



FOCUS on Results

Office of Special Education and Early Intervention Services

August 2009**Accountability****Assessment****Curriculum & Instruction****Dispute Resolution****Early Childhood****IEPs & IFSPs****Personnel****State & Federal Policy****Transition****Other**

***FOCUS on Results* offers valuable, up-to-date information for education stakeholders, including parents, teachers, school administrators, counselors, and others.**

Disproportionate representation is identified when students from a particular racial/ethnic background receiving special education programs and services are over or under represented as compared to the overall student population. The *Individuals with Disabilities Education Act* (IDEA) regards disproportionate representation as a great concern.

This article reviews two sets of federal requirements known as "disproportionate representation as a monitoring priority area" and "significant disproportionality." This article also explains the actions that are federally required of the state and local districts in response to existing disproportionate representation.

Understanding Disproportionate Representation and Significant Disproportionality

When students from a particular racial/ethnic background who receive special education services are over or under represented, when compared to the overall student population, this is referred to as "disproportionate representation." Disproportionate representation is identified by the *Individuals with Disabilities Education Act* (IDEA) as a great concern.

Over and under representation is often the result of improper identification of students in need of special education services. Improper policies and procedures could result in racial/ethnic subgroups being more likely or less likely to be determined eligible for special education services or a specific disability category. The students could also be at higher risk for lack of access to the general education classroom and a higher rate of discipline.

Through legislation, the U.S. Congress requires states and school districts to address over and under representation. The IDEA outlines two separate sets of requirements for state education agencies (SEAs) regarding over and under

representation. One set of requirements is known as "disproportionate representation as a monitoring priority area" and the other is known as "significant disproportionality."

Though both terms are concerned with over representation of racial/ethnic subgroups, the primary differences relate to the areas of special education that are examined and the actions required of districts when reaching the thresholds for disproportionate representation as a monitoring priority and significant disproportionality.

This *FOCUS on Results* article reviews and defines both disproportionate representation as a monitoring priority area and significant disproportionality. This article also offers guidance and technical assistance about the actions that are required of the Michigan Department of Education, Office of Special Education and Early Intervention Services (MDE, OSE-EIS) and local school districts in response to existing disproportionate representation and significant disproportionality.



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2008-2009, Volume 7, Issue 3
Packet 15, Article 2

Disproportionate Representation as a Monitoring Priority Area— 20 U.S.C. 1416(a)(3)(C); 34 CFR §§300.173 and 300.600(d)(3)

Each state education agency created a six-year State Performance Plan (SPP) in response to the 2004 reauthorization of IDEA and established goals and strategies for 20 performance indicators. These areas are called “monitoring priority areas” or “indicators.” Two indicators highlight disproportionate representation:

- Indicator 9 (disproportionate representation in special education and related services due to inappropriate identification).
- Indicator 10 (disproportionate representation in a specific disability category due to inappropriate identification).

The U.S. Office of Special Education Programs (OSEP) set an expectation for all states that no district shall have disproportionate representation due to inappropriate identification for indicators 9 and 10. The phrase “due to inappropriate identification” is included to make sure that agencies with disproportionate representation whose identification process is appropriate are still considered in compliance with the IDEA. States are required to monitor both over representation and under representation in their districts and report findings to the OSEP for both Indicators 9 and 10 in the Annual Performance Report (APR).

Verified ratios are calculated to determine over and under representation (see Figure 1 on page 3 for details). Districts with a verified ratio of greater than 2.5 (over representation) or less than 0.4 (under representation) for a particular racial/ethnic group for two consecutive years are selected for focused monitoring (FM). Focused monitoring includes the following:

- 1) The MDE, OSE-EIS completes a desk audit or an on-site monitoring visit.
- 2) The OSE-EIS determines if the

disproportionate representation is the result of inappropriate identification.

- 3) In cases of inappropriate identification, districts receive technical assistance from the state. They are required to correct non-compliance, including verification from the OSE-EIS, within one year.

To view Michigan’s performance on disproportionate representation as a monitoring priority (SPP Indicators 9 and 10), see Figures 2 and 3 on page 5.

