

1820-0030: Annual State application under Part B of the Individuals with Disabilities Education Act as amended in 2004 for federal fiscal year 2020 Section V.B Significant Disproportionality

Comment: None.

Discussion: Section V, Maintenance of State Financial Support (MFS), has been renamed Section V.A in order to accommodate a new Section V.B on significant disproportionality.

Changes: The application was revised to rename Section V, Maintenance of State Financial Support to Section V.A.

Comment: None.

Discussion: Section V, Maintenance of State Financial Support (MFS), required States to provide in whole dollars the total amount of State financial support made available for special education and related services for children with disabilities by year for the State fiscal years (SFY) included in Section V. In addition, the instructions for Section V allowed States that met the MFS requirement on a per capita basis to also provide, in whole dollars, the amount of State financial support made available for special education and related services per child with a disability

for each SFY. However, Section V included only one chart for States to use for reporting MFS data on a total basis, and did not include a chart for reporting MFS data on a per capita basis for States that wish to do so. Therefore, for clarity, we have added an additional chart to new Section V.A for States to use for reporting MFS data on a per capita basis, if applicable. The instructions have been revised to clarify that States must report MFS data on a total and, if applicable, per capita basis in the corresponding charts.

Changes: The Office of Special Education Programs (OSEP) added an additional chart in new Section V.A for States to use for reporting optional per capita MFS data. In addition, OSEP clarified in the instructions that States must report MFS data on a total basis in the chart titled "Total Amount of State Financial Support Made Available for Special Education and Related Services for Children with Disabilities" and, if applicable, MFS data on a per capita basis in the chart titled "Per capita amount of State Financial Support Made Available for Special Education and Related Services for Children with Disabilities."

Comment: None.

Discussion: Upon review, it was determined that the estimated annualized cost to the Federal government in

response to question 14 in the Supporting Statement was miscalculated. The underlying numbers have not changed. However, the final calculations were revised as follows:

- Total annualized cost of significant disproportionality review revised from \$17,244.80 to \$21,734.40
- Total annualized cost revised from \$27,346.40 to \$31,836.00

Further, the additional cost of reporting data related to significant disproportionality in a given year was recalculated from \$40,500 to \$44,250 in the response to question 15 in the Supporting Statement.

Changes: OSEP revised the Supporting Statement to reflect accurate calculations for the estimated annualized cost to the Federal government and the additional cost of reporting data related to significant disproportionality.

Comment: A few commenters stated that requiring a State to provide data and research that justify the various values it selects to use in the standard methodology may be problematic, both because little research is available and because what research does exist suggests that the presumptively reasonable cell sizes and n-sizes may result in "false positives." The commenters suggested, therefore,

that the involvement of the State Advisory Panel and other stakeholders should be sufficient justification per se for the values chosen.

The commenters also asked whether the collection instrument is capable of accepting the large amounts of text that might be found in the required data and research, and they asked how much justification is required if a State selects cell sizes and n-sizes that are presumptively reasonable under 34 CFR § 300.647(b)(1)(iv).

Discussion: The Department understands the concerns the commenters expressed about including relevant data and research as part of a State's justifications for risk ratio thresholds, cell sizes, n-sizes, and standards for measuring reasonable progress, if any. However, the commenters appeared to read the instructions for the Significant Disproportionality Reporting Form to require a State to include relevant data and research to justify the values chosen. There is no such requirement.

Rather, the Department intended for the instructions to acknowledge that data and research may inform a State's decisions about risk ratio thresholds, cell sizes, n-sizes, and standards for measuring reasonable progress and to request that the State provide any data and research it

might have relied upon. Such information would give the Department a fuller understanding of the decision-making process that produced, and the reasonableness of, the values selected. We have, therefore, changed the instructions to clarify this point.

As to the capability of the application spreadsheet of accepting large amounts of text on data and research, we agree. The data will be collected using a fillable PDF form.

As to the required justifications for cell sizes and n-sizes, 34 CFR § 300.647(b)(1)(iv) both makes cell sizes of 10 or less and n-sizes of 30 or less presumptively reasonable and requires a State to provide justifications for reasonableness only when it selects a cell size greater than 10 or an n-size greater than 30.

Changes: We have changed the instructions about providing data and research in the Significant Disproportionality Reporting Form to read, "In general, these rationales must contain justifications for the choices made, including, if any, relevant data and research relied upon to make an informed choice..."

Comment: Many commenters supported the Department's proposed additions to the annual IDEA Part B State

application and to the State and Local Educational Agency IDEA Part B record keeping and reporting requirements noted in OMB control number 1820-0600. The commenters also suggested that the Department withdraw its proposed significant disproportionality State survey, arguing that, as the survey is flawed and unnecessary, the Department's time would be better spent helping States come into compliance with the significant disproportionality regulations.

Discussion: The Department thanks the commenters for their support.

As to the continued relevance and utility of the significant disproportionality State survey, that is outside the scope of this information collection. However, the Department notes that the main purpose of the survey is to identify what technical assistance States will need to best implement the significant disproportionality regulations. As such, the State survey will not hinder but, rather, better enable the Department to help States comply with the significant disproportionality regulations.

Changes: None.

Comment: One commenter suggested that because the reporting of significant disproportionality data in the annual IDEA Part B State application is a new exercise for the States, the Department should provide technical assistance to ensure that this information is accurately reported.

Discussion: We agree. Each year, in addition to providing written instructions for filling out the IDEA Part B State application, OSEP holds teleconferences and other, similar, meetings where States may ask questions and receive technical assistance on filling out the IDEA Part B application. The amount of information that this information collection would add to the IDEA Part B application is small, and any questions about it could easily be addressed in this kind of forum. As implementation of the significant disproportionality regulations continues and States' technical assistance needs change, the Department will provide technical assistance as appropriate.

