

## **Disproportionality 101: Equity in IDEA: Contents of the Final Rule – 2017 Webinar Transcript – February 2, 2017**

Hello and welcome to the second in a series of webinars on the equity and IDEA final rule. The first webinar was an overview of the final rule itself. This webinar is going to be on implementing the final rule. I am Ruth Ryder the acting director of the Office of Special Education Programs. I am joined today by Michael Gross and Richelle Davis who will provide more in-depth information on the final rule. In addition we have released a Q&A document on the equity and IDEA final rule. The first webinar and Q&A document along with this webinar can be found on OSEP IDEAs That Work under significant disproportionality.

Today we will have a recap of the final rule. I am going to do a quick recap, then I will turn it over to Richelle to talk about the standard methodology. Michael will talk about remedies and dates then I will wrap it up with information on how to provide us with any questions.

The final rule equity and IDEA on Significant Disproportionality was published on December 19 and became final on January 18. The statute -- statute requires states to annually collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and LEAs of the state with respect to identification of children as children with disabilities including identification as children with particular impairments. Placement of children in particular educational settings and looking at disciplinary actions including incidents, duration, and type of actions including suspensions and expulsions -- expulsions. That is all in the statute.

The final rule requires states to use a standard methodology to look at those items I just listed. If the state determines there is significant disproportionality, there are certain actions the state needs to take which we will discuss further. The standard methodology requires that states use a risk ratio or ultimate risk ratio analysis. As part of the standard methodology that states develop which needs to be developed involving stakeholders particularly the state advisory panel.

The standard methodology includes a reasonable risk ratio threshold, a reasonable minimum cell size and a reasonable n-size.

The rule includes a rebuttable presumption that includes a cell size and n-size the rebuttable presumption is that if a state has a minimum cell size of no greater than 10 and a minimum N-size of no greater than 30, we consider that to be reasonable. There are also a couple of other flexibilities. We call them the multiyear flexibility and the reasonable progress flexibility.

The multiyear flexibility allows states in developing standard methodology to use up to three years of data before identifying a LEA with significant disproportionality. The second flexibility is reasonable progress. This allows states to not identify LEAs if they are demonstrating reasonable progress in lowering the applicable risk ratios in each of the two prior consecutive years.

That gives credit to districts that are making progress in reducing their level of racial or ethnic disproportionality.

The equity and IDEA final rule includes some new comprehensive coordinator early intervening services. These are identified with significant disproportionality and required to reserve 15% of their IDEA funds. They are allowed to use the funds to serve students ages three through grade 12 with and without disabilities. That is different than previously where they were not allowed to use the copper Sampson -- comprehensive CEIS funds for preschool children and these funds for children with disabilities. Now they can use these funds for ages three through great 12 with and without disabilities. Students without disabilities are students that are struggling learners.

They are also required to identify and address the factors that may contribute to the sick if it can't disproportionality -- significant disproportionality. All LEAs are required to do a root cause analysis to determine the factors that have contributed to significant disproportionality and determine how they can be used -- use those funds to address those factors.

I mentioned earlier that the rule was published in the Federal Register on December 19 and became effective January 17 -- January 18, 2017. The final rule is now effective but the rule was structured in a way that it gives states 18 months to prepare to work with state advisory panels to make decisions regarding their methodology and implementation from the comprehensive CEIS. Statement -- states must demonstrate compliance by July 1, 2018. We will talk more about what the compliance looks like. I'm going to turn it over to Richelle who will walk us through more details on the standard methodology.

We are going to take a look a little more in depth at the standard methodology. Before we start I would like to draw your attention to the bottom right-hand corner where it shows Q&A B21. Each slide has the label for question and answers. If you would like to go back and map it to the frequently asked questions you can do that. As Ruth mentioned this is all based on risk ratio. Risk is a proportion expecting likelihood. For example, if we had 40 Hispanic children identified as students with disabilities and 200 total Hispanic children in LEA the risk of a Hispanic child being identified as a child with a disability is 20%.

