



U.S. Department of Education
Office of Inspector General

Implementation of the Significant Disproportionality in the Individuals with Disabilities Education Act Final Regulations

May 8, 2023

ED-OIG/I22NY0084

Final Report

NOTICE

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. The appropriate Department of Education officials will determine what corrective actions should be taken.

In accordance with Freedom of Information Act (Title 5, United States Code, Section 552), reports that the Office of Inspector General issues are available to members of the press and general public to the extent information they contain is not subject to exemptions in the Act.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services

May 8, 2023

TO: Katherine Neas
Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties
of the Assistant Secretary
Office of Special Education and Rehabilitative Services

FROM: Bryon S. Gordon /s/
Assistant Inspector General for Audit
Office of Inspector General

SUBJECT: Final Report, "Implementation of the Significant Disproportionality in the Individuals with Disabilities
Education Act Final Regulations," Control Number ED-OIG/I22NY0084

Attached is the subject final report that consolidates the results of our review. We have provided an electronic copy to your audit liaison officer. We received your comments agreeing with the first finding and agreeing, in part, with the second finding and two recommendations in our draft report.

U.S. Department of Education policy requires that you develop a final corrective action plan within 30 days of the issuance of this report. The corrective action plan should set forth the specific action items and targeted completion dates necessary to implement final corrective actions on the findings and recommendations contained in this final audit report. Corrective actions that your office proposes and implements will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the audits that remain unresolved after 6 months from the date of issuance.

We appreciate your cooperation during this review. If you have any questions, please contact Myra Hamilton, RIGA, at (214) 661-9545 or Myra.Hamilton@ed.gov.

Attachment

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Results in Brief

What We Did

The objective of our inspection was to determine what steps the Office of Special Education and Rehabilitative Services (OSERS) has taken to implement its final regulations on significant disproportionality in special education. Our inspection covered the period of January 2017 through December 2022.

To accomplish our objective, we interviewed Office of Special Education Programs (OSEP) officials and reviewed various documents from OSEP regarding technical assistance, oversight, and monitoring of significant disproportionality. Specifically, we reviewed technical assistance and guidance that was developed, published, and disseminated to State educational agencies (SEA) regarding significant disproportionality. In addition, we reviewed monitoring protocols, guides, and review checklists that OSEP used to oversee SEAs' implementation of the December 2016 significant disproportionality regulations.

What We Found

OSEP provided general guidance and technical assistance for SEAs, to assist them in implementing significant disproportionality regulatory requirements. To accomplish this, OSEP established a frequently asked questions document titled "Significant Disproportionality (Equity in [Individuals with Disabilities Education Act]) Essential Questions and Answers" and a Model State Timeline,¹ conducted webinars for SEAs, and used OSEP-funded technical assistance centers. Technical assistance centers provided information to SEAs on updates that were made to the regulations, how to conduct data-driven root cause analysis meetings with stakeholders, how to build stakeholder teams, and best practices from SEAs that had found success in working with their local educational agencies.

OSEP also performed ongoing monitoring of SEAs' compliance with Individuals with Disabilities Education Act requirements and program results. The monitoring activities included (1) implementing a differentiated monitoring and support system, (2) reviewing SEAs' significant disproportionality methodologies, and (3) revising the differentiated monitoring and support system protocol to include a discussion of the reasonableness of the criteria and thresholds used by SEAs for the calculation of significant disproportionality. However, we determined that OSEP has not performed a

¹ The Model State Timeline outlines different streams of work and the timelines that SEAs should consider as they implement the new rule.

risk assessment to determine if the change in the regulation affects the control activities that it has established for monitoring significant disproportionality, particularly regarding data reliability. Therefore, OSEP should perform a risk assessment to identify, analyze, and respond to any new risks prompted by the changes in the regulation. In addition, OSEP should review existing risks to determine if additional changes need to be made. After assessing the risks, OSEP should make necessary changes to its control activities to ensure the data being reported are accurate and complete.

What We Recommend

We recommend that OSEP assess the risks associated with the quality of data reported by SEAs and local educational agencies on significant disproportionality, and design and implement control activities as appropriate to mitigate against any identified risks and ensure that reported data are accurate and complete.

OSERS Comments and Our Response

We provided a draft of this report to OSERS for comment. We summarized OSERS' comments at the end of the findings and provided the full text of the comments at the end of the report (see [OSERS' Comments](#)).

OSERS Comments

OSERS concurred with Finding 1 and concurred, in part, with Finding 2 and the two recommendations. Regarding Finding 2 and the two recommendations, OSERS requested that the OIG make changes to clarify the respective roles of the Department and SEAs in ensuring the quality of data reported by SEAs and local educational agencies. In addition, OSERS provided technical comments to the draft report.

OIG Response

We reviewed the requested changes from OSERS and disagree with the clarifications provided. We did not make substantive changes to the findings or recommendations but made clarifying and technical edits to the report, where appropriate, based on the technical comments received.

Introduction

In 1997, Congress amended the Individuals with Disabilities Education Act (IDEA) to require State educational agencies (SEA) to collect data to determine if significant disproportionality based on race was occurring in the identification and placement of students with disabilities, and to provide reviews and appropriate revisions of policies, practices, and procedures used in identifying students with disabilities. In 2004, Congress expanded the scope of the significant disproportionality requirements to include disciplinary actions. In addition, Congress added IDEA section 611(c), which gave the Secretary of Education the authority to reserve up to one half of 1 percent of the amounts appropriated under Part B of IDEA for each fiscal year to provide technical assistance under IDEA section 616(i), when needed, to improve the capacity of SEAs to meet the IDEA data collection requirements.

In December 2016, the U.S. Department of Education (Department) published final regulations that required SEAs to use a standard methodology when making determinations on significant disproportionality and to comply by July 1, 2018. These regulations were issued in response to a Government Accountability Office (GAO) report² that identified widespread disparities in the treatment of racial and ethnic groups in special education, leading to broad differences in academic achievement. In 2018, the Department postponed the date for States to comply with the significant disproportionality regulations by 2 years, stating in the Federal Register (83 Federal Register 31306-308 (July 3, 2018)) that the Department was not sure that the 2016 significant disproportionality regulations were the best way for local educational agencies (LEA) to identify significant disproportionality and the regulations could create an incentive for LEAs to establish de facto racial quotas for categories included in the significant disproportionality calculations. The Department further stated that it was delaying the compliance date to evaluate regulatory approaches to ensure that it implemented the statute in a manner that “address[ed] over-identification without incentivizing under-identification.”

In March 2019, civil action was taken by the Council of Parent Attorneys and Advocates, Inc. against the Secretary of Education, the Assistant Secretary for Special Education and Rehabilitative Services, and the Department, stating that among other injuries, the

² The Government Accountability Office published a report titled “Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education” in February 2013. It followed up on this with a report titled “Discipline Disparities for Black Students, Boys, and Students with Disabilities” in March 2018.

delayed regulation would “reduce the number of school districts that are identified as significantly disproportionate in the 2018–19 school year compared to what would occur if compliance with the 2016 Final Regulations were required for the 2018–19 school year in all States.” The District Court for the District of Columbia vacated the postponement of the regulations in March 2019, stating in its ruling that the Department did not “provide a reasoned explanation for delaying the 2016 regulations” and did not “consider the costs of delay.”

In April 2019, the Department issued a press release stating that the December 2016 final regulations were in effect. In 2020, the Office of Special Education Programs (OSEP)³ required SEAs to submit a Significant Disproportionality Reporting Form appended as Section V.B. to the Fiscal Year 2020 Annual State Application that detailed information specific to the significant disproportionality calculation. OSEP used the Significant Disproportionality Reporting Form appended as Section V.B. to ensure compliance with the December 2016 final regulations.

What is Significant Disproportionality?

To address inequities, IDEA requires SEAs to identify LEAs with “significant disproportionality” in special education—that is, when LEAs identify, place outside the regular classroom, or discipline children from any racial or ethnic group at markedly higher rates than their peers.

