



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OSEP Policy Letter 22-02

March 2, 2022

Denise Marshall
Chief Executive Officer
The Council of Parent Attorneys and
Advocates, Inc.
Post Office Box 6767
Towson, Maryland 21285
Sent via email: denise@copaa.org

Dear Ms. Marshall:

Thank you for your May 13, 2021, letter to Secretary Cardona regarding the significant disproportionality requirements in the Individuals with Disabilities Education Act (IDEA). In your letter, you raised a series of issues regarding the implementation of the December 19, 2016, Equity in IDEA regulation. Your questions were forwarded to the Office of Special Education and Rehabilitative Services (OSERS) for a response. Subsequently, you met with David Cantrell, Gregg Corr, Rebecca Walawender, and Kabrillen Jones of my staff on June 2, 2021. Each of the issues you raised in your letter and in the follow-up conversation is addressed below.

In your letter, you inquired about the Significant Disproportionality Reporting Form that is included in the IDEA Part B State grant application package. You note that the form was created as an electronic submission form and is not posted for public review and comment with each State's application consistent with the General Education Provisions Act (GEPA). You have requested that the Department compile all States' information submitted via the Significant Disproportionality Reporting Form and post the information on the IDEA website, as well as instruct States to post the Significant Disproportionality Reporting Form on the State educational agency's (SEA's) website.

The Significant Disproportionality Reporting Form was initially submitted with each State's Federal fiscal year (FFY) 2020 IDEA Part B application, and subsequently updated as necessary. The State application is a mechanism for collecting the information required at 34 C.F.R. § 300.647(b)(7) and in section 618(a)(3) of IDEA, but submission of the Significant Disproportionality Reporting Form is not required as a condition of eligibility for a State's Part B grant award under section 612 of IDEA. Therefore, States are not required to post the form for public comment under the public participation requirements at 34 C.F.R. § 300.165 or in section 441(b)(7) of GEPA (20 U.S.C. 1232d(b)(7)). However, as the Department previously stated in the Analysis of Comments and Changes to the final Equity in IDEA regulation, publicly reporting this data provides increased transparency that allows States, local educational agencies (LEAs), and stakeholders to monitor significant disproportionality and reinforces the review and revision of risk ratio thresholds, cell sizes, and n-sizes as an iterative public process within each State. 81 Fed. Reg. 92376, 92389-90 (Dec. 19, 2016). Therefore, the Office of Special Education Programs (OSEP) will take appropriate

steps for posting the data collected in the Significant Disproportionality Reporting Form on the Department's IDEA website. Consistent with prior practices used for other data submission activities, States will be notified of OSEP's plan to publish the data and will be given the opportunity to clarify and resubmit their data in the upcoming FFY 2022 IDEA Part B Grant Application, which is due May 27, 2022. OSEP approximates that this data will be posted during the fourth quarter of the 2022 calendar year.

You also requested clarification regarding the effective date when States must begin using the new standard methodology for LEA determinations of significant disproportionality as well as the Department's process and timeline to monitor implementation of the new methodology. It is the Department's expectation that States are implementing the new standard methodology, as the Department stated in the April 4, 2019 [press release](#) following the March 7, 2019 judicial decision in *COPAA v. DeVos*. OSERS also made this expectation clear during a [Section VB webinar](#) in February 2020 outlining the significant disproportionality reporting requirements.

Regarding your question about the Department's process for monitoring implementation of the new standard methodology, we will engage in several activities that are related to this work. First, as a key component of Results Driven Accountability (RDA), OSEP monitors States through its Differentiated Monitoring and Support system known as DMS. Under DMS, OSEP focuses on both compliance and improving results for children with disabilities and differentiates its approach for each State based on the State's unique strengths, progress, challenges, and needs. While the Department has not conducted on-site monitoring activities since the pandemic began, it has continued to monitor and enforce State implementation of IDEA. In October 2020, OSEP announced a change to its DMS process and began implementation of DMS 2.0 for monitoring States' general supervision systems as described in 34 C.F.R. §§ 300.149 and 303.700¹. Under DMS 2.0, all States will be monitored on their general supervision systems in five Cohorts. General supervision encompasses the State's responsibility to ensure that it and its subgrantees and contractors meet the requirements of IDEA, which includes: 1) Improving educational results and functional outcomes for all infants, toddlers, children, and youth with disabilities; and 2) Ensuring that public agencies meet the program requirements under Parts B and C of IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for infants, toddlers, children, and youth with disabilities.

