IDEA PART B REGULATIONS

SIGNIFICANT DISPROPORTIONALITY
(EQUITY IN IDEA)

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ESSENTIAL QUESTIONS AND ANSWERS

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Office of Special Education Programs
Office of Special Education and Rehabilitative Services
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QUESTIONS AND ANSWERS

A. GENERAL RULE

Question A-1: What is "significant disproportionality" under the Individuals with Disabilities Education Act (IDEA) section 618(d)?

Answer A-1: IDEA section 618(d) requires States to collect and examine 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:

(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment;

(B) the placement in particular educational settings of such children; and

(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

IDEA does not, however, define "significant disproportionality." The regulations do not explicitly define the term either. Instead, they require States to use a standard methodology for analysis of disproportionality, which includes States setting a threshold above which disproportionality in the identification, placement, or discipline of children with disabilities within an LEA is significant.

Question A-2: Is "significant disproportionality" different from "disproportionate representation"?

Answer A-2: Yes. IDEA section 616(a)(3)(C) requires States to identify LEAs with "disproportionate representation" of racial and ethnic groups in special education and related services that is the result of inappropriate identification. The significant disproportionality regulations do not apply to or address the obligation to identify disproportionate representation due to inappropriate identification under IDEA section 616(a)(3)(C), though nothing prohibits a State from using risk ratios or up to 3 years of data for analyzing disproportionate representation.

Question A-3: Is "significant disproportionality" different from "significant discrepancy"?

Answer A-3: Yes. IDEA section 612(a)(22) requires States to identify LEAs with "significant discrepancy," which are disparities by race and ethnicity or by disability status in the rate of long-term suspensions and expulsions of children with disabilities. States must examine whether there are significant discrepancies among LEAs in the State or compare the rates of long-term suspensions and expulsions of children with disabilities to those rates for non-disabled children within the LEAs. The significant

disproportionality regulations do not apply to or address the obligation to identify significant discrepancies under IDEA section 612(a)(22).

Question A-4: Do these regulations address significant disproportionality caused by the under-identification of children of color with disabilities?

Answer A-4: Yes. While these regulations only establish a system for identifying significant disproportionality based on overrepresentation, the regulations acknowledge that overrepresentation may be caused by under-identification of one or more racial or ethnic groups.

We understand that overrepresentation of one racial or ethnic group that rises to the level of significant disproportionality may occur for a variety of reasons, including over-identification of that racial or ethnic group, under-identification of another racial or ethnic group or groups, or appropriate identification, with higher prevalence of a disability, in a particular racial or ethnic group.

For example, consider an LEA in which the risk ratio for African-American students with an emotional disturbance exceeds the State's risk ratio threshold and is identified as having significant disproportionality. The overrepresentation of African-American students could be due to:

(1) the LEA inappropriately identifying African-American students as having an emotional disturbance and needing special education and related services even though they do not (over-identification);

(2) the LEA failing to appropriately identify students in other racial or ethnic groups as having an emotional disturbance and needing special education and related services even though they do (under-identification); or

(3) the LEA appropriately identifying all students in the LEA who have an emotional disturbance, but underlying variations in the prevalence of those disabilities across racial and ethnic groups result in an overrepresentation of African-American students in that LEA.

Accordingly, we encourage States and LEAs to consider multiple sources of data when attempting to determine the factors contributing to significant disproportionality, including school level data, academic achievement data, relevant environmental data that may be correlated with the prevalence of a disability, or other data relevant to the educational needs and circumstances of the specific group of students identified. Further, where LEAs find that a factor contributing to the overrepresentation of one racial or ethnic group is the under-identification of a different racial or ethnic group or groups, the LEA may use IDEA Part B funds reserved for comprehensive coordinated early intervening services (CEIS) to address the causes of that under-identification. In addition, the regulations require an LEA, in implementing comprehensive CEIS, to address any policy, practice, or procedure it identifies as contributing to significant disproportionality, including any policy,

practice or procedure that results in a failure to identify, or the inappropriate identification of, members of a racial or ethnic group or groups. (See 34 C.F.R. §300.646(d)(1)(iii).)

B. STANDARD METHODOLOGY

1. General

Question B-1-1: What is the standard methodology States must use to identify significant disproportionality in LEAs?

Answer B-1-1: The standard methodology uses risk ratios to analyze disparities for seven racial or ethnic groups, comparing each to all other children within the LEA in 14 different categories of analysis. States determine the thresholds above which the risk ratio in each category of analysis indicates significant disproportionality. States have flexibility to identify an LEA with significant disproportionality only after it exceeds a risk ratio threshold for up to three prior consecutive years, exclude small populations from analysis, and exclude from determinations of significant disproportionality LEAs that have made reasonable progress in reducing their risk ratios. (See 34 C.F.R. §300.647(b) and (d).)

Question B-1-2: May States use a method other than the risk ratio or alternate risk ratio—such as risk difference or weighted risk ratios—to compare racial and ethnic groups to identify significant disproportionality in LEAs?

Answer B-1-2: No. States must use the standard methodology to comply with these regulations and determine if significant disproportionality exists under IDEA. (See 34 C.F.R. §300.647(b).)

Nothing, however, prohibits a State from using a method other than the risk ratio for internal information, evaluation, or assessment.

2. Risk and Risk Ratios

Question B-2-1: What is risk?

Answer B-2-1: As used in these regulations, risk is simply a measure of likelihood expressed as a percentage or proportion. Specifically, it is the likelihood of a particular outcome, such as identification of a child as a child with a disability, placement in a particular setting, or disciplinary removal, for a specified racial or ethnic group. Risk is calculated by dividing the number of children from a specified racial or ethnic group (or groups) who are, for example, identified as children with disabilities, by the total number of children from that racial or ethnic group (or groups) enrolled in the LEA. If there are 40 Hispanic children in an LEA identified as children with disabilities out of a total of 200 Hispanic children enrolled in the LEA, the

risk of a Hispanic child being identified as a child with a disability in that LEA is 40/200 or 20 percent. (See 34 C.F.R. §300.647(a)(5).)

