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Submitted via Federal eRulemaking Portal

The Honorable Linda McMahon
Secretary of Education
U.S. Department of Education
Office of Special Education Programs
400 Maryland Avenue SW, LBJ, Room 4A119
Washington, DC 20202-1200

RE: Comments on Proposed Revision to Information Collection 1820-0030 Concerning Significant Disproportionality Data Collection from Section V of the Annual State Application Under Part B of the Individuals with Disabilities Education Act, Docket No. ED-2025-SCC-0481, OMB Control No. 1820-0030

Dear Secretary McMahon:

The undersigned Attorneys General of Illinois, California, Arizona, Colorado, Delaware, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington (the States) submit this comment to oppose the U.S. Department of Education (Department), Office of Special Education and Rehabilitative Services' (OSERS) proposal to revise Information Collection 1820-0030¹ by removing the significant disproportionality data collection from Section V of the Annual State Application under Part B of the Individuals with Disabilities Education Act (IDEA).²

The Department has long worked to promote equity under IDEA by requiring states to identify and address when schools disproportionately place students in special education settings,

¹ Agency Information Collection Activities; Comment Request; Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004, 90 Fed. Reg. 41,063 (proposed Aug. 22, 2025).

² 20 U.S.C. §§ 1411–1419.

including placement in settings that unnecessarily separate them from their peers without disabilities, and subject them to discipline based on race and ethnicity. Increased attention to the root causes of significant disproportionality is necessary to eliminate its harmful effects—especially on students of color with and without disabilities. The States therefore urge the Department to enhance—not obscure—data collection on significant disproportionality to ensure states effectively measure and address racial and ethnic inequities in schools.

The States oppose the Department’s proposed revision to the Annual State Application under Part B of IDEA (State Application) for three reasons. *First*, the Department’s proposal to eliminate states’ obligation to report changes to their methodology for calculating significant disproportionality undermines the States’ interest in ensuring equal educational opportunities and outcomes for all students, including students of color and students with disabilities. *Second*, the Department’s stated purpose for this proposed change—to relieve states’ burden—is contrary to the States’ experience. *Third*, removing the reporting requirement will end much needed oversight and prevent the Department from fulfilling its obligation to assess the reasonableness of changes states may make to their methodologies for calculating significant disproportionality.

Background: IDEA and its Regulations Address Significant Disproportionality in Special Education While Affording States Some Flexibility in Measuring Such Instances.

Although IDEA aims to “ensure[] that children with disabilities receive needed special education services,”³ data and research have shown for decades that students are disproportionately identified for special education and related services, and disproportionately placed in segregated, restrictive special education settings, on the basis of race and ethnicity.⁴ For example, in the 2019-2020 school year, Black students were overrepresented among all students receiving special education services; Black students represented 13.79 percent of the population aged 5-21, but accounted for 17.66 percent of all students served under IDEA.⁵ In contrast, White students represented 51.09 percent of the population but accounted for 45.99 percent of all students served under IDEA.⁶ The Department recognizes that disproportionate representation in special education on the basis of race and ethnicity is a problem, explaining that “[w]hen children of color are identified as children with disabilities at substantially higher rates than their peers, there is strong concern that some of these children may have been improperly

³ *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 157 (2017).

⁴ See, e.g., Natasha M. Strassfeld, *The Future of IDEA: Monitoring Disproportionate Representation of Minority Students in Special Education and Intentional Discrimination Claims*, 67 Case W. Rsrv. L. Rev. 1121, 1123 (2017) (citations omitted); see also Nat’l Council on Disability, *IDEA Series: The Segregation of Students with Disabilities*, (Feb. 7, 2018), 25-26, <https://eric.ed.gov/?q=source%3A%22National+Council+on+Disability%22&id=ED588494> (describing data that show Black, Asian, and students from the Pacific Islands, including Hawaii, are excluded from general education settings at higher rates than their White and Native American peers for reasons that appear unrelated to student-specific factors).

⁵ U.S. Dep’t of Educ., *OSEP Fast Facts: Race and Ethnicity of Children with Disabilities Served under IDEA Part B* (Aug. 9, 2021), <https://sites.ed.gov/idea/osep-fast-facts-race-and-ethnicity-of-children-with-disabilities-served-under-idea-part-b/>.

