

Equity in *IDEA*: Notice of Proposed Rulemaking

Transcript of Presentation Dialog

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Hello everyone. I'm Michael Yudin, Assistant Secretary for the Office of Special Education and Rehabilitative Services at U.S. Department of Education. I'm joined by my friend and colleague Ruth Ryder, our Acting Director of Office of Special Education Programs. We're here to talk about equity in IDEA and particularly the proposed rule around significant disproportionality in special education.

To get started I want to provide you with a quote from our Secretary, John King. John said we have a moral and civil rights obligation to ensure that all students with and without disabilities are provided the tools they need to succeed regardless of background. He went on to say that *"IDEA exists for the purpose of ensuring that students get the unique services they need and we owe it to them and to ourselves to uphold all of the law's provisions."*

Thank you for joining us.

Again we're here to talk about the proposed rule around significant disproportionality in IDEA. As research shows and data shows and as Congress has found, more children of color continue to be served in special ed than would be expected from the percentage of children of color in the general school population. We know from research that kids of color are significantly more likely to be identified as having a disability particularly in the category of emotional disturbance or intellectual disability. Kids of color are significantly more likely to be educated in segregated or self-contained settings. And kids of color are significantly more likely to be submitted to disparate practices that move them from the classroom.

These figures are important and in fact it compels us to take steps to ensure we are providing the proper services to the right kids at the appropriate time. We must ensure that any local representation that occurs in special ed is not the result of misidentification. It could interfere with the school's ability to provide children with the appropriate educational services. As of now there are widespread disparities in the treatment of students of color with disabilities. Ultimately leading to broad differences in academic achievement and high school graduation rates.

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The US Department of Education took the critical step to address these disparities in treatment of students with color, proposing a new rule to improve equity in IDEA.

This notice of proposed rulemaking was published in the Federal Register on March 2, 2016 and is open for comment for 75 days. This webinar is intended to provide you with some background of what is in this notice, explain how significant disproportionality is currently realized, and discuss how these proposed regulations serve to improve how we collect, analyze, and use data on significant disproportionality nationwide.

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We conducted an analysis of data collected through 618 of the IDEA and it shows large discrepancies between identification and discipline practices applied to students of color versus all students. For example, almost 800 school districts in the country have identified black students with emotional disturbance at least three times as often as white students in the years 2012 through 2014. American Indian students with disabilities were also over-identified for three consecutive years. Over 500 school districts identified American Indian students at least 67% more often. The most startling fact is that almost a hundred school districts suspended black students with disabilities twice as often as their nonblack peers for three consecutive years. This data is shocking and appalling to many of us. To help communities understand the extensive racial and ethnic disparities in identification and placement and discipline, we are releasing a set of tables showing the percentage of districts in each state with the largest racial and ethnic disparities in the nation.

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While IDEA requires that states take steps to address racial and ethnic disparities in special ed, the data clearly show we have not fulfilled its intended purpose as relates to significant disproportionality. For the example in 2013, States identified only 491 LEAs for identification, placement, and discipline disparities combined — this figure fails to represent the true scope of disparities currently seen in special education. As a part of the analysis of the Section 618 data, OSEP determined that there are great disparities across the country in how many LEAs are identified and for which category. This analysis revealed that in the 2012-2013 school-year the majority of LEAs identified came from only 7 states; and 22 States identified 0 LEAs as having significant disproportionality.

Only 4 States and DC identified LEAs as having significant disproportionality - in all three categories - identification, placement, and discipline and only 11 States identified LEAs in just one category of analysis.

The data shows a pretty stark difference from what is actually happening in the country and the data that has been reported.

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There are widespread disparities in the treatment of students of color with disabilities, leading to broad differences in the academic achievement and high school graduation rates.

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We know that discipline disparities are frequently some of the greatest disparities that we face. With the exception of Latino and Asian-American students more than one out of four boys of color with disabilities served by IDEA and nearly one in five girls of color with disabilities received out of school suspensions in 2012.

In order to address those inequities, IDEA requires states to identify LEAs with “significant disproportionality” in special education — that is, when LEAs identify, place outside the regular classroom, or discipline children from any racial or ethnic group at markedly higher rates than their peers.

