



# Significant Disproportionality

## *Equity in IDEA*

Definitions, Methodology, and Support



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**2023-2024**

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**West Virginia Department of Education**

Office of Federal Programs & Support, Special Education

**August 2023**

# Table of Contents

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<b>Overview .....</b>	<b>5</b>
<b>Definitions .....</b>	<b>6</b>
<b>Methodology .....</b>	<b>8</b>
<i>Identification .....</i>	8
<i>Placement .....</i>	9
<i>Discipline .....</i>	9
<b>Questions and Answers .....</b>	<b>10</b>
<i>What happens if an LEA is identified as having significant disproportionality? .....</i>	10
<i>What are comprehensive coordinated early intervening services (What is CCEIS)? .....</i>	11
<i>What is the scope of the review and revision of policies, practices, and procedures? .....</i>	11
<i>Must an LEA meet the definition for significant disproportionality in each of the categories before being identified with significant disproportionality? .....</i>	12
<i>How will an LEA be notified if they are identified as having significant disproportionality? .....</i>	12
<i>Can an LEA voluntarily engage in coordinated early intervening services (CEIS)? .....</i>	12
<i>Is “significant disproportionality” different from “significant discrepancy”? .....</i>	12
<i>Is “significant disproportionality” different from “disproportionate representation”? .....</i>	12
<b>Resources .....</b>	<b>13</b>
<i>Regulatory Requirements .....</i>	13
<i>OSEP — Significant Disproportionality .....</i>	13
<i>Root Cause Analysis .....</i>	13
<i>CEIS — Fiscal and Student Tracking Tools / User Guide .....</i>	13
<i>CEIS — Graphic Overview and Resources .....</i>	13
<i>CEIS — Practice Guide .....</i>	13
<i>CEIS — Quick Reference Guide .....</i>	13
<i>Data Sources Used for Significant Disproportionality Calculations .....</i>	13
<i>Comparison of Equity Requirements in IDEA .....</i>	13

# Significant Disproportionality

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## Overview

The Individuals with Disabilities Education Act (IDEA) section 618(d) and 34 C.F.R. § 300.646 requires States to collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies (LEAs) of the State with respect to:

- › the **identification** of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment;
- › the **placement** of children in particular education environments; and
- › the incidence, duration, and type of **disciplinary actions**, including suspensions and expulsions.

States are required to use a standard methodology to identify significant disproportionality (i.e., overrepresentation) in LEAs, which involves the use of **risk ratios** to analyze educational disparities for seven (7) racial/ethnic groups.

## Racial/Ethnic Subgroup Categories

- |   |  |
|---|--|
| › <b>American Indian or Alaska Native</b> (AM7) | › <b>Native Hawaiian or Other Pacific Islander</b> (PI7) |
| › <b>Asian</b> (AS7)                            | › <b>White</b> (WH7)                                     |
| › <b>Black or African American</b> (BL7)        | › <b>Multi-Racial / Two or More Races</b> (MU7)          |
| › <b>Hispanic/Latino</b> (HI7)                  |  |

In West Virginia, if an LEA is identified with significant disproportionality in one or more of the same categories of analysis for three consecutive years, the state educational agency (SEA) must annually:

- 1) provide for the review and, if appropriate, revision of policies, practices, and procedures within the LEA to ensure compliance with the requirements of IDEA;
- 2) require the LEA to publicly report on the revision of policies, practices, and procedures consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99, and Section 618(b)(1) of the IDEA; and
- 3) require the LEA to set aside 15 percent of its IDEA, Part B (sections 611 and 619) funds to provide comprehensive coordinated early intervening services (comprehensive CEIS) to address factors contributing to the significant disproportionality. (See 34 C.F.R. §300.646(c) and (d).)

## Definitions

- › **Risk** refers to the likelihood of a certain outcome (e.g., receiving out-of-school suspension) for a particular racial/ethnic group.

For example, if 20 out of 125 Asian children with disabilities in an LEA received out-of-school suspension or expulsion for over 10 days, the risk of an Asian child with a disability being suspended or expelled for over 10 days in that LEA is 20/125 or 16 percent.
- › A **risk ratio** describes the likelihood of an outcome in one group compared to the likelihood of the same outcome in another group.

