



## State and Federal Activity Updates Regarding Significant Disproportionality Requirements at 20 U.S.C. 1418(d) and 34 CFR §§300.646 and 300.647

**Updated October 2020**

### Background

Texas has long regarded significant disproportionality as a critical issue requiring a comprehensive solution to ensure a free and appropriate public education in the least restrictive environment to every eligible child under the Individuals with Disabilities Education Act (IDEA). Determinations for whether significant disproportionality (SD) based on race/ethnicity occurs with respect to the identification of children as children with disabilities are made annually and include:

- Identification as children with particular impairments;
- Placement of children in particular educational settings; and
- Incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

Prior to the January 2017 federal regulation updates at 20 U.S.C. 1418(d) and 34 CFR §§300.646 and 300.647, the Texas Education Agency (TEA) made SD determinations utilizing a calculation methodology approved by the Office of Special Education Programs (OSEP). In early 2017, with stakeholder input and approval, TEA executed a plan to analyze data utilizing the new calculation methodology found in 34 CFR §300.647 and provide results to each local education agency (LEA) in the state in a “report only” output. Simultaneously, TEA continued to implement the prior approved calculation methodology to meet the continuing requirement for making SD annual determinations. This allowed the state to maintain compliance under the existing federal regulation, while preparing for implementation of the new regulations as required by July 1, 2018.

### Implementation Challenges

In July 2018 the United States Department of Education, led by Secretary Betsy DeVos, halted the SD rule for two years. This decision was challenged in federal court by the Council of Parent Attorneys and Advocates (COPAA) resulting in a ruling for the 2016 final regulations to immediately go into effect.

OSEP has released the following information on its website:

- *5/20/2019 - Pursuant to the plain language of the December 19, 2016 Equity in IDEA regulation on significant disproportionality, and in conjunction with the March 7, 2019 decision in COPAA v. DeVos, the Department expects States to calculate significant disproportionality for the 2018–2019 school year using the 2016 rule’s standard methodology, or to recalculate using the 2016 rule’s standard methodology if a different methodology has already been used for this school year.*
- *5/22/2019 - On May 6, 2019, the Department of Justice filed a Notice of Appeal in COPAA v. DeVos. The filing of this Notice of Appeal does not stay the district court order or alter the fact that the December 19, 2016 Equity in IDEA regulation on significant disproportionality is currently in effect.*

### State Implementation Status

Unlike other states who may have halted SD data calculation and related activities during summer 2018, Texas was well positioned for implementation of the requirements and allowable stakeholder developed flexibilities requiring three years of data for analysis. TEA began its third year of data calculations and analysis that are compliant with the 2016 SD final regulations. Public reporting at the beginning of the 2019-2020 school year includes, for each LEA identified in one or more of the required categories found in 34 CFR §300.647, designations of:

- SD Year 1, SD Year 2, or SD Year 3 with Reasonable Progress (RP)<sup>1</sup> – all being “report only” with no actions required under the federal regulations; and
- SD Year 3 which will carry the actionable requirements under 34 CFR §300.646.

The State will notify, in writing every year, each LEA identified as SD Year 3 in any of the required SD categories of its resulting actionable requirements and timelines associated for completion and assurance of those requirements.

## Frequently Asked Actionable Requirements for SD and Mandatory Use of Funds

The following frequently asked questions address identified LEA actionable requirements. Additional essential questions and answers provided by OSEP can be found at <https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17.pdf>.

- Q1** - What specific actions are required under IDEA and these regulations when an LEA is identified with significant disproportionality in Texas?
- A1** - Each LEA identified as “SD Year 3” in one or more SD category is required to:
- 1) provide for the review and, if appropriate, revision of policies, practices, and procedures used in the area in which the LEA is identified to ensure compliance with the requirements of IDEA;
  - 2) publicly report on the revision of policies, practices, and procedures consistent with the requirements of the Family Educational Rights and Privacy Act and its implementing regulations in 34 CFR Part 99, and Section 618(b)(1) of the IDEA; and
  - 3) set aside 15 percent of its IDEA, Part B (sections 611 and 619) funds to provide comprehensive coordinated early intervening services (CCEIS) to address factors contributing to the significant disproportionality. (See 34 C.F.R. §300.646(c) and (d))
- Q2** - Who can an LEA serve with funds reserved for Comprehensive Coordinated Early Intervening Services (CCEIS)?
- A2** - An LEA may use funds reserved for CCEIS to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups identified as significantly disproportionate, including children not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment and children with disabilities. (See 34 C.F.R. §300.646(d)(2).) LEAs may not limit comprehensive CEIS only to children with disabilities. (See 34 C.F.R. §300.646(d)(3).)
- Q3** - What Fiscal Year (FY) IDEA Part B funds can an LEA reserve for CCEIS and how does it affect the LEA’s ability to take the MOE reduction in 34 CFR §300.205?
- A3** - **UPDATED:** Generally, an LEA may reserve IDEA Part B funds that it is required to reserve for CCEIS either from the funds awarded for the FY following the date on which the State identified the significant disproportionality or from funds awarded from the appropriation for a prior FFY. For example, Texas uses data on identification collected for three school years (2017-18, 2018-19, and 2019-20) which is analyzed in summer 2020 to make a determination in September 2020 that an LEA has significant disproportionality related to identification and therefore must set aside 15 percent of its IDEA Part B funds for CCEIS. The State makes this determination before FY 2022 funds become available on July 1, 2021. The LEA has the following three options. The LEA may set aside:
- 1) 15 percent of the funds that the LEA receives from its FY 2022 IDEA Part B allocation (available for obligation beginning July 1, 2021);
  - 2) 15 percent of the funds that the LEA received from its FY 2021 IDEA Part B allocation