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In 2013 the Government accountability office, GAO, released a study showing the current flexibility in identifying racial and ethnic disparities has resulted in states taking little action to address this issue. From year to year only 2 to 3% of all school districts nationwide are identified and required to take action. This figure fails to represent the true scope of the disparities we see in special education. Accordingly, GAO made a set of recommendations — and that's what our proposed rule is based on — to require that all states adopt a standard approach to identify racial and ethnic disparity, specifically to identify significant disproportionality in special education. The proposed rule for the first time, will require states to set a reasonable threshold to determine when racial disparity in the school district has become significant disproportionality. And this issue must be addressed by a review of policies, practices, and procedures. As you know, if the school district is in fact identified the district is required to reserve 15% of its IDEA funds for comprehensive coordinated early intervening services.

With that, I'll turn it over to Ruth to take us through the next few slides.

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Thank you Michael. Currently significant disproportionality looks different for every state. States have the flexibility to determine what constitutes significant disproportionality for their districts. Often the calculations applied have led to few if any LEA being identified as having significant disproportionality. As a result of this variation across states and the use of different methodologies and thresholds, the data are not comparable and it's nearly impossible to fully understand the current state of the nation and subsequently address the issues that lead to significant disproportionality.

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There are several provisions in IDEA that require states to take steps to address racial and ethnic disparities in special education. This notice of proposed rulemaking addresses only the provision related to significant disproportionality and not the indicators that are in the State Performance Plan.

Under section 612 — 618 of IDEA states are required to annually identify LEAs with racial and ethnic disparities in identification, placement, and discipline of students with disabilities. Once identified the LEA must set aside 15% of their IDEA Part B funds to provide comprehensive, coordinated early intervening services or comprehensive CEIS for children in K-12 not identified with disability. Further, the policies and procedures of the LEA must be reviewed and, if necessary, revised appropriately. However the data clearly show that these requirements as implemented today do not fit the intended purpose, as we've heard Michael discuss on the earlier slides.

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Our proposed regulation would set a standard approach for the ways states determine what constitutes significant disproportionality. Specifically the proposed regulation would require all states to apply risk ratio calculation methodology and establish a reasonable risk-ratio threshold using a minimum cell size no greater than 10. The risk ratio methodology is the most common method used in states currently.

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This standard approach carves out specific flexibilities. States are allowed to use as many as 3 years of data in order to identify an LEA as having significant disproportionality.

And further if LEAs are identified as making reasonable progress in addressing significant disproportionality, the state is not required to identify the LEA as having significant disproportionality.

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In order to address significant disproportionality in LEAs identified, states are currently required to provide for the review of policies, practices and procedures for every year that the LEA is identified.

Any revisions to the policies, practices and procedures are to subsequently be publicly reported.

Finally, when implementing comprehensive CEIS, LEAs identified with significant disproportionality must both identify and address the factors contributing to the significant disproportionality.

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The proposed regulation would clarify that when an LEA is found as having significant disproportionality—specifically in disciplinary removals—both States and LEAs are required to reserve 15% of their IDEA funds for comprehensive coordinated early intervening services and review policies, practices and procedures, revising and publicly reporting when appropriate.

This is consistent with the guidance OSEP has provided in the past and continues to be an important requirement to ensure equity and fairness in disciplinary removals.

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Our proposed regulations would support LEAs identified with large disparities in addressing the underlying causes of the disparity. Currently, identified LEAs may not use their 15% set aside to serve students with disabilities, even if the LEA has racial disparities in the discipline and placement of children with disabilities. Nor may they use these dollars to serve preschool children, even if such services provide the LEA with new opportunities to address needs early, before the child is identified with a disability. Our proposed regulations would allow identified LEAs to use the 15% set aside to serve students with disabilities, as well as preschool children.

Our goal is to ensure that children struggling in school receive early and appropriate services and that those children are appropriately identified if they have a disability. When children of any race or ethnicity are vastly overrepresented in special education we want there to be a way to make certain that it's addressed.

There are 13 directed questions posed by the Department in the notice of proposed rulemaking. The Department poses these questions to get your specific input and to help guide our thinking around significant disproportionality. In your comments please explain your views and reasoning as clearly as possible. Provide the basis for your comments and provide any data or evidence if available to support your view.

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To review the NPRM, go to the March 2, 2016 Federal Register which is volume 81, number 41, page 10968.

There you can find the notice of proposed rulemaking. In order to formally submit comments, please go to www.regulations.gov. All comments must be submitted by May 16, 2016 to be considered. As we have described in this webinar there is a need for a common methodology to determine significant proportionality. In order for states and the Department to better identify and address the complex manifold causes of the issue and ensure compliance with the requirements of IDEA. We appreciate your interest in this important topic and look forward to reviewing your comments.

Thank you.

[Event Concluded]