

IDEA REGULATIONS

DISPROPORTIONALITY AND OVERIDENTIFICATION

(See also Early Intervening Services, Local Funding, and State Funding)

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.¹ This document addresses the final regulatory requirements regarding disproportionality and overidentification.

IDEA Regulations

1. Require policies and procedures.

The State must have in effect, consistent with the purposes of 34 CFR Part 300 and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 CFR 300.8 of the *IDEA* regulations.

[34 CFR 300.173] [20 U.S.C. 1412(a)(24)]

2. Require collection and examination of data regarding disproportionality.

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 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 described in section 602(3) of the Act;
- The placement in particular educational settings of these children; and

¹ Topics in this series include: Alignment With the *No Child Left Behind (NCLB) Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; Monitoring, Technical Assistance and Enforcement; *National Instructional Materials Accessibility Standard (NIMAS)*; Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the *IDEA* Web site at: <http://IDEA.ed.gov>.

- The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

[34 CFR 300.646(a)] [20 U.S.C. 1418(d)(1)]

3. Establish requirements for review and revision of policies, practices and procedures.

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 §300.646(a) of the *IDEA* regulations, the State or the Secretary of the Interior must:

- 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.
- Require any LEA identified under §300.646(a) of IDEA 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 overidentified under §300.646(a) of the IDEA regulations; and
- Require the LEA to publicly report on the revision of policies, practices, and procedures described under §300.646(b)(1) of the IDEA regulations.

[34 CFR 300.646(b)] [20 U.S.C. 1418(d)(2)]

4. Require States to disaggregate data on suspension and expulsion rates by race and ethnicity.

The State educational agency must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities:

- Among LEA's in the State; or
- Compared to the rates for nondisabled children within those agencies.

[34 CFR 300.170(a)] [20 U.S.C. 1412(a)(22)(A)]

5. Require States to monitor their LEA's to examine disproportionality.

The State must monitor the LEA's located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas, [including] disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

[34 CFR 300.600(d)(3)] [20 U.S.C. 1416(a)(3)(C)]