When we talk about a risk ratio we are comparing two risks. The likelihood of the outcome for one group versus the outcome of all others in the LEA. We have the same 40 Hispanic students identified as child with disability divided by 200 total Hispanic children in the LEA. That is divided by 200 of all other children identified out of disability and all of the other 2000 students in the LEA. You come out with a risk ratio of 2.0 which is 20% or point you come out with a risk ratio of 2.0 which is 20% or .2 divided by point to come up with 2.0.

When we talk about risk ratios what we're talking about is the likelihood. Every -- risk ratio of 2.0 is two times likely to occur as 3.0 is to suggest three times likely to occur. As Ruth mentioned a key factor of the standard methodology is it requires a risk ratio threshold. This risk ratio threshold allows a state and LEA to determine what is to get disproportionality. That is a risk ratio where it is above the risk ratio threshold. If it is above the threshold you have taken disproportionality in your LEA. States are required to set reasonable thresholds in competition with the stakeholders including their SAP.

As we talk about risk ratio -- ratio threshold one of the questions we get asked is how many risk ratio thresholds are states required to set? That number is 14. One for each category of analysis which we will talk about any second. States may set different thresholds for each category of analysis as reasonable. They may not set different thresholds for different racial or ethnic groups. They may also not set racial quotas for any category of analysis.

As we talk about the categories of analysis we have seven areas of identification that was mentioned which is a child with disabilities. We have two placements and that is students in a regular class less than 40% of the day. Then we have five areas of discipline including in school and out of school suspension for greater than or less than 10 days as total disciplinary removals.

Each category of analysis are applied seven racial or ethnic groups. In this case we have Hispanic Latino of any race and for individuals who are not Hispanic Latino only. American Indian or Alaska native, Asian, Black graphic and American, Native American or other specific Highlander, white, and two or more races. You are calculating the risk ratio against each of the 14 categories of analysis.

What is it that we must set? States must set in consultation with SAP the risk ratio threshold and what else? One of those things is a reasonable minimal -- minimum cell size, reasonable minimum N-size, the number of years the LEA must exceed the risk ratio threshold in order to be identified based on the regulation that is up to three years as an option, and they must define their definitions of reasonable progress which is also I know. As we talk about cell size and N-size what is a cell size? A cell size is the risk numerator. You're going to have to -- two of them. You will have the risk numerator which is 40 Hispanic children identified and the other is the 200 of all other races identified with students with disabilities. The risk of denominator is the N-size and in this case you would have to hundred total hispanic children in LEA and the other all N-size will be the 2000 other racial or ethnic group children in the LEA.

Each of those would require a threshold. Why do we have the cell sizes and N-size? One of the biggest reasons is risk ratio can produce on reliable or volatile numbers when applied to small populations. It is important that determinations of significant disproportionality should not turn on whether or not there is a small demographic change. What do we mean by this? All let's consider a small LEA. The risk ratio threshold for native Hawaiian student with a disability is to point out. All in this case we are looking at for native Hawaiian student identified as children with disabilities and a total native Hawaiian student in the LEA. We get a risk of .5. For all of the students we have 10 children identified disabilities divided by fifth students who are not -- 50 students who are not native Hawaiian children in LEA. We get a screen of 2.5. What happens if two students with disabilities were to move in the LEA? In this case we have six native Hawaiian children identified as students with disability divided by the 10 total native born children in the LEA and in this case you get .6 as the risk for native Hawaiian student being identified with a disability. For all other students it would be chin children identified divided by 50 of all other races. In this case we have 3.0 which is the sick get disproportionality threshold. With the increase of two students this LEA has now met the significant disproportionality threshold set their state. You can see there is a lot of volatility in small numbers. That is why we have the idea of minimum cell sizes and N-size. They must be reasonable. Minimum N-size, 10 or less and minimum -- cell sizes 10 or less.

Minimum cell sizes and N-size must be set through cell sizes of zero and one and N-size of one okay. May set different minimum as was mentioned the alternate risk ratio is another aspect of the final. Likelihood risk ratio is a comparison of risk unlike typical risk ratio within the LEA the alternate risk ratio is the likelihood of the outcome of one group versus the outcome of all others in the state. We are comparing the risk of a LEA for a particular group to the outcome of all others in the state. This is done because the comparison group does not meet the minimum cell or N-size.