For example, if 20 out of 125 Asian children with disabilities in an LEA received out-of-school suspension or expulsion for over 10 days (a risk of 16 percent), and 200 children with disabilities out of all 4,000 other children with disabilities in the LEA received out-of-school suspension or expulsion for over 10 days (a risk of 5 percent), the risk ratio for Asian children with disabilities being suspended or expelled for over 10 days compared to all other children with disabilities in the LEA is 16/5 or 3.2, (i.e., more than three times as likely).
- › A **cell size** is a minimum number, set by the State, of children experiencing a particular outcome (e.g., children identified as children with disabilities, children with disabilities in a particular educational environment, etc.). When calculating risk ratios, minimum cell size applies to the *numerator* in the fraction for calculating the risk for a particular racial or ethnic group.

*West Virginia's minimum cell size for all significant disproportionality calculations is 10.*

- › An **n-size** is a minimum number, set by the State, of children enrolled in an LEA (with respect to identification) or 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.

*West Virginia's minimum n size for all significant disproportionality calculations is 30.*

- › **Coordinated, early intervening services (CEIS)**, sometimes referred to as voluntary CEIS, involves the optional allocation of up to 15 percent of an LEA's IDEA Part B funds (611 and 619) to provide services to students in kindergarten through twelfth grade 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. Allowable activities include relevant professional development, as well as educational and behavioral evaluations, services, and supports (*See 34 CFR §300.226 for more information*).
- › **Comprehensive coordinated early intervening services (CCEIS)**, sometimes referred to as mandatory CEIS, must be initiated by an LEA if it is identified as having significant disproportionality in identification, placement, and/or disciplinary removals. CCEIS involves the mandatory allocation of exactly 15 percent of an LEA's IDEA Part B funds (611 and 619) to provide services to students ages three through grade 12 grade 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. Services may also be provided to students currently identified as needing special education or related services. Allowable activities include relevant professional development, as well as educational and behavioral evaluations, services, and supports. These activities must address factors contributing to the significant disproportionality. Additionally, LEAs must review related policies, practices, and procedures, and publicly report on any revisions made to ensure compliance with IDEA (*See 34 CFR §300.646 (d) for more information*).



## Identification

Significant disproportionality in **identification** exists when students ages 3 through 21 in a particular racial/ethnic group are at a significantly greater risk of being:

- › identified as a student with a disability, or
- › identified within a particular disability category.

When examining data to determine if significant disproportionality exists with respect to the identification of children ages 3-21 in specific disability categories, the following disability categories are reviewed:

- › Intellectual Disability
- › Specific Learning Disability
- › Emotional Disturbance
- › Speech or Language Impairment
- › Other Health Impairment
- › Autism

### West Virginia's Definition of Significant Disproportionality in Identification

Significant disproportionality exists when students in one racial/ethnic group are more than 3.00 times as likely as students in all other racial/ethnic groups to be identified for special education services or within a specific disability category for three consecutive years (i.e., exceeds a risk ratio threshold of 3.00).

**NOTE:** If a racial/ethnic group being analyzed does not meet the minimum cell size (10) or the minimum n-size (30), then the State does not calculate a risk ratio.

## Placement

Significant disproportionality in **placement** exists when students with disabilities age 5 (in kindergarten) through 21 in a particular racial/ethnic group are at a significantly greater risk of being placed in one of the following Educational Environment categories than all other racial/ethnic groups:

- › Inside the regular classroom less than 40 percent of the school day (LRE Code 2)
- › Inside separate schools and residential facilities (LRE Codes 3 and 6), not including homebound or hospital settings, correctional facilities, or private schools

### West Virginia's Definition of Significant Disproportionality in Placement

Significant disproportionality exists when students with disabilities in one racial/ethnic group are more than 3.00 times as likely as students with disabilities in all other racial/ethnic groups to be placed in a particular educational environment for three consecutive years (i.e., exceeds a risk ratio threshold of 3.00).