The United States Code at 20 U.S.C. section 1418(d) requires all SEAs receiving IDEA Part B funds to collect and review data to determine if significant disproportionality based on race and ethnicity is occurring in the SEA and the LEAs. SEAs are required to use a standard methodology for analyzing significant disproportionality because IDEA does not explicitly define the term “significant disproportionality.” The standard methodology in IDEA uses risk ratios to analyze disparities for seven racial or ethnic groups (Hispanic or Latino, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander, white, or two or more races) that are each compared

³ OSEP is the division within the Office of Special Education and Rehabilitative Services that is responsible for overseeing the SEAs’ implementation of the significant disproportionality regulations.

to all other children within the LEA in various categories of analysis.⁴ These categories include

- children ages 3 through 21 in each racial or ethnic group with intellectual disabilities, specific learning disabilities, emotional disturbance, speech or language disturbance, speech or language impairments, other health impairments, or autism;
- children ages 6 through 21 with disabilities who are in a regular classroom less than 40 percent of the day, attend separate schools or residential facilities (not homebound, hospital, correctional, or private); and
- children ages 3 through 21 with disabilities and more than 10 days of out-of-school suspensions and expulsions, 10 days or fewer of in-school suspensions, more than 10 days of in-school suspensions; or disabilities and disciplinary removals.

SEAs determine thresholds as described further below, and anything above those thresholds suggests significant disproportionality.

Standard Methodology for Determining Significant Disproportionality

On December 19, 2016, the Department provided SEAs with a standard methodology (risk ratio calculation) to determine significant disproportionality based on race and ethnicity (34 Code of Federal Regulation (C.F.R.) Part 300.647). The risk ratio is the possibility that one racial or ethnic group within an LEA would experience a specific outcome as compared to students in all other racial and ethnic groups within that LEA.⁵ According to the regulations, when applying the risk ratio standard methodology, SEAs must do the following.

- Set a reasonable **risk ratio threshold**, defined as an SEA-determined threshold “over which disproportionality based on race or ethnicity is significant under 34 C.F.R. sections 300.646(a) and (b).”

⁴ According to the Office of Special Education and Rehabilitative Services’ Essential Questions and Answers, disparities in significant disproportionality address inequalities based on overrepresentation of one racial or ethnic group based on various categories of analysis.

⁵ Appendix B is a glossary of terms specific to the methodology for determining significant disproportionality.

- Set a reasonable **minimum cell size**, defined as “the minimum number of children experiencing a particular outcome.” The Department further defined the presumptively reasonable cell size as no greater than 10.
- Set a reasonable **minimum n-size**, defined as “the 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.” The Department further defined the presumptively reasonable n-size as no greater than 30.

In the risk ratio calculation in Figure 1, the cell size is the numerator, and the n-size is 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. Appendix C provides examples of significant disproportionality calculations.

Figure 1. Risk Ratio Calculation Format

Cell Size (risk of risk group)	=	Risk for a particular racial or ethnic group
N-Size (risk of comparison group)		or the risk for children in all other racial or ethnic groups

The regulations also describe the standard for measuring reasonable progress if an SEA uses the reasonable progress flexibilities. All standards set must be based on advice from stakeholders, including a State Advisory Panel,⁶ and are subject to monitoring and enforcement of reasonableness.

If there are more than 10 children in the LEA’s disability comparison group or if there are more than 30 students in the LEA’s general education comparison group, the SEA may use the risk ratio calculation for the LEA. However, when an LEA does not meet the minimum cell size or n-size set by the SEA, using the risk ratio can produce volatile

⁶ According to IDEA section 612(a)(21)(B), the State Advisory Panel “shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities.”

results. In those instances, the SEA must use an alternate risk ratio by adjusting the minimum cell size or n-size for the LEA to address the limitation appropriately. For example, if there are 10 or fewer children in the LEA's disability comparison group or if there are fewer than 30 students in the LEA's general education comparison group, the SEA must use an alternate risk ratio⁷ to determine significant disproportionality for the LEA.

After finding the risk ratio, the SEA compares this number with its risk ratio threshold. If the risk ratio is below the risk ratio threshold, the disproportionality is not significant. The SEA must report the threshold numbers, the standard measures for reasonable progress, and rationales for arriving at the numbers to OSEP. If the minimum cell size and minimum n-size are not presumptively reasonable, the SEA must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the SEA is appropriately analyzing and identifying LEAs with significant disparities.

How is Significant Disproportionality Identified?

SEAs and LEAs complete their significant disproportionality calculations using data from collections required by IDEA, section 618 annual submissions through *EdFacts*. According to OSEP, the data collected under section 618 of IDEA undergo data quality edit checks in the *EdFacts* system.⁸ For each category of analysis, the technical assistance document "Data Sources for Calculating Significant Disproportionality" identifies what data SEAs and LEAs should use from their 618 submissions to calculate the risk numerator and risk denominator.

Although SEAs are required to examine their LEAs for significant disproportionality annually, there are some flexibilities built into the standard methodology. For example, SEAs are not required to identify an LEA as having significant disproportionality based on race or ethnicity until the LEA has exceeded the risk ratio threshold set by the SEA for up to three prior consecutive years or if the LEA has exceeded the risk ratio threshold but shows "reasonable progress," as determined by the SEA, in lowering the risk ratio. If an LEA is identified as having significant disproportionality, the SEA must require the LEA to set aside 15 percent of its IDEA, Part B sections 611 and 619 funds to provide

⁷ An alternate risk ratio is defined as "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."

⁸ The edit checks include system checks to identify missing data from the LEA or SEA, data that have unusual year to year changes, and inaccurate values by comparing the totals to another source.

comprehensive coordinated early intervening services (CEIS) to address factors contributing to the significant disproportionality. Other provisions of the IDEA Part B regulations allow LEAs not identified with significant disproportionality to voluntarily set aside funds for CEIS to develop and provide services for students who are not identified as needing special education but need additional behavioral and academic support.

Office of Special Education and Rehabilitative Services' Role in Overseeing Significant Disproportionality

Within the Office of Special Education and Rehabilitative Services (OSERS), OSEP is responsible for oversight and implementation of the December 2016 final regulations related to significant disproportionality in special education. Two key OSEP divisions that are significant to this review include the Research to Practice Division, and the Monitoring and State Improvement Planning Division. The Research to Practice Division administers the discretionary grant programs within OSERS, which includes the Technical Assistance on State Data Collection program. The Research to Practice Division is also responsible for the IDEA section 618 data collection review (including the Annual Report to Congress). State leads within the Monitoring and State Improvement Planning Division perform general oversight of their assigned SEAs and participate on one of the implementation teams. The State leads' general oversight responsibilities included reviewing the State Performance Plan (SPP) and Annual Performance Report (APR), holding monthly meetings, and participating in monitoring for their States. The State leads collaborate to oversee and monitor significant disproportionality in five implementation teams.

1. **The Program Accountability Implementation Team** is responsible for issuing grants, policies, procedures, and processes around awarding IDEA Part B and C funding. This includes the review and approval of SEA applications used to award funding. The Significant Disproportionality Reporting Form appended as Section V.B. is collected with the Part B grant application submission. This team accepts the information and sends it forward to others for review.
2. **The Data Accountability Implementation Team** is responsible for the annual review of the APR and the indicators that are included in IDEA Part B and C. The team analyzes and interprets data, identify data trends, and communicates information to colleagues and States. Team members manage the process and capacity building for the SPP and APR submissions by States monitored by OSEP. Specifically, team members analyze, and review State data submitted in the SPP and APR.
3. **The Fiscal Implementation Team** includes four audit facilitators and four fiscal accountability facilitators, and is responsible for audit resolution, Program

Determination Letters, and technical assistance and policy related to fiscal requirements. This group also reviews the LEA maintenance of effort reduction and comprehensive CEIS report, follows up with SEAs on any data discrepancies, and issues letters to SEAs regarding their monitoring responsibilities.

4. **The Differentiated Monitoring and Support Implementation Team** is responsible for the design and implementation of OSEP's monitoring framework, using a phased monitoring approach. The current framework is in a pilot stage and under review at the Office of General Counsel. Significant disproportionality is a component of this review. All SEAs would be subject to monitoring over a 5-year cycle.
5. **The Training, Learning, and Capacity Building Implementation Team** works across all other implementation teams and is responsible for onboarding new employees as well as training and capacity building.

Additionally, OSEP funds several technical assistance centers that provide IDEA technical assistance to SEAs. OSEP approves technical assistance and guidance published by the technical assistance centers. The IDEA Data Center (IDC) and the Center for IDEA Fiscal Reporting are the two technical assistance centers that SEAs interact with for significant disproportionality reporting, with the IDC providing the most relevant information as relates to the objective of this inspection.

Finding 1. OSEP Provided Guidance and Technical Assistance to SEAs Regarding Significant Disproportionality Requirements.

OSEP provided general guidance and technical assistance for SEAs to implement significant disproportionality requirements. To accomplish this, OSEP established the “Significant Disproportionality (Equity in IDEA) Essential Questions and Answers” (EAQ) document and Model State Timeline⁹ and used OSEP funded technical assistance centers to disseminate information and updates to regulations and to provide technical assistance to SEAs.

