

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

April 24, 2007

Contact Persons	
Name:	Ruth Ryder
Telephone:	(202)245-7513
Name:	Perry Williams
Telephone:	(202)245-7575

OSEP 07-

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

i0(opr)20(i)(d)-62(m)is 2fJETQ(r)21((s)14(-)312(f)83(or7(t)28(JE20(-)12U-124.e)7(s.(g)63(. g1691(c0JET63

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.

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 overiden	