ANNUAL STATE APPLICATION UNDER PART B OF THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT AS AMENDED IN 2004
FOR FEDERAL FISCAL YEAR 2022
CFDA No. 84.027A and 84.173A

ED FORM No. 9055

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION PROGRAMS
Washington, DC 20202-2600

Public Burden Statement
According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a currently valid OMB control number. The valid OMB control number for this collection is 1820-0030. Public reporting burden for this collection of information is estimated to average 14 hours per response, and an average of 25 additional hours for responses reporting data related to significant disproportionality in a given year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain a benefit under 20 U.S.C. 1411 and 1419. If you have comments or concerns regarding the status of your individual submission of this form, please contact Jennifer Simpson at Jennifer.Simpson@ed.gov or at the Office of Special Education and Rehabilitative Services US Department of Education, 400 Maryland Avenue SW, Washington, DC 20202.

Respondents are required to submit information for Sections I-IV of the Annual State Application in order to receive a grant under Section(s) 611 and/or 619 of the Individuals with Disabilities Education Act. Respondents are required to provide the data in Section V pursuant to IDEA section 618(a)(3), which provides the Secretary authority to collect annual data on any information that may be required by the Secretary and 34 CFR §300.647(b)(7), which requires States to report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress if the State uses the “reasonable progress” flexibility in 34 CFR §300.647(d)(2), and the rationales for each, to the Department.
Section I

A. Submission Statement for Part B of IDEA

Please select 1 or 2 below. Check 3 if appropriate.

X 1. The State provides assurances that it has in effect policies and procedures to meet all eligibility requirements of Part B of the Act as found in PL 108-446, the Individuals with Disabilities Education Act and applicable regulations (IDEA). The State is able to meet all assurances found in Section II.A of this Application.

2. The State cannot provide assurances for all eligibility requirements of Part B of the Act as found in PL 108-446. The State has determined that it is unable to make the assurances that are checked as 'No' in Section II.A. However, the State assures that throughout the period of this grant award the State will operate consistent with all requirements of IDEA in PL 108-446 and applicable regulations. The State will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2023. The State has included the date by which it expects to complete necessary changes associated with assurances marked 'No'. (Refer to Assurances found in Section II.A.)

Optional:

3. The State is submitting modifications to State policies and procedures previously submitted to the Department. These modifications are: (1) deemed necessary by the State, for example when the State revises applicable State law or regulations; (2) required by the Secretary because there is a new interpretation of the Act or regulations by a Federal court or the State’s highest court; and/or (3) because of an official finding of noncompliance with Federal law or regulations.

B. Conditional Approval for Current Grant Year

If the State received conditional approval for the current grant year, check the appropriate statement(s) below:

1. Conditional Approval Related to Assurances in Section II.A:
   a. Section II.A provides documentation of completion of all issues identified in the FFY 2021 conditional approval letter.
   b. As noted in Section II.A, the State has not completed all issues identified in the FFY 2021 conditional approval letter.

2. Conditional Approval Related to Other Issues:
   a. The State previously submitted documentation of completion of all issues identified in the FFY 2021 conditional approval letter.
   b. The State is attaching documentation of completion of all issues identified in the FFY 2021 conditional approval letter. (Attach documentation showing completion of all issues.)
   c. The State has not completed all issues identified in the FFY 2021 conditional approval letter. (Attach documentation showing completion of any issues and a list of items not yet completed.)
## Section II

**A. Assurances Related to Policies and Procedures**

The State makes the following assurances that it has policies and procedures in place as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419; 34 CFR §§300.100-300.174)