OSEP Guidance Provided to SEAs

The December 2016 changes to the significant disproportionality regulations required a standard methodology to calculate significant disproportionality across all SEAs. In March 2017, OSEP issued the EAQ and a Model State Timeline to SEAs. The EAQ informed them of the new regulations and described their responsibilities for implementing the new standard methodology, defining risk ratio thresholds and alternate risk ratios, taking required actions for LEAs that are identified as significantly disproportionate, and providing comprehensive CEIS. The EAQ also explained the flexibilities available to SEAs. Between July 2018 and March 2019, the Department delayed the implementation of the significant disproportionality regulations. According to an OSEP official and our review of the IDC website, there was no formal technical assistance related to the updates in significant disproportionality provided between July 2018 and March 2019, other than previously published public information. In April 2019, OSEP officials stated that the EAQ document was still valid and should be used as guidance at the present time. After the pause in implementation, technical assistance was resumed, and SEAs were updated on the requirements. The technical assistance provided guidance on collecting, processing, and recording student data that could later be used for significant disproportionality reporting.

OSEP Technical Assistance Centers

OSEP supports several technical assistance centers that provide IDEA resources and toolkits to SEAs. The IDC is the technical assistance center that most SEAs interacted with for assistance related to their implementation of the significant disproportionality rule. OSEP officials review and approve the technical assistance centers’ publications to

⁹ The Model State Timeline outlines different streams of work and the timelines that SEAs should consider as they implement the new rule.

ensure consistency with policy and regulations. The IDC is a knowledge building center for SEAs, so they can learn to properly store, retrieve, analyze, and use data in decision-making areas. For the purposes of our inspection, we reviewed significant disproportionality-focused content and regulations related to technical assistance that the IDC provided to SEAs under Sections 611(c) and 616(i).¹⁰

In addition, Principle 15.01 of GAO Standards for Internal Control in the Federal Government states that management should externally communicate the necessary quality information to achieve the entity's objectives.

The IDC aided SEAs through webinars, conferences, and online resources. They were informed of (1) how to use technical assistance tools to help LEAs identify significant disproportionality, (2) the differences in the updated regulations, (3) how to conduct data-driven root cause analysis meetings with stakeholders, (4) how to build stakeholder teams, and (5) best practices from SEAs that had found success in working with their LEAs.

Before the regulations were issued in December 2016, the IDC hosted multiple webinars with SEAs to discuss the differences in "equity reporting indicators" included in the SPP and APR and the proposed changes to the Federal regulations over significant disproportionality. In August 2017, the IDC hosted a virtual interactive meeting with SEAs to discuss the newly published significant disproportionality requirements as well as share SEAs' best practices surrounding stakeholder engagement, comprehensive CEIS, root cause analysis, and using the IDC's Success Gaps Toolkit. After the pause in implementation was vacated, the IDC hosted several Interactive Institute Conferences to discuss how SEAs can support LEAs in identifying significant disproportionality among other IDEA topics. According to its website, the IDC designs the Interactive Institutes to support SEAs in improving their capacity to meet the data collection and reporting requirements in IDEA sections 616 and 618. In November 2021, the IDC produced a Summit on Significant Disproportionality that was attended by over 240 officials from 49 SEAs and over 50 LEA staff. The seven sessions covered topics surrounding building diverse stakeholder teams, LEA-engaged root cause analysis, best practices for evaluating improvement strategies implemented for comprehensive CEIS, and SEAs'

¹⁰ The technical assistance Center for IDEA Fiscal Reporting aids SEAs in their fiscal reporting of the LEA maintenance of effort reduction and comprehensive CEIS reporting. While the LEA maintenance of effort reduction and comprehensive CEIS reporting is related to significant disproportionality reporting, the fiscal calculations do not fall within the scope of our inspection. Therefore, we did not use technical assistance from the Center for IDEA Fiscal Reporting to answer our inspection objective.

sharing of stories about their best practices when examining factors that contribute to significant disproportionality. The IDC held a more recent Interactive Institute with SEAs in June 2022, when they again highlighted significant disproportionality.

OSERS Comments

OSERS agreed with our finding that OSEP provided guidance and technical assistance to SEAs regarding significant disproportionality requirements and provided no additional comments. OSERS stated that OSEP is proposing a new OSEP-funded technical assistance center to improve the capacity of States to collect, report, analyze, and use accurate IDEA Part B data to address significant disproportionality.

Finding 2. OSEP Provided Monitoring of Significant Disproportionality, but Did Not Assess Risks Concerning Data Reliability

OSEP performed ongoing monitoring of States' compliance with IDEA requirements and program results. The monitoring activities included (1) implementing a differentiated monitoring and support system (DMS), (2) reviewing SEAs' significant disproportionality methodologies, and (3) revising the DMS protocol to include a discussion of the reasonableness of the criteria and thresholds used by SEAs for the calculation of significant disproportionality. However, we determined that OSEP has not performed a risk assessment to determine if the change in the regulation affects the control activities that it has established for monitoring significant disproportionality, particularly regarding data reliability. Therefore, OSEP should perform a risk assessment to identify, analyze, and respond to any new risks prompted by the changes in the regulation. In addition, OSEP should review existing risks to determine if additional changes need to be made. After assessing the risks, OSEP should make necessary changes to its control activities to ensure the data being reported are accurate and complete.

Implementation of a Differentiated Monitoring and Support System

The Monitoring and State Improvement Planning Division has monitored SEAs' general supervision controls for ensuring that LEAs meet the requirements of IDEA, including fiscal, data, and dispute resolution. In 2016, OSEP began using the DMS system to monitor SEAs for IDEA Parts B and C as part of its results-driven accountability system. Under results-driven accountability, OSEP shifted from monitoring based solely on compliance with IDEA requirements to providing monitoring and support based on both compliance and improving results for children with disabilities. These monitoring procedures are customized based on each individual State's unique strengths, challenges, and needs. Monitoring under the DMS system is performed in three phases:

- **Phase 1.** Phase 1 is focused on document requests¹¹ and protocol interviews. The OSEP monitoring team will also review available public information. Five months prior to Phase 2, OSEP asks for documents they have not found in their

¹¹ Documents requested during Phase 1 include, but are not limited to, the SEA's risk assessment, written policies and procedures on monitoring, guidance documents made available to LEAs and the public, documentation of correction procedures, section 618 data, section 616 SPP and APR, and evidence of training provided to education personnel.

initial research. Four months prior to Phase 2, OSEP performs interviews with SEA officials on certain component-specific protocols. After Phase 1 is complete, the monitoring team conducts an internal pre-brief meeting with senior leadership and prepares to implement Phase 2.

- **Phase 2.** Based on information found in Phase 1, OSEP conducts either an on-site or virtual visit to focus on issues that may require a deeper discussion. After Phase 2 is complete, the monitoring team discusses any findings and reviews and drafts the monitoring report based on information gathered. Once the monitoring report is approved, it is posted on the IDEA website and emailed to the SEA.
- **Phase 3.** Occurring up to 1 year after the on-site visit, Phase 3 requires OSEP's State leads to ensure there are corrections for any outstanding findings from the Phase 2 report and provide technical assistance and support.

The DMS system was updated in late 2021 to implement a risk-based approach to scheduling and to review SEAs' significant disproportionality methodologies, resulting in the DMS 2.0 protocol. Members of the DMS implementation team within the Monitoring and State Improvement Planning Division have primary responsibility for the implementation of the DMS 2.0 protocol, including developing standard operating procedures and internal monitoring tools and protocols, taking a lead role in all DMS monitoring activities, and creating capacity development on the DMS 2.0 protocol. In addition, OSEP began monitoring States' IDEA Parts B and C programs in a 5-year cycle to prioritize SEAs that had not been the subject of recent monitoring activities. OSEP considers factors such as the date of last monitoring, monitoring experience of the State lead, and additional information from the State lead and Associate Division Director in creating the monitoring cycle schedule.

Review of SEAs' Significant Disproportionality Methodologies

SEAs reported information on significant disproportionality methodologies via the Significant Disproportionality Reporting Form appended as Section V.B. to the Annual IDEA Part B State Application under Part B of IDEA beginning in fiscal year 2020. This form requires SEAs to report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress (if applicable), number of years of data used for annual determinations of significant disproportionality, and rationales for each. In accordance with 34 C.F.R. 300.647(b)(1) of the December 2016 significant disproportionality regulations, OSEP is required to monitor criteria and thresholds set by SEAs for the calculation of significant disproportionality for reasonableness. OSEP began reviewing the Significant Disproportionality Reporting Forms appended as Section V.B. of the Annual IDEA Part B application in 2020.

