

Crosswalk of Current Significant Disproportionality Regulations with Prior Significant Disproportionality Regulations

The purpose of this crosswalk is to provide a quick reference to the changes inherent in the final regulations published on pages 92376 to 92464 of the Federal Register, December 19, 2016. All language in this document can be found on those pages.

The revised regulations take effect 30 days after the date of publication in the Federal Register. However, States are not required to comply with these regulations until July 1, 2018, or to include children ages three through five in the review of significant disproportionality with respect both to the identification of children as children with disabilities and the identification of children as children with a particular impairment until July 1, 2020.

Regulation Section	Prior Regulation
34 CFR § 300.646	<p>§ 300.646 Disproportionality.</p> <p>(a) <i>General.</i> Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to—</p> <ol style="list-style-type: none"> (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; (2) The placement in particular educational settings of these children; and (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions. <p>(b) <i>Review and revision of policies, practices, and procedures.</i> In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph of this section, the State or the Secretary of the Interior must—</p> <ol style="list-style-type: none"> (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act. (2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified under paragraph (a) of this section; and (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section. <p>(Authority: 20 U.S.C. 1418(d))</p>

Regulation Section	Current Regulation, Published in the Federal Register on December 19, 2016	Regulation Changes (OSEP language)
34 CFR § 300.646(a)	<p>§ 300.646 Disproportionality.</p> <p>(a) <i>General.</i> Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to—</p> <p>(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;</p> <p>(2) The placement in particular educational settings of these children; and</p> <p>(3) The incidence, duration, and type of disciplinary removals from placement, including suspensions and expulsions.</p>	None.
34 CFR § 300.646(b)	<p>(b) <i>Methodology.</i> The State must apply the methods in § 300.647 to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State under paragraph (a) of this section.</p>	New §§ 300.646(b) and 300.647(a) and (b) provide the standard methodology that States must use to determine whether there is significant disproportionality based on race or ethnicity in the State and its LEAs. (81 FR 243, pg. 92377)
34 CFR § 300.646(c)	<p>(c) <i>Review and revision of policies, practices, and procedures.</i> In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities or the placement in particular educational settings, including disciplinary removals of such children, in accordance with paragraphs (a) and (b) of this section, the State or the Secretary of the Interior must—</p> <p>(1) Provide for the annual review and, if appropriate, revision of the policies, practices, and procedures used in identification or placement in particular education settings, including disciplinary removals, to ensure that the policies, practices, and procedures comply with the requirements of the Act. (2) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (c)(1) of this section consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 CFR part 99, and Section 618(b)(1) of the Act.</p>	<p>Amended § 300.646(b) (new § 300.646(c)) clarify that the remedies in IDEA section 618(d)(2) are triggered if a State makes a determination of significant disproportionality with respect to disciplinary removals from placement. (81 FR 243, pg. 92377)</p> <p>Amended § 300.646(b)(1) and (3) (new § 300.646(c)(1) and (2)) clarify that the review of policies, practices, and procedures must occur in every year in which an LEA is identified with significant disproportionality, and that LEA reporting of any revisions to policies, practices, and procedures must be in compliance with the confidentiality provisions of the Family Educational Rights and Privacy Act (FERPA), (20 U.S.C. 1232), its implementing regulations in 34 CFR part 99, and IDEA section 618(b)(1). (81 FR 243, pg. 92377)</p>

Regulation Section	Current Regulation, Published in the Federal Register on December 19, 2016	Regulation Changes (OSEP language)
34 CFR § 300.646(d)	<p>(d) <i>Comprehensive coordinated early intervening services.</i> Except as provided in paragraph (e) of this section, the State or the Secretary of the Interior shall require any LEA identified under paragraphs (a) and (b) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality.</p> <p>(1) In implementing comprehensive coordinated early intervening services an LEA—</p> <p>(i) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports.</p> <p>(ii) Must identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality.</p> <p>(iii) Must address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups).</p> <p>(2) An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly over identified under paragraph (a) or (b) of this section, including—</p> <p>(i) Children who 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; and</p> <p>(ii) Children with disabilities.</p> <p>(3) An LEA may not limit the provision of comprehensive coordinated early intervening services under this paragraph to children with disabilities</p>	<p>Amended § 300.646(b) (2) (new § 300.646(d)) to define which populations of children may receive comprehensive CEIS when an LEA has been identified with significant disproportionality. Comprehensive CEIS may be provided to children from age 3 through grade 12, regardless of whether they are children with disabilities, and, as part of implementing comprehensive CEIS, an LEA must identify and address the factors contributing to the significant disproportionality. (81 FR 243, pg. 92378)</p> <p>New § 300.646(d)(1)(iii), requires an LEA, in implementing comprehensive CEIS, to address any policy, practice, or procedure it identifies as contributing to significant disproportionality, including any policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups). (81 FR 243, pg. 92378)</p>
34 CFR § 300.646(e)	<p>(e) <i>Exception to comprehensive coordinated early intervening services.</i> The State or the Secretary of the Interior shall not require any LEA that serves only children with disabilities identified under paragraphs (a) and (b) of this section to reserve funds to provide comprehensive coordinated early intervening services.</p>	<p>New § 300.646(e) clarifies that LEAs that serve only children with disabilities are not required to reserve IDEA Part B funds for comprehensive CEIS. (81 FR 243, pg. 92378)</p>
34 CFR § 300.646(f)	<p>(f) <i>Rule of construction.</i> Nothing in this section authorizes a State or an LEA to develop or implement policies, practices, or procedures that result in actions that violate the requirements of this part, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities. (Authority: 20 U.S.C. 1413(f); 20 U.S.C. 1418(d))</p>	<p>New § 300.646(f) makes clear that these regulations do not authorize a State or an LEA to develop or implement policies, practices, or procedures that result in actions that violate any IDEA requirements, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities. (81 FR 243, pg. 92378)</p>

