



## **Response to Annual State Application under Part B of the Individuals with Disabilities Act as Amended in 2004 (Docket ID ED-2025-SCC-0481)**

The National Academy of Education (NAEd) is providing this response to the U.S. Department of Education’s request for comment to the “Annual State Application under Part B of the Individuals with Disabilities Act as Amended in 2004.” The NAEd is a nonpartisan, nonprofit organization that advances high-quality research to improve education policy and practice. Founded in 1965, the NAEd has approximately 350 members, including those in the United States and international associates, who are elected on the basis of their leading and trusted scholarship related to education. The NAEd undertakes research studies to address pressing educational issues and administers professional development fellowship programs to enhance the preparation of the next generation of education scholars.

The NAEd strongly objects to the U.S. Department of Education’s proposal to: (1) no longer require States to report “the Significant Disproportionality data collection under IDEA section 618(d) and 34 CFR §§300.646 and 300.647 from Section V of the Annual State Application under Part B of the IDEA” and (2) limit States to only “provide assurances that they either have or do not have in effect policies and procedures to meet the eligibility requirements of Part B of the Act as found in PL 108-446. Information Collection 1820-0030 corresponds with 34 CFR §§ 300.100-176; 300.199; 300.640-645; and 300.705.”

### Background

There is a long history of racial disparities concerning students with disabilities, including the overidentification of students of color in certain disability categories; the placement of these students in particular educational settings; and the disciplinary actions imposed on them. In the 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA), “significant disproportionality” was added to the law to address these disparities.<sup>1</sup> However, inappropriate implementation led Congress to strengthen these IDEA requirements in 2004. In passing Section 618(d) of the IDEA, the House Committee stated:

The Committee feels very strongly about the importance of this new provision and encourages States to take the necessary steps to work with local educational agencies to remedy these problems. The referral and identification processes under this Act should be clear, consistent, and not subject to abuse. Children,

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<sup>1</sup> In 1997, Congress found that “[g]reater efforts [were] needed to prevent the intensification of problems connected with mislabeling . . . among minority children with disabilities.” Pub. L. No. 105-17, § 601(c)(8)(A), 111 Stat. 37, 40 (1997).

particularly minority children, should not be referred, or determined to be eligible for special education, due to their race. The Committee is very concerned about data showing that African Americans are nearly three times as likely to be identified as mentally retarded as their peers and nearly twice as likely to be labeled emotionally disturbed. There is no scientific data or studies available to support these rates of identification, and this data clearly demonstrates that a problem exists. This provision, and other provisions throughout the bill, is clearly aimed at addressing the problem.

Section 618(d) of the IDEA, codified as 20 U.S.C. § 1418, requires States to provide information to the Department concerning the race/ethnicity of students with disabilities. Concerning significant disproportionality, 20 U.S.C. § 1418(d), titled "Disproportionality" asserts:

States . . . shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to— (A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 1401(3) of this title; (B) the placement in particular educational settings of such children; and (C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. 20 U.S.C. § 1418(d)(1).

In addition to identifying significant disproportionality, the IDEA requires states that determine significant disproportionality exists to “provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of [the IDEA]” and similarly require local educational agencies (LEAs) to “publicly report on the revision of policies, practices, and procedures” 20 U.S.C. § 1418(d)(1).

In the intervening years, researchers and governmental entities documented serious noncompliance issues with these regulations.<sup>2</sup> In 2016, the U.S. Department of Education adopted regulations called *Equity in IDEA* to clarify the requirements, reinforce monitoring and enforcement of the IDEA, and guide states in their compliance with the IDEA. These regulations include a standard methodology for computing significant disproportionality (including the designation of a risk ratio threshold) and provide substantial discretion to states concerning aspects of the methodology, 34 C.F.R. §§ 300.646(b), 300.647(b)-(d). Because of this discretion, states must provide their methodologies and rationales for them to the Department.

