Significant Disproportionality Requirements

Background

Texas has long regarded significant disproportionality (SD) as a critical issue requiring a comprehensive solution to ensure a free and appropriate public education (FAPE) in the least restrictive environment (LRE) for every eligible child under the Individuals with Disabilities Education Act (IDEA). Determinations for whether 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 to 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 United States Department of Education (USDE), 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 educational 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.

In July 2018, the USDE, 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 2019 ruling for the 2016 final regulations to immediately go into effect.

State Implementation

Public reporting at the beginning of the 2019-20 school year included, 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) [1] – all being "report only" with no actions required under the federal regulations; and
- SD Year 3 which carried the actionable requirements under 34 CFR §300.646.

Since that time, TEA notifies, 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: Significant Disproportionality – Essential Questions and Answers and State General Supervision Responsibilities Under Parts B And C Of the IDEA

1. What specific actions are required under IDEA and these regulations when an LEA is identified with SD in Texas?

[1] Per 34 CFR §300.647(d)(2), the TEA is not required to identify an LEA for SD until the LEA has exceeded the risk ratio threshold and has failed to demonstrate Reasonable Progress (RP). The 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 RDA chapter and Appendix K of the 2024 Accountability Manual, which was previously in the standalone RDA Manual (see historical RDA and PBMAS Manuals).

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 any policies, practices, and procedures consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99 and Section 618(b)(1) of the IDEA; and
3. set aside 15% of its IDEA Part B (sections 611 and 619) funds to provide comprehensive coordinated early intervening services (CCEIS) to address factors contributing to the SD. (See 34 C.F.R. §300.646(c) and (d))

2. Who can an LEA serve with funds reserved for CCEIS?

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 CCEIS only to children with disabilities. (See 34 C.F.R.§300.646(d)(3).)

3. 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 Maintenance of Effort (MOE) reduction in 34 CFR §300.205?

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 SD or from funds awarded from the appropriation for a prior FY. For example, Texas uses data on identification collected for three school years (2021-22, 2022-23, and 2023- 24), which is analyzed in summer 2024 to make a determination in October 2024 that an LEA has SD related to identification and therefore must set aside 15% of its IDEA Part B funds for CCEIS. The State makes this determination before FY 2026 funds become available on July 1, 2025. The LEA has the following two options. The LEA may set aside:

1. Set aside 15 percent of the funds that the LEA received from its FY 2024-2025 IDEA Part B allocation (available for obligation July 1, 2024), by amending budget schedule BS6016 in application for the current fiscal year covering school year 2024-2025 to implement CCEIS activities (must meet amendment deadline). or

2. Set aside 15 percent of the funds that the LEA receives from its fiscal year (FY) 2025- 2026 IDEA Part B allocation (available for obligation beginning July 1, 2025) and designate on its budget schedule BS6016 to implement CCEIS activities.

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 MOE, under 34 C.F.R. §300.205 in FY 2025.

If an LEA selects option 2, then because the LEA was identified as SD in FY25 and opted to wait to reserve the required 15% in FY26, that LEA would be ineligible for MOE Voluntary Reduction in FY25 (as a result of being identified in FY25) and would also be ineligible for MOE Voluntary Reduction in FY26 (because the combined amount of CCEIS reservation and MOE voluntary reduction cannot exceed the lesser of the 2 max amounts).

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, the LEA could reserve $100 from its FY 2024 IDEA Part B funds, but it could not reserve $50 of its FY 2024 IDEA Part B funds and $50 of its FY 2025 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.

4. If mandatory IDEA Part B funds (CCEIS) are reserved in the current year (FY 2025) or previous year (FY 2024) and used for planning or professional development activities but do not serve students in the same year, when would an LEA begin tracking and reporting which identified students are impacted

(served)?

LEAs identified as SD in school year 2024-25 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 are required to submit the number of students with disabilities and the number of students without disabilities who were served with CCEIS funds during the reference year.