Question B-2-2: What is a risk ratio?

Answer B-2-2: A risk ratio is a numerical comparison, expressed as a ratio or decimal, between the risk of a specific outcome for a specific racial or ethnic group in an LEA and the risk of that same outcome for all other children in the LEA. The comparison is made -- the risk ratio is calculated -- by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that same outcome for children in all other racial or ethnic groups within the LEA (the comparison group). Note that for risk ratios involving identification, the comparison group is children in all other racial or ethnic groups enrolled in an LEA. For risk ratios involving placement or discipline, the comparison group is children with disabilities in all other racial or ethnic groups enrolled in an LEA. (See 34 C.F.R. §300.647(a)(6).)

For example, if 40 out of 200 Hispanic children in an LEA are identified as children with disabilities, the risk of a Hispanic child being identified as a child with a disability in that LEA is 40/200 or 20 percent. If 200 out of all of the other 2,000 children in the LEA are identified as children with disabilities, then the risk of all other children being identified as children with disabilities is 200/2,000 or 10 percent. The risk ratio for Hispanic children in the LEA being identified as children with disabilities is 20/10, 2:1, or 2.0.

Similarly, in that same LEA, if 30 out of 40 Hispanic children with disabilities are placed inside a regular classroom less than 40 percent of the day, the risk of a Hispanic child with disabilities being so placed is 30/40 or 75 percent. If 150 out of the 200 children with disabilities of all other races or ethnicities in the LEA are placed in a regular classroom less than 40 percent of the day, that is also a risk of 150/200 or 75 percent. The risk ratio, then, for Hispanic children with disabilities being placed in a regular class room less than 40 percent of the day is 75/75 or 1.0.

Generally, a risk ratio of 1.0 indicates that children from a given racial or ethnic group are no more or less likely than children from all other racial or ethnic groups to experience a particular outcome. A risk ratio of 2.0 indicates that one group is twice as likely as all other children to experience that outcome. A risk ratio of 3.0 indicates three times as likely, etc. In the examples here, Hispanic children are twice as likely as all other children in the LEA to be identified as children with disabilities, and Hispanic children with disabilities are just as likely as all other children with disabilities to be placed in a regular classroom less than 40 percent of the day.

3. Risk Ratio Thresholds

Question B-3-1: What is a risk ratio threshold?

Answer B-3-1: It is a threshold, determined by the State, over which disproportionality based on race or ethnicity is significant. (See 34 C.F.R. §300.647(a)(7).)

For example, if a State sets a risk ratio threshold for identification of children as children with disabilities at 2.5, then, in the example given in Answer B-2-2, the disproportionality for Hispanic children identified as children with disabilities is not significant. There, Hispanic children were twice as likely as all other children to be identified as children with disabilities in the LEA, a risk ratio of 2.0.

However, if in the same example LEA, African-American children are four times more likely than all other children to be identified as children with disabilities, the risk ratio for African-American children being identified as children with disabilities is 4.0, and that disproportionality is significant. The State must then apply the remedies under IDEA section 618(d)(2) and 34 C.F.R. §300.646(c) and (d) discussed in Section C.

Question B-3-2: What requirements must risk ratio thresholds meet?

Answer B-3-2: Risk ratio thresholds must be reasonable.
(See 34 C.F.R. §300.647(b)(1)(i)(A).)

"Reasonable" means a sound judgment in light of all of the facts and circumstances that bear upon the choice. When choosing a risk ratio threshold, a State may consider its unique characteristics, such as the racial and ethnic composition of the State and LEAs, enrollment demographics, and factors correlated with various disabilities or disability categories. States should not set risk ratio thresholds for the purpose of identifying no LEAs with significant disproportionality.

Question B-3-3: What requirements must the process for selecting risk ratio thresholds meet?

Answer B-3-3: States must base their selection of risk ratio thresholds upon the advice of stakeholders, including the State Advisory Panels.
(See 34 C.F.R. §300.647(b)(1)(iii)(A).)

Question B-3-4: How many risk ratio thresholds must each State set?

Answer B-3-4: Fourteen, one for each category of analysis. (See 34 C.F.R. §300.647(b)(2).) However, States may set the same threshold for multiple categories of analysis (e.g., a State could set a risk ratio threshold of 2.5 for identification of children as children with disabilities and for identification of children as children with emotional disturbance).

Question B-3-5: May States set different risk ratio thresholds for different categories of analysis?

Answer B-3-5: Yes. States may need to set different risk ratio thresholds in order to reasonably identify significant disproportionality for categories with different degrees of incidence rates, and, therefore, different degrees of disparity, such as children identified with autism, on the one hand, and children placed in a regular classroom less than 40 percent of the day on the other. (See 34 C.F.R. §300.647(b)(1)(ii).) See Question and Answer B-4-2 for the complete list of categories of analysis.

Question B-3-6: May States set different risk ratio thresholds for different racial and ethnic groups?

Answer B-3-6: No. The use of different risk ratio thresholds, by race or ethnicity within the same category of analysis would be unlikely to meet constitutional scrutiny. The risk ratio thresholds developed for each category of analysis must be the same for each racial and ethnic group.
(See 34 C.F.R. §300.647(b)(2).)

Question B-3-7: May States explicitly, or by their choice of risk ratio thresholds, implicitly, set racial quotas for any category of analysis?

Answer B-3-7: No. Nothing in these regulations establishes or authorizes the use of racial or ethnic quotas, nor do they restrict the ability of a group of qualified professionals and the parent of the child to appropriately identify children as children with disabilities or the ability of a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, to appropriately place children with disabilities.

In fact, a State or an LEA's use of quotas to artificially reduce the number of children who are identified as having a disability, in an effort to avoid a finding of significant disproportionality, would almost certainly conflict with its obligations to comply with other Federal statutes, including civil rights laws governing equal access to education. States have an obligation under IDEA both to identify significant disproportionality, based on race and ethnicity, in the identification of children as children with disabilities and to ensure that LEAs implement child find procedures appropriately and make a free appropriate public education available to all eligible children with disabilities. (20 U.S.C. 1412(a)(1), (3) and (11); 34 C.F.R. §§300.101, 300.111, and 300.149). Establishing quotas would almost certainly violate Federal civil rights laws, including title VI of the Civil Rights Act of 1964 and the Constitution.

