SIGNIFICANT DISPROPORTIONALITY UNDER IDEA

FREQUENTLY ASKED QUESTIONS

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FREQUENTLY ASKED QUESTIONS RE: SIGNIFICANT DISPROPORTIONALITY

INTRODUCTION

Significant disproportionality is a complex topic under the Individuals with Disabilities Education Act (IDEA). This FAQ is designed to help LEA's – both charter schools and school districts – in Idaho better understand what it means to be flagged for significant disproportionality, how that determination is calculated, and what steps can be taken to rectify and prevent it. The information offered here is drawn largely from the excellent resources published by the Idaho Department of Education. This tool hopefully will serve to deepen the reader's understanding of significant disproportionality and to assist the reader with practical day-to-day problem solving.

PART I. LEGAL BACKGROUND: UNDERSTANDING THE FRAMEWORK.

What is significant disproportionality under the Individuals with Disabilities Education Act (IDEA) Section 618(d)?
Disproportionality is one measure of educational equity. It occurs when students from a racial group are identified for special education, placed in more restrictive settings, or disciplined at markedly higher rates than their peers. The federal government considers disproportionality "significant" when the overrepresentation exceeds a threshold defined by each state.

What are the federal legal requirements?
IDEA Section 618(d) requires each state to annually collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and/or in the local education agencies (LEAs) of the state and, if discovered, provide for the review and, if appropriate, revision of policies, practices and procedures. Having significant disproportionality means that students of a particular race/ethnicity are significantly more likely than their other-race peers to be identified as students with disabilities, identified in a particular disability category, placed in a particular educational setting, or suspended/expelled as a disciplinary measure.

What did the 2016 amendments to Section 618(d) do?
The amended regulations, 34 C.F.R §300.646 and §300.647, implemented in December 2016, impacted how Idaho (and every state) identifies and monitors significant disproportionality. The purpose of the final regulations was to promote equity in IDEA. Specifically, the final regulations were intended to help ensure that states meaningfully identify LEAs with significant disproportionality and that states assist LEAs in ensuring that children with disabilities are appropriately identified for services, receive necessary services in the least restrictive environment (LRE), and are not disproportionately removed from their educational placements for disciplinary removals.

In addition, the final regulations established a standard methodology each state must use in its annual determination under IDEA Section 618(d) to identify whether significant disproportionality based on race or ethnicity is occurring in the state and in each LEA in the state. Further, the final regulations clarified ambiguities in the previous regulations concerning significant disproportionality in the disciplining of children with disabilities.

When must a state identify an LEA as having significant disproportionality?
A state is not required to identify an LEA as having significant disproportionality based on race or ethnicity until:
- The LEA has exceeded a risk ratio threshold set by the state for a racial or ethnic group in a category for up to three prior consecutive years preceding the identification; and
- The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the state, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.

  Please note: many of the terms used above will be defined and explained below.

How does the Idaho Special Education Manual (2018) define "disproportionality"?
The Idaho Special Education Manual ("Manual") defines "disproportionality" as "a disparity or inequality." The Manual goes on to explain the term refers to a statistical range of data where students of a specific race or ethnicity are identified in either greater or fewer numbers than expected when compared to the representation of that race or ethnicity within the general school population.

The ID Special Education Manual recognizes the same areas addressed in the IDEA: (1) identification as a student with a disability; (2) identification of a student with a specific category of disability; (3) placement in a particular educational setting and (4) the incidence, duration of any type of disciplinary actions, including suspensions and expulsions.

PART II. PRACTICAL CONSIDERATIONS: PROBLEM SOLVING DAY-TO-DAY QUESTIONS.

When does the Idaho State Department of Education collect the data used to determine whether significant disproportionality may exist?
Each year, the Idaho State Department of Education pulls every LEAs child count data on the first Friday in November.

If an LEA is identified as having significant disproportionality, does that automatically mean the LEA is doing something wrong?
No. An LEA identified as having significant disproportionality is not necessarily in violation of the IDEA, but nevertheless needs to review its applicable policies, procedures and practices as

well as student data to determine what is causing the disproportionality so that steps can be taken to lower disproportionalities.

What circumstances can make charter schools uniquely vulnerable to being identified as having significant disproportionality?

LEA charter schools can be vulnerable to being identified as having significant disproportionality for the same reasons as traditional LEAs, but other circumstances may also make charter schools uniquely vulnerable. As a result, LEA charter schools may be identified as having significant disproportionality even when their identification and evaluation policies and procedures are sound. For example, small student populations could make a school more vulnerable to findings of significant disproportionality because even slight variances in the number of students identified could shift the calculation ratios detailed above, creating a significant impact on the outcome.