Significant Disproportionality— 20 U.S.C. 1418(d) and 34 CFR §300.646

As a separate obligation, the IDEA 2004 requires states to collect and examine data on an annual basis to determine whether “significant disproportionality” based on race or ethnicity is occurring in a district with respect to four different areas. The four areas are:

- 1) **Identification for Eligibility:** States determine if significant disproportionality exists among students with disabilities. This analysis does not consider if the identification is appropriate or inappropriate.
- 2) **Identification for a Particular Category:** States determine if significant disproportionality exists among students in particular eligibility categories. This analysis does not consider if the identification is appropriate or inappropriate.
- 3) **Educational Settings:** States determine if there is significant disproportionality among students with disabilities in particular educational settings, such as the general education classroom.
- 4) **Discipline:** States determine if there is significant disproportionality among students with disabilities receiving discipline, including the number of incidences, duration, and type of disciplinary actions, such as suspensions and expulsions.

Significant disproportionality is based solely on data analysis. The district’s policies, procedures, and practices are

Figure 1: Data and Calculations For Disproportionate Representation and Significant Disproportionality

The mathematical formulas used to determine disproportionate representation and significant disproportionality are the same. Using input from a wide range of stakeholder groups and guidance from the U.S. Office of Special Education Programs (OSEP), the Michigan Department of Education, Office of Special Education and Early Intervention Services (MDE, OSE-EIS) established methods for calculating what constitutes over and under representation for disproportionate representation and significant disproportionality. The calculations are designed to allow for the vast differences among districts regarding their racial/ethnic populations.

Collected Data

Although Michigan special education services are provided for children and students ages 3 through 25 who are eligible, federal law requires data for disproportionate representation and significant disproportionality be calculated only for students ages 6 through 21.

Data from five racial/ethnic categories are considered in calculations—African American, American Indian, Asian, Hispanic, and White.

Data from six disability categories are considered in calculations—emotional impairment, cognitive impairment, specific learning disability, speech and language impairment, other health impairment, and autism spectrum disorder.

Generally, the remaining disability categories have small numbers of students. Therefore, the OSEP does not require a review of over and under representation in these categories. However, a state is able to include any other category it believes may have problems with over and under representation.

Variations For Different Racial/Ethnic Populations

A Weighted Risk Ratio (WRR) is used to determine disproportionate representation for a particular racial/ethnic subgroup when there are at least ten students with disabilities in all other racial/ethnic subgroups (disability comparison group).

An Alternate Risk Ratio (ARR) is used to determine disproportionate representation for a particular racial/ethnic subgroup when there are fewer than ten students with disabilities in all other racial/ethnic subgroups (disability comparison group).

A Risk Ratio (RR) is used to determine disproportionate representation for a particular racial/ethnic subgroup when there are zero African American or zero White students with disabilities in the district.

The appropriate calculation is used to determine a “verified ratio” which is used to determine if a district has over or under representation. A verified ratio of 1 represents exact proportionate representation.

Districts are not required to have exact proportionate representation in order to be in compliance with the IDEA. Each state, with approval from the OSEP, sets the verified ratios that identify over representation and under representation.

For more detailed technical assistance on the methods for assessing disproportionate representation, visit:

- 1) www.ideadata.org/docs/Disproportionality%20Technical%20Assistance%20Guide.pdf
- 2) http://mich.gov/documents/mde/BusinessRulesforCalculatingDispro_244321_7.pdf

Disproportionate Representation as a Monitoring Priority

Monitored areas:

- Indicators 9 and 10.

Verified Ratios:

- More than 2.5.
- Less than 0.4.

Requirements after disproportionate representation is identified:

- Focused monitoring.
- If disproportionate representation is a result of inappropriate identification procedures, district must correct non-compliance within one year.

Significant Disproportionality:

Monitored areas:

- Identification for eligibility for special education services.
- Identification for a specific disability category.
- Educational settings.
- Discipline.

Verified Ratios:

- More than 3.0.