**NOTE:** If a racial/ethnic group being analyzed does not meet the minimum cell size (10) or the minimum n-size (30), then the State does not calculate a risk ratio.

## Discipline

Significant disproportionality in **discipline** exists when students with disabilities ages 3 through 21 in a particular racial/ethnic group are at a significantly greater risk of being subjected to disciplinary action during the school year than all other racial/ethnic groups. The discipline categories used to calculate significant disproportionality are listed below:

- › Out-of-school suspensions and expulsions of 10 days or fewer (OSS ≤ 10 Days)
- › Out-of-school suspensions and expulsions of more than 10 days (OSS >10 days)
- › In-school suspensions of 10 days or fewer (ISS ≤ 10 days)
- › In-school suspensions of more than 10 days (ISS > 10 days)
- › Total disciplinary removals, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative educational setting, and removals by a hearing officer

### West Virginia's Definition of Significant Disproportionality in Discipline

Significant disproportionality exists when students with disabilities in one racial/ethnic group are more than 3.00 times as likely as students with disabilities in all other racial/ethnic groups to receive a particular disciplinary action for three consecutive years (i.e., exceeds a risk ratio threshold of 3.00).

**NOTE:** If a racial/ethnic group being analyzed does not meet the minimum cell size (10) or the minimum n-size (30), then the State does not calculate a risk ratio.

### Alternate Risk Ratio

The **alternate risk ratio** is calculated by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that same outcome for children in all other racial or ethnic groups in West Virginia. This differs from the risk ratio only in that the comparison group comes from the state instead of the LEA.

- › If the comparison group **in the LEA** does not meet both the minimum cell size (10) and the minimum n-size (30), then the state must calculate an alternate risk ratio.
- › If the comparison group **in the State** does not meet both the minimum cell size (10) and the minimum n-size (30), then the state is not required to calculate an alternate risk ratio.

## Methodology

In West Virginia, a risk ratio of greater than 3.00 is used to determine significant disproportionality for all calculations. If an LEA exceeds a risk ratio threshold of 3.00 in a particular category of analysis for three consecutive years, the LEA is identified as having significant disproportionality.

## Identification

Data used in these calculations include the count of children with disabilities ages 3 through 21 (December Child Count), and the total count of children ages 3 through 21 enrolled in grades pre-kindergarten through 12 (October Enrollment).

Calculations are performed:

- › for each racial/ethnic subgroup in which 30 or more students are enrolled, with 10 or more students from the same racial/ethnic subgroup in a given disability category:
  - All Disabilities
  - Intellectual Disability
  - Specific Learning Disability
  - Emotional Disturbance
  - Speech or Language Impairment
  - Other Health Impairment
  - Autism

### Calculation Example

$$\frac{\text{\# of children from a given racial/ethnic group with disabilities}}{\text{\# of enrolled children from a given racial/ethnic group}} \div \frac{\text{\# of all other children with disabilities}}{\text{\# of all other enrolled children}}$$





# Questions and Answers

## What happens if an LEA is identified as having significant disproportionality?

LEAs identified with significant disproportionality must:

- › Conduct a root-cause analysis to identify the factor(s) contributing to the significant disproportionality.
- › Review and, if appropriate, revise policies, procedures, and practices (PPP) to address the significant disproportionality and ensure compliance with IDEA.
- › Publicly report on the revision of PPP consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 C.F.R. Part 99, and Section 618(b)(1) of the IDEA.
- › Allocate **exactly 15 percent** of IDEA Special Education funds (Part B, Section 611 & 619) within the Consolidated Grant Application (CGA) Process for comprehensive coordinated early intervening services (CCEIS) to identify and address factors contributing to the significant disproportionality in the identified category (or categories).
  - › An LEA may use funds reserved for CCEIS to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly over identified, including:
    - › Children 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,
    - › Children with disabilities. (See 34 C.F.R. §300.646(d)(2))
  - › An LEA may not limit CCEIS only to children with disabilities. (See 34 C.F.R. §300.646(d)(3))

