

Office of Special Education Significant Disproportionality Guidance

November, 2015

Frequently Asked Questions about Significant Disproportionality

Has the federal Office of Special Education Programs (OSEP) issued guidance around significant disproportionality?

Yes, see attached OSEP Memo 07-09 for detailed guidance on the requirements around significant disproportionality. These policies have been implemented in Nebraska according to the following information.

What is Nebraska's significant disproportionality definition for each area being analyzed?

- **Identification:**

Significant disproportionality in "identification" is defined as students ages 6-21 in a particular racial/ethnic group (i.e., American Indian or Alaskan Native, Asian, Black or African American, Hispanic/Latino, Native Hawaiian or Other Pacific Islander, White, or Two or More Races) being at a considerably greater risk of being:

- (1) identified as a student with a disability or
- (2) identified within a particular disability category

When examining data to determine if significant disproportionality exists with respect to the identification of children ages 6-21 with particular impairments, it is acceptable to OSEP for NDE to examine the data with regard to children with impairments in only the following six disability categories: specific learning disability, intellectual disability, speech or language impairment, other health impairment, autism, and emotional disturbance. Because the remaining disability categories typically have very small numbers of children, OSEP does not deem disproportionality in the number of children with these disabilities to be significant.

Nebraska's definition of significant disproportionality in Identification:

Significant Disproportionality is determined to exist when the percentage of students within a racial/ethnic group or racial/ethnic group within a specific disability category meets or exceeds a weighted risk ratio of 4.0 for two consecutive years. To address statistical validity for overall identification rates, a minimum 'n' size has been established of 30 or more students in special education for the race/ethnicity being examined and 30 or more students in special education across the other races/ethnicities. For the identification rates within a given disability, a minimum n size has been established of 30 more students in the disability category for the

race/ethnicity being examined and 30 or more students in the disability category across the other race/ethnicities.

- **Placement in Particular Education Settings:**

Significant disproportionality in “placement” is defined as students ages 6-21 in a particular racial/ethnic group (i.e., American Indian or Alaskan Native, Asian, Black or African American, Hispanic/Latino, Native Hawaiian or Other Pacific Islander, White, or Two or More Races) being at a considerably greater risk of being placed in one of the following Educational Environment placement categories than all other racial/ethnic groups:

- (1) Inside the regular classroom 40 – 79 percent of the school day
- (2) Inside the regular classroom less than 40 percent of the school day
- (3) In separate schools and residential facilities

Placements in homebound/hospital settings, correctional facilities, or placements by the parent of a student in private schools are not included in this examination. Further, per OSEP Memo 08-09, Nebraska does not examine data for placements inside the regular classroom for more than 79 percent of the school day.

Nebraska’s definition of significant disproportionality in Placement/Education Settings:
Significant disproportionality is determined to exist when the percentage of students within a racial/ethnic group within an educational setting meets or exceeds a weighted risk ratio of 4.0 for two consecutive years. To address statistical validity a minimum ‘n’ size has been established of 30 or more students in the setting for the race/ethnicity being examined and 30 or more students in the setting across the other races/ethnicities.

- **Discipline:**

Significant disproportionality in “discipline” is defined as students with disabilities ages 3-21 in a particular racial/ethnic group (i.e., American Indian or Alaskan Native, Asian, Black or African American, Hispanic/Latino, Native Hawaiian or Other Pacific Islander, White, or Two or More Races) being at a considerably greater risk of being subjected to disciplinary action during the school year than all other racial/ethnic groups. The discipline categories used to calculate significant disproportionality are listed below:

- (1) Out-of-school suspensions/expulsions of 10 days or less
- (2) Out-of-school suspensions/expulsions of greater than 10 days
- (3) In-school suspensions
- (4) Total number of disciplinary removals

All discipline data is reviewed based on cumulative days during the school year.

Nebraska’s definition of significant disproportionality in Discipline:
For discipline categories 1, 3 and 4, significant disproportionality is determined to exist when the percentage of disciplinary actions for students within a racial or ethnic group meets or exceeds a weighted risk ratio of 4.0 for two consecutive years. To address statistical validity a minimum ‘n’ size has been established of 30 or more students receiving a given disciplinary action for the race/ethnicity being examined and 30 or more students receiving a given disciplinary action across the other races/ethnicities.

