

TO: Directors of schools and special education directors
FROM: Theresa Nicholls, assistant commissioner of special populations and student support
DATE: July 5, 2017
SUBJECT: **Significant Disproportionality**

Context

Under federal law (Individuals with Disabilities Educational Act (IDEA) Regulations at 34 C.F.R. 300.646), states are annually required to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring within LEAs and the state with respect to:

- identification of students with disabilities, including identification of students in six high-incidence disability categories;
- the placement of students with disabilities in particular educational settings; and
- the incidence, duration, and type of disciplinary actions (specific to students with disabilities), including suspensions and expulsions.

Should an LEA be identified with significant disproportionality in one or more of these areas, states must:

- provide for the review (and, if appropriate) revision of policies, procedures, and practices;
- require identified LEAs to reserve the maximum amount of funds (15 percent) under Part B of IDEA to be used for comprehensive coordinated early intervening services (CEIS); or
- require the identified LEAs to publicly report on the revisions of their policies, procedures, and practices.

States may determine their own calculations for determining significant disproportionality, although the definition must be based on an analysis of numerical information and statistically sound. Additional information about significant disproportionality and requirements for Identified LEAs is available in a question and answer document found [here](#).

Changes

In the 2016-17 school year, the U.S. Department of Education's office of special education programs (OSEP) updated the significant disproportionality regulations to include the following:

- OSEP will establish minimum "n" sizes for the calculations for each of the categories assessed, which were previously left to the state's discretion. The "n" sizes for significant disproportionality calculations will still be selected by individual states, but they cannot exceed the minimum "n" sizes that have been established by OSEP.
 - These minimum "n" sizes are much smaller than those previously utilized by the Tennessee Department of Education in the significant disproportionality calculation.
 - These changes to "n" sizes and the calculation of significant disproportionality will not take effect until **July 1, 2018**.
- Data evaluated to determine significant disproportionality will expand from just students ages 6–21 to include students ages 3–5 as well.
 - The inclusion of students ages 3–5 **will be delayed until July 1, 2020**.

- **Funds reserved for CEIS can be used for both students with and without disabilities.** Under previous guidance, such funds could only be used for students not identified with a disability.

For more information about these changes, please see the federal register from Dec. 19, 2016 [here](#).

District Impact

The minimum “n” sizes for the calculation of significant disproportionality that have been established by OSEP **will likely lead to an increase in the number of districts identified with significant disproportionality.** While states will still ultimately make decisions about the ratio thresholds for significant disproportionality and whether consecutive years of data will be used to make this determination, the minimum “n” sizes will increase the scope of groups included in the calculations.

Should districts be identified with significant disproportionality, they will be required to set aside 15 percent of the Part B IDEA funds to provide CEIS to students with and without disabilities, ages 3–21.

This may pose budget implications for districts when the first change regarding “n” sizes takes effect in the 2018-19 school year.

Districts not identified with significant disproportionality may continue to use CEIS funds voluntarily to improve pre-referral interventions (as with RTI), but CEIS funds **must** be used to improve pre-referral interventions if districts are significantly disproportionate in their identification of minority students.

The Department’s Next Steps

In August 2017, the department will **establish a** state focus group to discuss these changes to significant disproportionality calculations and develop a new set of “n” sizes, thresholds, and determinations processes. This group will be comprised of a diverse array of stakeholders, including parents, individuals with disabilities, school personnel, advocacy groups, etc. The work of this panel will lead to updates to the calculation of significant disproportionality.

In the fall of 2017, the department will develop a significant disproportionality projection to share with each district. This projection will be based on changes proposed by the state focus group so that districts can prepare for the enactment of new calculations in the 2018-19 school year. During this time, the department will also communicate guidance on use of Part B IDEA funds for CEIS and how use of funds will be monitored.

For questions and concerns regarding significant disproportionality changes, contact Rachel.Wilkinson@tn.gov.