**Reporting requirement:** Each LEA that develops and maintains CEIS must annually report to the SEA on:

CEIS (voluntary)	CCEIS (mandatory)
<ul style="list-style-type: none"> <li>› Total number of children receiving CEIS (i.e., early intervening services) under the IDEA in the LEA during SY 20XX-XX.</li> <li>› Total number of children who received CEIS under the IDEA anytime in the past two school years (including SY 20XX-XX, SY 20XX-XX and SY 20XX-XX) and received special education and related services in SY 20XX-XX.</li> </ul>	<ul style="list-style-type: none"> <li>› Number of children with disabilities receiving CCEIS under IDEA in (the reference year).*</li> <li>› Number of children without disabilities receiving CCEIS under IDEA in (the reference year).*</li> </ul>
34 C.F.R. §300.646(d)	

\*Collection of these data will begin in SY 2023-24.

## ***What are comprehensive coordinated early intervening services (What is CCEIS)?***

CCEIS encompasses a broad range of activities that include professional development and educational and behavioral evaluations, services, and supports. (See 34 C.F.R. §300.646(d)(1).) An LEA must use funds reserved for CCEIS to identify and address the factors contributing to the significant disproportionality in the LEA for the identified category. According to OSEP, these factors may include 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 other similar policies, practices, or procedures that contribute to the significant disproportionality.

This requirement is fundamental to the use of funds reserved for CCEIS, and it carries with it a practical limitation: An LEA may use CCEIS funds for training and professional development and behavioral evaluations and supports, such as functional behavioral assessments, behavioral intervention plans, and positive behavioral interventions and supports, but only to the extent that it is doing so to address the factors identified by the LEA as contributing to the significant disproportionality identified by the State.

Further, the LEA must address any policy, practice, or procedure it identifies as contributing to the significant disproportionality, including any that result in a failure to identify, or the inappropriate identification of, a racial or ethnic group or groups. The LEA has discretion as to how best to address the policy, practice, or procedure, including by eliminating, revising, or changing how it is implemented, as long as it does so in a manner consistent with the requirements of the IDEA and its implementing regulations. (See 34 C.F.R. §300.646(d)(1)(iii).)

## ***What is the scope of the review and revision of policies, practices, and procedures?***

The State must provide for the review, and if appropriate, revision of policies, practices, and procedures used in the area in which an LEA is identified with significant disproportionality (identification, placement, or disciplinary removals) to ensure they comply with the requirements of IDEA.

- › For example, in an LEA identified with significant disproportionality with respect to identification, the State must provide for the review of policies, practices, and procedures used in identification. This should include a review of child find and evaluation policies, practices, and procedures to ensure they comply with IDEA.
- › Similarly, for an LEA identified with significant disproportionality in discipline, the State must provide for the review of policies, practices, and procedures used in the discipline of children with disabilities. This should include a review of the LEA's policies, practices, and procedures related to manifestation determinations, functional behavioral assessments, or behavioral intervention plans, or the rules for, and use of, schoolwide discipline, to ensure compliance with IDEA.
- › Further, when implementing comprehensive CEIS, the LEA must address any policy, practice, or procedure identified as contributing to the significant disproportionality, including any that result in a failure to identify, or in the inappropriate identification of, the members of a racial or ethnic group or groups. The LEA has discretion as to how to address the policy, practice, or procedure, including by eliminating, revising or changing how it is implemented, as long as it does so in a manner consistent with the requirements of the IDEA and its implementing regulations. (See 34 C.F.R. §300.646(d)(1)(iii).)

### ***Must an LEA meet the definition for significant disproportionality in each of the categories before being identified with significant disproportionality?***

- › No. The LEA only needs to meet the definition in one of the categories and for one racial/ethnic group to be identified with significant disproportionality.

### ***How will an LEA be notified if they are identified as having significant disproportionality?***

- › LEAs will be notified in writing by the OFPS if any category meets or exceeds the risk ratio or alternate risk ratio threshold of 3.0 for significant disproportionality for three consecutive years. Once the LEA has been made aware, OFPS staff will be available to offer assistance and specific tools to the LEA to assist with comprehensive CEIS.