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Assurances Related to Policies and Procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td></td>
<td>1. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1); 34 CFR §§300.101-300.108.</td>
</tr>
<tr>
<td>X</td>
<td></td>
<td>2. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (20 U.S.C. 1412(a)(2); 34 CFR §§300.109-300.110)</td>
</tr>
<tr>
<td>X</td>
<td></td>
<td>3. All children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3); 34 CFR §300.111.</td>
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<tr>
<td>X</td>
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<td>4. An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with 34 CFR §§300.320 through 300.324, except as provided in §§300.300(b)(3) and 300.300(b)(4). (20 U.S.C. 1412(a)(4); 34 CFR §300.112)</td>
</tr>
</tbody>
</table>
| X   |    | 5. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be
<table>
<thead>
<tr>
<th>Yes (Assurance is given.)</th>
<th>No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</th>
<th>Assurances Related to Policies and Procedures</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Check and enter date(s) as applicable</td>
<td>achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B); 34 CFR §§300.114-300.120.</td>
</tr>
<tr>
<td>X</td>
<td>6. Children with disabilities and their parents are afforded the procedural safeguards required by 34 CFR §§300.500 through 300.536 and in accordance with 20 U.S.C. 1412(a)(6); 34 CFR §300.121.</td>
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<td>X</td>
<td>7. Children with disabilities are evaluated in accordance with 34 CFR §§300.300 through 300.311. (20 U.S.C. 1412(a)(7); 34 CFR §300.122)</td>
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<tr>
<td>X</td>
<td>8. Agencies in the State comply with 34 CFR §§300.610 through 300.626 (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8); 34 CFR §300.123)</td>
<td></td>
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<td>X</td>
<td>9. Children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 34 CFR §300.323(b) and section 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10). (20 U.S.C. 1412(a)(9); 34 CFR §300.124)</td>
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<td>X</td>
<td>10. Agencies in the State, and the SEA if applicable, comply with the requirements of 34 CFR §§300.130 through 300.148 (relating to responsibilities for children in private schools), including that to the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 34 CFR §§300.130 through 300.148 unless the Secretary has arranged for services to those children under subsection (f) [By pass]. (20 U.S.C. 1412(a)(10); 34 CFR §§300.129-300.148)</td>
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<tr>
<td>Yes (Assurance is given.)</td>
<td>No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</td>
<td>Assurances Related to Policies and Procedures</td>
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<td>X</td>
<td>11. The State educational agency is responsible for ensuring that the requirements of Part B are met including the requirements of 34 CFR §§300.113, 300.149, 300.150 through 300.153, and 300.175 and 300.176 and that the State monitors and enforces the requirements of Part B in accordance with 34 CFR §§300.600-300.602 and 300.606-300.608. (20 U.S.C. 1412(a)(11); 34 CFR §300.149)</td>
<td></td>
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<td>X</td>
<td>12. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (b) of 34 CFR §300.154 and the State educational agency, in order to ensure that all services described in paragraph (b)(1)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under §300.154(a)(3). Such agreement or mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154.</td>
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<td>X</td>
<td>13. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13); 34 CFR §300.155)</td>
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<td>X</td>
<td>14. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E), as amended by the Every Student Succeeds Act; 34 CFR §300.156.</td>
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<td>15. The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C), as amended by the Every Student Succeeds Act; 34 CFR §300.157.</td>
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<td>X</td>
<td>16. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized</td>
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### Assurances Related to Policies and Procedures

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<tr>
<th>Yes</th>
<th>No</th>
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<tr>
<td>(Assurance is given.)</td>
<td>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</td>
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<td>Check and enter date(s) as applicable</td>
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B. Other Assurances

The State also makes the following assurances:

<table>
<thead>
<tr>
<th>Yes</th>
<th>Other Assurances</th>
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</thead>
<tbody>
<tr>
<td>X</td>
<td>1. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3); 34 CFR §300.705.</td>
</tr>
<tr>
<td>X</td>
<td>2. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3); 34 CFR §§300.640-300.645.)</td>
</tr>
<tr>
<td>X</td>
<td>3. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702)</td>
</tr>
<tr>
<td>X</td>
<td>4. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations.</td>
</tr>
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</table>

C. Certifications

The State is providing the following certifications:

<table>
<thead>
<tr>
<th>Yes</th>
<th>Certifications</th>
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<tbody>
<tr>
<td>X</td>
<td>1. The State certifies that ED Form 80-0013, Certification Regarding Lobbying, is on file with the Secretary of Education. With respect to the Certification Regarding Lobbying, the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, &quot;Disclosure Form to Report Lobbying,&quot; when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.</td>
</tr>
<tr>
<td>X</td>
<td>2. The State certifies that certification in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.104 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.</td>
</tr>
<tr>
<td>X</td>
<td>3. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154 (or 20 U.S.C. 1412(a)(12)(A); 34 CFR §300.154(a) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1); 34 CFR §300.171.</td>
</tr>
</tbody>
</table>
D. Statement

I certify that the State of HAWAII can make the assurances checked as 'yes' in Section II.A and II.B and the certifications required in Section II.C of this application. These provisions meet the requirements of the Part B of the Individuals with Disabilities Education Act as found in PL 108-446. The State will operate its Part B program in accordance with all of the required assurances and certifications.

