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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 and Rehabilitative Services
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 California, Illinois, Arizona, Colorado, Delaware, Maine, Maryland, Massachusetts, Michigan, 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) proposal¹ (January 2026 Notice) to revise Information Collection 1820-0030 by removing the significant disproportionality data collection from Section V of the Annual State Application (State Application) under Part B of the Individuals with Disabilities Education Act (IDEA).²

¹ Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004, 91 Fed. Reg. 990 (proposed Jan. 9, 2026).

² 20 U.S.C. §§ 1411–1419.

In a comment letter³ dated October 21, 2025, the States responded to the Department's August 22, 2025 Notice to revise Information Collection 1820-0030⁴ (August 2025 Notice), arguing that the proposed revision would undermine the States' interest in ensuring education equity; that the existing reporting requirement imposes a minimal burden on states and that the Department's burden hours estimate exaggerated the burden on states; and that removing the significant disproportionality reporting requirement would limit the Department's ability to assess the reasonableness of changes states make to their methodologies to identify significant disproportionality.

In response to the Department's January 2026 Notice, the States incorporate and refer to the States' previous comment opposing the Department's proposed revision. The States also provide additional reasons for such opposition. *First*, the Department would abdicate its supervisory and monitoring function by no longer having states report changes to their significant disproportionality standard methodologies to the Department. *Second*, the Department lacks a reasonable basis for removing this data collection from the State Application. The Department has failed to address the States' comments from the last public comment cycle or to provide clear analysis with any explanation for its estimated burden hours—though burden hours are the Department's sole reason for this proposed change. *Third*, the Department's proposed revision is contrary to States' interests in education equity and public transparency.

I. The Department Abdicates Its Supervisory and Monitoring Function by No Longer Requiring States to Report Changes to States' Standard Methodology for Identifying Significant Disproportionality.

Under the proposed revision, the Department would no longer require states to submit the Section V.B. Significant Disproportionality Reporting Form (the Reporting Form) as part of the State Application. Currently, states must only submit the Reporting Form if there is a change in their methodology from their previous report. The Reporting Form is a standard and streamlined way for states to inform the Department of any changes to states' standard methodologies for identifying significant disproportionality. Removing that reporting mechanism will deprive the Department of the information necessary to assess states' standard methodologies for reasonableness and will weaken the Department's ability to combat significant disproportionality and its harmful consequences.

Significant disproportionality refers to the “well-documented and detrimental over-identification of certain students [based on race or ethnicity] for special education services, with particular concern that over-identification results in children being placed in more restrictive

³ Office of the Illinois Attorney General, California Dep't of Justice, *et al.*, Comment on Agency Information Collection Activities; Comment Request; Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 (Oct. 21, 2025), Docket ID: ED-2025-SCC-0481, <https://www.regulations.gov> (the States' previous comment).

⁴ 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).

environments and not taught to challenging academic standards.”⁵ Significant disproportionality also refers to schools disproportionately disciplining students with disabilities based on race or ethnicity.⁶ As explained in the States’ previous comment, the Department’s 2016 Notice of Proposed Rulemaking (NPRM) made clear that the Department’s goal in requiring states to report changes to their standard methodologies was to “promot[e] equity in IDEA” and address significant disproportionality.⁷ That NPRM followed a 2013 study by the U.S. Government Accountability Office (GAO), which found that, under IDEA regulations in effect during the 2010-2011 school year, states required only 2.4 percent of all local educational agencies (LEAs) nationwide to take corrective action to address significant disproportionality.⁸ Of those LEAs, more than half of those needing to take corrective action were in just five states—with 73 LEAs located in Louisiana alone.⁹ GAO found that states’ methodologies “vary widely and may prevent [s]tates from identifying the magnitude of racial and ethnic overrepresentation in special education” and, as a result, significant disproportionality could not be accurately assessed nationwide.¹⁰ Although only five states reported significant disproportionality, the Department acknowledged that “some states’ definitions may be preventing them from identifying disproportionality.”¹¹ Consequently, GAO recommended that the Department set national standards, while still giving some discretion to states, which would “promote consistency in how states determine the [LEAs] required to provide early intervening services.”¹²

⁵ 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).

⁶ See *id.*

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

⁸ 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>.

⁹ *Id.*

¹⁰ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. at 92,377; see also 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* at 7, 12-13. For instance, in 2009-2010, Rhode Island, a state with 143,000 students, of which 18 percent are in special education, required 26 of its 51 LEAs to provide services to address significant disproportionality while Pennsylvania, a state with almost 1.8 million students and 16 percent of its students receiving special education services, did not require any of its over 600 LEAs to provide services. The difference between the two states was their methodologies: in Pennsylvania, racial and ethnic groups in an LEA must be identified for special education at a rate more than *four times* higher than other groups; while in Rhode Island, racial and ethnic groups must be identified for special education at a rate of *two and half times* more than other groups. Under 34 C.F.R. § 300.647, both states now have a uniform and consistent way of developing their methodologies, and the Department reviews these methodologies for reasonableness.