The appropriate and timely identification of children as children with disabilities and the prevention of significant disproportionality on the basis of race and ethnicity are goals that can work in concert with one another. A finding of significant disproportionality could be a signal that an LEA's child find procedures are not working appropriately. One of the goals of

these regulations is to help LEAs identified with significant disproportionality meet the statutory requirement to review and, if appropriate, revise policies, practices, and procedures—including child find procedures—to ensure compliance with IDEA.

Question B-3-8: Must States report risk ratio thresholds to the Department?

Answer B-3-8: Yes. States will have to report to the Department all risk ratio thresholds, and, to demonstrate that they are reasonable, the rationales for each. (See 34 C.F.R. §300.647(b)(7).) That information will be collected in a time and manner determined by the Secretary and will not be collected until an information collection request has been completed.

4. Applying the Standard Methodology

Question B-4-1: In collecting and examining data to determine whether significant disproportionality exists in an LEA, how many risk ratios does each State have to calculate?

Answer B-4-1: As many as 98 per LEA. For each LEA, the State must calculate risk ratios in 14 categories of analysis for each of seven racial or ethnic groups; however, States do not need to calculate risk ratios for populations that fall below the minimum cell sizes or minimum n-sizes set by the State. (See Question and Answer B-5-1.)

Question B-4-2: What are the 14 categories of analysis?

Answer B-4-2:

(a) The identification of children ages 3 through 21 as children with disabilities;

(b) The identification of children ages 3 through 21 as children with the following impairments:

  (i) Intellectual disabilities;

  (ii) Specific learning disabilities;

  (iii) Emotional disturbance;

  (iv) Speech or language impairments;

  (v) Other health impairments; and

  (vi) Autism.

(c) Placements of children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day;

(d) Placements of children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools;

(e) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of 10 days or fewer;

(f) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than 10 days;

(g) For children with disabilities ages 3 through 21, in-school suspensions of 10 days or fewer;

(h) For children with disabilities ages 3 through 21, in-school suspensions of more than 10 days; and

(i) For children with disabilities ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer.

(See 34 C.F.R. §300.647(b)(3) and (4).)

These are the same categories of analysis States previously used to identify significant disproportionality, less one. These regulations removed the category of placement of children with disabilities ages 6 through 21 inside a regular class more than 40 percent of the day and less than 79 percent of the day.

States may delay including children ages three through five in the review of significant disproportionality with respect both to the identification of children as children with disabilities and to the identification of children as children with a particular impairment, until July 1, 2020.

Question B-4-3: What are the seven racial or ethnic groups?

Answer B-4-3:

(a) Hispanic/Latino of any race, and for individuals who are non-Hispanic/Latino only;

(b) American Indian or Alaska Native;

(c) Asian;

(d) Black or African American;

(e) Native Hawaiian or Other Pacific Islander;

(f) White; and

(g) Two or more races.

(See 34 C.F.R. §300.647(b)(2).)

These are the same racial or ethnic groups States previously analyzed for significant disproportionality.

5. Applying the Standard Methodology to Small Populations—Minimum Cell Sizes, Minimum N-Sizes, and Alternate Risk Ratios

Question B-5-1: Must a State always calculate 98 different risk ratios for each LEA?

Answer B-5-1: Not necessarily. States do not need to calculate risk ratios for LEAs with populations that fall below the minimum cell sizes or minimum n-sizes set by the State.

Question B-5-2: What is a minimum cell size?

Answer B-5-2: It is a minimum number, set by the State, of children experiencing a particular outcome (e.g., children identified as children with disabilities, children with other health impairments, etc.). In the calculation of risk ratios, minimum cell size applies to the numerator in the fraction for calculating the risk for a particular racial or ethnic group.
(See 34 C.F.R. §300. 647(a)(3).)

For example, assume a State sets a minimum cell size of 10. If 2 out of 20 American Indian / Alaska Native children ages 3 through 21 in the LEA are identified with emotional disturbance, that is a risk of 2/20, or 10 percent. Because, however, the risk numerator (2) is less than the minimum cell size (10), the State need not calculate the risk ratio for American Indian / Alaska Native children ages 3 through 21 identified with emotional disturbance for that LEA.

Minimum cell size also applies to the numerator for calculating the risk for the comparison group, children in all other racial or ethnic groups.

For example, assume again a minimum cell size of 10. If 30 out of 1,500 White children ages 3 through 21 in the LEA are identified with autism, that is a risk of 30/1,500 or 2 percent. If only 5 of the 500 other children ages 3 through 21 in all other racial or ethnic groups in the LEA are identified with autism, the State need not calculate the risk ratio for White children ages 3 through 21 in the LEA because the risk numerator for the comparison group (5) is less than the minimum cell size (10).

The State may, however, have to calculate an alternate risk ratio if the comparison group does not meet the minimum cell size, as discussed in Questions and Answers B-5-11 through B-5-14.
(See 34 C.F.R. §300.647(b)(5).)

Question B-5-3: What is a minimum n-size?

Answer B-5-3: Directly analogous to minimum cell size, it is a minimum number, set by the State, of children enrolled in an LEA (with respect to identification) or 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. (See 34 C.F.R. §300.647(a)(4).)

For example, assume a State has set a minimum cell size of 5 and a minimum n-size of 30, and in a racially and ethnically homogenous LEA in that State, 490 out of 500 students are American Indian / Alaska Natives. In any of the 14 risk ratio calculations for American Indian / Alaska Natives for that LEA, the number of children in the comparison group (10) is smaller than the minimum n-size set by the State, and so the State cannot calculate risk ratios for American Indian / Alaska Native students.

The State may, however, have to calculate an alternate risk ratio if the comparison group does not meet the minimum n-size. Please see Questions and Answers B-5-11 through B-5-14.
(See 34 C.F.R. §300.647(b)(5).)