⁶ *Id.*

identified as children with disabilities, to their detriment.”⁷ In addition, when students of color are disproportionately placed in restrictive settings relative to their White peers, there is reason to suspect that they are denied necessary services in the least restrictive setting on the basis of race or ethnicity, which is similarly associated with inequitable opportunities and outcomes.⁸ As the Department recognized in the 2016 NPRM, “[m]isidentification interferes with a school’s ability to provide children with appropriate educational services” and “raises concerns of potential inequities in both educational opportunities and outcomes.”⁹

To address the disproportionate representation of students of color in special education, IDEA has, since 1997, required state educational agencies (SEAs) receiving federal funding to gather and analyze race- and ethnicity-specific data from local educational agencies (LEAs) on their identification and placement of students in special education. Congress amended IDEA in 2004 to “expand[] the scope of the significant disproportionality requirements to include disciplinary actions,”¹⁰ requiring SEAs and the Department to ascertain whether students with disabilities are also singled out for discipline, including exclusionary discipline, based on race or ethnicity.

Notwithstanding these requirements, IDEA does not prescribe how significant disproportionality should be measured. Prior to 2016, the Department’s IDEA regulations gave SEAs wide discretion. As a result, states adopted a range of methodologies leading to the inconsistent identification of LEAs that need to address significant disproportionality. A 2013 study by the U.S. Government Accountability Office (GAO) examined SEA practices and observed that under the regulations in effect during the 2010-2011 school year, only 2.4 percent of all LEAs nationwide were required to take action to address significant disproportionality, and more than half of these LEAs were located in only five states.¹¹ GAO recommended the Department develop nationwide standards that would balance states’ need for flexibility to consider varying population sizes and composition against the risk of widespread failure to identify and address significant disproportionality.¹² GAO concluded that national standards

⁷ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. 10,968, 10,970 (proposed Mar. 2, 2016) (to be codified at 34 C.F.R. pt. 300).

⁸ Nat’l Council on Disability, *IDEA Series: The Segregation of Students with Disabilities* (Feb. 7, 2018) at 26.

⁹ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. at 10,968, 10,970.

¹⁰ U.S. Dep’t of Educ., Office of Inspector Gen., *Implementation of the Significant Disproportionality in the Individuals with Disabilities Education Act Final Regulations: Final Report* (May 8, 2023), 3, <https://eric.ed.gov/?id=ED653454>.

¹¹ U.S. Gov’t Accountability Office, *Report to the Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, Individuals with Disabilities Education Act, Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education* (Feb. 2013), 7, <https://www.gao.gov/assets/gao-13-137.pdf>.

¹² *Id.* at 18, n.19 (citing a 2007 memorandum from the Department to state special education directors concerning states’ flexibility in identifying significant disproportionality).

would “promote consistency in how states determine the districts required to provide early intervening services”¹³ to address significant disproportionality.

In March 2016, following a request for public comment on GAO’s recommendation, the Department issued the 2016 NPRM in which it proposed regulations that aimed to help SEAs better identify, address, and reduce significant disproportionality with the goal of promoting educational equity.¹⁴ To address discrepancies in state approaches to measuring significant disproportionality, which the Department found resulted in the identification of “far fewer LEAs . . . as having significant disproportionality than the disparities in rates of identification, placement, and disciplinary removal across racial and ethnic groups would suggest,”¹⁵ the Department proposed a standard methodology “for determinations of significant disproportionality in order for States and the Department to better identify and address the complex, manifold causes of the issue and ensure compliance with the requirements of IDEA.”¹⁶ The proposed standard methodology gave SEAs discretion to determine the threshold at which disproportionality “is significant, so long as that threshold is reasonable and based on advice from their stakeholders, including their State Advisory Panels.”¹⁷

The Department issued a Final Rule in December 2016, which requires SEAs to follow the standard methodology set out in 34 C.F.R. § 300.647.¹⁸ The standard methodology provides a formula that SEAs must apply.¹⁹ However, SEAs, in collaboration with stakeholders, can determine the risk ratio threshold—the point at which disproportionality is significant—and other variable factors within the standard methodology.²⁰ To enable the Department to oversee the reasonableness of determinations made by SEAs in applying the standard methodology, the Final Rule added a requirement that SEAs “report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress, and the rationales for each to the Department.”²¹ The Department recognized that the new reporting requirement added to SEA’s reporting obligations, but determined that the burden from the reporting requirement itself would be “minimal” as the Final Rule requires SEAs to make determinations about risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring progress. The Department

¹³ U.S. Gov’t Accountability Office, *Report to the Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, Individuals with Disabilities Education Act, Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education* (Feb. 2013) at 22.

