

1820-0600: State and Local Educational Agency Record Keeping and Reporting Requirements under Part B of the Individual with Disabilities Education Act; Setting standards for significant disproportionality with advice from stakeholders

Comment: None.

Discussion: Upon review, OSEP determined that the chart describing the required collections required minor revisions to be align with regulatory language.

Changes: OSEP revised the descriptions of the required collections to align with regulatory language.

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.

Comment: A number of commenters noted that requiring States to retain the risk ratios and alternate risk ratios they calculate in their significant disproportionality analyses under 20 U.S.C. 1418(d) and 34 CFR §§ 300.646 and 300.647 is duplicative of some of the information States provide in the annual State Supplemental Survey, specifically, the number of local educational agencies (LEAs) that provided comprehensive coordinated early intervening services (comprehensive CEIS) because they were found to have significant disproportionality.

Discussion: We disagree. States must retain the risk ratios and alternate risk ratios they calculated – the actual numbers that result from the calculations – when assessing whether significant disproportionality exists in their LEAs. By contrast, in the IDEA Part B Maintenance of Effort Reduction and CEIS data collection required under IDEA section 618 (not the State Supplemental Survey as noted

by the commenters), States report only 1) the number of LEAs required to provide comprehensive CEIS because they were found to have significant disproportionality and 2) whether the significant disproportionality was found in the identification, placement, or discipline of children with disabilities. If States must retain the identity of the LEAs found to have significant disproportionality and then report the number of LEAs so found, that is only sensible recordkeeping.

Changes: None.

Comment: A few commenters recommended that the data collected pursuant to 20 U.S.C. 1412(a)(10)(A)(i)(V) and 34 CFR § 300.132 regarding the number of children with disabilities enrolled in private schools by their parents be annually reported to the Secretary. The commenters stated that submitting the data to the Secretary would assist in Federal oversight of § 300.132. Additionally, the commenters recommended that LEAs be required to report on the number of students who were referred for an evaluation and denied an evaluation in addition to the number of students who were determined to be eligible for special education and related services. The commenters expressed concern that some

students who are placed by their parents in private schools are being denied evaluations.

Discussion: The purpose of the child count under 20 U.S.C. 1412(a)(10)(A)(i)(V) and 34 CFR § 300.132(c) is to determine the amount of Federal funds that the LEA must spend on providing special education and related services to parentally placed private school children with disabilities in the next fiscal year. We are not requiring States to submit these data to the Department as the Department does not have a programmatic or regulatory need to collect this information at this time. Section 300.644 permits the State educational agency to include in its annual report of children served those parentally placed private school children who are eligible under the IDEA and receive special education or related services. We believe this is sufficient to meet the Department's need to collect data on this group of children and we do not wish to place an unnecessary data collection and paperwork burden on States. (See Analysis of Comments and Changes in 2006 IDEA Part B regulations, at 71 FR 46594).

Further, we understand the commenters' concerns that some parentally placed private school students may have been referred for, but denied, an evaluation to determine

eligibility for special education and related services. However, we do not agree that a remedy to address this concern should be that LEAs are required to report the number of parentally placed private school students who were referred for, but denied, an evaluation for special education and related services, as such decisions are either appropriate or subject to parental challenge through the applicable due process complaint, or State complaint, procedures. 34 CFR § 300.140(b). We believe that those procedures are the appropriate way to address the commenters' concerns.

Changes: None.

Comment: A few commenters expressed concerns that some LEAs are not meeting the consultation requirements in 20 U.S.C. 1412(a)(10)(A)(iii)-(v) and 34 CFR §§ 300.134 through 300.135. The commenters believe that the information that an LEA is required to submit is insufficient to determine if the LEA is meeting the consultation requirements. The commenters suggest that LEAs be required to submit additional documentation.

Discussion: We appreciate the commenters' concerns and believe the complaint procedures outlined in 34 CFR §

300.136 are sufficient to address the commenters' concerns that the consultation requirements are not being met. .

Changes: None.