In March 2022, OSEP issued a policy letter informing SEAs that it would post the Significant Disproportionality Reporting Forms appended as Section V.B. of the Annual IDEA Part B application to the Department’s website in late 2022 to provide increased transparency for monitoring significant disproportionality and to reinforce a reiterative public process. The letter noted that SEAs would have an opportunity to clarify and resubmit their forms as part of the fiscal year 2022 application submission. After initial submission of the form in 2020, SEAs must only resubmit the form if any modifications are made to the thresholds. On August 19, 2022, the Significant Disproportionality Reporting Forms appended as Section V.B. of the Annual IDEA Part B application for 50 States, 7 territories, the Bureau of Indian Education, and the District of Columbia were posted on the Department’s website.

In addition, the DMS 2.0 protocol includes a review of the significant disproportionality and related comprehensive CEIS data submitted by SEAs annually in the section 618 data submission. SEAs are required to submit data to OSEP from all LEAs and educational service agencies that receive IDEA sections 611 or 619 subgrants. Data submitted pertaining to the provision of comprehensive CEIS includes (1) whether the LEAs or educational service agencies are required to set aside 15 percent of their IDEA funds for comprehensive CEIS because the LEA was identified as having significant disproportionality during the current school year, (2) why the LEAs or educational service agencies were identified as having significant disproportionality (if applicable), and (3) the amount and percentage of funds actually reserved for required comprehensive CEIS as well as information on voluntary CEIS. According to OSEP, EdFacts data is evaluated for timeliness, completeness, and accuracy to be used for monitoring purposes, ad hoc requests, public reporting, and in the Annual Report to Congress.

Revision of DMS Protocols to Include an Assessment of Significant Disproportionality

According to an OSEP official, their monitoring activities were not affected by the delay in the compliance date for the December 2016 significant disproportionality regulations. States were still required to report on significant disproportionality through their LEA maintenance of effort reduction and comprehensive CEIS data, which OSEP monitored, but SEAs were not required to have implemented the new standard methodology. With the creation of the DMS 2.0 protocol, OSEP began drafting a new discussion guide for significant disproportionality in 2021. The resulting discussion guide includes questions intended to assess the consistency of SEAs’ policies and procedures with the requirements of IDEA, as well as questions that are designed to promote a discussion with SEAs on how best to promote equity through their policies, procedures, and practices. It also states that, as appropriate, OSEP will examine documentation based on

the most recent fiscal years for which data are available. However, the discussion guide does not provide any additional information on when such an examination would be appropriate and what documentation pertaining to the data should be reviewed.

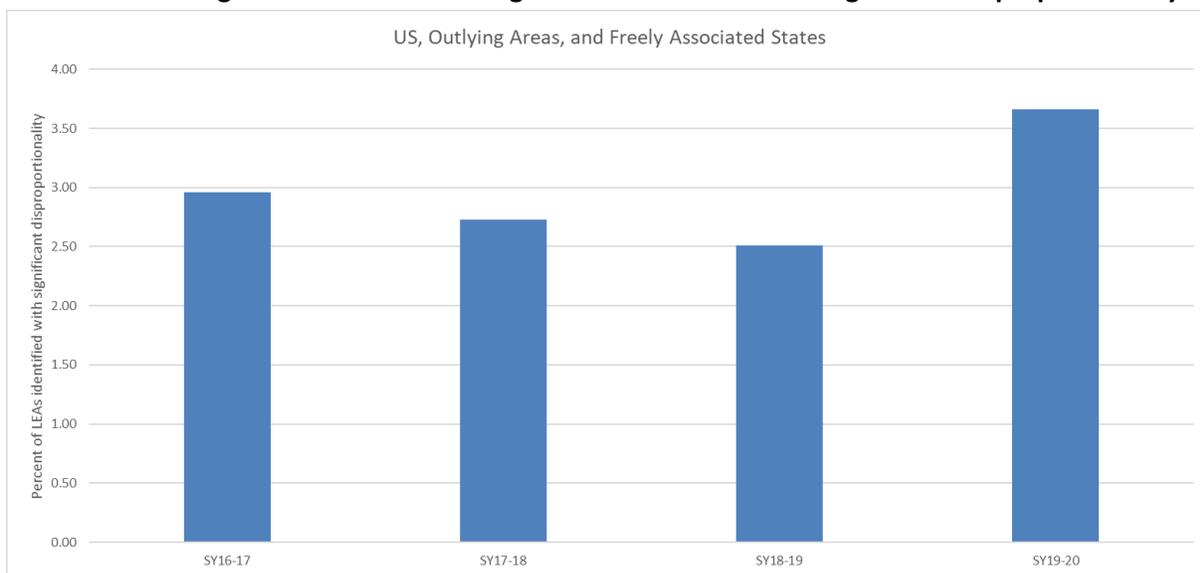
As of December 1, 2022, the DMS significant disproportionality discussion guide had not been finalized and may be subject to change. The DMS implementation team conducted an on-site visit with one SEA in June 2022 for the first monitoring visit under the DMS 2.0 protocol for IDEA Part B. The team held discussions with the SEA about its decision-making process and stakeholder involvement in the criteria and thresholds reported in the SEA's Significant Disproportionality Reporting Form appended as Section V.B. of the Annual IDEA Part B application. As of December 1, 2022, the DMS report for the SEA was being reviewed by OSEP officials and had not yet been issued.

Recent Changes in Significant Disproportionality Data

We reviewed data from the past 4 school years (SY) related to the reporting of significant disproportionality in the section 618 data submissions to determine whether there have been any noticeable changes; specifically, data on the number and percentage of LEAs that were required to reserve 15 percent of their IDEA sections 611 and 619 funds for comprehensive CEIS due to significant disproportionality. As illustrated in Figure 2, we noted a decrease in the percentage of LEAs nationwide that were identified as having significant disproportionality from SY 16–17 to SY 17–18 and from SY 17–18 to SY 18–19. We also noted an increase in the percentage of LEAs nationwide that were identified as having significant disproportionality from SY 18–19 to SY 19–20.¹² We did not conduct work as part of this inspection to determine whether the changes were caused by implementation of the final significant disproportionality regulations. In addition, there is insufficient post-regulation data to draw conclusions on the cause for the changes in data. Therefore, the data are being presented for illustrative purposes.

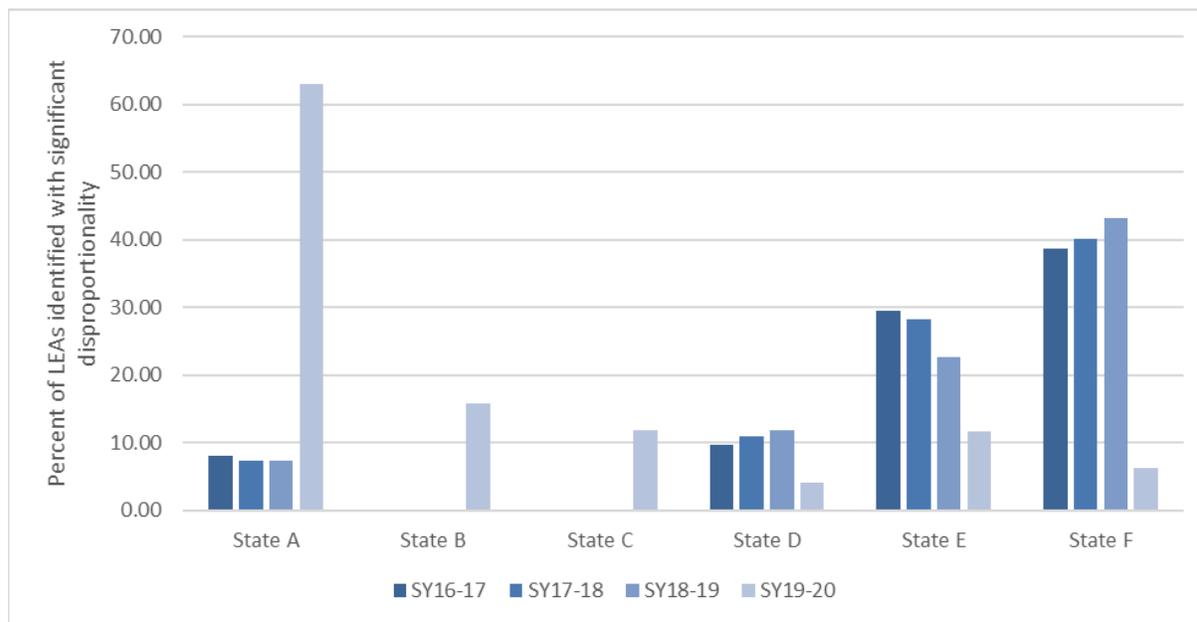
¹² SEAs were required to comply with the new regulations by July 1, 2018. SEAs had to implement the standard methodology in SY 18–19 and identify LEAs with significant disproportionality in SY 18–19 using, at most, data from the 3 most recent school years for which data were available.

