



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

11/04/08

Robert Runkel  
Assistant Superintendent  
Department of Education Services  
Office of Public Instruction  
1300 11th Avenue  
Helena, MT 59620-2501

Dear Mr. Runkel:

This letter is in response to your inquiry to me, dated March 11, 2008, and a telephone conversation with Perry Williams and Sara Doutre of the Monitoring and State Improvement Planning Division on July 28, 2008, regarding clarification of procedures a State may use when examining data to determine if significant disproportionality based on race and ethnicity is occurring, in accordance with 34 CFR §300.646(a)(1) of the regulations implementing the Individuals with Disabilities Education Act (IDEA). This regulatory provision requires each State receiving Part B funds to provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies (LEAs) of the State with respect to: (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 settings of these children; and (3) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. 34 CFR §300.646(a). Your questions pertain to the first of these four analysis categories - identification of children as children with disabilities.

You indicate in your letter that the Superintendent of Billings High School requested clarification which, in turn, you are requesting from the Department of Education's Office of Special Education Programs (OSEP). Montana is structured such that many elementary schools and secondary schools are independent districts. Because the children from several elementary school districts send their children to a single high school district, the Superintendent raised questions regarding the use of Coordinated Early Intervening Services (CEIS) funds when significant disproportionality is identified in the high school district.

In this case, the Billings High School District was identified with significant disproportionality and the Superintendent contends that the disproportionality was due to children identified in the elementary school districts that feed into the Billings High School District. Your questions and OSEP's responses are below:

1. The Montana Office of Public Instruction (OPT) is seeking clarification, based on the definition of "significant disproportionality", of what is meant by a determination "based on a collection and an examination of data" in 34 CFR §300.646(a).

**OSEP's Response:** The collection and examination of data requirement in 34 CFR §300.646(a) refers to the use of child count data (reported under section 618 of the IDEA) and total student enrollment data in a formula or method of calculation selected by the State. One of the most common methods used by States to calculate disproportionate representation, at the district level, is the weighted risk ratio. Many different methods of calculating disproportionality exist and examine different aspects of disproportionality; therefore, OSEP has encouraged States to consider multiple methods in making a determination of disproportionality. Information on calculating disproportionality can be found in WESTAT's *Methods for Assessing Racial/Ethnic Disproportionality in Special Education: A Technical Assistance Guide* (<https://www.ideadata.org/TAMaterial.asp>).

States have discretion in choosing an appropriate methodology (risk ratio, composition index, etc.) and in determining an appropriate threshold within the methodology for determining when representation is disproportionate. The determination of significant disproportionality is based solely on the numerical calculation of the State's 618 data through a statistically-defensible methodology established by the State. The State collects its data from the 618 data reports, selects an appropriate methodology, calculates the data using that methodology, and examines the data to determine if significant disproportionality is occurring. "Examine the data," in this context, means to review the collected data to determine if children with disabilities are significantly disproportionately represented based on race and ethnicity in the State and in the LEA's of the State with respect to the four analysis categories noted above.

2. In your letter you express Montana's desire "to exercise its discretion in defining disproportionality and simultaneously meet its responsibility to make a determination based on an examination of data by including in the statistical process a methodology that would control for variables that confound data." In this case, it is the state's intent to control for the factor of the district of initial identification." (Emphasis in original). Your letter further states that, "Montana wishes to use a statistical methodology that will control for variables, such as students placed by other agencies in group homes within a district's boundaries and student transfers from other LEAs, when it can be shown that the finding of disproportionality is primarily a result of identification that occurred independent of the LEA."

**OSEP's Response:** The discretion to choose an appropriate methodology for determining significant disproportionality does not extend to altering the analysis categories within that methodology that would result in the exclusion of groups of students from any of those categories. Montana's intent to control for confounding variables would exclude students from the identification analysis category when those students moved from an elementary district to a high school district in the State.

The Department understands that Montana's State-established structure of "feeding" students, including those students initially identified in elementary districts as students with disabilities, into - in this case - Billings High School District, has created questions with respect to examining identification data when determining if significant disproportionality exists. A finding of significant disproportionality in an LEA in any

one of the four analysis categories in 34 CFR §300.646(a) triggers the State's requirement to direct that LEA to reserve the maximum amount of funds to provide comprehensive CEIS to serve children who have not been identified as children with disabilities in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified. Further information on CEIS can be found in OSEP's Memorandum to Chief State School Officers, OSEP 08-09, dated July 28, 2008.

It is not permissible for Montana to exclude children who are naturally transitioning from elementary "feeder" school districts to the Billings High School District from its calculations. It does not appear that these students were publicly placed in group homes or residential facilities by LEAs. If that was the case, when calculating significant disproportionality, the State could choose to count each of those students in the high school district responsible for the provision of a free appropriate public education (FAPE) to those students. Under no circumstance, however, could students initially identified in an elementary school district that subsequently transition to a high school district be counted in the initial district of identification (the elementary district), as proposed in your letter.

3. During the telephone conversation with Perry Williams and Sara Dautre of OSEP, you requested our response to the following question: What are appropriate exceptions that may be included in a State's policy and procedures for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEA's in the State under 34 CFR §300.646?

**OSEP's Response:** In its policies and procedures for collecting and examining data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEA's in the State, a State may include an exception for children with disabilities who have been placed in residential facilities or group homes by local or State agencies or departments *other than* the State educational agency (SEA) or LEA (e.g., court systems, Department of Corrections, Department of Children, Youth and Families, Social Services, etc.). If a State chooses to include this exception in its policies and procedures for determining significant disproportionality, those children would not be included in the calculation of significant disproportionality. If a State chooses NOT to make such an exception, the children placed by these agencies should be counted, for purposes of calculating significant disproportionality, in the LEA that is responsible for the provision of FAPE to these children. In most cases, this will be the LEA that is providing or paying for the child's education while the child is in the facility.

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

In situations involving out-of-State placements, if a parent places a child from one State in a school or facility in a different State, then the LEA where the child is placed could exclude the child from its calculation for significant disproportionality. If a noneducational agency (e.g., court systems, Department of Corrections, Department of Children, Youth and Families, Social Services, etc.) places a child in a residential facility or group home in a different State, the State may choose, as part of its policy, to make an exception for the child and exclude the child from the calculation for significant disproportionality, or, in the absence of such an exception, could require the LEA responsible for providing FAPE to the child to count the child for purposes of determining significant disproportionality, as described above. If an educational agency places a child in a school or facility in another State, the LEA that is responsible for providing FAPE to the child (the placing LEA) must include the child in its calculation for significant disproportionality.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

I hope that you find this explanation helpful. If this Office can be of any further assistance regarding this matter, please feel free to contact Perry Williams, of OSEP, at 202-245-7575.

Sincerely,

A handwritten signature in black ink, appearing to read 'William W. Knudsen', with a stylized, cursive script.

William W. Knudsen  
Acting Director  
Office of Special Education Programs