Question B-5-4: Why are minimum cell sizes and minimum n-sizes necessary?

Answer B-5-4: Risk ratios can produce unreliable or volatile numbers when applied to small populations, an LEA with only small numbers of children in a given racial or ethnic group or with low incidences of certain disabilities or placements, for example. That is, small changes in small populations can result in large changes in risk ratios that do not necessarily suggest systemic problems giving rise to significant disproportionality. Using minimum cell sizes and n-sizes reduces the possibility of LEAs being inappropriately identified with significant disproportionality.

For example, assume a State has set a risk ratio threshold of 2.75 for children identified as children with disabilities. In 2015, in a rural LEA, four of eight African-American children have been identified as children with disabilities, and 10 of the 50 children of all other racial or ethnic groups have been so identified. The risk for African-American children being identified as children with disabilities is 4/8 or 50 percent. The risk for children of all other racial and ethnic groups is 10/50 or 20 percent. The risk ratio, then, for African-American children identified as children with disabilities is 50/20 or 2.5.

In 2016, two African-American children with disabilities moved into the LEA. That changed the risk for African-American children from 4/8 to 6/10 or 60 percent and changed the risk ratio from 50/20 to 60/20, from 2.5 to 3.0.

In 2016, then, the LEA would be determined to have significant disproportionality for African-American children identified as children with disabilities, but the only change in the LEA from one year to the next was the addition of two children.

Question B-5-5: What requirements must minimum cell sizes and minimum n-sizes meet?

Answer B-5-5: Minimum cell sizes and minimum n-sizes must be reasonable.
(See 34 C.F.R. §300.647(b)(1)(i)(B)-(C).)

As with risk ratio thresholds, "reasonable" means a sound judgment in light of all of the facts and circumstances that bear upon the choice. When choosing a cell size or an n-size, a State may consider its unique characteristics, such as the racial and ethnic composition of the State and LEAs, enrollment demographics, and factors correlated with disability. Generally, while there are a number of factors that may influence whether certain minimum cell or n-sizes are reasonable for a State, the optimal choice will be a balance between the need to examine as many LEAs (and as many racial and ethnic groups within LEAs) as possible for significant disproportionality and the need to prevent inappropriate identification of LEAs due to risk ratio volatility.

Minimum cell sizes no greater than 10 and minimum n-sizes no greater than 30 are presumptively reasonable.
(See 34 C.F.R. §300.647(b)(1)(iv)(A) and (B).)

Question B-5-6: What requirements must the process for selecting minimum cell sizes and minimum n-sizes meet?

Answer B-5-6: Like risk ratio thresholds, States must base their selection of minimum cell sizes and minimum n-sizes upon the advice of stakeholders, including State Advisory Panels. (See 34 C.F.R. §300.647(b)(1)(iii)(A).)

Question B-5-7: Must a State set minimum cell sizes and minimum n-sizes?

Answer B-5-7: Yes, though States have the option to set a minimum cell size of zero or one, or n-size of one, if this is reasonable. For example, a State may select a minimum cell size of zero or one if the State and its stakeholders believe their selection of a minimum n-size addresses the issues of volatility associated with small populations or low incidence categories of analysis. We note that States cannot select a minimum n-size of zero as it could require dividing by zero when calculating risk ratios.
(See 34 C.F.R. §300.647(b)(1)(i)(B) and (C).)

Question B-5-8: May States set different minimum cell sizes and different minimum n-sizes for different categories of analysis?

Answer B-5-8: Yes. States have the option, but are not required, to set different cell or n-sizes for each category of analysis. States should consider, in consultation with their stakeholders, the impact of minimum cell and n-sizes in conjunction with the risk ratio thresholds they select for each category of analysis. The Department encourages States to consider a smaller minimum n-size for categories of analysis where LEAs have small numbers of children. (See 34 C.F.R. §300.647(b)(1)(ii).)

Question B-5-9: May States set different minimum cell sizes and different minimum n-sizes for different racial or ethnic groups?

Answer B-5-9: No. The use of different cell sizes or n-sizes, by race or ethnicity within the same category of analysis would be unlikely to meet constitutional scrutiny. (See 34 C.F.R. §300.647(b)(2).)

Question B-5-10: Must States report minimum cell sizes and minimum n-sizes to the Department?

Answer B-5-10: Yes. States will have to report to the Department all minimum cell sizes and minimum n-sizes, and, to demonstrate that they are reasonable, the rationales for each. This information will be collected in a time and manner determined by the Secretary and will not be collected until an information collection request has been completed.

Rationales for minimum cell sizes and minimum n-sizes that are not presumptively reasonable (because they are greater than 10 or 30, respectively) must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the State is appropriately analyzing and identifying LEAs with significant disparities. (See 34 C.F.R. §300.647(b)(7).)

Question B-5-11: What is an alternate risk ratio?

Answer B-5-11: The alternate risk ratio is much like the risk ratio. The alternate risk ratio is also a numerical comparison, expressed as a ratio or decimal, between the risk of a specific outcome for a specific racial or ethnic group in an LEA and the risk of that same outcome for a comparison group—all other children in the State, instead of all other children in the LEA. The alternate risk ratio is calculated by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that same outcome for children in all other racial or ethnic groups in the State. (See 34 C.F.R. §300.647(a)(1).)

Question B-5-12: When must an SEA use an alternate risk ratio?

Answer B-5-12: An SEA must use an alternative risk ratio whenever the comparison group in the LEA does not meet the minimum cell size or minimum n-size set by the State. (See 34 C.F.R. §300.647(b)(5).)

See, again, the example in Answer B-5-3. A State has set a minimum cell size of 5 and a minimum n-size of 30, and in a racially and ethnically homogenous LEA in that State, 490 out of 500 students are American Indian / Alaska Natives. Of the 490 American Indian / Alaska Native students in the LEA, 70 have been identified as children with disabilities. The risk, then, of American Indian / Alaska Native children in the LEA being identified as children with disabilities is 70/490 or 14.3 percent.