Requirements after significant disproportionality is identified:

- Review of policies and procedures; publicly report changes.
- Set aside 15 percent of flowthrough funds for coordinated early intervening services.



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not factored into the determination. If a district's verified ratio for the area of discipline is more than 3.0 for a particular racial/ethnic group in one year, the district is determined to have significant disproportionality. In the areas of identification for eligibility, identification for a particular category, or educational settings, the district's verified ratio must be more than 3.0 for two consecutive years before being identified as having significant disproportionality. When a district has significant disproportionality, the IDEA requires three courses of action:

- 1) **State Review**—The state must review (and, if appropriate, revise) the policies, procedures, and practices used in some or all of the four areas monitored for significant disproportionality.
- 2) **Public Reporting**—The IDEA requires districts to publicly report on the results of its revision of policies, practices, and procedures used in identification, placement, or discipline of students with disabilities.
- 3) **Coordinated Early Intervening Services (CEIS) Funding**—The district is obligated to reserve 15 percent of the flow-through funds received under the IDEA for CEIS. To reserve the funds means the funds may only be used for approved CEIS. This is in contrast to districts without significant disproportionality, which may use up to 15 percent of the flow-through funds for CEIS, but are not required to do so. It is important to

note that even if further analysis indicates all identification is appropriate, 15 percent of the funding must still be reserved for CEIS.

The district must maintain a database of the students who benefit from CEIS for three years. The district must also report to the OSE-EIS any students subsequently identified as eligible for special education services.

Early intervening services address the needs of all students before they are identified as needing special education services, and in some cases can prevent the need for special education services. Appropriate CEIS combined with proper identification procedures help ensure the best possible placement for students. The CEIS should include students in significantly over-represented groups as well as students from all racial/ethnic groups.

Considerations for Determining Significant Disproportionality for Identification in Special Education and in a Particular Category

The data collected for disproportionate representation is also the data used for significant disproportionality. The five racial/ethnic categories are African American, American Indian, Asian, Hispanic, and White. The six disability categories are emotional impairment, cognitive impairment, specific learning disability, speech and language impairment, other health impairment, and autism spectrum disorder.

Coordinated Early Intervening Services (CEIS)

Local educational agencies (LEAs) are permitted to use up to 15 percent of the *Individuals with Disabilities Education Act* (IDEA) flow-through funds for coordinated early intervening services (CEIS). If an LEA is found to have significant disproportionality, the LEA is required to reserve 15 percent of the IDEA flow-through funds for CEIS.

What are CEIS?: CEIS are services provided to students who need additional academic and behavioral supports to succeed in a general education environment but who are not currently eligible for special education programs and services.

CEIS focus on behavioral and academic interventions. CEIS is for kindergarten through grade 12 with a particular emphasis on students in kindergarten through grade 3.



**Figure 2: State Performance Plan (SPP) Indicator 9—
Disproportionate Representation in Special Education
and Related Services**

Indicator Component	FFY 2006 Result	FFY 2007* Result	FFY 2007 Target	FFY 2007 Status
The percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification.	0.3%	0.3%	0%	Target Not Met

Sources: Michigan Compliance Information System (MI-CIS) and the Single Record Student Database (SRSD).

*Federal Fiscal Year (FFY) 2007=July 1, 2007 to June 30, 2008

During 2007-2008, the OSE-EIS analyzed FFY 2006 and FFY 2007 disproportionate representation data for 778 districts. Eight districts were identified for focused monitoring activities (three for over-representation; five for under-representation). Two of the districts with over-representation of African American students were found to have inappropriate identification policies, procedures, and/or practices as represented in the table above. There were no districts with under representation due to inappropriate identification.

**Figure 3: State Performance Plan (SPP) Indicator 10—
Disproportionate Representation in Specific Disability Categories**

Indicator Component	FFY 2006 Result	FFY 2007* Result	FFY 2007 Target	FFY 2007 Status
The percent of districts with disproportionate representation of racial and ethnic groups in specific categories of special education and related services that is the result of inappropriate identification.	3.2%	1.7%	0%	Target Not Met

Sources: Michigan Compliance Information System (MI-CIS) and the Single Record Student Database (SRSD).