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* at 18.

¹² *Id.* at 22.

Following GAO's study and the Department's request for public comment on GAO's recommendation, the Department issued an NPRM and its Final Rule in 2016. In the NPRM, 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."¹³ The Final Rule enabled the Department to oversee the reasonableness of states' standard methodologies by requiring states to "report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress, and the rationales for each to the Department."¹⁴ The Department stated that the reporting requirement was necessary for the Office of Special Education Programs (OSEP) to analyze the impact of the Final Rule and ensure the reasonableness of states' standard methodologies for identifying instances of significant disproportionality.¹⁵

The Department is charged with monitoring and enforcing the requirement that standard methodologies are reasonably designed to identify significant disproportionality.¹⁶ Specifically, states' standard methodologies are "subject to monitoring and enforcement for reasonableness by the Secretary consistent with section 616 of [IDEA]."¹⁷ In its own guidance, the Department explains that OSEP determines reasonableness of the states' methodology and considers factors like "whether none, or a very low percentage of . . . LEAs are being examined for significant discrepancy under the States' chosen methodology, and whether statistically sound alternative methodologies exist or are being used by similarly-situated States."¹⁸ As the Department has long recognized,¹⁹ its oversight role is vital to ensure, among other things, that there is consistency in how states determine instances of significant disproportionality and to ensure that the standard methodologies employed by states are reasonable.

Currently, the Department obtains the information necessary to fulfill its monitoring and enforcement responsibility by requiring states that change their standard methodology to submit

¹³ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. at 10,968 (emphasis added).

¹⁴ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. at 92,389.

¹⁵ *Id.*

¹⁶ 20 U.S.C. § 1416(a)(3)(C) (noting IDEA requires the Department to focus its monitoring efforts on the "[d]isproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification."); see 34 C.F.R. § 300.646 and 34 C.F.R. § 300.647.

¹⁷ 34 C.F.R. § 300.647(b)(1)(iii)(B).

¹⁸ U.S. Dep't of Educ., *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions: OSEP Q&A 22-02* (July 19, 2022), 49, <https://sites.ed.gov/idea/files/qa-addressing-the-needs-of-children-with-disabilities-and-idea-discipline-provisions.pdf> (regarding the rate of long-term suspensions and expulsions of children with disabilities).

¹⁹ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 81 Fed. Reg. at 92,377 ("The Department believes this regulatory action to standardize the methodology States use to identify significant disproportionality will provide clarity to the public, increase comparability of data across States, and improve upon current policy.").

the Reporting Form along with their State Application. If, as proposed, the Reporting Form is removed from the State Application, the Department will no longer have a mechanism by which it will be alerted to changes in standard methodologies, so that these changes can be reviewed for reasonableness.²⁰ Nor has the Department offered an alternative way for states to submit changes to their methodologies to identify significant disproportionality. Accordingly, if the requirement to regularly report any changes to their standard methodologies on the State Application is removed, the Department will have eliminated a critical source of information to fulfill its charge under the regulations and IDEA.

Additionally, both IDEA and its regulations explicitly require states to report their standard methodologies. Under Section 616 of IDEA, each state must “collect valid and reliable information as needed to report annually to the Secretary” on the priority areas, such as significant disproportionality.²¹ Under the regulations, each state must report its standard methodology “to the Department at a time and in a manner determined by the Secretary.”²² Given that both IDEA and its regulations mandate reporting and only allow discretion in determining the manner and way of the reporting, the law does not contemplate or allow the Secretary or the Department to eliminate the reporting requirement altogether. The proposed revision is therefore inconsistent with both IDEA and its regulations.

II. There Is No Reasonable Basis for This Revision.

A. The Department’s Response to Public Comments Is Inadequate.

The Department provides a document, less than three pages in length, that purports to respond to the 95 public comments received in response to its August 2025 Notice.²³ However, in its response, the Department fails to meaningfully address public comments, including significant concerns raised in the States’ previous comment. When responding to public comments, “[a]n agency must consider and respond to significant comments received during the period for public comment.”²⁴ Additionally, an agency must provide “a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made,”

²⁰ The State Application includes a section where states can assure the Department that states will provide all required information to the Secretary. However, the State Application does not ask states whether states have modified their standard methodologies for identifying significant disproportionality, and the State Application does not provide a clear method for submission of such information without the Reporting Form.

²¹ 20 U.S.C. § 1416(b)(2)(B)(i).

²² 34 C.F.R. § 300.647(b)(7).