¹⁴ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. at 10,968, 10,972.

¹⁵ *Id.* at 10,968.

¹⁶ *Id.*

¹⁷ *Id.* at 10,969.

¹⁸ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. 92,376 (Dec. 19, 2016) (to be codified at 34 C.F.R. pt. 300).

¹⁹ 34 C.F.R. § 300.647.

²⁰ *Id.*

²¹ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. at 92,389.

explained that the reporting requirement was also necessary for the Office of Special Education Programs (OSEP) to analyze the impact of the Final Rule and ensure the reasonableness of SEA's determinations.²²

The Final Rule also offers some flexibility to LEAs in addressing significant disproportionality after it is identified. If, however, data from an LEA indicates up to three consecutive years of significant disproportionality based on race and ethnicity in the identification, placement, or discipline of students with disabilities, without evidence of "reasonable progress" during that time, the LEA must take corrective action.²³ In such cases, the SEA must provide for the review of and, if applicable, revisions to policies, practices, and procedures to ensure compliance with IDEA.²⁴

LEAs identified for significant disproportionality based on race and ethnicity must also reserve 15 percent of their IDEA funds to provide comprehensive coordinated early intervening services (CCEIS) to students aged 3 through grade 12, with or without disabilities, who need additional academic or behavioral supports, in an effort to address factors contributing to significant disproportionality.²⁵ As part of these efforts, LEAs "[m]ust identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality."²⁶

The Department's Proposed Revision Is Contrary to the States' Interest in Ensuring Equity in Education.

The States have a longstanding commitment to promoting equitable opportunity and inclusion in education for all students regardless of race, ethnicity, and disability status. We share the Department's purpose in proposing and ultimately adopting the Final Rule:

[T]he Department's goal is to promote equity in IDEA. We want to be clear that our intention is not to deny special education services to children who need them. It is, however, to ensure that children who need special education services receive them in the least restrictive settings. It is also to ensure that children who do not have disabilities and do not need special education services are not inappropriately identified as such, and to

²² Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. at 92,389.

²³ 34 C.F.R. §§ 300.646(a), 300.647(d).

²⁴ 34 C.F.R. § 300.646(c).

²⁵ 20 U.S.C. §§ 1413(f), 1418(d)(2); 34 C.F.R. § 300.646(d).

²⁶ 34 C.F.R. § 300.646(d)(1)(ii).

ensure that those children receive proper educational supports through the general education system.²⁷

Many states have passed laws that require data collection and impose performance standards similar to what IDEA and the federal regulations require. For example, the Illinois School Code requires the State Superintendent of Education to prepare an annual state report card, school district report cards, and school report cards, which must include data required by federal law, as well as data the State Board of Education has collected.²⁸ Among other data, the State Board of Education collects information concerning the number and percentage of all students in kindergarten through grade 12, disaggregated by students' race and ethnicity, the percentage of students classified as low-income, the percentage of students classified as English learners, and the percentage of students who receive special education services.²⁹ Additionally, the State Board of Education must annually assess public school students entering kindergarten and publicly report its findings using statewide data and data broken down by school district.³⁰ The report disaggregates the data by race and ethnicity, income status, students who are English learners, and students who receive special education and related services under an Individualized Education Program (IEP).³¹

The Illinois School Code also requires administrators to collect, report, and address data reflecting racial and ethnic disparities in special education and discipline. For example, the State Board of Education must work to reduce the use of isolated time outs, time outs, and physical restraints by consulting with stakeholders to establish goals and review data, as well as to develop strategies for assessing and reducing racial and ethnic inequities in the use of those measures.³² Additionally, the State Superintendent of Education must annually prepare and publicly post a report that includes data on out-of-school suspensions, expulsions, and removals, disaggregated by race and ethnicity, gender, age, grade level, whether the student is an English learner, type of discipline, and the duration of that disciplinary measure.³³ The State Board of Education must then analyze the data each year to determine, among other metrics, racial disproportionality.³⁴ As with IDEA regulations, school districts must only take corrective action if data from three consecutive years indicates disproportionality.³⁵

The California Education Code similarly requires administrators to collect, report, and address data reflecting racial and ethnic disparities in special education. The California Legislature codified its intent that assessment and placement procedures and materials be

²⁷ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. at 10,970.