Figure 2. Overall Percentage of LEAs Identified with Significant Disproportionality



We also identified changes in the percentage of LEAs that were identified as having significant disproportionality at the State level. Figure 3 depicts States with the three largest increases (States A through C) and States with the three largest decreases (States D through F) in the percentage of LEAs identified as having significant disproportionality from SY 16–17 to SY 19–20. As noted above, we did not conduct work as part of this inspection to determine whether the changes were caused by implementation of the final significant disproportionality regulations. In addition, there is insufficient post-regulation data to draw conclusions on the cause for the changes in data. Therefore, the data are being presented for illustrative purposes.

Figure 3. Percentage of LEAs Identified with Significant Disproportionality for Selected States¹³



Assess Risks and Take Steps to Mitigate Them

As described above, OSEP has incorporated reviews of SEAs’ implementation of the new significant disproportionality regulations into its ongoing monitoring efforts. OSEP has also collected data on LEAs identified as having significant disproportionality. However, we found that OSEP did not assess the risks that the changes in the significant disproportionality regulations might have on the reliability of data reported by SEAs. As a result, OSEP may not have had information that would have enabled it to identify, analyze, and respond to any such risks through the design and implementation of related control activities.

Section 9.04 of GAO’s Standards for Internal Control in the Federal Government states that changes affecting the organization often require changes to the organization’s internal control system, and section 9.05 states that changing conditions often promote new risks or changes to existing risks that need to be assessed. Section 10.02 states that management designs control activities in response to the entity’s objectives and risks to achieve an effective internal control system. Finally, Section 13.04 states that

¹³ The changes in the percentage of LEAs identified with significant disproportionality for each State cannot be compared to other States, as each SEA has a different number of LEAs that were identified with significant disproportionality.

management must obtain relevant data from reliable internal and external sources in a timely manner based on identified information requirements and should evaluate sources of data for reliability and obtain data on a timely basis to be used for effective monitoring. We have identified a recurring issue regarding SEAs submitting data to the Department that are incomplete or inaccurate due to deficiencies in the States' internal controls over the reliability of LEA data.¹⁴ Although many of these prior audits focused on activities at the State level, the errors that we identified also had an impact at the Federal level.

For example, we found that multiple SEAs did not have controls to ensure the reliability of data used to calculate their adjusted cohort high school graduation rates. As a result, both the SEAs and the Department used inaccurate and incomplete data when describing and reporting on progress toward raising graduation rates, and graduation rates accountability as an academic indicator to measure student achievement and school performance. We also found that multiple SEAs did not have controls to prevent or detect inaccurate displaced student counts that LEAs reported to them, and that the SEAs subsequently reported to the Department, to obtain Temporary Emergency Impact Aid for Displaced Students program funds. As a result, the SEAs did not report accurate student count data to the Department and LEAs received incorrect grant allocations. These audits estimated that the SEAs allocated, to the LEAs that we reviewed, millions of dollars in Temporary Emergency Impact Aid for Displaced Students program funds that the SEAs and their LEAs should not have received.

Lastly, regarding the Department itself, we found in another audit that it took actions to ensure the completeness and reasonableness of select data that it reported in its APR and select Office of Elementary and Secondary Education data. However, we noted that the Department could provide better oversight, including both technical assistance and monitoring, of SEAs' controls over data quality to support the accuracy of reported data and to reduce the risk of using inaccurate or unreliable data when describing its progress toward meeting performance goals.

Our prior audit findings demonstrate the importance of organizations having controls in place to assure themselves and others of the reliability of reported data. These controls

¹⁴ See the following Office of Inspector General audit reports: "Calculating and Reporting Graduation Rates" in Alabama, Utah, and California (A02P0010, A06R0004, A02Q0005); "Administration of the Temporary Emergency Impact Aid for Displaced Students Program" for Texas, Florida, and Massachusetts (A02T0001, A02T0006, A19NY0012); and "Management Certifications of Data Reliability" (A06O0001).

should be informed by assessments of risks facing agencies as they seek to achieve their objectives, to include risks associated with changes in program requirements and activities. OSEP's implementation of the December 2016 final regulations on significant disproportionality in special education represents such a change. Although there is insufficient post-regulation data on the cause for the changes shown in figures 2 and 3 in this report, these data can nevertheless be used along with other relevant information to assess risks related to both OSEP's and SEAs' implementation of the regulations—risks that OSEP can mitigate through the design and implementation of appropriate control activities, particularly regarding data reliability. With the changes in the significant disproportionality regulations, it is important that LEAs are correctly identified as having or not having significant disproportionality, and that those that do have it set aside the required 15 percent of funds for comprehensive CEIS and take actions to identify and address the factors contributing to significant disproportionality.

Recommendations

We recommend that the Assistant Secretary for OSERS require OSEP to—

- 2.1 Assess the risks associated with the quality of data reported by SEAs and LEAs on significant disproportionality and comprehensive CEIS, and
- 2.2 Design and implement control activities as appropriate to mitigate against any identified risks and ensure that reported data are accurate and complete.

OSERS Comments

OSERS concurred in part with the finding and recommendations. OSERS requested that the OIG clarify the finding and the two recommendations to reflect the Department's role in working directly with SEAs under IDEA Part B.

Regarding the finding that OSEP did not assess risks concerning data reliability, OSERS stated that it believes that it currently does assess risks concerning data reliability because it reviews SEA-submitted data for quality issues and provides feedback to the SEAs. OSEP reviews the data for timeliness, completeness, and accuracy to ensure that the data are of a high enough quality to be used by the Department. However, OSERS stated that it is the SEA's responsibility to ensure the quality of the data reported by the SEA and the LEAs. OSERS stated that OSEP should provide technical assistance to SEAs regarding collecting, reporting, and analyzing the data to determine significant disproportionality. In addition, OSERS stated that OSEP will continue to monitor and support SEAs to ensure the data collected and reported reflect actual practice and performance.

OSERS concurred with Recommendation 2.1 and the need to assess the risks associated with the quality of data reported by SEAs and LEAs on significant disproportionality and the provision of comprehensive CEIS. However, OSERS requested that the recommendation be clarified to acknowledge the respective roles of the Department and the SEAs in ensuring the quality of these data. Specifically, OSERS requested that the recommendation emphasize OSEP's responsibility to assist SEAs in SEAs' assessment of the risks associated with the quality of data that they report to the Department.

OSERS concurred with Recommendation 2.2 to the extent that OSEP's role is to provide technical assistance to the SEAs. OSERS requested that the recommendation be clarified to say that OSEP will provide technical assistance to SEAs to help them design and implement control activities to ensure that the data being reported are accurate and complete.

OIG Response

We reviewed the requested clarifications from OSERS but did not make any changes to the finding or recommendations. We agree that SEAs are responsible for submitting accurate and complete data for the SEA and the LEAs and should assess and mitigate any associated risks but hold that this is a shared responsibility under the law and given OSEP's reliance on these data for monitoring and reporting purposes. OSEP stated that it believes that it currently does assess risks concerning data reliability, and its proposal to fund a new technical assistance center to improve the capacity of SEAs to collect, report, analyze, and use accurate IDEA Part B data to address significant disproportionality appears to be reflective of these efforts. However, it is not clear how reviewing SEA-submitted data for timeliness, completeness, and accuracy constitutes a risk assessment in line with GAO's Standards for Internal Control in the Federal Government, and OSEP did not provide information on risks that it identified and that could be addressed via the new technical assistance center. Further, OSEP did not provide records to demonstrate that it performed the sort of risk assessment that a significant change in regulations like this should necessitate and, as a result, may not have essential information to identify, analyze, and respond to risks concerning the reliability of reported data.