Additionally, charter schools with particular missions and/or educational programs may attract families of students with disabilities to enroll at a higher rate than traditional school districts; these charter schools could also be more vulnerable to findings of significant disproportionality because a higher number of students with disabilities are choosing to enroll. Moreover, LEA charters must provide a continuum of services under IDEA and therefore cannot deny enrollment even if there already are high numbers of students with disabilities, in any or many disability categories, enrolled.

As a result of these potential vulnerabilities, LEA charter schools need to take proactive measures to avoid and address significant disproportionality.

How can an LEA avoid being flagged for significant disproportionality? What practices can a school implement?

LEAs should review and monitor relevant data to identify areas where the LEA may be at risk of disproportionality and take proactive steps to reduce the likelihood of disproportionalities.

Proactive steps include but are not limited to:
- Review and revision of policies, procedures and practices related to identification, placement, and discipline of students with disabilities.
- Actively monitor the LEAs risk ratio to identify and address disproportionality before it is identified by the state.
- Review student records to ensure appropriate identification and placement and reevaluate if changes may be appropriate.
  - This is especially important for transfer students who were identified at a different LEA.
- Training for staff on the IDEA's requirements related to identification, placement, and discipline of students with disabilities.

With respect to identification, which disability categories are often flagged for significant disproportionality?

Some examples, provided in "Significant Disproportionality in Special Education: Current Trends and Actions for Impact", published by the National Center for Learning Disabilities (2020), include:

- Students of color, with the exception of Asian students, are identified for special education at a higher rate than their White peers.
- White students are identified as having other health impairments or autism spectrum disorder at a higher rate than students of color.
- Black students are disproportionality identified as having emotional disturbances or intellectual disabilities.
- American Indian/Alaska Native students are more likely to be identified as having specific learning disabilities.
- Black, Hispanic and Native students are disproportionality suspended.
- Black, Hispanic and American Indian students with disabilities are more likely to be taught in separately classrooms than White students with disabilities.

What happens if an LEA is flagged for significant disproportionality this year but not next year?

If an LEA is flagged for significant disproportionality one year and not flagged for significant disproportionality the next year, the LEA will not be identified as having significant disproportionality under IDEA Section 618(d) and will not be required to redirect funds or undergo a review of student records with the State Department of Education.

What can an LEA do if it is flagged for significant disproportionality in years 1 and 2?

LEAs flagged for significant disproportionality in year 1 can take a proactive approach to addressing disproportionality in order to eliminate disproportionality in year 2 or at least demonstrate reasonable progress. If an LEA is flagged for significant disproportionality in years 1 and 2, it is critical the LEA engage proactively, improving upon previously tried strategies, to eliminate disproportionality before year 3 or at least demonstrate reasonable progress.

Proactive steps can include:
- Review policies, practices, and procedures in the areas flagged and make revisions when appropriate.
- Train staff on applicable policies, practices and procedures to ensure consistent and accurate implementation.
- Review individual student files in the areas flagged to determine appropriate identification, placement, and/or supports in place to address behavior.
- Pay close attention to transfer students to avoid disproportionality resulting from newly enrolled students already identified by their previous LEA.

- Voluntarily conduct self-assessment to identify potential causes of disproportionality and address identified causes.

PART III. GLOSSARY: DEFINING KEY TERMS.

What is risk in this context?
Risk is defined as the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a specified racial or ethnic group (or groups), calculated by dividing the number of children from a specified racial or ethnic group (or groups) experiencing that outcome by the total number of children from that racial or ethnic group or groups enrolled in the LEA.

What is minimum cell size?
Minimum cell size is the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating risk.

What is minimum n-size?
Minimum n-size is the minimum number of children enrolled in an LEA with respect to identification, and the minimum number of children with disabilities enrolled in an LEA with respect to placement and discipline, to be used as the denominator when calculating risk.

What is a risk ratio?
Risk ratio is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA.

What is a comparison group?
A comparison group consists of the children in all other racial or ethnic groups within an LEA or within the state, when reviewing a particular racial or ethnic group within an LEA for significant disproportionality.

What is a risk ratio threshold?
Risk ratio threshold is a threshold, determined by the state, over which disproportionality based on race or ethnicity is significant.