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<sup>1</sup> Per 34 CFR §300.647(d)(2), the TEA is not required to identify an LEA for Significant Disproportionality (SD) until the LEA has exceeded the risk ratio threshold and has failed to demonstrate Reasonable Progress (RP). RP designation requires an LEA to reduce its risk ratio in each of two prior consecutive years. The TEA will use a proportionate improvement method for calculating RP that is described in the 2019 Results Driven Accountability Manual (*formerly Performance Based Monitoring Analysis System Manual*).

(available for obligation beginning July 1, 2020, by amending the application for the current fiscal year covering school year 2020-21; or

- 3) 15 percent of the funds that it received from the FY 2020 IDEA Part B allocation (that was available for obligation July 1, 2019) **only** if the LEA did not use the adjustment to reduce its required level of effort in the fiscal year covering school year 2019-20 under 34 C.F.R. §300.205, **and** amendment request is received and approved by TEA Grants Division management.<sup>2</sup>

If an LEA selects option 1, the LEA will not be able to use the adjustment to reduce its required level of effort, known as Maintenance of Effort (MOE) under 34 C.F.R. §300.205 in FY 2022.

If an LEA selects option 2, the LEA will not be able to use the adjustment to reduce its required level of effort, or MOE, under 34 C.F.R. §300.205 in FY 2021.

An LEA can only select option 3 if the LEA did not use the adjustment in 34 C.F.R. §300.205 to reduce its required level of effort in FY 2020. Because FY 2020 is ending at the time the LEA is identified with significant disproportionality in early September 2020, the LEA would already know whether it used the adjustment in 34 C.F.R. §300.205 to reduce its required level of effort in FY 2020, and if it had done so, could not use its FY 2020 IDEA Part B funds to provide CCEIS because of the way the MOE adjustment provision and the authority to use IDEA Part B funds for CCEIS are interconnected.

Finally, an LEA must reserve IDEA Part B funds received from a single FY IDEA Part B allocation, and not from multiple FY Part B allocations. For example, if an LEA is required to reserve funds for CCEIS, it must reserve funds from a single year's allocation. The LEA could reserve \$100 from its FY 2022 IDEA Part B funds, but it could not reserve \$50 of its FY 2022 IDEA Part B funds and \$50 of its FY 2021 IDEA Part B funds to provide CCEIS. Once the LEA chooses to reserve funds from a particular FY, it must reserve the entire amount for CCEIS from that FY. Further, the LEA must expend the funds reserved to provide CCEIS reported on the budget schedule BS6016 of the applicable Special Education Consolidated Grant Application.

Q4 - If mandatory IDEA Part B funds (CCEIS) are reserved in the current year (FY 2021) or previous year (FY 2020) and used for planning or professional development activities but does not serve students in the same year, when would an LEA begin tracking and reporting which identified students are impacted (served)?

A4 - **UPDATED:** LEAs identified as SD in school year 2020-2021 and who used funds for professional development and/or planning for CCEIS in a given year must expend the funds reserved to provide CCEIS and report on the budget schedule BS6016 of the applicable Special Education Consolidated Grant Application. LEAs may be required to submit data in subsequent years to report the number of students served.<sup>3</sup>

Currently under voluntary CEIS reporting requirements, if no students are served in the same year funds are reserved the LEA would report -0- students served if they are merely providing PD in that year, then report students served (impacted by the PD) in the next year (even though funds may not be reserved in the next year). The LEA would report on that cohort of students for the following 2 additional years. In other words, if funds are spent for PD only, LEAs must track/report which identified students are impacted by that PD in the 3 years following. Although at the time of this publication TEA has not yet received specific reporting requirements from OSEP for **CCEIS** regarding student outcomes, and while current reporting mechanisms only require LEAs to report aggregate numbers to TEA for CEIS, LEAs should consider maintaining a child-level record to account for each child who received CEIS or CCEIS.