Let's give an example. In this case the state set a minimum cell size of five and a minimum N-size of 30. 490 out of 500 students in the LEA are American Indian or Alaska native. The number of students in the comparison group would be 10. We have 70 American Indian or Alaska native children identified as students with disability out of 490 total American Indian and Alaska native children in the LEA. That obviously does not meet the minimum cell and N-size. We have to look at the state. This state has 520,000 children identified with disabilities out of 3,640,000 all other children in the state. As you look at the risk ratio you come up with 1.0.

We have the discussion of flexibility or multiyear data. States may choose up to three years of data to make determinations of significant disproportionality. Much like the setting of threshold of cell size and N-size. In 2019 20 In 2019 28 risk ratio threshold for identification is 3.0 and it requires a LEA to exceed the threshold for three consecutive years. If we look at our table we note that LEA one does not exceed in the first year exceeds in the second but does not in the third. LEA number two it seems it in the first year exceeds it the second year and the third year. Because of this only LEA number two is determined to have significant disproportionality and identification even though LEA number one does have a risk ratio of 3.3.

The other flexibility is the idea of reasonable progress. Much like the years of data is optional. You have to use at least one year of data. If a LEA is above a risk ratio threshold but as long managing to lower the risk ratio for the two prior consecutive years states need not find significant disproportionality. Specific details of how much risk ratio must be lowered will be determined by the state in consultation with stakeholders including the SAP. Given the time it takes to make systemic change we do not want to interrupt sub. -- something that is working.

The state has defined reasonable progress to mean a year-to-year decline in risk ratio of 0.5. Let's look at this example. LEA one in year one had a risk ratio 4.9 much like LEA number two in the second year number one went down to 4.3 and LEA number two went down to 3.6. By the third year LEA one went to a 3.6 and LEA to -- LEA number two [ Indiscernible ]. Only LEA one decreased by .5 across all three years. In this case in school year 2021 and 2022 the year does not need to find significant disproportionality for identification and LEA one. I'm going to turn it over to Michael to discuss remedies that will be important for the implementation of this rule.

The state has done all of the calculations for all of its LEAs. Some are above the risk ratio threshold and some are below. What happens when a LEA is above a risk ratio threshold in the state determines that there is significant disproportionality in the LEA? At that point the statute calls for a number of remedies

The state must provide for the review and if appropriate the revision of policies practices and procedures. The state must require the LEA to publicly report on any revisions. If those are made. And require the LEA to set aside 50% of its IDEA funds part B for comprehensive CEIS. For a little more detail that can be found in slide 34.

Every year a LEA is identified with significant disproportionality. The state must provide for the review of policies practices and procedures. That has to be done every year in which the LEA is identified with significant disproportionality. Those review and revisions are done to ensure compliance with the requirements of IDEA and note the phrasing in the statute. While the states must provide for the review

that does not mean that the state needs to do the review itself. It can have other parties such as the LEA to the review.

Slide 35 is continuing with a more detailed discussion of policies practices and procedures. When you do the review what might you review? If we are talking about the identification of a child with a disability you might find evaluation procedures and policies. If we're talking about the discipline of children with disabilities you may review the policies and procedures about manifestation determinations, functional behavioral assessments, behavioral intervention plans or disciplinary rules.

Most of the questions we have received so far deal with the remedy of comprehensive CEIS. That is not surprising because that is where the money is involved. With comprehensive CEIS that is where the recent regulations have made the most significant change to existing policies. What has not changed is what comprehensive CEIS is. That is defined as a broad range of activities that include professional development and educational behavior of evaluation services supports functional behavioral assessments behavioral intervention plans and positive behavior interventions and supports.