For discipline category 2, significant disproportionality is determined to exist if the district suspension/expulsion rate for the racial/ethnic group being examined exceeds 5% for two consecutive years with 10 or more suspensions/expulsions occurring during the school year within the same racial/ethnic category.

What is a Weighted Risk Ratio?

A risk ratio compares the relative size of two risks by dividing the risk for a specific racial and ethnic group by the risk for a comparison group. Risk ratios may not be comparable across districts when districts have substantially different demographic distributions. Therefore, the weighted risk ratio (WRR) addresses this limitation by standardizing district racial and ethnic distributions based on state-level demographics. A WRR standardizes district risk ratios so they can be compared across districts. A WRR of 1.0 indicates no difference between the risks. A WRR greater than 1.0 indicates that the risk for the racial and ethnic group is greater than the risk for the comparison group while a WRR of less than 1.0 indicates the risk for the racial and ethnic group is less than the risk for the comparison group. A WRR of 4.0 indicates that the risk for the racial or ethnic group is 4 times that of the comparison group.

Weighted Risk Ratio

$$= \frac{(1 - p_i)R_i}{\sum_{j=1} p_j R_j}$$

Where R_i is the district-level risk for racial/ethnic group i , and p_i is the state-level proportion of children from racial/ethnic group i . R_j is the district-level risk for the j -th racial/ethnic group, and p_j is the state-level proportion of children from the j -th racial/ethnic group.

Which students are included in the comparison group?

- The comparison group for identification of racial and ethnic groups in special education and related services is students of all other races and ethnicities identified for special education.
- The comparison group for identification of racial and ethnic groups in specific disability categories is students of all other races and ethnicities receiving special education services under the same disability category.
- The comparison group for the placement of children in particular educational settings is students of all other races and ethnicities who are receiving special education services in the same educational setting.
- The comparison group for disciplinary actions is students of all other races and ethnicities who are receiving special education services in the district and are reported in the same disciplinary category.

Why doesn't Nebraska use the Weighted Risk Ratio calculation for the discipline category of 'out-of-school suspensions/expulsions for greater than 10 days'?

The out-of-school suspension/expulsion of students with disabilities for greater than 10 days is also examined as a compliance indicator in the State Performance Plan (SPP) Indicator 4B. Stakeholders recommended the use of a 5% rate of suspension/expulsion in the racial/ethnic group so that school districts could easily self-monitor their status on the indicator. Rather than examine this same data with two different formulas, NDE elected to carry this same

definition to significant disproportionality adding that the measure must be exceeded for two consecutive years.

Must a school district meet the definition for significant disproportionality in each of the categories before being identified with significant disproportionality?

No. The district only needs to meet the definition for one of the categories to be identified with significant disproportionality.

When is school district data examined for significant disproportionality?

Identification and Placement data for the current school year and Discipline data for the previous school year will be examined by February each year.

Where does the data being examined come from?

Identification and placement data is taken from the October 1 special education child count submitted to NSSRS. Discipline data is taken from the Special Education Discipline report that is submitted by districts each June and compared with the cumulative year-end special education count also collected in June through NSSRS.

How will a school district be notified if they have significant disproportionality?

School districts will be notified in writing by NDE the first year the data in any category meets the mathematical measure for significant disproportionality. Once the district has been put on notice, NDE staff will be available to offer assistance to the district upon request. If the data in the same category exceeds the mathematical measure for a second consecutive year, the district will receive a written notification from NDE of significant disproportionality and the three provisions outlined in OSEP Memo 07-09 will be triggered.

Why is a school district being found to have a significant disproportionality when they were already told they are appropriately referring, evaluating and identifying students for special education?

There is potential for conflicting messages to districts regarding the appropriateness of their policies and practices and findings of significant disproportionality. A district may be flagged based on the thresholds used within the State Performance Plan but following the necessary policy and practice review be found to demonstrate appropriate identification practices. The conflicting message would then occur when NDE is forced to make a determination of significant disproportionality due to the district's data alone. The regulations specify that significant disproportionality needs to be based on an analysis of numerical information and may not include consideration of policies, procedures and practices.

Where can I find additional information about Coordinated Early Intervening Services (CEIS)?