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<sup>2</sup> Albrecht, S. F., Skiba, R., & Losen, D. J. (2013). Federal policy on disproportionality in special education: Is it moving us forward? *Journal of Disability Policy Studies*, 23(1), 14–25; Cavendish, W., Artiles, A. J., & Harry, B. (2014). Tracking inequality: Does policy legitimize the racialization of disability? *Multiple Voices*, 14(2), 30–40; U.S. Government Accountability Office. (2013). *Individuals with Disabilities Education Act: Standards needed to improve identification of racial and ethnic overrepresentation in special education* (GAO-13-137). <https://www.gao.gov/products/GAO-13-137>; 81 Fed. Reg. at 92,380.

## Importance of Reporting Significant Disproportionality and the Methodology for Its Collection

Research supported Congress's **mandate** to collect, report, and evaluate data on significant disproportionality.<sup>3</sup> Additionally, the Department uses these data to engage with states about potential reforms as well as a basis to conduct civil rights investigations pertaining to states and LEAs.<sup>4</sup> States, LEAs, schools, principals, and teachers similarly use these data to examine and make necessary modifications to policies and practices.<sup>5</sup> Advocacy organizations use these data to support students and their families,<sup>6</sup> and numerous parents, through their comments to this request for information (RFI), have indicated the importance of these data to them.<sup>7</sup> And, researchers have a long history of using these data to investigate disparities and to examine the benefits of interventions.<sup>8</sup>

Nothing in this RFI eliminates the states' obligation to collect and evaluate data on significant disproportionality. And of course, to collect such data, states must have a methodology for doing so. Moreover, LEAs remain congressionally mandated to publicly report changes to their policies and procedures based on disproportionality, 20 U.S.C. § 1418(d)(2). Given that this must occur – and given the large group of stakeholders who utilize these data – the NAEd can see no burden to the states or reasons why the U.S. Department of Education would not continue to require the reporting of it.

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<sup>3</sup> Albrecht, S. F., Skiba, R. J., Losen, D. J., Chung, C.-G., & Middelberg, L. (2011). Federal policy on disproportionality in special education: Is it moving us forward? *Journal of Disability Policy Studies*, 23(1), 14–25.

<https://doi.org/10.1177/1044207311407917>; Donovan, M. S., & Cross, C. T. (Eds.). (2002). *Minority students in special and gifted education*. National Academies Press.

<sup>4</sup> See, e.g., Response to this RFI by the ED-OCR Alumni Collective, October 17, 2025 (Comment ID: ED-2025-SCC-0481-0036).

<sup>5</sup> See, e.g., Response to this RFI by National Education Association (NEA), October 10, 2025 (Comment ID: ED-2025-SCC-0481-0031); Response to this RFI by Council of Administrators of Special Education (CASE), October 14, 2025 (Comment ID: ED-2025-SCC-0481-0033).

<sup>6</sup> See, e.g., Response to this RFI by Council of Parent Attorneys and Advocates (COPAA), October 6, 2025 (Comment ID: ED-2025-SCC-0481-0029).

<sup>7</sup> See, e.g., “A parent of a child with a disability,” October 9, 2025 (Comment ID: ED-2025-SCC-0481-0030); “Mother of a high school aged child who has received special education services,” September 8, 2025 (Comment ID: ED-2025-SCC-0481-0016); “Parent of two children, one without and one with multiple disabilities,” September 8, 2025 (Comment ID: ED-2025-SCC-0481-0017); Jennifer McKinish, Nevada State Chair of National Grassroots Network - NCSA and Parent and Caregiver, September 4, 2025 (Comment ID: ED-2025-SCC-0481-0013).

<sup>8</sup> Artiles, A. J., Dorn, S., & Bal, A. (2016). Objects of protection, enduring nodes of difference: Disability intersections with “other” differences, 1916–2016. *Review of Research in Education*, 40(1), 777–820.

<https://doi.org/10.3102/0091732X16680606>; Cruz, R., Voulgarides, C., Firestone, A., McDermott, L., & Feng, Z. (2024). Is dis-ability a foregone conclusion? Research and policy solutions to disproportionality. *Review of Educational Research*, 94(6), 843–882; Cruz, R., & Firestone, A. (2018). An integrative synthesis of literature on disproportionality in special education. *The Journal of Special Education*, 52(1), 50–63; Tefera, A., Artiles, A. J., Voulgarides, C., Aylward, A., & Alvarado, S. (2023). The aftermath of disproportionality citations: Situating disability-race intersections in historical and spatial contexts. *American Educational Research Journal*, 60(2), 367–404. <https://doi.org/10.3102/00028312221147007>.