What has changed is who may be served comprehensive CEIS. Under the new regulations comprehensive CEIS may serve children ages three through grade 12 both with and without disabilities. That is an expanded group of children from the previous rule. There are some limitations on how the service goes. You cannot use comprehensive CEIS to serve only children with disabilities. The comprehensive CEIS must address the factors contributing to the significant disproportionality in the LEA for the identified cabin or a categories. They are targeted but not unlimited in their use. >> What does it mean to address factors contribute to significant disproportionality? That can mean a lot of different things and will depend on the individual circumstances within the LEA. It may include children's lack of access to quality instruction. It may include the economic cultural and linguistic barriers to appropriate identification or placement. It may include the children's lack of access to appropriate.

Slide 40 will talk about the money. When a LEA is determined to have significant disproportionality the LEA is required to reserve 15% of its IDEA part B sub grant. That said, the LEA may reserve the 15% from its sections X11 funds, section 619 funds, or both at the LEA's discretion -- discretion.

That completes the summary of the remedies. Now let's talk about the dates. How this is going to on flowed -- on fold. Ruth mentioned at the beginning of the conversation that the effective date of these regulations is January 18 of these regulations is January 18, 2017. In the world of the Federal Register and federal rule making that means something peculiar. All that only means the date the regulations replaced in the Code of Federal Regulations. That does not mean, necessarily, that a regulated into the start complying with the wall at that date. In this case it does not. The compliance date for this rule is July 1, 2018. This is the date by which states must comply with regulations and begin using the standard methodology to determine whether said you can disproportionality exists. That said, there is the exception.

The exception is that states need not include analysis of significant disproportionality of children three through five until two years following July 1, 2020. Advance the calendar to July 1, 2018. What do we do? What do we have to do? By July 1, 2018 the beginning of skill year -- school year 2018 and 2019 states must begin making determinations of significant disproportionality using the risk ratio threshold cell sizes, N-sizes, numbers of years of data etc. in consultation with their stakeholders including state advisory panels. This may mean using data from the three prior school years 2015, -- 2015 2016, 2016

2017; 2017-2018. And it may mean refiguring -- recalculating the data from some of those years because Mid-states will not have the standard methodology in place now. That is something that will disappear over time when we get further down the line through prior years. We will all be done with standard methodology and new configuring or calculating will need to be necessary. The preparatory work involved to getting -- in getting to this point.

Bicycle year 2018 2019 states will have consulted with their SAP's to develop reasonable risk ratio threshold, minimum N-sizes, minimum cell sizes and standards for measuring reasonable progress. The department will not be pre-proving states [ Indiscernible ]

By school year 2018 - 2019 states will have amended any necessary policies and procedures to comply with the significant is personality regulation. In the event that a state determines a LEA has dissolve personality in the school year 2018 2019 the reservation of 15% or comprehensive CEIS does not take place until the following school year will.

At some point states will have to report via the part B LEA maintenance of effort reduction and CEIS data collection whether what LEAs have reserved 15% for comprehensive CEIS. That first data report will not occur until spring of 2020. Again, setting up the time line. Use the standard methodology in school year 1819 and reserve funds for sick if Kent is now the in 1920 and report which LEAs have reserved funds in 2021. There are other data reporting requirement the department is in the process of developing requests for them and expect to have them finalized in 2017.

That brings us to the conclusion of the detailed discussion. I will pass it back to Ruth to wrap up.

Thank you to Michael and Richelle with their detailed work for of the standard methodologies and dates. We appreciate the opportunity to provide you with this information and recognize all of the work you are doing in states and locals to prepare for implementing the role. As a reminder we did release a FAQ document that talks about the requirements in detail. That is available on OSEP IDEA that work along with the first webinar which is an overview of the equity and IDEA final rule. This webinar will also be there. This is about implementing the final role. The other document you will find which will be helpful is a suggested time line. This is not a mandatory time line that you must follow that it is a suggested time line that includes the activities we have determined all complete do to be ready for full implementation on July 1, 2018. As you look at the FAQ and webinars, if you have additional questions please send them to us at: [significantdisproportionalityrule@ed.gov](mailto:significantdisproportionalityrule@ed.gov) Thank you for all that you do.