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<sup>2</sup> Option 3 is considered on a case by case basis. LEAs seeking this option should contact the TEA Grants Division for more information on limitations and related conditions.

<sup>3</sup> At the time of this publication, TEA has not yet received specific reporting requirements from OSEP for **CCEIS** regarding student outcomes. While current reporting mechanisms only require LEAs to report aggregate numbers to TEA for CEIS, LEAs should consider maintaining a child-level record to account for each child who received CEIS or CCEIS.

The following chart is provided for clarity of options and recommendations for mandatory CCEIS:

Reserve 15% IDEA B funds in which FY?	School year students served	Options	Recommended Student Cohort Tracking/Reporting <sup>4</sup> Years
FY 2022 (school year 2021-2022)	2021-2022	Could plan/PD in 2020-2021 without using IDEA B funds; or Could plan/PD/serve students in 2021-2022	Recommend cohort 2021-2022 with track/report <sup>4</sup> continued in 2022-2023 & 2023-2024
FY 2021 (school year 2020-2021)	2020-2021	Could plan/PD/serve students in 2020-2021	Recommend cohort 2020-2021 with track/report <sup>4</sup> continued in 2021-2022 & 2022-2023
	2021-2022	Could plan/PD in 2020-2021 then serve students in 2021- 2022	Recommend record -0- students in 2020-2021; then cohort of 2021-2022 with track/report <sup>4</sup> continued in 2022-2023 & 2023-2024
FY 2020 (school year 2019-2020)	2020-2021	Could plan/PD/serve students in 2020-2021	Recommend cohort 2020-2021 with track/report <sup>4</sup> continued in 2021-2022 & 2022-2023
	2021-2022	Could plan/PD in 2020-2021 then serve students in 2021- 2022	Recommend record -0- students in 2020-2021; then cohort of 2021-2022 with track/report <sup>4</sup> continued in 2022-2023 & 2023-2024

### Additional Questions from Stakeholders – October 2020

Q5 - What is the difference in CEIS and CCEIS regarding voluntary or mandatory, and what is 15% set aside calculated from?

A5 - Published existing resources regarding differences between CEIS and CCEIS requirements can be found on TEA's website at [http://bit.ly/SD\\_Texas](http://bit.ly/SD_Texas) . For specific context regarding 15% set aside:

- **CEIS** (Coordinated Early Intervening Services) defined at 34 CFR §300.266 allows **voluntary** set aside of no more than 15% of your IDEA-B allocation (Section 611, Formula, and Section 619, Preschool) to develop and implement CEIS for students kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
- **CCEIS** (Comprehensive Coordinated Early Intervening Services) defined at 34 CFR §300.646(d) requires maximum **mandatory** set aside (15%) of your IDEA-B allocation (Section 611, Formula, and Section 619, Preschool) to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality for children ages 3 through grade 12, particularly, but not exclusively for children in those groups that were significantly overidentified. This includes children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment, and children with disabilities. An LEA may not limit the provision of comprehensive coordinated early intervening services under this paragraph to only children with disabilities.

<sup>4</sup> At the time of this publication, TEA has not yet received specific reporting requirements from OSEP for **CCEIS** regarding student outcomes. While current reporting mechanisms only require LEAs to report aggregate numbers to TEA for CEIS, LEAs should consider maintaining a child-level record to account for each child who received CEIS or CCEIS.