If any assurances have been checked 'no', I certify that the State will operate throughout the period of this grant award consistent with the requirements of the IDEA, as found in PL 108-446 and any applicable regulations, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2023. (34 CFR § 76.104)

I, the undersigned authorized official of the Hawaii Department of Education,

(Name of State and official name of State agency)

am designated by the Governor of this State to submit this application for FFY 2022 funds under Part B of the Individuals with Disabilities Education Act (IDEA).

Printed/Typed Name of Authorized Representative of the State:

Keith T. Hayashi

Title of Authorized Representative of the State:

Interim Superintendent

Signature:

Date:
Section III

Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act—20 U.S.C. 1411(e)(5); 34 CFR § 300.171

States must provide the Description of Use of Funds by completing and submitting the Excel Interactive Spreadsheet with the FFY 2022 Application.

Describe how the amount retained by the State educational agency under 20 U.S.C. 1411(e)(1) will be used to meet the following activities under Part B. (20 U.S.C. 1411(e)(1)-(3), (6) and (7).) The Department annually identifies for States the maximum amounts that a State may retain under Section 1411(e)(1) and (2).¹ The dollar amounts listed in the Excel Interactive Spreadsheet by the State for administration and for other State activities should add up to less or equal to the dollar amount provided to the State by the Department for each of these activities.

Enter whole dollar amounts (do not enter cents) in appropriate cells on the State’s Excel Interactive Worksheet. The Excel Interactive Spreadsheet must be submitted as part of the State’s application.

Describe the process used to get input from LEAs regarding the distribution of amounts among activities described in the Excel Interactive Spreadsheet to meet State priorities. (20 U.S.C. 1411(e)(5)(B); 34 CFR § 300.704)

Hawaii is a unitary system and is one State Educational Agency and Local Educational Agency. As such, HIDOE functions as a statewide entity administering the activities needed to meet the State’s priorities for improving educational outcomes for children with disabilities.

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¹Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or $800,000 (adjusted in accordance with 20 U.S.C. 1411(e)(1)(B)), whichever is greater; and each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under 20 U.S.C. 1411(b)(1) for the fiscal year or $35,000, whichever is greater.

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust: 1) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and 2) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.
**Hawaii**

<table>
<thead>
<tr>
<th>FFY 2022</th>
<th>REGULAR AWARD AMOUNT Est.</th>
<th>$45,725,633</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL AWARD AMOUNT</td>
<td></td>
<td>$45,725,633</td>
</tr>
</tbody>
</table>

**ADMINISTRATION**

Maximum Available for Administration. Sec. III $1,196,120

How much do you want to set aside for Administration in dollars? $1,196,120

You must distribute, in whole dollars, the amount you want to set aside for Administration among the following activities:

- For the purpose of administering IDEA Part B including Preschool Grants under 20 U.S.C. 1419, a High Cost Fund, and the coordination of activities under Part B with, and providing technical assistance to, other programs that provide services to children with disabilities. (Note: These funds may be used for Administering but not Financing a High Cost Fund)
  - a $1,196,120

- For the administration of Part C of IDEA, if the SEA is the Lead Agency for the State under Part C.
  - b $0

You may set aside a portion of your Administration funds resulting from inflation for the following 4 Other State-Level Activities. Additional funds for these purposes may also be set aside under Other State-Level Activities. Based on the amount that you propose to set aside for Administration, the maximum amount of Administration funds that you may use for these 4 activities is:

$396,120

- For support and direct services, including technical assistance, personnel preparation, and professional development and training.
  - c

- To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.
  - d

- To assist local educational agencies in meeting personnel shortages.
  - e

- To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.
  - f

Subtotal, Administration funds used for Other State-Level Activities $0

If you receive a Preschool Grant under 20 U.S.C. 1419, you may use Administration funds, along with other funds, to develop and implement a State policy jointly with the lead agency under Part C and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C to children with disabilities who are eligible for services under the Preschool Grant program and who previously received services under Part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.
OTHER STATE-LEVEL ACTIVITIES

If you propose to set aside more than $850,000 for Administration and you DO wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is: $5,110,106

Of the amount you set aside for Other State-Level Activities at least 10% must be used for the High Cost Fund.

If you propose to set aside more than $850,000 for Administration and you DO NOT wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is: $4,572,794

If you propose to set aside $850,000 or less for Administration and you DO wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is: $5,365,612

Of the amount you set aside for Other State-Level Activities at least 10% must be used for the High Cost Fund.