Appendix A. Scope and Methodology

The objective of this inspection was to determine what steps OSERS has taken to implement its final regulations on significant disproportionality in special education. We conducted interviews and obtained documentation during the period June 2022 through November 2022. We obtained ED*Facts* data from SY 16–17, SY 17–18, and SY 18–19 and summarized the data to review the changes in the percentages of LEAs identified as having significant disproportionality. Our inspection covered the period of January 2017 through December 2022. To answer the objective, we performed the following procedures:

- We gained an understanding of relevant significant disproportionality criteria and other applicable information, including
 - 34 C. F. R. Part 300. 646-647;
 - Federal Register, Volume 81, No. 243;
 - Federal Register, Volume 83, No. 128;
 - 20 United States Code 1418, Title 20, Chapter 33, Subchapter II;
 - Public Law 105-17;
 - Public Law 108-446;
 - GAO’s Standards for Internal Control in the Federal Government (Green Book), September 2014; and
 - Council of Parent Attorneys and Advocates, Inc. v. Elizabeth (Betsy) DeVos, Secretary of Education; Johnny W. Collet, Assistant Secretary for Special Education and Rehabilitative Services; U.S. Department of Education.
- We assessed 15 prior issued reports pertaining to significant disproportionality.
 - Five reports were issued by GAO:
 - “Individuals with Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education” (GAO-13-137), issued February 2013;
 - “District of Columbia Charter Schools: Multi-Agency Plan Needed to Continue Progress Addressing High and Disproportionate Discipline Rates” (GAO-17-165), issued February 2017;
 - “K–12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities” (GAO-18-258), issued March 2018;

- “Special Education: Varied State Criteria May Contribute to Differences in Percentages of Children Served” (GAO-19-348), issued April 2019; and
 - “K–12 Education: Certain Groups of Students Attend Alternative Schools in Greater Proportions Than They Do Other Schools” (GAO-19-373), issued June 2019.
- Nine reports were issued by the U.S. Department of Education Office of Inspector General:
 - “American Recovery and Reinvestment Act of 2009: Local Educational Agency Maintenance of Effort Flexibility Due to Recovery Act IDEA, Part B Funds” (A09L0011), issued July 2013;
 - “Office of Special Education Programs’ Differentiated Monitoring and Support” (A09R0004), issued October 2018;
 - “Management Certifications of Data Reliability” (A06O0001), issued February 2016;
 - “Calculating and Reporting Graduation Rates in Utah” (A06R0004), issued November 2018;
 - “Calculating and Reporting Graduation Rates in Alabama” (A02P0010), issued June 2017;
 - “Calculating and Reporting Graduation Rates in California” (A02Q0005), issued January 2018;
 - “Texas Education Agency’s Administration of the Temporary Emergency Impact Aid for Displaced Students Program” (A02T0001), issued March 2020;
 - “Florida Department of Education’s Administration of the Temporary Emergency Impact Aid for Displaced Students Program” (A02T0006), issued January 2021; and
 - “Massachusetts Department of Elementary and Secondary Education’s Administration of the Temporary Emergency Impact Aid for Displaced Students Program” (A19NY0012), issued January 2022.
- One report was issued by the U.S. Commission on Civil Rights:
 - “Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities,” issued July 2019.

- We gained an understanding of the steps OSERS took to implement its final regulations on significant disproportionality in special education by interviewing officials and staff identified as having responsibility for the implementation of the regulations.
- We gained an understanding of OSERS' technical assistance and guidance provided to SEAs on its significant disproportionality regulations in special education by reviewing the issued and available resources, including
 - IDC's webinars, interactive institutes, and published resources;
 - IDC's 2021 significant disproportionality summit;
 - the Center for IDEA Fiscal Reporting's published resources for CEIS guidance;
 - OSERS' published resources for grantees;
 - OSERS' SPP and APR measurement table for IDEA, Part B; and
 - OSERS' approvals of IDC publications.
- We gained an understanding of OSERS' monitoring of SEAs by reviewing OSERS' policies, procedures, and processes, including
 - implementation teams' descriptions, competencies, and standard operating procedures;
 - CEIS monitoring protocols;
 - Department compliance determinations for IDEA, Part B;
 - DMS 2.0 manual;
 - Monitoring cycle schedule;
 - DMS significant disproportionality discussion guide; and
 - Internal DMS documentation from site visit.

Computer Processed Data

We relied upon computer-processed data from *EDFacts*, the Department's centralized data collection, analysis, and reporting initiative, to identify significant disproportionality data that SEAs submitted in accordance with IDEA section 618 reporting requirements. We obtained and summarized the data from *EDFacts* to review changes in the percentage of LEAs with significant disproportionality and to generate illustrative tables to provide additional context for Finding 2 in our report. Because *EDFacts* is the Department's system of record for such information and the data was primarily used for informational purposes and did not materially affect our findings and

resulting conclusions, we did not assess its reliability, accuracy, or completeness. OSEP officials confirmed that the data we obtained were the SEAs submissions to OSEP related to significant disproportionality under the IDEA section 618 requirements. Therefore, we deemed that the data in *EDFacts* were the correct data to use to illustrate changes in the identification of significant disproportionality that occurred during our inspection period.

Compliance with Standards

We conducted our work in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. Those standards require that we plan and perform our work to obtain sufficient and appropriate evidence to support our findings and provide a reasonable basis for our conclusions. We believe that the evidence obtained provides a reasonable basis for our conclusions.

Appendix B. Glossary of Terms

Appendix B is a glossary of terms specific to the calculation of the significant disproportionality.

- **Alternate Risk Ratio** means 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.
- **Comparison Group** 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.
- **Minimum Cell Size** means 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.
- **Minimum N-Size** means 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.
- **Risk** means 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.
- **Risk Ratio** means 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 and ethnic groups within the LEA.
- **Risk Ratio Threshold** means a threshold, determined by the SEAs, over which disproportionality based on race or ethnicity is significant under 34 C.F.R. sections 300.646(a) and (b).

Appendix C. Examples of Significant Disproportionality Analyses

Appendix C includes examples of significant disproportionality analyses for illustrative purposes only. These examples do not reflect calculations for any LEA in particular; they are included to show how significant disproportionality could be calculated.

Minimum Sizes for Example Analysis is based on the updated regulations; see the definition for Cell size and n-size in Appendix B, Glossary of Terms.

Cell size used: 10.

N-size used: 30.

Risk ratio threshold values for example analyses based on the updated regulations:

For the examples below, we used the following threshold values to illustrate how an SEA would determine significant disproportionality of an LEA.

- Identification threshold of 3.0 sets the limit regarding identifying a risk group as being identified with significant disproportionality. A ratio below the 3.0 threshold would result in the risk group not having significant disproportionality regarding being identified as having disabilities.
- Placement threshold of 3.0 sets the limit regarding placement of a risk group as being identified with significant disproportionality. A ratio below the 3.0 threshold would result in the risk group not having significant disproportionality regarding placement in a separate school.
- Discipline threshold of 2.5 sets the limit regarding discipline of a risk group as being identified with significant disproportionality. A ratio below the 2.5 threshold would result in the risk group not having significant disproportionality regarding discipline (suspended for more than 10 days).

Example for Identification

In the first example (Figures 4–6), we demonstrate how an LEA can calculate significant disproportionality for Asian students identified in all disability categories.

Following the calculation in Figure 4, if 20 Asian students are identified out of 100 Asian students enrolled in an LEA in both special and regular education, there is a 20 percent likelihood of Asian students being identified with a disability in that LEA.

Figure 4. Risk Group Calculation Format

$$\frac{\text{Number of Asian students identified with disabilities in an LEA}}{\text{Number of Asian students enrolled in an LEA in both special and regular education}} = \text{Likelihood of Asian students being identified with a disability in that LEA}$$

Following the calculation in Figure 5, if 100 non-Asian students are identified out of 1,000 non-Asian students enrolled in an LEA, there is a 10 percent likelihood of non-Asian students being identified with a disability in that LEA.

Figure 5. Comparison Group Calculation Format

$$\frac{\text{Number of non-Asian students identified with disabilities in an LEA}}{\text{Number of non-Asian students enrolled in an LEA in both special and regular education}} = \text{Likelihood of non-Asian students being identified with a disability in that LEA}$$

Following the calculation and the previous examples used in Figures 4 and 5, Figure 6 shows the 20 percent likelihood of Asian students being identified with a disability divided by the 10 percent likelihood of non-Asian students being identified with a disability result in a risk ratio of 2.0, indicating that at that LEA, an Asian student is twice as likely as all other race groups to be identified with a disability. In this example, the disproportionality for Asian children identified as children with disabilities is not significant because the risk ratio is below 3.0, which is the threshold set for identification.