The comparison group, children in all other racial or ethnic groups in the LEA, numbers only 10. As this is less than the minimum n-size of 30, the

State cannot calculate the risk ratio for American Indian / Alaska Native children identified as children with disabilities. The State must, then, calculate the alternate risk ratio.

In the example State, 520,000 of 3,640,000 non-American Indian / Alaska Native children have been identified as children with disabilities, a risk of 520,000 / 3,640,000 or 14.3 percent.

The alternate risk ratio for American Indian / Alaska Native students identified as children with disabilities is 14.3/14.3 or 1.0.

Question B-5-13: Why is an alternate risk ratio necessary?

Answer B-5-13: Again, risk ratios can produce volatile results when applied to small populations. Setting an appropriate minimum cell size or minimum n-size is one way of addressing this limitation when there are too few children in the racial or ethnic group of interest. However, when an LEA has too few children in the comparison group, the alternate risk ratio allows for a similar comparison as the risk ratio makes, only the State population replaces the LEA population for the comparison group and produces results that are less volatile. See Answer B-5-4.

In addition, the Department believes that, in racially or ethnically homogenous LEAs and LEAs with markedly different demographic characteristics than the State, there is a possibility that a particular racial or ethnic group is identified, placed, or disciplined, at markedly higher rates than their peers. In these cases, the absence of a comparison group should not excuse either the State or the LEA from their responsibility under IDEA section 618(d) to identify and address significant disproportionality.

Question B-5-14: Under what circumstances are States not required to calculate either a risk ratio or an alternate risk ratio within an LEA?

Answer B-5-14: States are not required to calculate a risk ratio or alternate risk ratio for a particular racial or ethnic group being analyzed within an LEA unless:

1) That group meets the minimum n-size and minimum cell size requirements; AND
2) The comparison group for the racial or ethnic group being analyzed, either within the LEA (for risk ratios) or State (for alternate risk ratios) meets the minimum n-size and cell size requirements.

In instances where the particular racial or ethnic group being analyzed meets the minimum n-size or minimum cell size, but the comparison group in the LEA and the State does not meet the minimum n-size or cell size, States are not required to calculate the alternate risk ratio. (See 34 C.F.R. §300.647(c).)

6. Other Flexibilities in the Standard Methodology

Question B-6-1: How else may States use the standard methodology to address the individual needs and circumstances of their LEAs?

Answer B-6-1: There are two additional flexibilities built into the standard methodology.

First, while States are required annually to examine their LEAs for significant disproportionality, States 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 State for up to three prior consecutive years also referred to as the "multi-year flexibility." The flexibility to determine significant disproportionality after one, two, or three consecutive years was designed to account for volatility—small changes in data from year to year that may cause large changes in a risk ratio and cause an LEA to be identified with significant disproportionality. Allowing States to take into consideration up to three consecutive years of data provides an opportunity for the States to determine which LEAs have significant disproportionality on the basis of consistently elevated risk ratios, rather than what may be a single year increase. (See 34 C.F.R. §300.647(d)(1).)

Second, States are not required to identify an LEA with significant disproportionality if the LEA has exceeded the risk ratio threshold but has demonstrated reasonable progress, as determined by the State, in lowering the risk ratio (or alternate risk ratio) for the group and category of analysis in each of the two prior consecutive years. This flexibility exists so that States need not interrupt successful efforts in meaningfully reducing significant disproportionality. (See 34 C.F.R. §300.647(d)(2).)

Question B-6-2: What are examples of the "multi-year" flexibility?

Answer B-6-2: As an example, a State is making a determination of significant disproportionality in school year (SY) 2018–19 and has set a risk ratio threshold of 3.0 for identification. The State has a number of small LEAs, and, over the last three years, two adjacent LEAs have the following risk ratios for Hispanic children identified as children with disabilities:

School Year	2015–16	2016–17	2017–18
LEA 1	2.7	3.3	2.6
LEA 2	3.1	3.3	3.3

Without the "multi-year" flexibility, the State would have identified LEA 1 with significant disproportionality in SY 2017–18, because the risk ratio for Hispanic children identified as children with disabilities in SY 2016–17 was above 3.0.

The State, however, chose to use this flexibility and require that LEAs exceed the risk ratio threshold for three consecutive years before the LEA is identified with significant disproportionality. Therefore, the State would not have identified LEA 1 with significant disproportionality for Hispanic

children identified as children with disabilities in SY 2018-19, because the risk ratios for SYs 2015-16 and 2017–18 were below 3.0. But the State would have identified LEA 2 with significant disproportionality in SY 2018–19 because the risk ratios for the three prior consecutive years were all above 3.0.

Question B-6-3: How is this "multi-year" flexibility applied in practice?

Answer B-6-3: The "multi-year" flexibility must be applied separately to each of the 98 risk ratios calculated. In the example in Answer B-6-2 just above, as a result of this flexibility, LEA 1 was not identified with significant disproportionality in SY 2018–19 for Hispanic students identified as children with disabilities. The flexibility must be applied separately to the analysis for Hispanic students identified with other health impairments, African-American students with disabilities placed in regular classrooms less than 40 percent of the day, etc.

When using this flexibility, a State may choose to use two years of data instead of three. That is, the State may require that LEAs exceed the risk ratio threshold for two consecutive years before the LEA is identified with significant disproportionality.

Use of this flexibility is optional, and States may use it alone or in conjunction with the second flexibility.

Question B-6-4: How is the "reasonable progress" flexibility applied in practice?

Answer B-6-4: The "reasonable progress" flexibility applies separately to each of the 98 risk ratios calculated. In the example in Answer B-6-5 just below, LEA 1 was making reasonable progress in reducing the risk ratio for African-American children identified as children with disabilities. The flexibility must be applied separately to all other risk ratios—African-American children identified with autism, Hispanic children identified with emotional disturbance, White children placed in a regular classroom less than 40 percent of the day, etc.

