



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

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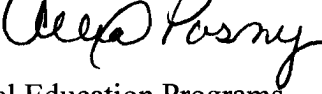
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**OSEP 07- 09**

**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](http://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**

<b>Disproportionate Representation</b>	<b>Significant Disproportionality</b>
<p><b>300.173:</b> 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.</p>	
<p><b>300.600:</b> 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.</p>	<p><b>300.646:</b> 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.</p>
<p>Collect and examine data</p>	
<p>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).</p>	<p>Require LEAs with significant disproportionality to reserve 15% for EIS.</p>
<p>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).</p>	<p>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.</p>
<p>If disproportionality is due to inappropriate identification, require the LEA to correct the noncompliance, including revising deficient policies, procedures and practices.</p>	<p>If policies, procedures or practices are deficient, require the LEA to revise to comply with the requirements.</p>
<p>SEA must report in APR as follows: (# due to inappropriate identification)/all LEAs) and in next APR report on correction.</p>	<p>Require the LEA to publicly report on the revision of policies, procedures and practices.</p>