A guidance document around CEIS is located on the NDE Special Education website at, <http://www.education.ne.gov/sped/finance.html>.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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OSEP 07- 09

MEMORANDUM

TO: State Directors of Special Education

FROM: Alexa Posny
Director
Office of Special Education Programs

SUBJECT: Disproportionality of Racial and Ethnic Groups in Special Education

As you know, the disproportionate representation of children from diverse racial and ethnic backgrounds in special education is a longstanding national issue and continues to concern the public. The phenomenon of disproportionality is particularly troubling when one considers that the proportion of minority students in the population of school-age children has risen dramatically—to 35% as of 2000—increasing the diversity of students in many public schools throughout the nation. As minority children continue to comprise an increasing percentage of public school students, the Federal government must be responsive to the growing needs of an increasingly diverse society.

Excerpts from findings in the Individuals with Disabilities Education Act (IDEA) 2004's statute note that: (1) greater efforts are needed to prevent the intensification of problems connected with mislabeling minority children with disabilities; (2) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their white counterparts; (3) more minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population; (4) in the 1998-1999 school year, African-American children represented 14.8% of the population aged 6 through 21, yet comprised 20.2% of all children with disabilities served in our schools; and (5) studies have found that schools with predominately white students and teachers have placed disproportionately high numbers of their minority students into special education.

The Department understands the complexities States are facing in fully addressing disproportionate representation. The IDEA requires States and local educational agencies (LEAs) to take steps to address disproportionate representation in special education. The statute and regulations for IDEA-Part B include important changes in how States and LEAs now must address disproportionate representation in special education. Changes in Part B include a more extensive examination of disproportionality and more extensive remedies where findings of disproportionality occur. In order to

properly implement these changes, it is critical for States to understand the differences between the requirements in the monitoring priority indicators (Indicators 9 and 10) that address disproportionality that is the result of inappropriate identification [20 U.S.C. 1416(a)(3)(C); 34 CFR §§300.173 and 300.600(d)(3)] and the requirements concerning significant disproportionality identified through the collection and examination of data [20 U.S.C. §1418(d); 34 CFR §300.646(b)].

Disproportionality as a Monitoring Priority Area

States are required to address disproportionality that is the result of inappropriate identification in the State Performance Plan (SPP) Indicators 9 and 10. Under these indicators, which are based on statutory language at 20 U.S.C. 1416(a)(3)(C), States are required to review the LEAs in the State to determine the extent to which the disproportionate representation of racial and ethnic groups in special education is the result of inappropriate identification. Failure to conduct this analysis will be cited as noncompliance with the requirements of 34 CFR §300.600(d)(3), which requires that States monitor LEAs with regard to disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

We believe that the inclusion of disproportionality that is the result of inappropriate identification in the State monitoring and enforcement component of the law clearly reflects the seriousness with which Congress viewed this issue. The focus of monitoring priority indicators 9 and 10 of the SPP is on disproportionate representation that is the result of inappropriate identification. This language signals that more than just an examination of numerical information is required to respond to and appropriately address the monitoring indicators. After reviewing the numerical information, States need to probe instances in which they identify disproportionality to determine whether it is the result of inappropriate identification.

States must report annually to the Secretary on the performance of the State on these indicators. States also must report to the public on the performance of each LEA in the State on an annual basis. This annual report must include the State's findings regarding disproportionality in the LEAs in the State resulting from inappropriate identification related to representation of racial and ethnic groups in special education and the representation of racial and ethnic groups in specific disability categories.

Significant Disproportionality

States have a separate obligation, under 20 U.S.C. 1418(d) and 34 CFR §300.646, to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the State and LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. States must make this determination on an annual basis. When the State educational agency (SEA) identifies LEAs with significant disproportionality in one or more of these areas based on the collection and examination of their data, States must: 1) provide for the review (and, if appropriate) revision of policies, procedures, and practices; 2) require the LEA to reserve the maximum amount of funds to be used for early intervening services; and 3) require the LEA to publicly report on the revision of policies, procedures, and practices.

With one important caveat, each State has the discretion to define what constitutes significant disproportionality for the LEAs in the State and for the State in general. The caveat is that a State's definition of significant disproportionality needs to be based on an analysis of numerical information, and may not include consideration of the State's or LEA's policies, procedures or practices. This is because section 618(d)(2) of the Act is clear that a review of policies, practices and procedures is a

consequence of, rather than a part of, a determination of significant disproportionality by race or ethnicity. Therefore, in identifying significant disproportionality, a State may determine statistically significant levels of disproportionality. There are multiple factors at the State level to consider in making such determinations. For example, States may want to consider the population size, the size of individual LEAs, and the composition of the State population.