What is an alternative risk ratio?
Alternate risk ratio is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that outcome for children in all other racial or ethnic groups in the state.

How is significant disproportionality calculated?
Under the standardized process established through the amended 2016 regulations, states are required to use risk ratios or alternative risk ratios to determine equity within each LEA. The cell size and n-size, as defined by each state, determine which ratio (risk ratio or alternative risk ratio) will be used for each area of analysis.

In Idaho, assuming an LEA satisfies the cell size and the n-size requirements for a particular area, a risk ratio is calculated for the LEA and compared to the risk ratio threshold set by the state. Idaho has set the risk ratio threshold at 3.0. So, an LEA with a risk ratio above 3.0 (assuming sufficient cell size and n-size) for three consecutive years will be identified as having significant disproportionality in that particular area.

If a LEA meets the cell size and n-size requirements for the target group, but not the cell or n-size requirements for the comparison group, an alternative risk ratio will be calculated. If the alternative risk ratio is greater than 1.0, meaning it is more likely for a student of the target racial/ethnic group to be identified for a particular outcome than it would be for a student of all other races in the state to experience the same outcome, then the standardized methodology will conclude the LEA is identifying students of the target racial/ethnic group at a significantly disproportionate rate.

What are the racial and ethnic categories and the disability considerations that factor into the significant disproportionality calculation?
Idaho collects and examines data to determine if significant disproportionality exists in the identification of students with disabilities, by race/ethnicity, including specific disabilities.

To ensure equity in special education, the calculation of significant disproportionality includes all racial and ethnic subgroups as required by federal reporting: Hispanic or Latino of any race; American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; White; and Two or more races (non-Hispanic/Latino).

These seven subgroups are analyzed using the risk ratio and alternate risk ratio in three key areas: identification, placement, and disciplinary action.

The following are the specific areas of focus:
- Identification
    - Identification as a student with a disability under IDEA Part B
    - Identification in a particular disability category
        - Autism
        - Emotional Disturbance

- Intellectual Disability
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment

- Placement in a particular educational setting [least restrictive environment (LRE)]
  - Inside the regular class less than 40 percent of the day
  - Inside separate schools and residential facilities (not including homebound or hospital settings, correctional facilities or private schools)

- Received suspension/expulsion as a disciplinary action
  - Out-of-school suspensions and expulsions of 10 days or fewer
  - Out-of-school suspensions and expulsions of more than 10 days
  - In-school suspensions of 10 days or fewer
  - In-school suspensions of more than 10 days
  - Total disciplinary removals including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer

What flexibilities are available to states in their significant disproportionality calculations and determinations?

Under the amended regulations, states have the flexibility to determine reasonable risk ratio thresholds, reasonable minimum n-size(s) and cell size(s), and the extent to which LEAs have made reasonable progress under 34 C.F.R. §300.647(d)(2) in lowering their risk ratios or alternate risk ratios.

A state is only required to identify an LEA as having significant disproportionality based on race or ethnicity when:
- The LEA has exceeded a risk ratio threshold set by the state for up to three prior consecutive years preceding the identification; and
- The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the State, in lowering the risk ratio or alternate risk ratio in each of the two prior consecutive years.

Based on data analysis and stakeholder involvement, Idaho State Department of Education has determined the areas of flexibility as:
- Number of years of analysis = three consecutive years
- Minimum cell size, number of students in a specific analysis category = 10
- Minimum n-size, number of students for comparison = 30
- Ratio threshold = three
- Standard for measuring reasonable progress = optional

If an LEA flagged for significant disproportionality believes the data used to reach that conclusion may be incorrect, can the LEA appeal the data calculation?
Yes, there is a way an LEA may appeal. The determination of significant disproportionality is based on the analysis of data from three consecutive years. LEA's may appeal their data for the most recent year of analysis included in the determination of significant disproportionality.

There are three main data sources used to determine significant disproportionality:
- Child Count
- Membership
- Disciplinary Action

To appeal, an LEA must submit a *Significant Disproportionality Data Appeals Form* and include student records documenting the data reporting errors. The *Significant Disproportionality Data Appeals Form* and corresponding student data are due to the State Department of Education within 2 weeks of official notification of significant disproportionality.

Once received, the assigned State Department of Education team members will review the information and provide the LEA with a final determination. If the LEA's data used to determine significant disproportionality is determined to be inaccurate, the LEA may be required to demonstrate individual and systemic correction to their data collection process.

