

### **§ 300.646 Disproportionality.**

(a)General. 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 LEAs of the State with respect to -

(1) 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;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary removals from placement, including suspensions and expulsions.

(b)Methodology. The State must apply the methods in § 300.647 to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State under paragraph (a) of this section.

(c)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, including disciplinary removals of such children, in accordance with paragraphs (a) and (b) of this section, the State or the Secretary of the Interior must -

(1) Provide for the annual review and, if appropriate, revision of the policies, practices, and procedures used in identification or placement in particular education settings, including disciplinary removals, to ensure that the policies, practices, and procedures comply with the requirements of the Act.

(2) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (c)(1) of this section consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 CFR part 99, and Section 618(b)(1) of the Act.

(d)Comprehensive coordinated early intervening services. Except as provided in paragraph (e) of this section, the State or the Secretary of the Interior shall require any LEA identified under paragraphs (a) and (b) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality.

(1) In implementing comprehensive coordinated early intervening services an LEA -

(i) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports.

(ii) Must identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality.

(iii) Must address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups).

(2) An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) or (b) of this section, including -

(i) Children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; and

(ii) Children with disabilities.

(3) An LEA may not limit the provision of comprehensive coordinated early intervening services under this paragraph to children with disabilities.

(e) Exception to comprehensive coordinated early intervening services. The State or the Secretary of the Interior shall not require any LEA that serves only children with disabilities identified under paragraphs (a) and (b) of this section to reserve funds to provide comprehensive coordinated early intervening services.

(f) Rule of construction. Nothing in this section authorizes a State or an LEA to develop or implement policies, practices, or procedures that result in actions that violate the requirements of this part, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities. ec. 19, 2016]

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