If you propose to set aside $850,000 or less for Administration and you DO NOT wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is: $4,854,601

Do you wish to use funds for a High Cost Fund? (Yes or No) No

Based on the amount that you intend to set aside for Administration, the size of your total award, and your decision NOT TO use set aside funds to support a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is: $4,572,794

How much do you want to set aside for Other State-Level Activities? $4,572,794

You must distribute the amount you want to set aside for Other State-Level Activities the following activities. You can distribute amounts in any order you wish. The total balance remaining to be distributed at any time appears in red.
### Required Activities:

- For monitoring, enforcement, and complaint investigation. (You must use at least $1 for this purpose)
  - h. $1,850,832

- To establish and implement the mediation process required by 20 U.S.C. 1415(e), including providing for the cost of mediators and support personnel. (You must use at least $1 for this purpose)
  - i. $213,500

### Optional Authorized Activities:

- For support and direct services, including technical assistance, personnel preparation, and professional development and training
  - j. $1,827,403

- To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.
  - k. $0

- To assist local educational agencies in meeting personnel shortages.
  - l. $0

- To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.
  - m. $0

- To support paperwork reduction activities, including expanding the use of technology in the IEP process.
  - n. $0

- To improve the use of technology in the classroom by children with disabilities to enhance learning.
  - o. $0

- To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.
  - p. $150,000

- Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.
  - q. $381,059

- Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.
  - r. $150,000

- To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with Sections 1111(b) and 1201 of the Elementary and Secondary Education Act of 1965.
  - s. $0

- To provide technical assistance to schools and LEAs, and direct services, including direct student services described in section 1003A(c)(3) of the ESEA to children with disabilities, to schools or LEAs implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement based on the challenging academic standards described in section 1111(b)(1) of the ESEA.
The total of details for your Other State-Level Activities set-aside is $4,572,794

You are almost done.

If you are using money for a High Cost Fund. You must report how much you will use for each of the following two activities. You reported that you would use

$0

To establish and make disbursements from the high cost fund to local educational agencies in accordance with 20 U.S.C. 1411(e)(3) during the first and succeeding fiscal years of the high cost fund.

To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to 20 U.S.C. 1411(e)(3)(B)(ii) (Amount may not be more than 5% of the amount reserved for the LEA Risk Pool.)

Establishment of High Cost Fund (20 U.S.C. 1411(e)(3)(B)(i)) - A State shall not use any of the funds the State reserves pursuant to 20 U.S.C. 1411(e)(3)(A)(i), but may use the funds the State reserves under 20 U.S.C. 1411(e)(1), to establish and support the high cost fund.

Subtotal, High Cost Fund $0
Section IV Attachment

HAWAII STATE IMPOSED REQUIREMENTS NOT REQUIRED BY IDEA OR FEDERAL REGULATION

I. REFERRAL:

Hawaii Administrative Rules ("HAR") §8-60-10

(d) Referral.

(1) All referrals for the evaluation of a student to determine eligibility as a student with a disability under this chapter shall be documented and shall be in accordance with this section;

(2) Within fifteen days from the date of receipt of a request for an evaluation, the parent shall:

(A) Receive a written notice in accordance with section 8-60-58 of the department's proposal to assess the student under this chapter; request for consent to assess in accordance with section 8-60-31; and the procedural safeguards notice in accordance with section 8-60-59; or

(B) Receive a written notice in accordance with section 8-60-58 of the department's refusal to assess under this chapter and the procedural safeguards notice in accordance with section 8-60-59. [Eff 11/23/09] (Auth: 20 U.S.C. 1401(3)), 1412(a)(3); HRS §302A-1112) (Imp: 34 C.F.R. §§300.111, 300.131)

II. Eligibility:

HAR §8-60-38 Determination of eligibility

(a) General. Upon completion of the administration of assessments and other evaluation measures:

(1) A group of qualified professionals and the parent of the student determines whether the student is a student with a disability as defined in sections 8-60-2 and 8-60-39, in accordance with subsection (c) and the educational needs of the student; and

(2) The department provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A student shall not be determined to be a student with a disability:

(1) If the determinant factor for that determination is:

(A) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(B) Lack of appropriate instruction in math; or§8-60-38

(C) Limited English proficiency; and

(2) If the student does not otherwise meet the eligibility criteria under sections 8-60-2 and 8-60-39.
(c) Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a student is a student with a disability under sections 8-60-2 and 8-60-39, and the educational needs of the student, the department shall:

(A) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(B) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with sections 8-60-44 through 8-60-48.

