# Questions and Answers on Disproportionality

June 2009

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Additional regulations were published on December 1, 2008 and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide States, State educational agencies (SEAs), and local educational agencies (LEAs) with information regarding the IDEA requirements relating to disproportionality determinations. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. This Q&A document supplements the Department's guidance, entitled *Disproportionality of Racial and Ethnic Groups in Special Education*, issued on April 24, 2007.

IDEA requires States and LEAs to take steps to address disproportionate representation of racial/ethnic groups in special education. The statute, as amended in 2004, and the Part B regulations include important changes in how States must monitor the LEAs in the State to determine disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification. 20 U.S.C. 1416(a)(3)(C); 34 CFR §300.600(d)(3).

States have a separate obligation, under 20 U.S.C. 1418(d) and 34 CFR §300.646, to collect and examine data to determine whether significant disproportionality based on race and ethnicity is occurring in the State and LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. Where significant disproportionality is occurring, the State must provide for the review, and, if appropriate, revision of policies, procedures, and practices used in identification, placement, or discipline to ensure that they comply with the requirements of IDEA; require the LEA to publicly report on the revision of policies, practices, and procedures; and require the LEA to reserve 15 percent of its Part B funds 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.

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of IDEA and its implementing regulations. IDEA, its implementing regulations, and other important documents related to IDEA and the regulations are found at http://idea.ed.gov.

If you are interested in commenting on this guidance, please email your comments to OSERSguidancecomments@ed.gov and include Disproportionality in the subject of your email or write us at the following address: Patricia Guard, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW, room 4108, Washington, DC 20202.

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## A. Reporting Requirements

**Authority:** The requirements for reporting on disproportionality are found in the regulations at 34 CFR §§300.600(d) and 300.646.

**Question A-1:** Are States required to report data regarding significant disproportionality, collected and examined pursuant to 34 CFR §300.646, in their Annual Performance Reports (APRs)?

**Answer:** No, States are only required to report, in their APRs, on LEAs with disproportionate representation of racial and ethnic groups in special education that is the result of inappropriate identification as required by 34 CFR §300.600(d)(3).

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**Question A-2:** Are the reporting requirements under 34 CFR §300.646 different from the reporting requirements under Indicators 9 and 10 in the SPP?

**Answer:** Yes. In accordance with the requirements in 20 U.S.C. 1416(a)(3)(C) of the IDEA and 34 CFR §300.600(d)(3), an SPP and APR must address the percent of LEAs with disproportionate representation of racial and ethnic groups in special education and related services (Indicator 9) and in specific disability categories (Indicator 10) that is the result of inappropriate identification. As stated in the Answer to Question A-1 above, States are not required to report on the collection and examination of data to determine significant disproportionality, pursuant to 34 CFR §300.646, in the APR. Although not required to report to the Department, if a State determines that significant disproportionality based on race and ethnicity is occurring in a particular LEA with respect to identification of children as children with disabilities, including identification as children with particular impairments, placement in particular educational settings, or the incidence, duration, and type of disciplinary actions including suspensions and expulsions, the State must require the LEA to review and if appropriate revise its policies, procedures or practices and to publicly report on the revision of its policies, practices, and procedures consistent with 34 CFR §300.646.

## B. Exceptions for Significant Disproportionality

**Authority:** The requirements for collecting and examining data to determine significant disproportionality are found in the regulations at 34 CFR §300.646.

**Question B-1:** Must a State include children placed in residential facilities or group homes in its calculation of significant disproportionality under 34 CFR §300.646? Does it matter if the child is placed in a different State?

**Answer:** Whether a State must include or may exclude a child with a disability in its calculation of significant disproportionality depends on the agency that places the child in a residential facility or group home and the location of the residential facility or group home, as described below:

(i) All children with disabilities placed in a residential facility or group home in the same State by an educational agency must be included in the calculation of significant disproportionality. For purposes of calculating significant disproportionality, however, a State should assign responsibility for counting children with disabilities placed in out-of-district placements to the LEA that is responsible for providing FAPE for those children rather than the LEA in which the child has been placed.

(ii) Children with disabilities placed in residential facilities or group homes in the same State by a noneducational agency (e.g., court systems, Department of Corrections, Department of Children, Youth and Families, Social Services, etc.) may be excluded from a State's calculation of significant disproportionality.

(iii) Children with disabilities placed in a residential facility or group home in a different State by an educational agency should be included in a State's calculation of significant disproportionality in the LEA responsible for providing FAPE for that child (the placing LEA).

(iv) Children with disabilities placed in a residential facility or group home in a different State by a noneducational agency (e.g., court systems, Department of Corrections, Department of Children, Youth and Families, Social Services, etc.) may be excluded from the calculation of significant disproportionality by both the State in which the child resides and the State where the residential facility or group home is located.