

# Hot Topic - Disproportionality

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What are the legal requirements?  
Why all the changes?  
What is the latest update?



# Note Cards

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**Orange** – questions for Jana and Sara

**Yellow** – questions for MDE

**Green** – questions for your colleagues

# Disproportionality

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Disproportionality exists when students in a racial or ethnic group are more likely to be

- identified as a student with a disability
- identified as a student with a particular disability
- placed in more restrictive settings
- removed from class for discipline

than students in other racial or ethnic groups.

# Federal Requirements (34 CFR §300.646)

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- State must:
  - determine if disproportionality is occurring in each district
  - review policies, procedures and practices
- Districts must:
  - conduct a root cause analysis
  - reserve 15% of IDEA funds for comprehensive coordinated early intervening services

# Summary of Revised 2016 Regulations

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(1) established a standard methodology States must use

(2) clarify that States must address significant disproportionality in disciplinary actions

(3) clarify requirements for the review and revision of policies, practices, and procedures when significant disproportionality is found; and

(4) require that LEAs identify and address the factors contributing to significant disproportionality as part of comprehensive coordinated early intervening services (comprehensive CEIS) and allow these services for children from age 3 through grade 12, with and without disabilities.

# Current vs. New Analysis Categories

Area	Current	New
Identification	All disabilities and six disability categories; ages 6-21	Same categories (ages 3-5 included by July 2020)
Placements	Inside Regular Class 40-79% Inside Regular Class < 40% Separate Placements	Inside Regular Class <40% Separate Placements
Discipline	Suspensions and Expulsions > 10 days, consecutively or cumulatively	OSS > 10 days OSS ≤ 10 days ISS > 10 days ISS ≤ 10 days Total removals

## From 77 to 98 Ways...

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- Seven racial/ethnic groups
- Fourteen areas
  - All disabilities
  - Six disability categories (ID, ED, LD, AU, OHI, Sp/L)
  - Two placement categories (was 3)
  - Five discipline groups (was 1)
- A district has ninety-eight “opportunities” to be identified as being significantly disproportionate

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# Regulations Delayed

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The Department postpones by two years the date for States to comply with the “Equity in IDEA” or “significant disproportionality” regulations, from July 1, 2018, to July 1, 2020. The Department also postpones the date for including children ages three through five in the analysis of significant disproportionality, with respect to the identification of children as children with disabilities and as children with a particular impairment, from July 1, 2020, to July 1, 2022.

# Why were the regulations delayed (2017)?

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- <https://www.federalregister.gov/documents/2018/07/03/2018-14374/assistance-to-states-for-the-education-of-children-with-disabilities-preschool-grants-for-children>
- The Department does not agree with the commenters that the **causes of, and remedies for, significant disproportionality** based on race and ethnicity in the identification, placement, and discipline of children with disabilities in LEAs across the country **have received sufficient study.**
- The Department also believes that the racial disparities in the identification, placement, or discipline of children with disabilities **are not necessarily evidence of, or primarily caused by, discrimination...**

# Why were the regulations delayed?

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- The Department is not certain that the standard methodology in the 2016 significant disproportionality regulations is the best method for States to identify significant disproportionality in LEAs across the country.
- It would be wrong and inconsistent with IDEA to require a system that potentially denies services based on a child's ethnic or racial status/group. We are **concerned the 2016 significant disproportionality regulations could result in de facto quotas, which in turn could result in a denial of services based on a child's ethnic or racial status/group**. The Secretary is concerned that the regulations will create an environment where children in need of special education and related services do not receive those services because of the color of their skin.

## No Longer Delayed (May 20 press release)

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“Pursuant to the plain language of the December 19, 2016 Equity in IDEA regulation on significant disproportionality, and in conjunction with the March 7, 2019 decision in COPAA v. Devos, the Department expects States to calculate significant disproportionality for the 2018–2019 school year using the 2016 rule’s standard methodology, or to recalculate using the 2016 rule’s standard methodology if a different methodology has already been used for this school year.”

# How is disproportionality connected to improving outcomes?

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How can addressing disproportionality help meet the overarching goals for students with disabilities?

Have you seen any success addressing disproportionality – reducing it or other positive outcomes?