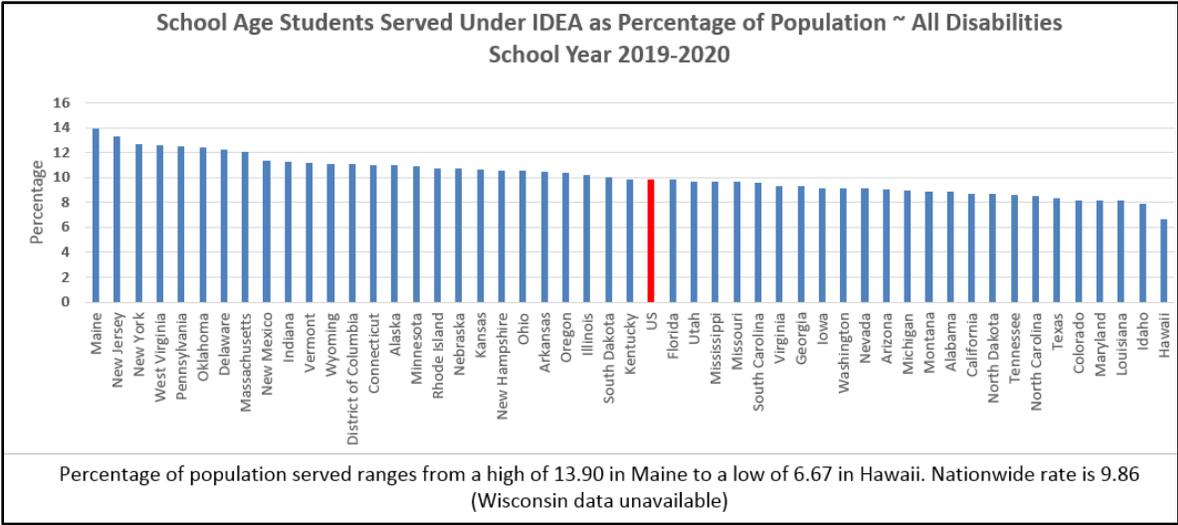
<b>Number of Students Served Under IDEA Part B</b>				
<b>YEAR</b>	<b>AGES 3-5</b>	<b>AGES 6-21</b>	<b>TOTAL</b>	<b>% CHG</b>
2015	763,685	6,050,725	6,816,425	1.7%
2016	759,801	6,048,882	6,808,683	-0.1%
2017	773,595	6,130,637	6,904,232	1.4%
2018	815,010	6,315,228	7,130,238	3.3%
2019	716,382	6,561,998	7,278,380	2.1%



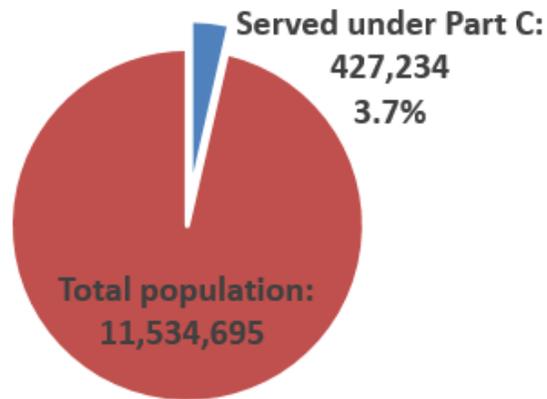
### 6.56 M Students with Disabilities Ages 6-21 School Year 2019-2020



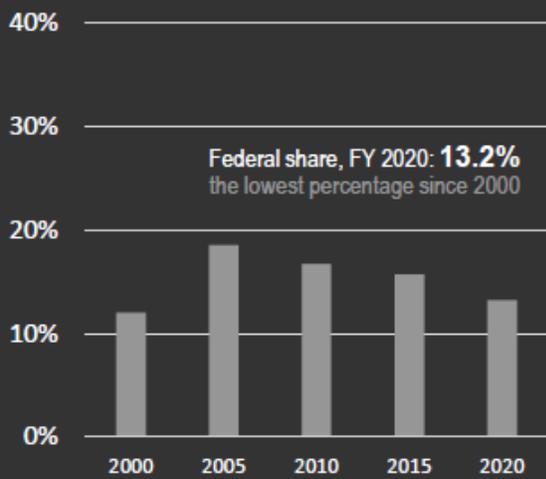
Other categories are: Deaf-blindness, Visual impairments, Traumatic brain injury, Orthopedic impairments, Hearing impairments, Multiple disabilities, Developmental delay (ages 6-9 only)



### IDEA Part C: Infants and Toddlers ages Birth through 2 :: 2019



Federal share promised: **40%**



Federal underfunding shifts **\$24 billion**  
in costs to states and districts in 2020

## Discipline of Students with Disabilities by Race/Ethnicity :: Ages 3-21