²³ Department’s Responses to Public Comments Received During the 60-Day Notice on 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) (issued Jan. 9, 2026).

²⁴ *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015).

and may not ignore “an important aspect of the problem.”²⁵ The Department has not met that standard here.

Indeed, the Department failed entirely to respond to several issues raised by the States, including that the burden on states is minimal; that the Department’s role in collecting, assessing, and publicly posting states’ methodologies is critical; and that equity in education, as well as public scrutiny of the states’ methodologies, is an important state interest. Failure to respond to comments regarding important aspects of the problem can render an agency decision arbitrary and capricious.²⁶

Even where the Department did respond to comments, its response is cursory and inadequate. In response to the most common concerns raised by commenters regarding the importance of collecting and publicly sharing states’ methodologies, the Department merely emphasizes that the legal obligations for identifying and addressing significant disproportionality still require states to establish methodologies to identify and address significant disproportionality, but that the law does not require states to report their standard methodologies on the State Application.²⁷ While it may be true that reporting methodologies using the State Application is not required, the Department does not offer an alternative way for states to report and publicly share their standard methodologies.²⁸ As noted, the regulations allow the Secretary to determine the time and manner, but do not provide authority for entirely eliminating the reporting requirement.²⁹ Failing to respond to this central concern raised by the commenters demonstrates the inadequacy of the Department’s response to public comments.

The public comments also addressed the burden (or lack thereof) of reporting changes to significant disproportionality standard methodologies. As discussed below, the Department’s response to the States’ previous comment about the burden of reporting significant disproportionality standard methodologies is flawed and significantly overestimates the current burden on states. The Department’s flawed burden analysis demonstrates the lack of a rational connection between the facts and the proposed revision.³⁰

²⁵ *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted).

²⁶ *Motor Vehicle Mfrs. Ass’n of U.S.*, 463 U.S. at 40-43.

²⁷ Department’s Response to Public Comments Received During the 60-Day Notice on Agency Information Collection Activities; Comment Request; Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 at 1-2.

²⁸ *Id.* at 2. The Department claims that states’ significant disproportionality standard methodologies will be available on the Department’s website. However, on its website, the Department refers to the State Applications for such information—the very same application the Department is proposing to revise by removing the requirement to report significant disproportionality standard methodologies. As such, there is no indication that changes to states’ standard methodologies will be publicly reported should the Department remove such reporting from the State Application.

²⁹ 34 C.F.R. § 300.647(b)(7).

³⁰ *See Burlington Truck Lines v. U.S.*, 371 U. S. 156, 168 (1962).

B. The Department's Annual Burden Hour Estimates Are Flawed.

The Department's sole justification for the proposed revision is to "reduce the burden on respondents when completing the Annual State Application under Part B of IDEA,"³¹ pursuant to the Paperwork Reduction Act of 1995³² (PRA). Although burden reduction is central to the Department's reason for the proposed revision, its burden hour analysis is inconsistent, unsupported, and wholly overestimated.

1. The Department's Burden Hour Estimates Are Inconsistent and Unsupported.

The burden hour numbers provided by the Department are inconsistent. First, the Department provides different "Total Estimated Number of Annual Burden Hours" in each of the Notices: in the August 2025 Notice, the Department estimates 180 burden hours; and, in the January 2026 Notice, the Department estimates 840 burden hours.³³ The Department provides no explanation for this inconsistency in the estimated burden hours. Second, in its response to public comments, the Department claims there would be a burden reduction of 1,500 burden hours due to the removal of Section V.B. from the State Application.³⁴ However, in the Department's Supporting Statement, the Department claims a reduction of 500 burden hours when the standard methodologies are not reported on the State Application.³⁵ The Department offers no explanation for why these estimates of burden reduction differ by 1,000 hours. Having multiple, inconsistent estimates of burden hours confuses the calculation for the actual burden hours of this data collection—a calculation that is central to the Department's rationale for this proposed revision.

The Department's burden hour estimates are also unsupported by any explanation of how the Department arrived at its estimates.³⁶ An agency evaluating burden hours must "provide an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure."³⁷ The Department wholly fails to do this. For instance, the Department contends that the unamended State Application imposes a total of 1,340

³¹ 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. at 41,064.

³² 44 U.S.C. § 3501 *et seq.*

³³ 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. at 41,063; Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004, 91 Fed. Reg. at 990.

³⁴ Department's Response to Public Comments Received During the 60-Day Notice on Agency Information Collection Activities; Comment Request; Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 at 3.

³⁵ Department's Supporting Statement, 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) (Attachment A), 6-8.

³⁶ *Id.* at 6-7.

³⁷ *Id.* at 6.

burden hours across all 60 respondents (or 22 hours per state), and only 840 burden hours across all 60 respondents (or 14 hours per state) to complete the proposed revised State Application. Thus, according to the Department, the proposed change will save about eight burden hours annually for each respondent. However, the Department offers no explanation for how it reached these estimates.