Additionally, the law provides states with the latitude to modify the cutoff scores to define significant disproportionality. However, states must report these changes as well as a rationale in their State Performance Plans. Federal funding is contingent upon the Secretary's approval of these modifications. Given the history of noncompliance and gaming strategies around disproportionality documented by researchers and the U.S. Government Accountability Office,<sup>9</sup> this rule and reporting requirement are critical to ensure that disproportionality thresholds are not shifted to unreasonably high levels. Removing this critical reporting requirement could reproduce the situation that prevailed before the regulations were approved, in which states rarely flagged school districts for disproportionality. Moreover, the elimination of this 2016 regulatory provision will significantly reduce the Secretary's capacity to assess alterations in States' implementation of the 2016 regulation and lead to the persistence of enduring disparities in educational opportunity for substantial segments of the student population. Finally, the RFI does not provide any explanation of how the Secretary could fulfill its oversight function without the data submission.

The Secretary of Education is mandated to monitor, provide technical assistance, and enforce the IDEA. Section 1416, titled "Monitoring, technical assistance, and enforcement," explicitly outlines these duties (20 U.S.C. § 1416). In addition to the general monitoring requirements articulated in Section 1416, it also sets forth three "monitoring priorities" where the "Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State..." (20 U.S.C. § 1416 (a)(3)). The third priority requires the Secretary and states to monitor "[d]isproportionate representation of racial and ethnic groups in special education and related services..." (20 U.S.C. § 1416 (a)(3)(C)). Without collecting data on "Significant Disproportionality" or data on states' methodologies concerning such collection and reporting, the Department cannot adequately carry forth its obligations.

By failing to collect these data, the Department is also signalling to states and LEAs that disproportionality does not matter. Not only is this in contravention of the IDEA, it is counter to the best interests of students, particularly students of color identified with disabilities.<sup>10</sup> While no alleged "burden" should outweigh protecting our nation's students, certainly the minimal burden identified by the Department should not. The Department only asserts a burden of 180 hours spread across 60 respondents – thus three hours per respondent. Moreover, since each respondent is required to collect, maintain, and analyze the data, the NAEd is unsure that it will take even three hours to add it to the already-required report. This "burden" is thus no reason to dismiss these important reporting requirements.

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<sup>9</sup> U.S. Government Accountability Office. (2013). *Individuals with Disabilities Education Act: Standards needed to improve identification of racial and ethnic overrepresentation in special education* (GAO-13-137). <https://www.gao.gov/products/GAO-13-137>; 81 Fed. Reg. at 92,380.

<sup>10</sup> See, e.g., *Id.* (finding that the Department was not appropriately monitoring or addressing the significant overrepresentation of minorities in special education because of the flexibility states had in defining disproportionality and the lack of consistent examination by the Department and recommending a standard approach to defining significant disproportionality and transparency in methodology ultimately adopted in the 2016 regulations).

The “Significant Disproportionality” provisions of both the law and regulations are intended to provide the Department, states, and LEAs, as well as advocacy organizations, researchers, educators, and parents, with the ability to identify potential discrimination, create policies and procedures, and implement trainings, to address it. The Department’s proposed changes to reporting under Part B of the Annual State Application make it impossible for the Department to conduct its functions of monitoring, technical assistance, and enforcement, and for that reason alone, the proposed changes should not go into effect. Moreover, the Department’s argument that this will lessen the states’ “burden” is misplaced. We reiterate that states are congressionally mandated to collect and review “Significant Disproportionality” data; thus the burden is *de minimis* to provide these data within the larger reports that States already provide to the Department. The Department’s “mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.”<sup>11</sup> The Department’s collection, analysis, and enforcement actions concerning significant disproportionality is a necessary component for the Department to meet its mission for all students, including those with disabilities. Finally, as noted above, numerous other organizations and individuals use these critical data; the NAEed, NAEed members, and NAEed fellows, for instance, use it to advance work that ensures educational opportunities for all students.

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<sup>11</sup> U.S. Department of Education. (n.d.). *Mission of the U.S. Department of Education*. <https://www.ed.gov/about/ed-overview/mission-of-the-us-department-of-education>