²⁸ 105 ILCS 5/10-17a.

²⁹ *Id.*

³⁰ 105 ILCS 5/2-3.64a-10.

³¹ *Id.*

³² 105 ILCS 5/2-3.130(e).

³³ 105 ILCS 5/2-3.162(a).

³⁴ 105 ILCS 5/2-3.162(b).

³⁵ *Id.*

administered in a way that is not racially discriminatory.³⁶ Consistent with IDEA, local plans must address overidentification and disproportionate representation by race and ethnicity.³⁷ The State Superintendent must use “quantifiable indicators and qualitative indicators” to measure disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.³⁸ And the California Department of Education is required to publish data on least restrictive environment for students with disabilities, disaggregated by race and ethnicity.³⁹

Massachusetts requires all school districts to annually report to the Massachusetts Department of Elementary and Secondary Education the assignment of children to special education classes by sex, national origin, economic status, race, and religion.⁴⁰ If it is determined that there is a substantially disproportionate pattern of assignment to special education programs, including substantially separate settings, the Massachusetts Department of Elementary and Secondary Education must notify the district of its *prima facie* denial of equal educational opportunities.⁴¹ Massachusetts further requires states to report in-school and out-of-school short- and long-term suspensions, expulsions, and emergency removals, disaggregated by race, gender, socioeconomic status, English learner status, and disability status, and modify its discipline practices if select student populations are disproportionately excluded from school.⁴²

The New Jersey Commissioner of Education is required to prepare an annual state report card, school district report cards, and school report cards, which must include data required by federal law, as well as data collected from LEAs by the New Jersey Department of Education.⁴³ New Jersey law requires that the report cards include demographic data, including race and disability status, of students who receive exclusionary discipline.⁴⁴ New Jersey’s Commissioner of Education must also post a database to its website that contains school-level totals of exclusionary discipline, use of restraint and seclusion, law enforcement referrals, and arrests of students, as well as demographic information of affected students.⁴⁵

In Vermont, the policy is to provide all children with educational opportunities that are substantially equal in quality.⁴⁶ In service of this, Vermont state law requires schools to develop, implement, and update continuous improvement plans.⁴⁷ These plans include student-level

³⁶ Cal. Educ. Code § 56000(j).

³⁷ Cal. Educ. Code § 56205(a)(21).

³⁸ Cal. Educ. Code § 56600.6(d).

³⁹ Cal. Educ. Code § 56049.1.

⁴⁰ M.G.L. c. 71B § 6.

⁴¹ *Id.*

⁴² 603 CMR 53.14.

⁴³ N.J.S.A. 18A:7E-2, 3(13).

⁴⁴ *Id.*

⁴⁵ N.J.S.A. 18A:17-48.

⁴⁶ Vt. Stat. Ann. tit. 16, § 165(a).

⁴⁷ Vt. Stat. Ann. tit. 16, § 165(a)(1).

indicators, disaggregated according to subgroups, including students identified from major racial and ethnic groups and students identified as having a disability.⁴⁸

Collecting data on significant disproportionality and reporting on changes to standard methodologies for determining when it exists is far from burdensome for states like Illinois, California, Massachusetts, New Jersey, Vermont, and the undersigned, which are committed to gathering and reporting detailed information on students' educational experiences not only to comply with state law, but also to advance our commitment to promoting equitable access to education for all students in our schools.

The States Do Not View the Reporting Requirement as a Significant Burden.

The Department's proposed revision to the State Application cites to the Paperwork Reduction Act, claiming that removing the reporting requirement relieves states of a burden. In the States' experience, completing and submitting the Significant Disproportionality Reporting Form imposes a minimal burden, and the benefits of tracking this important information outweigh any burden. Moreover, the Department's burden hours estimate in the Information Collection Request exaggerates any conceivable burden, as states are only required to submit their standard methodologies one time and then resubmit upon any revisions to the standards they set.⁴⁹

In instances where states change their standard methodologies and therefore must complete the report, the report is not involved or lengthy. In many cases, states only need to answer close-ended questions about whether they selected the Department's presumptively reasonable numbers for the different categories; provide alternative numbers, if applicable, and the rationale for why those are reasonable; set out the risk ratio threshold and how the state decided on that threshold for one or all categories of analysis; and answer a close-ended question concerning how the state measures reasonable progress.