States may set different measures for making "reasonable progress" in lowering different risk ratios for each of the categories of analysis. However, we do not believe that different standards for "reasonable progress" for different racial or ethnic groups would meet constitutional scrutiny.

Each measure for making "reasonable progress" in lowering risk ratios must be applied uniformly across the State.

Like risk ratio thresholds, minimum cell sizes, and minimum n-sizes, States must develop measures for "reasonable progress" with the advice of stakeholders, including State Advisory Panels. (See 34 C.F.R. §300.647(b)(1)(iii)(A).) States should set their reasonable progress standards based on whether the progress realized by LEAs in lowering risk ratios represents a meaningful benefit to children in the LEA, rather than statistical noise or chance.

This flexibility requires data from the three immediately prior consecutive years. Three years of data are necessary to show the decrease over the two-year period required by the regulations.

Use of this flexibility is optional; States may use it alone or in conjunction with the "multi-year" flexibility discussed in Questions and Answers B-6-2 through B-6-3.

Question B-6-5: What are examples of the "reasonable progress" flexibility?

Answer B-6-5: A State is making a determination of significant disproportionality in SY 2021-22 and has set a risk ratio threshold of 3.0 for identification. It has adopted the first flexibility requiring determinations for significant disproportionality to be made using data from the three prior consecutive years. Two LEAs in the State had the following risk ratios for African-American children identified as children with disabilities, all of them over 3.0:

School Year	2018-19	2019-20	2020-21
LEA 1	4.9	4.3	3.6
LEA 2	4.9	3.6	4.3

Using just the "multi-year" flexibility, the State would identify both LEAs with significant disproportionality for African-American children identified as children with disabilities because both LEAs have had risk ratios greater than 3.0 for three consecutive years immediately prior.

However, the State has adopted the reasonable progress flexibility, defining reasonable progress as a decrease in a risk ratio of 0.5 or more for each of the two prior consecutive years.

With this flexibility, the State would not identify LEA 1 with significant disproportionality for African-American children identified as children with disabilities. The decrease in the risk ratio from SY's 2018–19 to 2019–20 was 0.6, and the decrease from SY's 2019–20 to 2020–21 was 0.7, both greater than 0.5.

The State, however, would identify LEA 2 with significant disproportionality. Even though there was a reduction in risk ratio of 1.3 from SY's 2018–19 to 2019–20, there was no reduction of 0.5 or greater for each of the two prior consecutive years. Rather, the risk ratio from SY's 2019–20 to 2020–21 increased by 0.7.

Question B-6-6: Must States report their measures of "reasonable progress" to the Department?

Answer B-6-6: Yes, if the State chooses to use the "reasonable progress" flexibility. The State must also provide an explanation of why the measures chosen are reasonable. (See 34 C.F.R. §300.647(b)(7).) This information will be

collected in a time and manner determined by the Secretary and will not be collected until an information collection request has been completed.

C. REMEDIES

1. General

Question C-1-1: What specific actions are required under IDEA and these regulations when an SEA identifies an LEA with significant disproportionality?

Answer C-1-1: The SEA must annually:

1) provide for the review and, if appropriate, revision of policies, practices, and procedures within the LEA to ensure compliance with the requirements of IDEA;
2) require the LEA to publicly report on the revision of policies, practices, and procedures consistent with the requirements of the Family Educational Rights and Privacy Act and its implementing regulations in 34 CFR Part 99, and Section 618(b)(1) of the IDEA; and
3) require the LEA to set aside 15 percent of its IDEA, Part B (sections 611 and 619) funds to provide comprehensive coordinated early intervening services (comprehensive CEIS) to address factors contributing to the significant disproportionality.
(See 34 C.F.R. §300.646(c) and (d).)

2. Review of Policies, Practices, and Procedures

Question C-2-1: How often must the State provide for the review and, if appropriate, revision of policies, practices, and procedures when an LEA is identified with significant disproportionality?

Answer C-2-1: The review and, if appropriate, revision must be conducted every year in which the LEA is identified with significant disproportionality.
(See 34 C.F.R. §300.646(c)(1).)

Question C-2-2: Must the State perform the review of policies, practices, and procedures itself?

Answer C-2-2: No. The State is obligated to provide for the review. It may perform the review itself or select another entity, such as the LEA, to conduct the review.

Question C-2-3: What is the scope of the review and revision of policies, practices, and procedures?

Answer C-2-3: The State must provide for the review, and if appropriate, revision of policies, practices, and procedures used in the area in which an LEA is identified with

significant disproportionality (identification, placement or disciplinary removals) to ensure they comply with the requirements of IDEA.

For example, in an LEA identified with significant disproportionality with respect to identification, the State must provide for the review of policies, practices, and procedures used in identification. This should include a review of child find and evaluation policies, practices, and procedures to ensure they comply with IDEA.

Similarly, for an LEA identified with significant disproportionality in discipline, the State must provide for the review of policies, practices, and procedures used in the discipline of children with disabilities. This should include a review of the LEA's polices, practices, and procedures related to manifestation determinations, functional behavioral assessments, or behavioral intervention plans or the rules for, and use of, school-wide discipline, to ensure compliance with IDEA.

Further, when implementing comprehensive CEIS, the LEA must address any policy, practice, or procedure identified as contributing to the significant disproportionality, including any that result in a failure to identify, or in the inappropriate identification of, the members of a racial or ethnic group or groups. The LEA has discretion as to how to address the policy, practice, or procedure, including by eliminating, revising or changing how it is implemented, as long as it does so in a manner consistent with the requirements of the IDEA and its implementing regulations. (See 34 C.F.R. §300.646(d)(1)(iii).) Providing comprehensive CEIS is discussed further in Questions and Answers C-3-2 and C-3-3.

Question C-2-4: Is the review of policies, practices, and procedures the same as the one-year verification process for correcting noncompliance with IDEA as required by 34 C.F.R. §300.600(e) and explained in OSEP Memorandum 09-02, Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act (OSEP Memorandum 09-02) (and available at https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep09-02timelycorrectionmemo.pdf)?

Answer C-2-4: No. The identification of significant disproportionality is not the same as a finding of noncompliance under IDEA.

