

Division of Special Education/Early Intervention Services

OVERIDENTIFICATION AND DISPROPORTIONALITY

The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on December 3, 2004, by President George W. Bush. The provisions of the Act are effective July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Division of Special Education/Early Intervention Services, Maryland State Department of Education (MSDE) that cover a variety of high-interest topics to support local school systems, local Infants and Toddlers Programs, and other public agencies in preparing to implement the new requirements. This document only addresses the changes in the provisions regarding overidentification and disproportionality that take effect on July 1, 2005. It does not address any changes that may be made in the final federal regulations or potential changes to State statutes or regulations.

1. What are the State’s responsibilities regarding policies and procedures concerning the overidentification and disproportionate representation of students with disabilities by race and ethnicity?

The State, local school systems, and public agencies must have policies and procedures in effect that are designed to prevent the inappropriate overidentification or disproportionate representation by race or ethnicity as students with disabilities or within any particular impairment. This also includes preventing a disproportionate representation of students with disabilities in particular educational settings, such as a separate class. This issue has been studied extensively during the past decade consistent with State and federal guidance from the Office of Special Education Programs (OSEP) and the Office for Civil Rights (OCR) and MSDE continues to provide leadership and grant opportunities to address this problem.

[Sec. 612(a)(24)]

2. What are the requirements for the review of policies and procedures at the State and by local school systems?

In the case when a determination of significant disproportionality has been made, pursuant to Section 618(d)(1), with respect to identification or placement in certain educational settings (such as a separate class), the State must review and work with the system to revise the policies, practices, and procedures to comply with the requirements of IDEA 2004. Local school systems are required to publicly report on the revision of these policies and procedures.

[Sec. 618(d)(2)]

3. What data must be collected and examined regarding disproportionality?

IDEA 2004 requires MSDE to collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and local school systems with respect to the:

- Identification of children as children with disabilities, including the identification of children in accordance with a particular impairment as described in Sec. 602(3);
- Placement in particular educational settings of such children; and
- Incidence, duration, and type of disciplinary action, including suspensions and expulsions.

[Sec. 618(d)(1)]

4. How is the determination of significant disproportionality made?

IDEA 2004 is silent on what constitutes significant disproportionate representation. Further information in the form of federal regulations or policy guidance is not yet available.

5. What is a local school system required to do if MSDE identifies a local school system as significantly disproportionate relative to discipline of students with disabilities?

If significant disproportionality is identified, MSDE must:

- Provide for the review and revision of a local school system's policies, procedures, and practices to ensure they comply with the requirements of IDEA 2004;
- Require any local school system identified under Section 618(d)(1) to reserve the

maximum amount of funds (15%) under section 613(f) to provide comprehensive coordinated early intervening services, particularly to serve children who are significantly over identified under Section 618(d)(1);

- Require the LSS to report publicly on the revision of policies, procedures, and practices.

[Sec. 618(d)(2)]

6. What is the relationship between disproportionality and the mandatory set aside of funds for the provision of Early Intervening Services?

A local school system identified by MSDE as having significant disproportionate representation with respect to the identification of students with disabilities, the placement in particular educational settings, and the incidence, duration, and type of disciplinary action, including suspensions and expulsions is required to reserve the maximum amount of funds (15%) under Section 613(f) to provide comprehensive, coordinated early intervening services to serve students, particularly those in groups that were significantly over identified. Refer to Informational Update 4 for more information on early intervening services.

[618(d)(2)(B)]

For more information, call 410-767-0858

MARYLAND STATE DEPARTMENT OF EDUCATION
Nancy S. Grasmick, State Superintendent of Schools
Carol Ann Baglin, Assistant State Superintendent
Division of Special Education/Early Intervention Services
200 West Baltimore Street
Baltimore, MD 21201

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