Changes: None.

Comment: One commenter suggested that the Department collect the values States have chosen to use with the significant disproportionality methodology in a different

data collection, such as the State Performance Plan/Annual Performance Report data collection, which, the commenter maintains, would also eliminate duplicate data submissions.

Discussion: The Department does not believe this change is necessary. As explained above, the data States would submit in this proposed collection do not duplicate the data States submit in the State Supplemental Survey. Further, the amount of significant disproportionality data in this proposed collection is not large, and by attaching this data collection to the annual IDEA Part B State application, the Department already is, as suggested, using a regular, recurring collection as the mechanism for collecting States' significant disproportionality data.

Changes: None.

Comment: One commenter suggested that the Department collect and review more data than this information collection proposes to collect: data on under- and over-representation of various populations in special education and data on multi-tiered systems of support, such as response to intervention and positive behavioral interventions and supports. This information, the commenter

suggested, would enable the Department to better help States serve children with disabilities.

The commenter further suggested that expanded data collection would allow the Department to provide training on comprehensive coordinated early intervening services to teachers and related-service providers on appropriately identifying children for special education, as opposed to other kinds of supports and services, as well as training on cultural awareness, culturally sensitive assessment strategies, and second-language acquisition.

Finally, the commenter suggested that the Department align all its Part B data collections with the reporting requirements of the Centers for Medicare and Medicaid Services (CMS) on the reimbursement for services provided in school to Medicaid-eligible children.

Discussion: The data that the Department has proposed to collect here are only those that States are required to submit under 34 CFR § 300.647(b)(1). The commenter, however, suggests data collection far beyond the scope of what is proposed here and, indeed, beyond what the significant disproportionality regulations require.

In adopting the significant disproportionality regulations, for example, the Department noted that IDEA

section 618(d) only requires States to address overrepresentation, not under-identification or underrepresentation. Therefore, the significant disproportionality regulations “only establish[] a system for identifying significant disproportionality based on overrepresentation...,” 81 FR 92381, leaving to the States the responsibility for “working with their LEAs to ensure appropriate identification of children with disabilities” and for “address[ing] any potential under-identification that may exist,” id.

Put somewhat differently, the commenter appears to be suggesting amendments to the significant disproportionality regulations, a task beyond the scope of this proposed information collection.

Finally, as to the suggestion that the Department coordinate its Part B data collections with CMS’s relevant Medicaid data collections, that may not be practicable, given the requirements of the school calendar and the many different requirements of the two large and detailed statutory schemes involved.

Changes: None.

Comment: A few commenters responded that the burden hours appear to be accurate. One commenter stated that the Department's burden estimates for the collection of significant disproportionality values were too low.

Discussion: OSEP agrees with the commenters regarding the accuracy of the burden hours. As to the commenter who stated the burden estimates were too low, the commenter stated nothing more than that the hours given are "insufficient to complete the required tasks," giving the Department little basis to evaluate the comment. We believe that the assumptions and burden estimates given for filling out and submitting the values States will use with significant disproportionality standard methodology were reasonable.

Changes: None.

Comment: One commenter stated that it will be difficult to submit narrative responses on a spreadsheet.

Discussion: OSEP agrees. States will submit the required information in a fillable .pdf document that will be distributed with the Federal fiscal year 2020 application for Part B funds. The data elements that will be in the

fillable .pdf document are included in this package in the "Significant Disproportionality Reporting Form."

Changes: OSEP will collect the required data in a fillable .pdf document.

Comment: None.

Discussion: Upon review, OSEP determined that the language used in Section c: Risk Ratio Thresholds, 4.a, of the Significant Disproportionality Reporting Form was unclear. Therefore, OSEP clarified where the State is to provide the threshold and rationale. The language is now parallel with Section d: Reasonable Progress, 5.b.i, where the State must provide its standard, and rationale for that standard, for measuring reasonable progress.

Changes: Section c: Risk Ratio Thresholds, 4.a, is revised to read - "If you answered YES to question 4, provide the threshold here: ____ and provide the rationale here: ____."

Comment: As a means of helping ensure full compliance, commenters encouraged the Department to provide guidance and technical assistance to States on making a transparent and inclusive process for stakeholder input to meet the requirements in 20 U.S.C. 1418(d) and 34 CFR §§ 300.646 and

300.647. In addition to asking that the Department provide guidance and technical assistance to States for meaningful and transparent stakeholder input, a few commenters urged the Department to include, among the stakeholders to be consulted, charter school authorizers, charter school leaders, diverse families of children and youth with disabilities, and family-led organizations, such as parent centers.

Discussion: As to providing guidance and technical assistance for stakeholder input, the Department notes that States likely already possess this expertise. As we noted when adopting the significant disproportionality regulations, State Advisory Panels already have, under IDEA section 612(a)(21)(D)(iii) (20 U.S.C. 1412(a)(21)(D)(iii)), a responsibility to “advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618.” Given these responsibilities, the Department believes that States already have in place processes and procedures to secure input from State Advisory Panels and other appropriate stakeholders. We agree that the individuals and entities mentioned would be appropriate stakeholders for States to consult when setting the values to use with the standard methodology. Indeed, IDEA already

requires States to include representatives of public charter schools, parents of children with disabilities, individuals with disabilities, and administrators of programs for children with disabilities in the membership of their State Advisory Panels. IDEA section 612(a)(21)(B)(i), (ii), (vi), (viii) (20 U.S.C. 1412(a)(21)(B)(i), (ii), (vi), (viii)). Again, the Department believes that States already have processes and procedures in place that secure input from the State Advisory Panels and to select State Advisory Panel membership as required by IDEA.

Changes: None.