2. The Department Continues to Overestimate the Burden Hours.

The Department has overestimated states' current burden in reporting changes to their standard methodologies. First, because states are required to report their standard methodology only when there is a change in that methodology, the actual burden hours across states will be much lower each year. In fact, the actual burden hours will be zero for states who do not report any changes to their standard methodologies for a particular year. And, as the Department itself notes, such changes in methodology are rare and occurred only three times between 2020 and 2023.³⁸

Second, based on the States' experience, their reporting of significant disproportionality standard methodologies is far from burdensome. Reporting the methodology and its rationale does *not* include the time required to develop and adopt the methodology; that work is already required by federal regulation even if not reported. It also does not require the reporting of any data. Moreover, as discussed in the States' previous comment, the form for reporting is not involved or lengthy and has a series of close-ended questions. Thus, whatever the Department's burden hour estimates are, states' experience dictates that reporting standard methodologies is minimally burdensome, and a burden worth bearing to identify and address significant disproportionality.

C. Identifying Significant Disproportionality Remains Essential to Addressing Racial and Disability Discrimination in LEAs.

As noted above, the Department adopted the existing regulations to address the problem of significant disproportionality. However, these efforts have only begun, and significant proportionality remains a problem, though it can now be accurately tracked and remediated.³⁹ Nothing has factually changed since the adoption of the existing regulations to justify the Department's proposed revision. The need for reasonable and consistent methodology remains.

Moreover, if applicants report special education data based on undisclosed methodologies—methods that may or may not be deemed reasonable—the data will no longer be reliable. Without consistent and transparent methodologies, there will be no uniformity or clarity in what the data represents, and data comparisons across states will be meaningless. Without

³⁸ Department's Response to Public Comments Received During the 60-Day Notice on Agency Information Collection Activities; Comment Request; Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 at 2-3.

³⁹ See 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/>.

reliable data, the scope of significant disproportionality will be obscured, and federal oversight of racial and disability discrimination in our nation's education system will be weakened.

III. The Department's Proposed Revision Is Contrary to States' Interests in Educational Equity and Public Transparency.

The States are committed to advancing equitable opportunity and inclusion in education for all students regardless of race, ethnicity, and disability status. The States rely on both state and federal statutory frameworks to uphold these principles. While states can enforce their own laws, they necessarily rely on the Department to enforce federal civil rights obligations. By eliminating review of the methodologies used to identify significant disproportionality, the Department is abdicating its essential monitoring role. Methodology is not ancillary—it is foundational to accurately identify and address significant disproportionality. Without federal oversight of methodology, it will be more difficult for states to combat educational inequities based on race and ethnicity, as well as on disability status.

The States also have a strong interest in transparency of information for the public. Under the proposed revision, states' methodologies for identifying significant disproportionality would no longer be publicly available through a centralized and uniform federal source. Currently, the only mechanism through which the Department makes this information public is the State Application and the Department's website. Although states may choose to disclose their methodologies independently, there is no requirement to do so and no centralized system that allows for meaningful comparison across states. Families, advocates, and community members rely on the Department's public reporting of methodology to evaluate equity within their LEAs. Public transparency is a core value shared by the States. The proposed revision, which would reduce public access to critical information about how significant disproportionality is identified, is inconsistent with that value.

This is not the Department's first attempt to weaken its oversight role. In 2018, the Department issued a final rule seeking to delay the date by when states needed to comply with the 2016 regulations addressing significant disproportionality.⁴⁰ This attempt was promptly challenged, and the district court vacated the regulation delaying implementation, finding that the Department had failed to provide a reasoned explanation for its proposed delay and that the delay would result in costs that the Department had failed to consider, including the loss of transparency occasioned by the delay.⁴¹ The Department's current effort to weaken its own oversight role suffers from the same infirmities. The Department has once again not considered the costs, including the transparency costs of its proposed revision, and has failed to provide a reasoned explanation for its proposed change. Ultimately, the Department's revised proposal appears to be another misguided attempt to limit the impact of the 2016 regulations.

⁴⁰ Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, 83 Fed. Reg. 31,306 (July 3, 2018).

⁴¹ *Council of Parent Atty's & Advocs. v. DeVos*, 365 F. Supp. 3d 28, 52-53, 55 (D.D.C. 2019).

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

Sincerely,



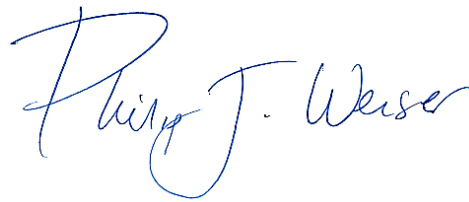
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