- Q6 - Are LEAs identified as SD required to reserve 15% of the combined IDEA-B Formula and IDEA-B Preschool “planning” allocations, which are released in April/May, or 15% of the “final” allocation, which are released in November?
- A6 - LEAs identified as SD are required to reserve 15% of the combined IDEA-B Formula and IDEA-B Preschool “final” allocations, which are released in November.
- Q7 - Does the grant require you to itemize the set aside, or is it one lump sum for the set aside?
- A7 - The total amount allocated to CEIS is reserved in Part 2 of the BS6016 – Fiscal Compliance Requirements schedule of the 2020-2021 Special Education Consolidated Grant Application. The costs are not itemized in the 2020-2021 Special Education Consolidated Grant Application.
- Q8 - My understanding is that the entire 15% must be spent within one grant year. However, some information indicates we have access to the 15% based on the 27 months (i.e. can spend some of the money that is carried over to the next year).What is the timeline to spend the funds?
- A8 - LEAs who set-aside the required 15% of IDEA B funds in a particular budget year would typically plan to expend within the 12-month budget year. However, if an LEA does not spend down the total set-aside amount, TEA may allow a “carryover” of unspent funds into the next grant year and provide additional time (up to a total of 27 months from July 1 of the original budgeted year).
- Q9 - One year of intervention may not be sufficient to see progress for students receiving CCEIS. Does the requirement to track a cohort of students for 3 years mean that activities/funds are to be used for 3 years.
- A9 - At the time of this publication, TEA has not yet received specific tracking/reporting requirements from OSEP for CCEIS regarding student outcomes. TEA will notify LEAs of any updated information for tracking/reporting requirements with CCEIS when received from the US Department of Education/Office of Special Education Programs. Refer to Answer 8 for for timeline associated with expenditures for 15% set-aside requirements. For additional context:
- LEAs may choose to continue supports beyond mandatory CCEIS set-aside to support ongoing intervention through other applicable/appropriate use of local/state/federal funds in subsequent years.
  - LEAs who are identified as SD (year 3) designation with mandatory CCEIS set-aside of funds in consecutive or subsequent school years may include previously identified/prior year budgeted interventions where applicable to address factors contributing to the significant disproportionality (i.e. 2020-21 budget requires 15% for CCEIS that includes a particular intervention; 2021-22 budget requires 15% for CCEIS that can include the funding continuation of the same particular intervention).
- Q10 - Since the current SC5100 only collects CEIS data, where and what will LEA’s be required to report on CCEIS target group cohort data?
- A10 - IDEA funds used for voluntary (CEIS) and mandatory comprehensive CEIS (CCEIS) are subject to the general requirements for use of federal funds, as well as specific requirements related to their use. LEAs should carefully track the use of IDEA funds for CEIS and CCEIS for audit purposes. LEAs should have procedures in place to ensure that the use of funds is in accordance with the requirements at 34 CFR §300.226 and 34 CFR §300.646. TEA is engaged with the Office of Special Education Programs (OSEP) and its technical assistance centers to understand and determine any additional reporting requirements for CCEIS use of funds and cohort tracking/information that differs from current CEIS reporting. These additional reporting requirements are to be determined by OSEP at a future date and will be communicated to LEAs by TEA at that time. Until further information is obtained, TEA understands the following to be true:
- For CCEIS, the LEA must also demonstrate to TEA that it used the funds to address the policies, procedures, or practices that contributed to the identified significant disproportionality.

- For CCEIS, the LEA should be able to demonstrate that it did not exclusively provide CCEIS to children with disabilities.
- For CEIS, LEAs must track children who receive CEIS to report the numbers of children to TEA, and subsequently for TEA to report to OSEP. While current reporting mechanisms only require LEAs to report aggregate numbers of children to TEA for CEIS, LEAs should consider maintaining a child-level record to account for each child who received CEIS or CCEIS.
- The target group is the group that qualifies for and will receive CEIS or CCEIS. The cohort group will be the identified children from the target group receiving CEIS who will be tracked/reported for 3 years. *At this time, we have not yet received specific reporting requirements from OSEP for CCEIS, but LEAs should consider maintaining a child-level record to account for each child who received voluntary CEIS or mandatory CCEIS.*
- Currently, in addition to reporting the number of children identified who receive CEIS services, LEAs must determine whether children who received voluntary CEIS over the past three years were identified for special education and related services in the reporting year. While current reporting mechanisms only require LEAs to report aggregate numbers to TEA for CEIS, LEAs should consider maintaining a child-level record to account for each child who received CEIS or CCEIS.

Q11 - When must the review and public reporting of policies take place by?

A11 - LEAs should complete their review and, if appropriate, revision of the policies, procedures, and practices used in the identification, placement, or discipline of students, to ensure the policies, procedures, and practices comply with the requirements of IDEA (34 CFR §300.646(c)(1)) and report publicly any revisions to those **as soon as possible**. LEAs will be required to make assurances during the 2020-2021 school year regarding completion of these required actions. Notice and direction for the assurance submission through the ESC Region 18 Legal Framework portal will be provided to LEAs in fall 2020.

Q12 - How will discipline be affected by COVID?

A12 - As a result of school (building) closures beginning March 2020 through the remainder of the 2019-2020 school year, TEA anticipates an overall decline in the number of students with disciplinary removals reported by LEAs. That data, once validated, is projected to impact LEA analysis for SD calculations relating to required disciplinary SD categories resulting in an anticipated overall decline in SD designations assigned for disciplinary categories on the RDA 2021 reports. Further discussion and information regarding recommendations for and continued focus and support on this important issue in our state is expected during the 2020-21 school year once validated data is analyzed.

Q13 - Will TEA be creating resources to compare SD district issues with other districts?

A13 - TEA is developing additional resources, technical assistance through a dedicated grantee award for support to LEAs identified with, or with concerns of SD. Additionally TEA will be creating additional SD resources that will be publicly available on its website this fall to support year to year, LEA, and SD category data analysis and comparisons. Please check the TEA Significant Disproportionality website at [http://bit.ly/SD\\_Texas](http://bit.ly/SD_Texas) for continued updates.

For more information regarding CEIS, CCEIS funding, data collection, and reporting please reference the [IDEA Fiscal Compliance](#) webpage on the TEA website.