### ***Can an LEA voluntarily engage in coordinated early intervening services (CEIS)?***

- › Yes. An LEA can voluntarily allocate **up to 15 percent** of IDEA Special Education (Part B, Section 611 & 619) funds to initiate CEIS. This is typically done as a preventive measure if an LEA has met or exceeded the risk ratio or alternate risk ratio threshold of 3.0 for significant disproportionality for one year or two consecutive years. It can also be done any time an LEA identifies a value to providing services to children 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. While LEAs who engage in voluntary CEIS are not required to conduct a root cause analysis, review and revise PPP, or publicly report on reviews or revisions of PPP, they must report annually to the SEA on the number of children served who received early intervening services, and the number of children served who received early intervening services and subsequently received special education and related services under Part B of the IDEA during the preceding two-year period.

### ***Is “significant disproportionality” different from “significant discrepancy”?*** ***(Indicator 4B)***

- › Yes. IDEA section 612(a)(22) requires States to identify LEAs with “significant discrepancy,” which are disparities by race and ethnicity or by disability status in the rate of long-term suspensions and expulsions of children with disabilities. States must examine whether there are significant discrepancies among LEAs in the State or compare the rates of long-term suspensions and expulsions of children with disabilities to those rates for non-disabled children within the LEAs. The significant disproportionality regulations do not apply to or address the obligation to identify significant discrepancies under IDEA section 612(a)(22).

### ***Is “significant disproportionality” different from “disproportionate representation”?*** ***(Indicators 9 & 10)***

- › Yes. IDEA section 616(a)(3)(C) requires States to identify LEAs with “disproportionate representation” of racial and ethnic groups in special education and related services that is the result of inappropriate identification. The significant disproportionality regulations do not apply to or address the obligation to identify disproportionate representation due to inappropriate identification under IDEA section 616(a)(3)(C), though nothing prohibits a State from using risk ratios or up to 3 years of data for analyzing disproportionate representation.

## Resources

### Regulatory Requirements

- › **34 CFR §300.226 Early Intervening Services**
  - <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-C/section-300.226>
- › **34 CFR §300.646 Disproportionality**
  - <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-F/subject-group-ECFR4f9a33f19162f53/section-300.646>
- › **34 CFR §300.647 Determining Significant Disproportionality**
  - <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-F/subject-group-ECFR4f9a33f19162f53/section-300.647>

### OSEP — Significant Disproportionality

- › **Essential Questions and Answers**
  - <https://sites.ed.gov/idea/files/significant-disproportionality-qa-03-08-17.pdf>
- › **Disproportionality 101: Equity in IDEA: Contents of the Final Rule - 2017 Webinar**
  - <https://www.youtube.com/watch?v=q8xbJr9QruE>

### Root Cause Analysis

- › **Data Meeting Toolkit**
  - <https://www.ideadata.org/data-meeting-toolkit>
- › **Examining Representation and Identification: Over, Under, or Both?**
  - <https://www.ideadata.org/resources/resource/1592/examining-representation-and-identification-over-under-or-both>
- › **Success Gaps Toolkit: Addressing Equity, Inclusion, and Opportunity**
  - <https://ideadata.org/resources/resource/1538/success-gaps-toolkit-addressing-equity-inclusion-and-opportunity>

### CEIS — Fiscal and Student Tracking Tools / User Guide

- › <https://www.ideadata.org/resources/resource/1689/coordinated-early-intervening-services-ceis-fiscal-and-student-data-tracker>

### CEIS — Graphic Overview and Resources

- › <https://cifr.wested.org/tools/ceis-step-by-step/>

### CEIS — Practice Guide

- › <https://www.ideadata.org/resources/resource/1790/ceis-practice-guide>

### CEIS — Quick Reference Guide

- › <https://cifr.wested.org/wp-content/uploads/2021/04/CIFR-CEIS-QRG.pdf>

### Data Sources Used for Significant Disproportionality Calculations

- › <https://ideadata.org/sites/default/files/media/documents/2020-06/Sig-Dispro-DataSources.pdf>

### Comparison of Equity Requirements in IDEA

- › <https://ideadata.org/equity-requirements-2021>

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