Can a racially homogenous LEA have disproportionality?
In a racially homogenous LEA that does not enroll enough students of other races to form a comparison group (as defined above), there is still a possibility that students in the LEA's predominant racial group are identified for special education, placed in more restrictive settings, or disciplined at markedly higher rates than their peers in other LEA's.

Federal regulations establish that the absence of a comparison group in these cases should not excuse either the state or the LEA from their respective responsibilities under IDEA Section 618(d) to identify and address significant disproportionality.

LEAs with homogenous populations with too few students to form a comparison group must be compared to the state. States are required to use an alternate risk ratio (as defined above) when the comparison group in an LEA does not meet the minimum cell size or minimum n-size (as defined above), which are set by the state. The alternate risk ratio compares the risk of a racial group experiencing a particular outcome in an LEA to the risk of students of all other races in the state experiencing that outcome. The alternate risk ratio uses the LEA-level risk for the racial group in the numerator and the state-level risk for the comparison group in the denominator.

For example, a predominantly White LEA enrolls about 80 percent White students with disabilities and places almost 15 percent of those White students with disabilities in separate

settings. This LEA enrolls only 20 percent non-White students with disabilities and places fewer than 10 non-White students in separate settings, so a regular risk ratio cannot be calculated. This LEA does not have enough students of other races in the comparison group and must be compared to the state as a whole with the alternate risk ratio. In this example, let's say statewide, about 3 percent of White students with disabilities are placed in separate settings. When the LEA-level risk of 15 percent is compared to (divided by) the state-level risk of 3 percent, the resulting risk ratio is 5.00. In other words, this LEA is _five times more likely_ than the state as a whole to place White students with disabilities in separate settings. It's important for this LEA to explore and address the factors contributing to this disproportionality. When students with disabilities in this LEA are significantly more likely to be placed in restrictive settings compared to students in the rest of the state, they face inequitable access to instruction in the general education environment with their typically developing peers. Over time, this inequitable access often leads to inequitable outcomes.

PART V. NOTIFICATION: HOW WILL AN LEA KNOW IF IT IS AT RISK OF BEING IDENTIFIED OR IF IT HAS BEEN IDENTIFIED AS HAVING SIGNIFICANT DISPROPORTIONALITY?

What notifications are provided to help an LEA understand its risk of being flagged for significant disproportionality?
Every LEA receives a copy of its Significant Disproportionality Report from the State Department of Education each year. This Significant Disproportionality Report documents three years (current and two prior years) of calculations, enabling the LEA to monitor its risk of being flagged for significant disproportionality.

What happens if an LEA exceeds the state-established threshold for significant disproportionality for one school year?
In addition to the Significant Disproportionality Report, if an LEA exceeds the threshold for one school year, the LEA will receive notification that it has exceeded the State's significant disproportionality threshold for one or more categories and is at risk for future identification for significant disproportionality. The notification will include information on available supports, requirements for mandatory comprehensive coordinated early intervening services ("CCEIS"), and regulatory requirements specific to calculating and addressing significant disproportionality.

The LEA will be encouraged to utilize supports including a self-assessment tool to address and reduce disproportionality in the LEA. The State Department of Education or Idaho Special Education Support and Technical Assistance ("SESTA") will provide supports through technical assistance, webinars and general monitoring.

What happens if an LEA is flagged for significant disproportionality this year but not next year?

As previously noted, if an LEA is flagged for significant disproportionality one year and not flagged for significant disproportionality the next year, the LEA will not be identified as having significant disproportionality under IDEA Section 618(d) and will not be required to redirect funds or undergo a review of student records with the State Department of Education.

When must a state identify an LEA as having significant disproportionality?

As previously noted, a state is not required to identify an LEA as having significant disproportionality based on race or ethnicity until:

- The LEA has exceeded a risk ratio threshold set by the state for a racial or ethnic group in a category for up to three prior consecutive years preceding the identification; and
- The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the state, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.

How will an LEA be notified that it has been found to have significant disproportionality?

In addition to the Significant Disproportionality Report, an LEA that has exceeded the state threshold for three consecutive years in the same category will receive a notification that the LEA has significant disproportionality in one or more categories. The notification will include information on available supports, recommended timeline, requirements for mandatory comprehensive coordinated early intervening services ("CCEIS"), and regulatory requirements for calculating and addressing significant disproportionality.

PART VI. AN LEA IS IDENTIFIED AS HAVING SIGNIFICANT DISPROPORTIONALITY: NOW WHAT?