Figure 6. Risk Ratio Calculation Format

$$\frac{\text{Risk of Risk Group} \\ \text{(Likelihood of Asian students being} \\ \text{identified with a disability in that LEA)}}{\text{Risk of Comparison Group} \\ \text{(Likelihood of non-Asian students being} \\ \text{identified with a disability in that LEA)}} = \text{Risk Ratio}$$

Example for Placement

In the second example (Figures 7–9), we demonstrate how an LEA can calculate significant disproportionality for Black students with disabilities to be placed in a separate school.

Following the calculation in Figure 7, if 15 Black special education students are placed in separate schools in the LEA out of 300 Black special education students enrolled in the LEA, there is a 5 percent likelihood of a Black special education student being placed in a separate school.

Figure 7. Risk Group Calculation Format

$$\frac{\text{Number of Black special education} \\ \text{students in separate schools in the LEA}}{\text{Number of Black special education} \\ \text{students enrolled in the LEA}} = \text{Likelihood of} \\ \text{Black special} \\ \text{education} \\ \text{students being} \\ \text{placed in a} \\ \text{separate school}$$

Following the calculation in Figure 8, if 40 non-Black special education students enrolled in separate schools in the LEA out of 400 non-Black special education students enrolled in an LEA, there is a 10 percent likelihood of non-Black special education students being placed in a separate school.

Figure 8. Comparison Group Calculation Format

$$\frac{\text{Number of non-Black students in special education in separate schools in the LEA}}{\text{Number of non-Black students in special education in the LEA}} = \text{Likelihood of non-Black students being placed in a separate school}$$

Following the calculation and the previous examples used in Figures 7 and 8, Figure 9 shows the 5 percent likelihood of Black special education students being placed in a separate school divided by the 10 percent likelihood of non-Black special education students being placed in a separate school results in a risk ratio of 0.5, indicating that a Black special education student is half as likely as all other race groups to be placed in a separate school. In this example, the disproportionality for Black special education students being placed in a separate school is not significant because the risk ratio is below 3.0, which is the threshold set for placement.

Figure 9. Risk Ratio Calculation Format

$$\frac{\text{Risk of Risk Group (Likelihood of Black special education students being placed in a separate school)}}{\text{Risk of Comparison Group (Likelihood of non-Black special education students being placed in a separate school)}} = \text{Risk Ratio}$$

Example for Discipline

In the third example (Figures 10–12), we demonstrate how an LEA can calculate significant disproportionality for Hispanic or Latino students with disabilities to have an out-of-school suspension (OSS) for more than 10 days.

Following the calculation in Figure 10, if 30 Hispanic or Latino special education students in the LEA have more than 10 days of OSS out of 300 Hispanic or Latino special

education students enrolled in the LEA, there is a 10 percent likelihood of Hispanic or Latino special education students being suspended for more than 10 days.

Figure 10. Risk Group Calculation Format

Number of Hispanic or Latino special education students in the LEA with more than 10 days of OSS <hr style="width: 50%; margin-left: 0;"/> Number of Hispanic or Latino special education students enrolled in the LEA	=	Likelihood of Hispanic or Latino special education students being suspended for more than 10 days
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Following the calculation in Figure 11, if 20 non-Hispanic or Latino special education students in the LEA have more than 10 days of OSS out of 800 non-Hispanic or Latino special education students enrolled in the LEA, there is a 2.5 percent likelihood of non-Hispanic or Latino special education students being suspended for more than 10 days.

Figure 11. Comparison Group Calculation Format

Number of non-Hispanic or Latino special education students being suspended for more than 10 days <hr style="width: 50%; margin-left: 0;"/> Number of non-Hispanic or Latino students in special education in the LEA	=	Likelihood of non-Hispanic or Latino special education students being suspended for more than 10 days
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Following the calculation and the previous examples used in Figures 10 and 11, Figure 12 shows the 10 percent likelihood of Hispanic or Latino special education students enrolled in the LEA with more than 10 days of OSS divided by the 2.5 percent likelihood of non-Hispanic or Latino special education students with more than 10 days of OSS results in a risk ratio of 4.0, indicating that at that LEA, a Hispanic or Latino special education student is four times as likely as all other race groups to receive more than 10 days of OSS. In this example, the disproportionality for Hispanic or Latino special education students being suspended for more than 10 days is significant because the risk ratio is above 2.5, which is the threshold set for discipline.

Figure 12. Risk Ratio Calculation Format

$$\frac{\text{Risk of Risk Group} \\ \text{(Likelihood of Hispanic or Latino special} \\ \text{education students being suspended for} \\ \text{more than 10 days)}}{\text{Risk of Comparison Group} \\ \text{(Likelihood of non-Hispanic or Latino} \\ \text{special education students being} \\ \text{suspended for more than 10 days)}} = \text{Risk Ratio}$$

Example for Alternate Risk Ratio

In the fourth example (Figures 13–15), we demonstrate how an LEA can calculate significant disproportionality using an alternate risk ratio. The alternate risk ratio is used if the comparison group does not meet the minimum cell or n-size. The alternate risk ratio uses the SEA data for comparison instead of LEA data.

Following the calculation in Figure 13, if there were 150 total removals for White special education students in the LEA out of 500 White special education students enrolled in the LEA, there is a 30 percent likelihood of a White special education student experienced disciplinary removal.

Figure 13. Risk Group Calculation Format

$$\frac{\text{Number of total removals for White} \\ \text{special education students in the LEA}}{\text{Number of White special education} \\ \text{students enrolled in the LEA}} = \text{Likelihood of} \\ \text{White special} \\ \text{education} \\ \text{students} \\ \text{experiencing} \\ \text{a disciplinary} \\ \text{removal}$$

Following the calculation in Figure 14, if there were 5 total removals for non-White special education students enrolled in the LEA out of 25 non-White special education students enrolled in the LEA, the calculation cannot be performed because the sample size for the comparison group does not meet the minimum cell (10) or n-size (30) requirement. Therefore, an alternate risk ratio calculation is used for this category using the SEA-level data reporting for the comparison group.

If the SEA reported 30,000 total removals of non-White special education students and there were 300,000 non-White special education students enrolled in the SEA, the new comparison would be 30,000 total removals for non-White special education students enrolled in the SEA out of 300,000 non-White special education students enrolled in the SEA, resulting in a 10 percent risk for non-White students in the SEA to experience a disciplinary removal.

Figure 14. Comparison Group Calculation Format

Number of total removals for non-White students enrolled in special education in the SEA <hr style="border: 0.5px solid black;"/> Number of non-White students enrolled in special education in the SEA	=	Likelihood of non-White students experiencing a disciplinary removal
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Following the calculation and the previous examples used in Figure 13 and the SEA alternate risk ratio in Figure 14, Figure 15 shows the 30 percent likelihood of a White special education student experiencing a disciplinary removal at the LEA divided by the 10 percent likelihood of non-White special education students experiencing a disciplinary removal at the SEA results in a risk ratio of 3.0, indicating that a White special education student is three times as likely as all other races across the State to experience a disciplinary removal. In this example, the disproportionality for White special education students experiencing a disciplinary removal is significant because the risk ratio is above 2.5, which is the threshold set for discipline.

Figure 15. Risk Ratio Calculation Format

Risk of Risk Group (Likelihood of White special education students experiencing a disciplinary removal in the LEA) <hr style="border: 0.5px solid black;"/> Risk of Comparison Group (Likelihood of non-White special education students experiencing a disciplinary removal in the SEA)	=	Risk Ratio
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Example for No Analysis for Category

In the last example (Figure 16), we demonstrate a circumstance wherein an LEA cannot calculate significant disproportionality. In this example, the sample size for the risk group does not meet the minimum cell size requirement, therefore no risk ratio is calculated for the category.

Following the calculation in Figure 16, if there were 6 American Indian special education students identified with autism in the LEA out of 80 American Indian students enrolled in both special and regular education in the LEA, there is a 7.5 percent likelihood of an American Indian student being identified with autism. The analysis would not be performed due to the LEA risk group not meeting the minimum cell size of 10, regardless of whether the LEA meets the requirement for the comparison group.