(d) The student resides in the State and comes within the following age range:

(1) Is three years of age; and

(2) Under twenty on the first instructional day of the official school year calendar set by the department. A student who is under twenty years of age on the first instructional day of the school year set by the department, but who reaches the age of twenty during the school year, shall be eligible for the full school year, including extended school year when the requirements of section 8-60-7 are met. [Eff 11/23/09] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 34 C.F.R. §§300.7; 300.306)

Note: In response to the 9th Circuit Court's 2013 decision in E.R.K. v. State of Hawaii Department of Education, the HIDOE amended the State Statute in 2014, (HRS Section 302A-1134(c), which now reads:

"Unless otherwise required by the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., no person who is twenty years of age or over on the first instructional day of the school year shall be eligible to attend a public school; provided that if a person reaches twenty years of age after the first instructional day of the school year, the person shall be eligible to attend public school for the full school year."

HIDOE is in the process of revising the administrative rules to align with such state and IDEA requirements.

HAR §8-60-39 Eligibility criteria.

(a)(1) Autism spectrum disorder. A student shall be eligible under the category of autism spectrum disorder if the student has a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects the student's educational performance. The student may have one or more of the following other characteristics often associated with autism spectrum disorder:

(A) Engagement in repetitive activities and stereotyped movements;

(B) Resistance to environmental change or change in daily routines;

(C) Unusual responses to sensory experiences.
(2) A student who manifests the characteristics of autism spectrum disorder after age three may be diagnosed as having autism spectrum disorder if the criteria in paragraph (1) are satisfied.

(3) A team of qualified professionals and the parent may not identify a student as having autism spectrum disorder if the student's educational performance is adversely affected primarily because the student has an emotional disability pursuant to subsection (e).

(b) Deaf. A student shall be eligible under the disability category of deaf if the student has a hearing loss averaging greater than 70 decibels in the speech frequencies (500Hz to 4,000Hz) and:

(1) The hearing loss impairs the student's auditory processing of linguistic information through hearing, with or without amplification; or§8-60-39

(2) The hearing loss adversely affects the student's educational performance.

(c) Deaf-blindness. A student shall be eligible under the category of deaf-blindness:

(1) If the student meets the criteria under the category of deaf, or the category of hard of hearing, and the category of visual disability; and

(2) The concomitant hearing and visual disabilities cause severe communication and other developmental and educational needs.

(d) Developmental delay.

(1) A student, aged three through five, shall be eligible for any eligibility category in this subchapter if the applicable criteria are met, or for the category of developmental delay if, as measured by appropriate diagnostic instruments and procedures, one or more of the following is met:

(A) Cognitive development and adaptive behavior are delayed equivalent to one and one-half standard deviations below the mean when compared with the standard score expected for the chronological age.

(B) One of the following areas is delayed one and one-half standard deviations below a standard score for:

(i) Motor development, including fine motor, gross motor, sensory motor, and perceptual-motor development;

(ii) Communication, including speech and language development;

(iii) Academic development;

(iv) Adaptive behavior;

(2) A student, aged six through eight, shall be eligible for any eligibility category in this subchapter if the applicable criteria are met, or for the category of developmental delay if as measured by appropriate diagnostic instruments and procedures, three of the five areas are delayed one and one-half standard deviations below a standard score for:

(A) Motor development, including fine motor, gross motor, sensory motor, and perceptual-motor development;

(B) Communication, including speech and language development;

(C) Academic development;
(D) Adaptive behavior;

(E) Cognition.

(3) If assessment materials would not conclusively demonstrate eligibility as required under paragraphs (1) or (2), the team of qualified professionals and the parent may find the student eligible under the category of developmental delay if the team determines the student's patterns of learning deviate from age expectations across settings. The documentation of eligibility required by section 8-60-38 shall include a statement of the patterns of learning that deviate from age expectations across settings and the basis and method used in determining eligibility.

(e) Emotional disability.

(1) A student shall be eligible under the disability category of emotional disability if the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affect the student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal; relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression;

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) A student shall not be determined to be a student with a disability under this category, if paragraph (1) is primarily the result of cultural, or language differences, or both.