Regulation Section	Current Regulation, Published in the Federal Register on December 19, 2016	Regulation Changes (OSEP language)
34 CFR § 300.647(a)	<p>§ 300.647 Determining significant disproportionality.</p> <p>(a) <i>Definitions.</i> (1) <i>Alternate risk ratio</i> 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.</p> <p>(2) <i>Comparison group</i> 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.</p> <p>(3) <i>Minimum cell size</i> is the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.</p> <p>(4) <i>Minimum n-size</i> 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 either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.</p> <p>(5) <i>Risk</i> is 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.</p> <p>(6) <i>Risk ratio</i> 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.</p> <p>(7) <i>Risk ratio threshold</i> is a threshold, determined by the State, over which disproportionality based on race or ethnicity is significant under § 300.646(a) and (b).</p>	<p>New § 300.647(a) includes a definition of comparison group, minimum n-size, and minimum cell size. (81 FR 243, pg. 92378)</p>

Regulation Section	Current Regulation, Published in the Federal Register on December 19, 2016	Regulation Changes (OSEP language)
34 CFR § 300.647(b)	<p>(b) <i>Significant disproportionality determinations.</i> In determining whether significant disproportionality exists in a State or LEA under § 300.646(a) and (b)—</p> <p>(1)(i) The State must set a:</p> <ul style="list-style-type: none"> (A) Reasonable risk ratio threshold; (B) Reasonable minimum cell size; (C) Reasonable minimum n-size; and (D) Standard for measuring reasonable progress if a State uses the flexibility described in paragraph (d)(2) of this section. <p>(ii) The State may, but is not required to, set the standards set forth in paragraph (b)(1)(i) of this section at different levels for each of the categories described in paragraphs (b)(3) and (4) of this section.</p> <p>(iii) The standards set forth in paragraph (b)(1)(i) of this section:</p> <ul style="list-style-type: none"> (A) Must be based on advice from stakeholders, including State Advisory Panels, as provided under section 612(a)(21)(D)(iii) of the Act; and (B) Are subject to monitoring and enforcement for reasonableness by the Secretary consistent with section 616 of the Act. <p>(iv) When monitoring for reasonableness under paragraph (b)(1)(iii)(B) of this section, the Department finds that the following are presumptively reasonable:</p> <ul style="list-style-type: none"> (A) A minimum cell size under paragraph (b)(1)(i)(B) of this section no greater than 10; and (B) A minimum n-size under paragraph (b)(1)(i)(C) of this section no greater than 30. <p>(2) The State must apply the risk ratio threshold or thresholds determined in paragraph (b)(1) of this section to risk ratios or alternate risk ratios, as appropriate, in each category described in paragraphs (b)(3) and (4) of this section and the following racial and ethnic groups:</p> <ul style="list-style-type: none"> (i) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only; (ii) American Indian or Alaska Native; (iii) Asian; (iv) Black or African American; (v) Native Hawaiian or Other Pacific Islander; (vi) White; and (vii) Two or more races. <p>(3) Except as provided in paragraphs (b)(5) and (c) of this section, the State must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph (b)(2) of this section with respect to:</p> <ul style="list-style-type: none"> (i) The identification of children ages 3 through 21 as children with disabilities; and (ii) The identification of children ages 3 through 21 as children with the following impairments: <ul style="list-style-type: none"> (A) Intellectual disabilities; (B) Specific learning disabilities; (C) Emotional disturbance; (D) Speech or language impairments; (E) Other health impairments; and (F) Autism. 	<p>New § 300.647(b)(1) requires States to set reasonable risk ratio thresholds, reasonable minimum cell sizes, reasonable minimum n-sizes, and, if a State is using the flexibility in § 300.647(d)(2), standards for measuring reasonable progress, all with input from stakeholders (including their State Advisory Panels) and subject to the Department’s oversight. (81 FR 243, pg. 92378)</p> <p>New § 300.647(b)(1) also clarifies that a State may, but is not required to, set these standards at different levels for each of the categories described in paragraphs (b)(3) and (4); States may delay the inclusion of children ages three through five in the review of significant disproportionality with respect to the identification of children as children with disabilities, and with respect to the identification of children as children with a particular impairment, until July 1, 2020. (81 FR 243, pg. 92378)</p>