An LEA identified with significant disproportionality is not necessarily out of compliance with IDEA. When an LEA is identified with significant disproportionality, the State must provide for review and, if appropriate, revision of policies, practices, and procedures used in identification, placement, or discipline to ensure they comply with the requirements of IDEA. If the State identifies noncompliance with a requirement of IDEA through this review, the State must ensure, in accordance with 34 C.F.R. §300.600(e), that the noncompliance is corrected as soon as

possible, and in no case later than one year after the State's identification of the noncompliance.

As explained in OSEP Memorandum 09-02, when verifying that the noncompliance was corrected, the State must both ensure that the LEA has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA, and determine that the LEA is subsequently correctly implementing the specific regulatory requirement(s) through a review of updated data, such as data subsequently collected through on-site monitoring or a State data system.

If in a subsequent year, the LEA is again identified with significant disproportionality, the State must again provide for a review of policies, practices, and procedures to determine if there is any new or continuing non-compliance with IDEA.

Question C-2-5: Must an LEA publicly report on the revision of its policies, practices, and procedures if it concludes after a review that no change is necessary?

Answer C-2-5: No. However, where there is a determination of significant disproportionality and the LEA concludes after review of its policies, practices, and procedures that no change is necessary, LEAs are encouraged to report that information to stakeholders, including the State Advisory Panel.

3. Comprehensive Coordinated Early Intervening Services (Comprehensive CEIS)

Question C-3-1: What are comprehensive coordinated early intervening services (What is comprehensive CEIS)?

Answer C-3-1: Comprehensive CEIS encompasses a broad range of activities that include professional development and educational and behavioral evaluations, services, and supports. See also Question and Answer C-3-3. (See 34 C.F.R. §300.646(d)(1).)

i. Providing Comprehensive CEIS

Question C-3-2: Who can an LEA serve with funds reserved for comprehensive CEIS?

Answer C-3-2: An LEA may use funds reserved for comprehensive CEIS to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly over-identified, including children 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 children with disabilities. (See 34 C.F.R. §300.646(d)(2).)

An LEA may not limit comprehensive CEIS only to children with disabilities. (See 34 C.F.R. §300.646(d)(3).)

Question C-3-3: How can an LEA use funds reserved for comprehensive CEIS?

Answer C-3-3: An LEA must use funds reserved for comprehensive CEIS to identify and address the factors contributing to the significant disproportionality in the LEA for the identified category.

In the Department's experience, these factors may include 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 other similar policies, practices, or procedures that contribute to the significant disproportionality.

This requirement is fundamental to the use of funds reserved for comprehensive CEIS, and it carries with it a practical limitation: An LEA may use comprehensive CEIS funds for training and professional development and behavioral evaluations and supports, such as functional behavioral assessments, behavioral intervention plans, and positive behavioral interventions and supports, but only to the extent that it is doing so to address the factors identified by the LEA as contributing to the significant disproportionality identified by the State.

Further, the LEA must address any policy, practice, or procedure it identifies as contributing to the significant disproportionality, including any that result in a failure to identify, or the inappropriate identification of, a racial or ethnic group or groups. The LEA has discretion as to how best to address the policy, practice, or procedure, including by eliminating, revising or changing how it is implemented, as long as it does so in a manner consistent with the requirements of the IDEA and its implementing regulations. (See 34 C.F.R. §300.646(d)(1)(iii).)

ii. Funding Comprehensive CEIS

Question C-3-4: Must an LEA identified with significant disproportionality always reserve 15 percent of its IDEA, Part B funds to provide comprehensive CEIS?

Answer C-3-4: Yes. (See 34 C.F.R. §300.646(d).) (See also Answer C-3-10, which addresses what Federal Fiscal Year IDEA Part B funds an LEA can reserve for comprehensive CEIS.)

Question C-3-5: May an LEA identified with significant disproportionality reserve 15 percent of its IDEA section 619 funds, IDEA section 611 funds, or both?

Answer C-3-5: While the amount of the 15 percent reservation must be calculated on the basis of both the LEA's section 611 and 619 allocations, the LEA retains full flexibility regarding whether the reservation is made with section 611 funds, section 619 funds, or both. That is, IDEA does not specify the source from which an LEA is required to reserve funds. The LEAs retain

this flexibility regardless of the age of the children who will be receiving comprehensive CEIS.

Question C-3-6: Does the LEA have flexibility in how these funds are allocated and expended within the LEA?

Answer C-3-6: Yes, as long as funds are used in accordance with the requirements in §300.646(d), the LEA may distribute the IDEA Part B funds reserved for comprehensive CEIS to its schools to carry out comprehensive CEIS, and the LEA retains discretion about how to allocate those funds within the LEA. As such, if an LEA determines that it is best able to address the factors contributing to the identified significant disproportionality by providing a portion of its reserved funds to a particular subset of schools for comprehensive CEIS, it is permitted to do so.

Whatever it chooses to do, the LEA must document that 15 percent of its IDEA Part B funds were reserved and used to provide comprehensive CEIS in accordance with §300.646(d). See also 34 C.F.R. §76.731.

Question C-3-7: May LEAs provide funds reserved for comprehensive CEIS to schools operating a Title I schoolwide program under section 1114 of the Elementary and Secretary Education Act (ESEA)?

Answer C-3-7: Yes. Section 300.206(a) makes clear that IDEA Part B funds may be consolidated in these schools and instructs States and LEAs how to calculate the amount of funds that may be used for this purpose. Further, 34 C.F.R. §§300.206(b)(1) and (2) provide that these funds must be considered Federal Part B funds for the purposes of calculating LEA maintenance of effort (MOE) and excess cost under 34 C.F.R. §§300.202(a)(2) and (a)(3) and that these funds may be used without regard to the requirements of 34 C.F.R. §300.202(a)(1).

Regardless, the LEA is still responsible for meeting all other requirements of IDEA Part B, including ensuring that children with disabilities in schoolwide program schools "1) [r]eceive services in accordance with a properly developed IEP [individualized education program]; and 2) [a]re afforded all of the rights and services guaranteed to children with disabilities under the Act [IDEA]." 34 C.F.R. §300.206(c).