(3) Emotional disability includes schizophrenia. Emotional disability does not apply to a student who is socially maladjusted, unless it is determined that the student has an emotional disability.

(f) Hard of hearing. A student shall be eligible under the disability category of hard of hearing if the student has a hearing loss, whether permanent or fluctuating, averaging 26 to 70 decibels in the speech frequencies (500 Hz to 4,000 Hz), and:

(1) The hearing loss impairs the student's auditory processing of linguistic information, with or without amplification; or

(2) The hearing impairment adversely affects the student's educational performance.

(g) Intellectual disability. A student shall be eligible under the disability category of intellectual disability when all of the following are met:

(1) The student has subaverage general intellectual functioning, as demonstrated by evidence of intellectual functioning two or more standard deviations below the mean;

(2) The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas; and

(3) The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance.

(h) Multiple disabilities.
A student shall be eligible under the category of multiple disabilities if the student has concomitant impairments, the combination of which causes severe educational needs and all of the following criteria are met:

(A) The student has subaverage general intellectual functioning, as demonstrated by evidence of intellectual functioning three or more standard deviations below the mean;

(B) The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas;

(C) The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance; and

(D) The student is not eligible under the category of deaf-blindness, as set forth in subsection (c), and the student is eligible under one or more of the following disability categories:

(i) Autism spectrum disorder, as set forth in subsection (a);

(ii) Deaf, as set forth in subsection (b);

(iii) Hard of hearing, as set forth in subsection (f);

(iv) Orthopedic disability, as set forth in subsection (i);

(v) Other health disability, as set forth in subsection (j); or

(vi) Visual disability including blindness, as set forth in subsection (n);

If assessment materials would not conclusively demonstrate eligibility as required under paragraph (1), the team of qualified professionals and the parent may find the student eligible under the category of multiple disabilities if the criteria in paragraph (1)(A) to (C) are met and the team documents the existence of a concomitant disability in the determination of eligibility. The documentation of eligibility shall include a statement of the concomitant disability and the basis and method used in determining eligibility.

(i) Orthopedic disability. A student shall be eligible under the disability category of orthopedic disability if there is medical evidence that a severe orthopedic disability exists that adversely affects the student's educational performance. The term includes disabilities caused by congenital anomaly, disabilities caused by disease (e.g., poliomyelitis, bone tuberculosis), and disabilities from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health disability. A student shall be eligible under the category of other health disability if both of the following are met:

(1) The student has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems or a medically fragile condition such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(2) The health disability adversely affects the student's educational performance.

(k) Specific learning disability.
(1) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia;

(2) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disability; or environmental, cultural, or economic disadvantage.

(i) Speech or language disability. A student shall be eligible under the category of speech or language disability when a significant problem in the comprehension or production, or both, of an oral communication system, which is not consistent with the student's other developmental or cognitive abilities, or both, adversely affects the student's educational performance and is evident in one or more of the following:

(1) Articulation or phonological condition, or both;
(2) Voice condition;
(3) Fluency condition;
(4) Language conditions, as documented by:
(A) Multiple sources of data; and
(B) A discrepancy of one and one-half standard deviations between the student's estimated cognitive level and performance on at least two standardized measures in the areas of semantics or grammar, or both.

(m) Traumatic brain injury.

(1) A student shall be eligible under the category of traumatic brain injury if both of the following are met:

(A) There is medical evidence that the student has an acquired injury to the brain, caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both that adversely affects the student's educational performance; and

(B) The traumatic brain injury is either an open or closed head injury, resulting in impairments in one or more areas such as:
(i) Cognition;
(ii) Language;
(iii) Memory;
(iv) Attention;
(v) Reasoning;
(vi) Abstract thinking;
(vii) Judgment;
(viii) Problem-solving;
(ix) Sensory, perceptual and motor abilities;
(x) Psychosocial behavior;
(xii) Information processing;
(xiii) Speech.

(2) The team of qualified professionals and the parent may not identify a student as having a traumatic brain injury if the brain injury is congenital or degenerative, or induced by birth trauma.