While DMS monitoring focuses on the elements of general supervision, OSEP's monitoring process also addresses equity under both Part B and Part C of IDEA through examination of topics including, but not limited to significant disproportionality, disproportionate representation, discipline, child find, and evaluations. OSEP continues to partner with States toward improvement of outcomes for children with disabilities through technical assistance and, when appropriate, findings and correction of noncompliance. Technical assistance will continue to include addressing any questions or concerns raised after review of the significant disproportionality data and information that States submitted or updated with their grant applications.

In addition to the DMS process, each year OSEP reviews the LEA maintenance of effort and coordinated early intervening services (LEA MOE/CEIS) data collection, in which States identify

¹ [Sec. 300.149 SEA responsibility for general supervision - Individuals with Disabilities Education Act](#); and [Sec. 303.700 State monitoring and enforcement - Individuals with Disabilities Education Act](#)

whether each LEA was required to reserve funds for comprehensive coordinated early intervening services (CCEIS) due to being identified as having significant disproportionality under 34 C.F.R. § 300.646(d) or whether each LEA reserved funds voluntarily under 34 C.F.R. § 300.226 for CEIS. Following review of this information, OSEP follows up with States on any data discrepancies and issues letters to States regarding their monitoring responsibilities under 34 C.F.R. § 300.600. Through this review and technical assistance, OSEP has observed the quality of the LEA MOE/CEIS data collection improve over time.

OSEP provides technical assistance to States in a variety of ways, including past webinars as well as technical assistance that results from the DMS process and the review of the LEA MOE/CEIS data. The [IDEA Data Center](#) also has several resources and offers technical assistance to States regarding significant disproportionality. Additionally, in its recent return to school guidance, the Department prioritized the inclusion of equity in each guidance document to ensure that equity is consistently included in educational decisions regarding children with disabilities.

Finally, you asked about the status of the Significant Disproportionality State Survey that was announced in May 2019, as well as information regarding the technical assistance being provided to States to assist in implementation of the new standard methodology. The Significant Disproportionality State Survey was published in the Federal Register for both a 60-day and 30-day comment period. It was approved by the President's Office of Management and Budget (OMB) on March 12, 2020 and assigned Information Collection number 1820-0697. It was set to expire on March 31, 2023. The Department has reviewed the approved information collection and, as discussed below, we believe that the Significant Disproportionality State Survey is no longer necessary. As initially proposed, the survey was intended to collect information on each State's implementation of the new standard methodology and the information required under 34 C.F.R §§ 300.647(b)(7) and 300.647(d)(2). However, upon full implementation of the Equity in IDEA regulation in 2019, the Department revised its Information Collection 1820-0030 (Annual State Application Under Part B of IDEA) to collect the information required by 34 C.F.R. §§ 300.647(b)(7) and 300.647(d)(2), and pursuant to the authority established in IDEA section 618(a)(3), also collect the number of years of data each State uses in making annual determinations of significant disproportionality.

The Department then made substantive changes to proposed Information Collection 1820-0697 as a result of comments received during the 60-day comment period and because some of the information in proposed 1820-0697 was duplicative of the information collected under 1820-0030. The stated purpose of the revised Information Collection 1820-0697 published 30-day comment period was to provide States with a voluntary opportunity to submit information on the States' need for technical assistance in implementing the standard methodology for measuring significant disproportionality in States and LEAs pursuant to the 2016 regulation. Most comments received during the 30-day comment period did not support the proposed Information Collection 1820-0697. The collection was finalized and published in the Federal Register on March 12, 2020. No State has requested to complete the survey and additional distribution has not occurred.

The Department believes that the survey, as approved, is no longer necessary to assess a State's need for assistance in implementing the standard methodology for measuring significant disproportionality in States and LEAs because the Department provided extensive universal technical assistance to all States to ensure timely and accurate submission of the required information through Information Collection 1820-0030. The information collected under 1820-0030 is a one-time submission and must only be resubmitted if a State revises its standard methodology. Because the Department is prepared to continue to provide technical assistance on the Equity in

IDEA reporting requirements, both generally and as needed by specific States, the Department requested and received approval from OMB to discontinue Information Collection 1820-0697 (Significant Disproportionality State Survey) effective February 28, 2022.

We hope you find this information helpful. If you have any additional questions, please do not hesitate to contact me. Thank you for your commitment and work in supporting children with disabilities.

Sincerely,

/s/

Katherine Neas
Deputy Assistant Secretary
Delegated the authority to perform
the functions and duties of the
Assistant Secretary for the Office of
Special Education and Rehabilitative Services