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FACT SHEET: Equity in IDEA

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The U.S. Department of Education today made available to [the public final regulations](http://www2.ed.gov/policy/speced/reg/idea/part-b/idea-part-b-significant-disproportionality-final-regs-unofficial-copy.pdf) (<http://www2.ed.gov/policy/speced/reg/idea/part-b/idea-part-b-significant-disproportionality-final-regs-unofficial-copy.pdf>), under Part B of the [Individuals with Disabilities Education Act \(IDEA\)](http://www2.ed.gov/about/offices/list/osep/index.html) (<http://www2.ed.gov/about/offices/list/osep/index.html>), aimed at promoting equity by targeting widespread disparities in the treatment of students of color with disabilities. The regulations will address a number of issues related to significant disproportionality in the identification, placement, and discipline of students with disabilities based on race or ethnicity. The Department is also releasing a new Dear Colleague Letter addressing racial discrimination.

"Children with disabilities are often disproportionately and unfairly suspended and expelled from school and educated in classrooms separate from their peers," said U.S. Secretary of Education John B. King Jr. "Children of color with disabilities are overrepresented within the special education population, and the contrast in how frequently they are disciplined is even starker."

King added, "Today's new regulations and supporting documents provide the necessary guidance and support to school districts and build upon the work from public education advocates and local leaders who believe, like we do, that we need to address racial and ethnic disparities in special education. This important step forward is about ensuring the right services get to the right students in the right way."

In order to address those inequities, IDEA requires states to identify districts with "significant disproportionality" in special education—that is, when districts identify, place in more restrictive settings, or discipline children from any racial or ethnic group at markedly higher rates than their peers.

Children of color—particularly African-American and American Indian youth—are identified as students with disabilities at substantially higher rates than their peers. It is critical to ensure that overrepresentation is not the result of misidentification, including both over- and under-identification, which can interfere with a school's ability to provide children with the appropriate educational services required by law. It is equally important to ensure that all children who are suspected of having a disability are evaluated and, as appropriate, receive needed special education and related services in the most appropriate setting and with the most appropriate discipline strategies employed.

This rule sets a common standard for identifying significant disproportionality in representation of students within special education, segregated school settings, and in receipt of disciplinary actions and ensures that school districts where disproportionality is found carefully review their policies and practices to determine root causes

and whether changes are needed. The final rule ensures that school districts explore and address situations where the cause of significant disproportionality is due to under-identification of a group as well as over-identification.

President Obama's My Brother's Keeper Task Force (<https://www.whitehouse.gov/the-press-office/2015/03/05/my-brothers-keeper-task-force-one-year-progress-report-president>) identified restoring equity for students with disabilities as a key priority, because there are lasting impacts on children when they are misidentified, including them being taught in classrooms separate from their peers and subjected to inappropriate disciplinary action. Today's announcement delivers on that commitment.

A Standard Approach

The final regulations establish a standard approach that States must use in determining whether significant disproportionality based on race or ethnicity is occurring in the state and in its districts. In 2013, the Government Accountability Office (GAO) issued a report finding that, because states currently use a wide variety of methodologies for examining their districts, few states take action to address significant disproportionality; in fact, as the GAO found, only two to three percent of all districts nationwide are identified as having significant disproportionality, and some states' methodologies for identifying districts for disproportionality were constructed in such a way that the GAO found districts would likely never be identified. Accordingly, GAO recommended that the Department require that all states adopt a standard approach to identify racial and ethnic disparities. With these final regulations, all states will use the same methodology, which will allow for more accurate comparisons within and across states.

Focusing on Discipline

In addition to requiring a standard methodology, the regulations shine a spotlight on disparities in the discipline of students with disabilities on the basis of race or ethnicity by requiring states to examine districts for significant disproportionality in their disciplinary practices. Specifically, the regulations clarify that States must address significant disproportionality in the incidence, duration, and type of disciplinary actions, including suspensions and expulsions, using the same statutory remedies required to address significant disproportionality in the identification and placement of children with disabilities.

Addressing the Root Causes of Disproportionality

In order to eliminate the racial and ethnic disparities that are the focus of these regulations, districts must identify and address the root causes of significant disproportionality. Accordingly, the final regulations clarify requirements for the review and revision of policies, practices, and procedures when significant disproportionality is found. Districts will be required to identify and address the factors contributing to significant disproportionality as part of comprehensive, coordinated early intervening services (CEIS). In addition, new flexibilities in the use of CEIS will further help districts identified with large disparities in addressing the underlying causes of the disparity.

Providing Support for Districts to Take Action

The Department understands that districts need support to effectively address significant disproportionality, and these final regulations provide that support through additional flexibilities in the use of CEIS. Prior to these final regulations, districts identified as having significant disproportionality were not permitted to use their required 15 percent set aside for CEIS in order to serve students with disabilities, even if the district had identified racial disparities in the discipline and placement of children with disabilities. Likewise, CEIS funds could not be used to serve preschool children. Now, with these final regulations, districts identified as having significant

disproportionality will have the flexibility to use their CEIS set aside to assist students with disabilities and preschool children with and without disabilities.

All children who require special education services should be appropriately identified and supported. At the same time, no child should be inappropriately identified for special education services, segregated from his or her peers, or disciplined more frequently or harshly simply because they are a student of color with a disability. These regulations will help ensure that the promise of IDEA is fulfilled without regard to race or ethnicity.

The final regulations incorporate changes to the Department's initial proposals (<http://www2.ed.gov/policy/speced/reg/idea/part-b/idea-part-b-significant-disproportionality-final-regs-changes-nprm-to-nfr.pdf>) from the comments we received in many ways, including:

- Better addressing how the risk ratio applies to small districts; under the final regulations;
- States need not calculate risk ratios for any racial or ethnic group that does not meet minimum cell or n-sizes set by the state;
- Explicitly prohibiting the use of quotas or of artificially reducing the number of children identified as children with disabilities; and
- Clarifying that states have flexibility not to identify significant disproportionality in districts that make reasonable progress in lowering risk ratios for two prior consecutive years.

To learn more about more technical assistance resources, [click here](https://www.osepideasthatwork.org/federal-resources-stakeholders/disproportionality-and-equity) (<https://www.osepideasthatwork.org/federal-resources-stakeholders/disproportionality-and-equity>).

Meanwhile, the Office for Civil Rights (OCR) is also releasing a new policy document (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-racedisc-special-education.pdf>) to support educators and administrators as they work to identify students' need for special education. This new policy document was created to remind states, school districts, and public schools of their legal obligation to prevent discrimination on the basis of race in special education. OCR's enforcement experience suggests both over-identification and under-identification based on race are occurring in schools.

"All students deserve access to the world-class education federal civil rights laws demand," said Catherine E. Lhamon, assistant secretary for civil rights. "The Department will continue its work with school communities to safeguard the rights of our students with disabilities, students of color, and all students to ensure educational equity."

Specifically, the Dear Colleague Letter explains the Title VI requirement that students of all races and national origins have equitable access to general education interventions and to a timely referral for an evaluation for disability under the IDEA or Section 504; and that students of all races and national origins be treated equitably in the evaluation process, in the quality of special education services and supports they receive, and in the degree of restrictiveness of their educational environment.

The letter outlines how to avoid racial discrimination in the referral for disability evaluation, the evaluation process itself, and the provision of special education. It also provides ten illustrative examples that provide further guidance on those processes.

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