Figure 16. Risk Group Calculation Format

Number of American Indian special education students identified with autism in an LEA		Likelihood of American Indian students being identified with autism
_____	=	
Number of American Indian students enrolled in both special and regular education in an LEA		

Appendix D. Acronyms and Abbreviations

APR	Annual Performance Report
CEIS	Coordinated Early Intervening Services
C.F.R.	Code of Federal Regulations
Department	U.S. Department of Education
DMS	differentiated monitoring and support system
EAQ	“Significant Disproportionality (Equity in IDEA) Essential Questions and Answers”
GAO	U.S. Government Accountability Office
IDC	IDEA Data Center
IDEA	Individuals with Disabilities Education Act
LEA	local educational agency
OSERS	Office of Special Education and Rehabilitative Services
OSEP	Office of Special Education Programs
OSS	out-of-school suspension
SEA	State educational agency
SPP	State Performance Plan
SY	school year

OSERS' Comments



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

March 28, 2023

SENT VIA EMAIL – CONFIRMATION OF RECEIPT REQUESTED

Myra Hamilton,
Regional Inspector General for Audit
U.S. Department of Education
Office of Inspector General
1201 Elm St., Suite 1075
Dallas, Texas 75201
Myra.Hamilton@ed.gov

Re: Project Number ED-OIG/I22NY0084

Dear Ms. Hamilton,

Thank you for the opportunity to provide comments on the Office of the Inspector General's (OIG) draft report "Implementation of the Significant Disproportionality in the Individuals with Disabilities Education Act Final Regulations" (ED-OIG/I22NY0084). This document responds to OIG's draft report's findings and recommendations and provides technical comments on behalf of the U.S. Department of Education (Department), Office of Special Education and Rehabilitative Services (OSERS) and reflects comments from the Office of the General Counsel.

The Department concurs with the first finding and concurs, in part, with the second finding and two recommendations. As further outlined below, we respectfully request that OIG clarify the second finding and two recommendations to reflect the Department's role in working directly with State educational agencies (SEAs) under Part B of the Individuals with Disabilities Education Act (IDEA).

OIG Finding 1: OSEP Provided Guidance and Technical Assistance to SEAs Regarding Significant Disproportionality Requirements

OSERS Response

The Office of Special Education Programs (OSEP) within OSERS is responsible for administering IDEA. Both OSERS and OSEP appreciate OIG's recognition of the work the Department has done in providing guidance and technical assistance (TA) to SEAs regarding the implementation of the IDEA Part B significant disproportionality regulations. OSEP will continue its work in providing guidance and TA to SEAs around the implementation of the IDEA Part B significant disproportionality regulations.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OSEP is proposing a new OSEP-funded TA center to improve the capacity of States to collect, report, analyze, and use accurate IDEA Part B data to address significant disproportionality (“TA Center”). The Notice of Proposed Priority (NPP) for the TA Center was published in the *Federal Register* on March 28, 2023. <https://www.federalregister.gov/documents/2023/03/28/2023-06417/proposed-priority-and-requirements-technical-assistance-on-state-data-collection-national-technical>

OIG Finding 2: OSEP Provided Monitoring of Significant Disproportionality, but Did Not Assess Risks Concerning Data Reliability

OSERS Response

The Department appreciates OIG’s recognition that OSEP is monitoring States’ implementation of the IDEA Part B significant disproportionality regulations. Regarding the finding that OSEP did not assess risk concerning data reliability, OSEP believes it currently does assess risks concerning data reliability for the SEA data that is reported to OSEP. However, as explained below, there is a need for further TA to SEAs on significant disproportionality data.

Section 618(d) of the IDEA requires SEAs and the Department of the Interior to collect and examine data to determine if significant disproportionality is occurring based on race and ethnicity in the State and the local educational agencies (LEAs) of the State with respect to: (1) identification of children as children with disabilities, including by the disability categories listed in the IDEA; (2) placement of children with disabilities in particular educational settings of such children; and (3) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. When an SEA identifies an LEA as having significant disproportionality, the SEA must require the LEA to reserve 15 percent of its IDEA, Part B funds to provide comprehensive coordinated early intervening services (CCEIS). These data reported on significant disproportionality and CCEIS are separate from the data SEAs report under IDEA Section 616 under the State Performance Plan/Annual Performance Report (SPP/APR) Indicator 4 (Suspension/Expulsion) and SPP/APR Indicators 9 and 10 (Disproportionate Representation). While these are different data, OSEP’s analysis indicates there is a need for TA to SEAs to understand the collection, reporting, and analysis of their significant disproportionality data.

While OSEP recognizes the importance of significant disproportionality data, OSEP respectfully would like to clarify the Federal role in reviewing State-submitted data for quality issues and providing feedback to SEAs. The data collected under Section 618 of IDEA are collected and reported to the Department by the SEA. While OSEP reviews these data for timeliness, completeness, and accuracy, as well as to determine whether the data are of a high enough quality to be used in Department’s data products, the SEA is ultimately responsible for ensuring the quality of the data reported by both SEAs and LEAs. Specifically, when reporting on data and conducting the analysis under IDEA Section 618(d), the SEA must use the identification, placement, and discipline data that the SEA has collected under IDEA Section 618. Therefore, OSEP respectfully requests that OIG revise the finding to read: “OSEP Provided Monitoring of Significant Disproportionality; OSEP Should Provide TA to States to Improve State Capacity to Collect, Report, and Analyze the Data that SEAs Use under IDEA Section 618(d) to Determine Significant Disproportionality.”

To assess the impact of the TA provided by OSEP, OSEP will continue to monitor States' general supervision systems under its current cyclical differentiated monitoring and support (DMS), which includes an examination of States' data systems to ensure that they are reasonably designed to collect and report timely, accurate, valid and reliable data and information to the Department and the public and ensure that the data collected and reported reflect actual practice and performance. OSEP will continue to examine whether States' data collection policies and procedures for all data required under IDEA Sections 616 and 618 include: (1) data governance (roles and responsibilities); (2) business rules (database format checks, field validation restrictions, import restrictions/checks); (3) data quality/validation (database or manual); and (4) data security. Additionally, OSEP will continue to ensure that States have mechanisms in place, including training, guidance, and technical assistance, to communicate IDEA Sections 616 and 618 data collection requirements at the State and local levels and that States have processes in place, including monitoring and oversight, to ensure that LEAs are implementing policies and procedures consistent with IDEA Sections 616 and 618 data collection requirements.

OIG Recommendation 2.1: Assess the risks associated with the quality of data reported by SEAs and LEAs on significant disproportionality and CEIS.

OSERS Response

We concur with the need to assess the risks associated with the quality of data reported by SEAs and LEAs on significant disproportionality and the provision of CCEIS. As noted above, the data collected under IDEA Section 618 are collected and reported to the Department by the SEA. While OSEP reviews these SEA-reported data for timeliness, completeness, and accuracy, as well as to determine whether the data are of a high enough quality to be used in Department data reporting products, the SEA is ultimately responsible for ensuring the data quality of both the SEA and LEA data.

Therefore, we respectfully request that OIG clarify the recommendation to acknowledge the respective roles of the Department and of the SEA in ensuring the quality of data reported respectively by SEAs and LEAs. With this in mind, we request this recommendation be re-written such that "OSEP would assist SEAs in their assessment of the risks associated with the quality of data reported by SEAs and by their LEAs to SEAs on significant disproportionality and CCEIS."¹

¹ OSEP notes that CCEIS is the correct term to use here as it stands for comprehensive coordinated early intervening services, which is the relevant data and term under significant disproportionality. CCEIS is broader than CEIS, which refers to coordinated early intervening services voluntarily provided by an LEA under 34 CFR 300.226 to serve students in kindergarten through grade 12 who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment. In contrast, CEIS is required to be provided by an LEA identified as having significant disproportionality, and includes identifying and addressing factors contributing to significant disproportionality, in addition to a broad range of other authorized activities to serve children from age 3 through grade 12, with and without disabilities. 34 CFR 300.646(d).

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OIG Recommendation 2.2: Design and implement control activities as appropriate to mitigate against any identified risks and ensure that reported data are accurate and complete.

OSERS Response

We concur with the recommendation to the extent that OSEP's role is to provide TA to the SEA. As noted above, OSEP has plans to provide additional targeted TA to SEAs through the new TA Center on the quality of their data review as it relates to significant disproportionality. Thus, the revised recommendation would read: "Provide technical assistance to SEAs to help them design and implement control activities as appropriate to mitigate against any identified risks and ensure that SEA-reported data are accurate and complete."

Additional technical comments are attached. Thank you for the opportunity to comment on this draft report, and for your consideration of the Department's feedback.

Sincerely,



Katherine Neas
Deputy Assistant Secretary
Delegated the authority to perform
the functions and duties of the
Assistant Secretary

cc: Keith Cummins, Director of State and Local Advisory and Assistance, Office of
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