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

Reserve 15% IDEA B	School year students served	Options	Student Cohort Tracking/Reporting Years
FY 2026 (school year 2025-26)	2025-26	Could plan/PD in 2024-25 without using IDEA B funds **OR** Could plan/PD/serve students in 2025-26	Track/report the number of students with disabilities and the number of students without disabilities who were served with CCEIS during 2025-26
FY 2025 (school year 2024-25)	2024-25	Could plan/PD/serve students in 2024-25	Track/report the number of students with disabilities and the number of students without disabilities who were served with CCEIS during 2024-25
	2025-26	Could plan/PD in 2024-25 then serve students in 2025-26	Track/report the number of students with disabilities and the number of students without disabilities who were served with CCEIS during 2025-26

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

Published existing resources regarding the differences between CEIS and CCEIS requirements can be found on TEA's website at bit.ly/SD_Texas. For specific context regarding 15% set aside:

- **CEIS** (Coordinated Early Intervening Services) defined at 34 CFR §300.226 allows **voluntary** set aside of no more than 15% of your IDEA Part 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 Part B allocation (Section 611, Formula, and Section 619, Preschool) to provide CCEIS to address factors contributing to the SD 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 CCEIS under this paragraph to only children with disabilities.

6. Are LEAs identified as SD required to reserve 15% of the combined IDEA Part B Formula and IDEA Part B Preschool "planning" allocations, which are released in April/May, or 15% of the "final" allocation, which are released in November?

LEAs identified as SD are required to reserve 15% of the combined IDEA Part B Formula and IDEA Part B Preschool "final" allocations, which are released in November.

7. Does the grant require you to itemize the set aside, or is it one lump sum for the set aside?

The total amount allocated to CCEIS is reserved in Part 2 of the BS6016 – Fiscal Compliance Requirements schedule of the 2024-25 Special Education Consolidated Grant Application. The costs are not itemized in the 2024-25 Special Education Consolidated Grant Application.

8. 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?

LEAs who set aside the required 15% of IDEA Part 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).

9. One year of intervention may not be sufficient to see progress for students receiving CCEIS. How does this impact the tracking and reporting requirement for the use of CCEIS funds?

LEAs are required to report the number of students with disabilities and the number of students without disabilities who are served with CCEIS funds. The requirement is to track and report these students during the reference year they are served. This data will be reported on the SC5100-Special Ed Comprehensive and Coordinated Early Intervening Services (CCEIS & CEIS) special data collection form.

10. When must the review and public reporting of policies take place by?

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 they comply with the requirements of IDEA (34 CFR §300.646(c)(1)) and report publicly any revisions **as soon as possible**. LEAs will be required to make assurances during the 2024-25 school year regarding completion of these required actions. Notice and direction for the assurance submission through the Texas Legal Framework portal was provided to LEAs in January of each year following notification.

11. Will TEA be creating resources for LEAs that experience issues with SD?

TEA continues to develop and leverage additional resources and technical assistance through a dedicated grantee award for support to LEAs identified with SD, or those that may have questions regarding SD. Please check the TEA Significant Disproportionality website at bit.ly/SD_Texas for continued updates.

12. We have been identified as having SD Year 2, and based on our formative data, we anticipate that we will be SD Year 3. Can we begin using our CCEIS funds prior to the SD Year 3 designation?

An LEA, in terms of funds availability, could be expending funds for CCEIS prior to the point of identification (back to July 1, the date on which the LEA submitted a substantially approvable application) so long as:

> "*The obligations/expenditures are ultimately allowable uses consistent with a and approved for the LEA's CCEIS plan addressing root cause analysis and factors contributing to the disproportionality. Further, the LEA must not have used prior FFY [federal fiscal year] carryover funds for these expenditures as the LEA must reserve from only one grant award per determination and must have sufficient funds available for the designated grant award to meet the full 15% reserve required*."

So, while this is technically allowable, we would warn that the LEA would be assuming a degree of risk in being able to ensure the funds were being used to address factors contributing to the identification of the disproportionality based on the required "root cause analysis" to address "factors contributing to the disproportionality." Further complications might involve the overlap of identification in a prior or future year; not using "carryover" from a previous year for the initial reservation; and ensuring that if not subsequently identified after reserving/expending in a "pre-year," that the before-the-fact reservation could not be used for a subsequent identification.

13. We were identified as having SD Year 3 this year but planned to use set aside funds in the following year. When our data came in, we were no longer SD Year 3. Do we still have to set aside and expend the mandatory 15% of funds.

Yes, funds must be set aside and used for the SD even though you no longer have the SD designation. Each year of identification requires a year in which the LEA reserves 15% of IDEA Part B funding to address the significant disproportionality. If an LEA is identified as SD Year 3 in 2023-24 and elects to reserve funds in the 2024-25 FY, then the LEA must reserve those funds regardless of their status in 2024-25. However, if that LEA is subsequently again identified as SD Year 3 in 2024-25, the LEA would be required to reserve another required 15% the following year. Identified LEAs notify TEA of their intent to reserve the required 15% in a particular year (previous year, current year, or following year) via the Significant Disproportionality Survey.

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