(n) Visual disability including blindness. A student shall be eligible for the disability category of visual disability, including both partial sight and blindness, if the impairment in vision, even with the best correction, adversely affects the student's educational performance and one or more of the following are met:

(1) Partially-sighted. The student's visual acuity is 20/70 to 20/200 in the better eye and with the best correction;

(2) Blind. The student's visual acuity is 20/200 in the better eye and with the best correction, or less, or the student has a subtended visual field of less than 20 degrees, regardless of central visual acuity;

(3) The student has a progressive visual impairment, such as retinitis pigmentosa, that will lead to eventual visual disability as set forth in paragraphs (1) and (2). [Eff 11/23/09] (Auth: 20 U.S.C. 1414(b)(4) and (5), HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.8, 300.306, and 300.534)

III. Individualized Educational Program

HAR §8-60-47 When IEPs shall be in effect.
(c) Initial IEPs; provision of services. The department shall ensure that:

(1) A meeting to develop an IEP for a student is conducted within 15 days after the receipt of parental consent for the initial provision of special education and related services by the department; and

HAR §8-60-44 Definition of individualized education program.

(a) General. As used in this chapter, the term individualized education program or IEP means a written statement for each student with a disability that is developed, reviewed, and revised in a meeting in accordance with sections 8-60-44 through 8-60-48, and that shall include:

(1) A statement of the student's present levels of academic achievement and functional performance, including:

(A) How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students); or

(B) For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;

(2) A statement of measurable annual goals, including academic and functional goals and a description of short-term objectives or benchmarks designed to:
(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational needs that result from the student's disability;

(3) A description of:

(A) How the student's progress toward meeting the annual goals described in paragraph (2) will be measured; and

(B) When periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(A) To advance appropriately toward attaining the annual goals;

(B) To be involved in and make progress in the general education curriculum in accordance with paragraph (1), and to participate in extracurricular and other nonacademic activities; and

(C) To be educated and participate with other students with disabilities and nondisabled students in the activities described in this section;

(5) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in paragraph (4);

(6) (A) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on statewide assessments consistent with section 612(a)(16) of the Act; and

(B) If the IEP team determines that the student shall take an alternate assessment instead of a particular regular State assessment of student achievement, a statement of why:

(i) The student cannot participate in the regular assessment; and

(ii) The particular alternate assessment selected is appropriate for the student; and

(7) The projected date for the beginning of the services and modifications described in paragraph (4), and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition services. (1) For each student beginning at age 14 (or younger if determined appropriate by the IEP team), and updated annually, the IEP shall include a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational educational program).

(2) Beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP shall include:

(A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
(B) The transition services needed to assist the student in reaching those goals, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

c) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of majority under State law, the IEP shall include a statement that the student has been informed of the student's rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority under section 8-60-74.

IV. Procedural Safeguards

HAR §8-60-65 Impartial due process hearing.
(e) The hearing officer shall conduct a pre-hearing conference. The hearing officer may conduct all or part of the pre-hearing conference by telephone if both parties or party representatives have an opportunity to participate in and hear the entire proceeding while it is taking place. The pre-hearing conference shall include the identification of the precise issues to be heard under section 8-60-61(a).

HAR §8-60-69 Timelines and convenience of hearings and reviews.
(b) A hearing officer may, for good cause, grant specific extensions of time beyond the period set out in subsection (a) at the request of either party. Each extension shall be no more than 45 days.

1) The hearing officer shall consider the following factors before an extension is granted:
   (A) The negative effects of extending the time in which a student's education is in abeyance;
   (B) The requesting party's ability to have avoided the necessity for an extension;
   (C) If the requesting party is the petitioner, whether the requesting party had an opportunity to adequately prepare before filing a hearing request;
   (D) The negative effects denying the request for an extension;
   (E) The intent of this chapter and federal laws to expedite an informal administrative proceeding; and
   (F) Whether granting the extension will override the intent of the law in favor of the convenience of the parties.

2) Absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted. Agreement of the parties is not a sufficient basis for granting an extension.

3) The impartial hearing officer shall respond in writing to each request for an extension. The response shall include findings of fact and conclusions as to why good cause exists. The response shall become part of the record. The impartial hearing officer shall set a new date for rendering his or her decision, and notify the parties in writing of such date.

HAR §8-60-66 Hearing rights.
(a) General. Any party to a hearing conducted pursuant to sections 8-60-61 through 8-60-67 or sections 8-60-75 through 8-60-79, or an appeal conducted pursuant to section 8-60-68, has the right to:
(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(A) The party initiating the due process complaint has the burden of proof.

(B) The burden of proof is the responsibility of the party initiating and seeking relief in an administrative hearing under the IDEA or this chapter is to prove, by a preponderance of the evidence, the allegations of the complaint.