The States Urge the Department to Continue Assessing the Reasonableness of Any Adaptations States Make to Their Significant Disproportionality Determinations.

The Department's proposed change would improperly limit its ability to assess the reasonableness of changes that states may make to their adaptation of the standard methodology for measuring significant disproportionality. Currently, SEAs collaborate with State Advisory

⁴⁸ 22-000-003 Vt. Code. R. § 2124.2.

⁴⁹ Katherine Neas, Deputy Assistant Sec'y for the Office of Special Educ. and Rehab. Servs., U.S. Dep't of Educ., *OSEP Policy Letter 22-02*, (Mar. 2, 2022), 3, <https://sites.ed.gov/idea/files/osep-letter-to-marshall-03-02-2022.pdf>; see also U.S. Dep't of Educ., Office of Inspector Gen., *Implementation of the Significant Disproportionality in the Individuals with Disabilities Education Act Final Regulations: Final Report* (May 8, 2023) at 4, 15 (States submitted their initial Significant Disproportionality Reporting Form in Fiscal Year 2020).

Panels and other stakeholders to set their standard methodologies.⁵⁰ Through that process, they either adopt the Department’s default values or determine state-specific values and measurements.⁵¹ The Department requires SEAs to report the values and standards it selects for use in the Department’s standard formula, and the rationales for each.⁵² OSEP assesses SEAs’ reported choices for reasonableness.⁵³ OSEP began reviewing states’ Significant Disproportionality Reporting Forms in 2020,⁵⁴ and states have now reported to OSEP the criteria and risk ratio thresholds they initially set to measure significant disproportionality.

If the Department eliminates the reporting requirement as proposed, it will be impossible for OSEP to assess the reasonableness of any changes SEAs may make to their standard methodologies. Without the Department’s oversight, some states may revert to prior practices that the GAO concluded not only “varied widely,” but also may have prevented “states from identifying the magnitude of racial and ethnic overrepresentation in special education.”⁵⁵ Without publicly available information on how states calculate significant disproportionality, decisions about which LEAs are identified and required to take action will occur behind closed doors, shielded from both Department oversight and meaningful public scrutiny. This reporting is necessary for the Department to evaluate whether states are using approaches that accurately identify and address significant disproportionality, rather than obscure it.

The Department must continue to require states to report any changes to their methodology for calculating significant disproportionality to ensure that schools meet the needs of their most vulnerable students. Transparency in identifying and reporting significant disproportionality is critical to addressing longstanding racial and ethnic inequities in education—inequities that remain pervasive and deeply problematic today.

For the foregoing reasons, the States urge the Department to reconsider and withdraw its proposed revision to Information Collection 1820-0030 and instead retain the significant disproportionality data collection from Section V of the Annual State Application under Part B of IDEA.

⁵⁰ 34 C.F.R. § 300.647(b)(1)(iii)(A); see *Council of Parent Att’ys and Advocs., Inc. v. DeVos*, 365 F. Supp. 3d 28, 34-35 (D.D.C. 2019).

⁵¹ 34 C.F.R. § 300.647(b).

⁵² *Id.*

⁵³ 34 C.F.R. § 300.647(b)(7); see U.S. Dep’t of Educ., Office of Inspector Gen., *Implementation of the Significant Disproportionality in the Individuals with Disabilities Education Act Final Regulations: Final Report* (May 8, 2023) at 14.

⁵⁴ U.S. Dep’t of Educ., Office of Inspector Gen., *Implementation of the Significant Disproportionality in the Individuals with Disabilities Education Act Final Regulations: Final Report* (May 8, 2023) at 14.

⁵⁵ U.S. Gov’t Accountability Office, *Report to the Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, Individuals with Disabilities Education Act, Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education* (Feb. 2013) at 10.

Sincerely,



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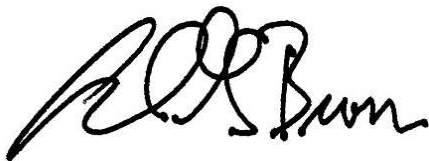
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