When States make determinations of significant disproportionality based on race or ethnicity with respect to the identification of children as children with disabilities, the placement in particular educational settings of these children, or the incidence, duration, and type of disciplinary actions (including suspensions and expulsions), three important provisions are triggered.

First, the State must provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification, placement, or discipline of children with disabilities, to ensure that the policies, procedures, and practices comply with the requirements of the Act. [34 CFR §300.646(b)(1)] The review of LEAs' policies, practices, and procedures for identifying, placing, and disciplining children with disabilities would occur for LEAs that, based on the numerical analysis, were identified as having significant disproportionality in identification, placement, or discipline. The purpose of this review is to determine if the policies, practices, and procedures are consistent with the requirements of the IDEA.

Second, in the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, the placement in particular educational settings of such children, or disciplinary actions, the SEA must require the LEA to reserve the maximum amount (15%) of the flow-through funds it receives under Part B of IDEA to provide comprehensive coordinated early intervening services (EIS) to serve children who have not been identified as children with disabilities in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified. [34 CFR §300.646(b)(2)] The Department interprets the phrase "reserve the maximum amount of funds" as meaning to use the funds for early intervening services. The statute does not authorize LEAs to use these funds for any other purpose. It is important to note that the obligation to use 15% of the LEA's IDEA funds for EIS is triggered solely on a determination of significant disproportionality. In other words, the obligation to reserve funds for EIS occurs independent of any analysis of whether that disproportionality is the result of inappropriate identification.

The third provision at 34 CFR §300.646(b)(3) requires the LEA to publicly report on the results of its revision of policies, practices, and procedures used in identification, placement or discipline of children with disabilities (described under 34 CFR §300.646(b)(1)).

Conclusion

The disproportionate representation of minority students in special education is an important issue for States to address. The Department believes that States and LEAs are making a concerted effort to reduce racial and ethnic disproportionality in identification, placement, and disciplinary actions. This memorandum references the key provisions under Part B of IDEA regarding the responsibilities of States and LEAs in addressing disproportionality. It is critical for States to understand the differences in the requirements between the monitoring priority indicators that address disproportionality that is the result of inappropriate identification [20 U.S.C. 1416(a)(3)(C); 34 CFR §300.600(d)(3)] and the separate and distinct obligation to collect and examine numerical data to determine if significant disproportionality is occurring. [20 U.S.C. §1418(d); 34 CFR §300.646(b)] See the attached chart that clearly presents these two distinct requirements.

We understand the complexities associated with fully addressing racial and ethnic disproportionality and encourage States and LEAs to utilize the resources provided by the National Center for Culturally Responsive Educational Systems (NCCRESt). This information can be located at: www.nccrest.org

If you have any questions about implementing the IDEA requirements related to disproportionality, please contact your Part B State contact in OSEP.

Attachment

cc: Regional Resource Centers
Federal Resource Center
NCCRESt

Attachment
Disproportionate Representation and Significant Disproportionality:
Requirements in IDEA 2004

Disproportionate Representation	Significant Disproportionality
300.173: State must have policies and procedures designed to prevent inappropriate overidentification and disproportionate representation by race and ethnicity of children with disabilities including children with disabilities with particular impairments.	
300.600: State must monitor LEAs in the priority areas: Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.	300.646: Collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and LEAs with respect to identification of children with disabilities, including children with disabilities in accordance with particular impairments, placement in particular educational settings and incidence, duration and type of disciplinary actions, including suspensions and expulsions.
Collect and examine data	
Identify LEAs with disproportionate representation, and of those, the number where the disproportionate representation is the result of inappropriate identification of children with disabilities (Indicator 9), including children with disabilities with particular impairments (Indicator 10).	Require LEAs with significant disproportionality to reserve 15% for EIS.
Identifying inappropriate identification could include a review of policies, procedures and practices related to identification of children with disabilities (Indicator 9), including children with disabilities with particular impairments (Indicator 10).	Review policies, procedures and practices related to: Identification of children with disabilities, including children with disabilities with particular impairments, placement in education settings and incidence and duration of disciplinary actions.
If disproportionality is due to inappropriate identification, require the LEA to correct the noncompliance, including revising deficient policies, procedures and practices.	If policies, procedures or practices are deficient, require the LEA to revise to comply with the requirements.
SEA must report in APR as follows: (# due to inappropriate identification)/all LEAs) and in next APR report on correction.	Require the LEA to publicly report on the revision of policies, procedures and practices.