Discipline
HAR §8-60-75(g) Authority of school personnel.

(2) (A) If the basis for a crisis removal exists pursuant to chapter 8-19-7, school personnel may order the removal of a student with a disability from the student's current educational placement, for up to ten consecutive school days. If the crisis removal, together with any previous days of disciplinary suspensions or removals, exceeds ten school days, the crisis removal would constitute a change of placement only if the removals constitute a pattern:

(i) because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.

(ii) because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals one to another.

STATUTE OF LIMITATION

Hawaii Revised Statutes §302A-443 Administrative hearing procedures and subpoena power relating to the education of children with a disability.

(a) An impartial hearing may be requested by any parent or guardian of a child with a disability, or by the department, on any matter relating to the identification, evaluation, program, or placement of a child with a disability; provided that the hearing is requested:

(1) Within two years of the date the parent, guardian, or department knew or should have known about the alleged action that formed the basis of the request for a hearing; and

(2) Notwithstanding paragraph (1), within one hundred and eighty calendar days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement.
Section IV

State Administration

Section 608(a) of the IDEA requires each State that receives funds under this title to:

(1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;

(2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and

(3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

States must attach to this application a list identifying any rule, regulation, or policy that is State-imposed (not required by IDEA or Federal regulations). If there are no such State-imposed rules, regulations, or policies, please so indicate. In addition, the State is required to inform local educational agencies in writing of such State-imposed rules, regulations or policies. (20 U.S.C. 1407(a); 34 CFR § 300.199)
### Section V

#### A. Maintenance of State Financial Support

Pursuant to the authority established in IDEA section 618(a)(3), each applicant for funds under section 611 must provide the following State fiscal data with a certification of its accuracy by the State budget office or an authorized representative thereof. Amounts should be shown in whole dollars and are for the State fiscal year (SFY). States may meet the maintenance of State financial support (MFS) requirement in IDEA section 612(a)(18) and 34 CFR § 300.163 on either a total or per capita basis. In order to complete Section V.A of the Application, States must provide in whole dollars the total amount of State financial support made available for special education and related services for children with disabilities during SFYs 2020 and 2021. However, if a State met the MFS requirement on a per capita basis, it **must** complete the first chart and then may also complete the second chart by providing, in whole dollars, the amount of State financial support made available for special education and related services per child with a disability during SFYs 2020 and 2021.

| Total Amount of State Financial Support Made Available for Special Education and Related Services for Children with Disabilities |
| SFY 2020 | $602,869,351 |
| SFY 2021 | MSFS is currently being calculated. |

| Per capita amount of State Financial Support Made Available for Special Education and Related Services for Children with Disabilities |
| SFY 2020 | |
| SFY 2021 | |

Brian Hallett, Assistant Superintendent of the Office of Fiscal Services  
State Budget Officer or Authorized Representative (Printed Name)

______________________________  ______________________________
Signature of State Budget Officer or Authorized Representative  Date
B. Significant Disproportionality

In accordance with 34 CFR § 300.647(b)(7), each State must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress if the State uses the “reasonable progress” flexibility in 34 CFR § 300.647(d)(2), and the rationales for each, to the Department. Under § 300.647(b)(7), rationales for minimum cell sizes that exceed 10 and minimum n-sizes that exceed 30 must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the State is appropriately analyzing and identifying LEAs with significant disproportionality based on race and ethnicity, in the identification, placement, or discipline of children with disabilities. Additionally, pursuant to the authority established in IDEA section 618(a)(3), each applicant must also provide the number of years of data it uses in making annual determinations of significant disproportionality. Each applicant must provide this information by completing and submitting the Significant Disproportionality Reporting Form.

All States completed and submitted the Significant Disproportionality Reporting Form with their FFY 2021 IDEA Part B application. After the initial submission of the Form, a State will only be required to submit the Form with any future annual IDEA Part B State applications if the State modifies its risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress, and rationales for each, or the number of years of data used in making annual determinations of significant disproportionality.

If your State has revised its Significant Disproportionality procedures or has any questions regarding Section V.B. of the grant application, please contact your OSEP State Lead before the Application due date.

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2 This collection is not intended to replace or duplicate the information collected through the Significant Disproportionality State Survey (Docket No. ED–2019–ICCD–0065; 1820-NEW). That survey will collect information that the Department will use to support States and LEAs in their efforts to comply with the statutory requirement at section 618(d) of the IDEA.