*Federal Fiscal Year (FFY) 2007=July 1, 2007 to June 30, 2008

During 2007-2008, the OSE-EIS analyzed FFY 2006 and FFY 2007 disproportionate representation data for 778 districts. The FFY 2007 data analysis identified 63 districts as potentially having disproportionate representation due to inappropriate identification (35 with under representation). Thirteen districts were found to have over representation due to inappropriate identification. There were no districts found to have under representation due to inappropriate identification.

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The Michigan Department of Education complies with all Federal laws and regulations prohibiting discrimination and with all requirements and regulations of the U.S. Department of Education.

Compliance With Title IX

What Title IX is: Title IX of the Education Amendments of 1972 is the landmark federal law that bans sex discrimination in schools, whether it is in curricular, extra-curricular or athletic activities.

Title IX states: "No person in the U.S. shall, on the basis of sex be excluded from participation in, or denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal aid."

The Michigan Department of Education (MDE) is in compliance with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq. (Title IX), and its implementing regulation, at 34 C.F.R. Part 106, which prohibits discrimination based on sex. The MDE, as a recipient of federal financial assistance from the United States Department of Education (USED), is subject to the provisions of Title IX. MDE does not discriminate based on gender in employment or in any educational program or activity that it operates.

The designated individual at the Michigan Department of Education for inquiries and complaints regarding Title IX is:

Ms. Norma Tims, Office of Career and Technical Education, Michigan Department of Education, Hannah Building, 608 West Allegan, P.O. Box 30008, Lansing, Michigan 48909, Phone: (517) 241-2091, Email: timsn@michigan.gov.





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This document was printed 16,750 times at a per piece cost of \$0.075.

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2008-2009, Volume 7, Issue 3
Packet 15, Article 2

Considerations for Determining Significant Disproportionality for Educational Settings

States are required to examine racial/ethnic representation for the following:

- 1) Students who receive special education and related services in the general education classroom for 40-79 percent of the day.
- 2) Students who receive special education and related services in the general education classroom for less than 40 percent of the day.
- 3) Students who receive special education and related services in separate schools and residential facilities.

States are not required to examine data for children who receive special education and related services in the general education classroom for more than 79 percent of the day.

Considerations for Determining Significant Disproportionality for Discipline

States are required to examine racial/ethnic representation of students

receiving special education services for discipline. The calculations account for a variety of factors in discipline, such as:

Incidence: The number of times students with disabilities are subject to disciplinary actions.

Duration: The length of suspensions or expulsions.

Type: In-school and out-of-school suspensions and expulsions and other actions as determined by the district (e.g., exclusion from extracurricular activities).

The Future of Disproportionate Representation

When students are unnecessarily placed into special education programs, their risk for poor academic outcomes increases. Students must be placed in appropriate educational settings to ensure opportunities to succeed in an appropriate and rigorous curriculum. Proper CEIS help reduce inappropriate referrals to special education. Additionally, appropriate identification procedures reduce the risk that race/ethnicity plays a role in the placement of students.

RESOURCES

Office of Special Education Programs (OSEP) Memo: Disproportionality of Racial and Ethnic Groups in Special Education

www.ed.gov/policy/speced/guid/idea/letters/2007-2/osep0709disproportionality2q2007.pdf

Methods for Assessing Racial/Ethnic Disproportionality in Special Education: A Technical Assistance Guide

www.ideadata.org/docs/Disproportionality%20Technical%20Assistance%20Guide.pdf

Special Education Fact Sheets (Includes Indicators 9 and 10)

www.cenmi.org/Documents/SpecialEducationFacts.aspx

Disproportionality in Special Education

http://michigan.gov/mde/0,1607,7-140-6530_6598_48005---,00.html

Business Rules for Calculating Disproportionality: May 2009 Revisions

http://mich.gov/documents/mde/BusinessRulesforCalculatingDispro_244321_7.pdf