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34 CFR § 300.647(b) <i>(continued)</i>	<p>(4) Except as provided in paragraphs (b)(5) and (c) of this section, the State must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph (b)(2) of this section with respect to the following placements into particular educational settings, including disciplinary removals:</p> <ul style="list-style-type: none"> (i) For children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day; (ii) For children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools; (iii) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of 10 days or fewer; (iv) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than 10 days; (v) For children with disabilities ages 3 through 21, in-school suspensions of 10 days or fewer; (vi) For children with disabilities ages 3 through 21, in-school suspensions of more than 10 days; and (vii) For children with disabilities ages 3 through 21, disciplinary removals in total, 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. <p>(5) The State must calculate an alternate risk ratio with respect to the categories described in paragraphs (b)(3) and (4) of this section if the comparison group in the LEA does not meet the minimum cell size or the minimum n-size.</p> <p>(6) Except as provided in paragraph (d) of this section, the State must identify as having significant disproportionality based on race or ethnicity under § 300.646(a) and (b) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs (b) (3) and (4) of this section that exceeds the risk ratio threshold set by the State for that category.</p> <p>(7) The State must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under paragraphs (b)(1)(i)(A) through (D) of this section, and the rationales for each, to the Department at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph (b) (1)(iv) of this section must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the State is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.</p>	<p>New § 300.647(b)(4) no longer requires States to calculate the risk ratio for children with disabilities ages 6 through 21, inside a regular class more than 40 percent of the day and less than 79 percent of the day. (81 FR 243, pg. 92378)</p> <p>New § 300.647(b)(5) requires States to use the alternate risk ratio when the number of children in the comparison group fails to meet either the State’s reasonable minimum n-sizes or the State’s reasonable minimum cell sizes. (81 FR 243, pg. 92378)</p> <p>New § 300.647(b)(7) requires States to report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress, and the rationales for each, to the Department at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes must include a detailed explanation of why the numbers are reasonable and how they ensure appropriate analysis for significant disproportionality. (81 FR 243, pg. 92378)</p>

Regulation Section	Current Regulation, Published in the Federal Register on December 19, 2016	Regulation Changes (OSEP language)
34 CFR § 300.647(c)	<p>(c) <i>Exception.</i> A State is not required to calculate a risk ratio or alternate risk ratio, as outlined in paragraphs (b)(3), (4), and (5) of this section, to determine significant disproportionality if:</p> <p>(1) The particular racial or ethnic group being analyzed does not meet the minimum cell size or minimum n-size; or</p> <p>(2) In calculating the alternate risk ratio under paragraph (b)(5) of this section, the comparison group in the State does not meet the minimum cell size or minimum n-size.</p>	<p>New § 300.647(c) clarifies that States are not required to calculate a risk ratio or alternate risk ratio if the particular racial or ethnic group being analyzed does not meet the minimum n-size or minimum cell size, or in calculating the alternate risk ratio under § 300.647(b)(5), the comparison group in the State does not meet the minimum cell size or minimum n-size. (81 FR 243, pg. 92378)</p>
34 CFR § 300.647(d)	<p>(d) <i>Flexibility.</i> A State is not required to identify an LEA as having significant disproportionality based on race or ethnicity under § 300.646(a) and (b) until—</p> <p>(1) The LEA has exceeded a risk ratio threshold set by the State for a racial or ethnic group in a category described in paragraph (b)(3) or (4) of this section for up to three prior consecutive years preceding the identification; and</p> <p>(2) 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.</p>	<p>New §300.647(d) provides flexibilities that States, at their discretion, may consider when determining whether significant disproportionality exists. States may choose to identify an LEA as having significant disproportionality after an LEA exceeds a risk ratio threshold for up to three prior consecutive years. States may also choose not to identify an LEA with significant disproportionality if the LEA is making reasonable progress, as defined by the State, in lowering risk ratios in each of the two consecutive prior years, even if the risk ratios exceed the State's risk ratio thresholds. (81 FR 243, pg. 92377)</p>