What specific actions are required under IDEA when an LEA is identified as having significant disproportionality?

According to the Individuals with Disabilities Education Act, an LEA identified as having significant disproportionality must:

1. Undergo a review of student records with the State Department of Education.
2. Review its policies, procedures and practices related to identification, placement, and discipline of students with disabilities and revise if needed.
3. Identify the factors that may be contributing to the significant disproportionality through a guided self-assessment (also known as a "root cause" analysis).
4. Redirect 15 percent of their federal special education (Part B) funds toward Comprehensive Coordinated Early Intervening Services ("CCEIS") designed to address the contributing factors, including professional development, educational and behavioral evaluations, services and supports.
5. Report publicly on any revisions of its policies, procedures and practices.

How is the guided self-assessment conducted?
The guided self-assessment process is facilitated by the State Department of Education and Idaho Special Education Support and Technical Assistance (SESTA) through two or more meetings and is designed to identify root causes contributing to significant disproportionality at the system and team levels. The self-assessment provides supports and a framework for (1) conducting a review of policies, practices and procedures; (2) analyzing root cause; and (3) creating and tracking action and improvement plans with emphasis on equity, inclusion and opportunity. The LEA is required to document the review and, if appropriate, revision of policies, practices and procedures to the State Department of Education. The LEA must publicly report any revisions to policies, practices and procedures.

Why is completing the root cause analysis as a team important?
The root cause analysis is most effective when the review team includes representatives from both special education and general education, building principals, general education teachers, and LEA administrators. Disproportionality often is not solely a special education issue and typically cannot be meaningfully addressed without ownership by and collaboration with general education partners and building and LEA leaders.

How can/must CCEIS monies be used when redirected for purposes of addressing significant disproportionality?
If an LEA is identified as having significant disproportionality, the LEA is required to commit 15% of its IDEA Part B funds towards Comprehensive Coordinated Early Intervening Services ("CCEIS"). Specific requirements apply to funds allocated to CCEIS. Notably, these requirements are different from the requirements that apply to IDEA Part B funds allocated to voluntary Coordinated Early Intervening Services ("CEIS").

In particular, CCEIS is:
- regulated by 34 C.F.R. §300.646.
- mandatory for LEA's identified as having significant disproportionality.
- required to be exactly 15% of IDEA Part B funds.
- required to be spent on activities that address factors and policies, practices or procedures that contribute to significant disproportionality.
- available to be spent on (1) professional development; and (2) educational and behavioral evaluations, services and supports.
- available to children aged 3 through 12th grade, who either:
  - are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; or,
  - are currently identified as needing special education or related services; however, these funds cannot be used exclusively for this group (though these funds may be used primarily for this group).

An LEA may use redirected CCEIS funds to serve children specifically, but not exclusively, in those groups that were significantly overidentified. Furthermore, an LEA may not limit the provision of CCEIS pursuant to IDEA Section 618 (d) to children with disabilities.

If an LEA is already using 15% of funds for voluntary coordinated early intervening services, does that 15% get reallocated or does another 15% get pulled?
If an LEA is already using 15% of its IDEA Part B funds for voluntary coordinated early intervening services and subsequently is identified as having significant disproportionality, the LEA must redirect those IDEA Part B funds to mandatory comprehensive coordinated early intervening services.

If the LEA is notified of significant disproportionality the following school year, the LEA must again redirect 15% of its IDEA Part B funds to comprehensive coordinated early intervening services. This mandatory redirection of funds continues until it is determined the LEA no longer demonstrates significant disproportionality.

If an LEA is identified in multiple disproportionality categories, will the redirected funds cumulate (15% + 15%) or will it cap at 15% regardless of the number of categories?
Redirection of funds is not cumulative. Only one 15% redirection is required. However, if an LEA has more than one finding of significant disproportionality, the redirection should apply to activities for all findings.

How are CCEIS allocations tracked?
Funding committed to CCEISS is tracked through IDEA Part B and Preschool Application and monitored by the Special Education Funding and Fiscal Accountability Team.

What are the applicable reporting requirements for an LEA identified as having significant disproportionality?
An LEA identified as having significant disproportionality must:
- publicly report on the revision of policies, practices, and procedures; and,
- report to the state and the state is required to report to the U.S. Department of Education the following:
    - the number of children served who received comprehensive coordinated early intervening services; and
    - the number of children served who received comprehensive coordinated early intervening services and subsequently received special education and related services under Part B of IDEA during the preceding 2-year period.

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