LEAs are not prohibited from providing funds reserved for comprehensive CEIS to schools operating a schoolwide program. Further, the requirement to reserve funds for comprehensive CEIS does not override the flexibilities described in 34 C.F.R. §300.206. Instead, LEAs are only required to ensure that any school operating a schoolwide program to which it provides funds for comprehensive CEIS is able to appropriately document that at least the amount of funds provided to the school for that purpose were so expended.

For example, if an LEA provides $100 of the funds it has reserved for comprehensive CEIS to a school implementing a schoolwide program, that

school is not required to separately track and account for those funds if it is otherwise consolidating IDEA Part B funds. Instead, the LEA would only need to ensure that it can document that the school spent at least $100 on allowable activities under comprehensive CEIS. It is not required to demonstrate that the school expended $100 of IDEA Part B funds.

iii. Implications for IEPs

Question C-3-8: May LEAs use IDEA Part B funds reserved for comprehensive CEIS to provide services already identified in a child's IEP?

Answer C-3-8: It depends. LEAs are required to use IDEA Part B funds reserved for comprehensive CEIS to address the factors contributing to the significant disproportionality identified by the State. These factors may include a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers; or other factors. An LEA may also use comprehensive CEIS funds for training and professional development and behavioral evaluations and supports, such as functional behavioral assessments and behavioral intervention plans, but only to the extent that it is doing so to address the factors identified by the LEA as contributing to the significant disproportionality identified by the State.

Therefore, if comprehensive CEIS funds are used to provide services that address factors contributing to the significant disproportionality identified by the State, then the fact that those services are also identified in some children's IEPs does not make the services impermissible or the expenditures improper. However, we generally would not expect that using comprehensive CEIS funds for the purpose of providing services already identified on a child's IEP would address factors contributing to the significant disproportionality identified by the State.

iv. Implications for LEA Maintenance of Effort (MOE)

Question C-3-9: What effect will reserving 15 percent of an LEA's IDEA, Part B funds have on the LEA's (MOE) obligations?

Answer C-3-9: Using IDEA Part B funds reserved to provide comprehensive CEIS for children with disabilities may, but does not necessarily, affect the amount of local, or State and local, funds an LEA must expend to meet the MOE requirement in 34 C.F.R. §300.203.

Generally, under 34 C.F.R. §300.203(b), an LEA may not reduce the amount of local, or State and local, funds that it spends for the education of children with disabilities below the amount it spent from the same source for the preceding fiscal year. The calculation is based only on local, or State and local—not Federal—funds.

When an LEA identified with significant disproportionality is required to use 15 percent of its IDEA Part B funds for comprehensive CEIS, it should

consider the effect that decreasing its available IDEA Part B funds might have on the amount of local, or State and local, funds it must expend to meet the LEA MOE requirement. For example, if an LEA reserves 15 percent of its IDEA Part B funds for comprehensive CEIS, it may replace those funds by using local, or State and local, funds to provide special education and related services to children with disabilities. If that is the case, then the higher level of local, or State and local, expenditures for the education of children with disabilities becomes the LEA's new required level of effort for the subsequent year.

The effect would be the same under the previous 34 C.F.R. §300.646 if, after a finding of significant disproportionality, an LEA reserved 15 percent of its IDEA Part B funds for comprehensive CEIS and increased by 15 percent the amount of local, or State and local, funds it used to provide special education and related services to children with disabilities.

In addition, an LEA identified with significant disproportionality will not be able to take advantage of the LEA MOE adjustment that would otherwise be available under 34 C.F.R. §300.205 because of the way that the MOE adjustment provision and the authority to use Part B funds for CEIS are interconnected. As a result, no matter how much is available for comprehensive CEIS or for the MOE adjustment, an LEA that is required to reserve the maximum 15 percent of its Part B allocation for comprehensive CEIS will not be able to use 34 C.F.R. §300.205(a) to reduce its MOE obligation.

Information describing the actions that States and LEAs must take to meet MOE requirements and answers to frequently asked questions about LEA MOE can be found at https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osepmemo15100leamoeqa.pdf .

Question C-3-10: What Federal Fiscal Year's IDEA Part B funds can an LEA reserve for comprehensive CEIS and how does it affect the LEA's ability to take the MOE reduction in §300.205?

Answer C-3-10: Generally, an LEA may reserve IDEA Part B funds that it is required to reserve for comprehensive CEIS either from the funds awarded for the Federal fiscal year (FFY) following the date on which the State identified the significant disproportionality or from funds awarded from the appropriation for a prior FFY. For example, State X uses data on identification collected for school year 2015-2016, which is reported in April 2016, to make a determination in February 2017 that LEA Y has significant disproportionality related to identification and therefore must set aside 15 percent of its IDEA Part B funds for comprehensive CEIS. The State makes this determination before FFY 2017 funds become available on July 1, 2017. The LEA has the following three options. The LEA may set aside:

(1) 15 percent of the funds that the LEA receives from its FFY 2017 IDEA Part B allocation (available for obligation from Jul 1, 2017, through September 30, 2019);

(2) 15 percent of the funds that the LEA received from its FFY 2016 IDEA Part B allocation (available for obligation from July 1, 2016, through September 30, 2018); or

(3) 15 percent of the funds that it received from the FFY 2015 IDEA Part B allocation (available for obligation from July 1, 2015 through September 30, 2017) only if the LEA did not use the adjustment to reduce its required level of effort in the fiscal year covering school year (FY) 2015-16 under 34 C.F.R. §300.205.

If an LEA selects option 1, the LEA will not be able to use the adjustment to reduce its required level of effort under 34 C.F.R. §300.205 in FY 2017–18.

If an LEA selects option 2, the LEA will not be able to use the adjustment to reduce its required level of effort under 34 C.F.R. §300.205 in FY 2016–17.

An LEA can only select option 3 if the LEA did not use the adjustment in 34 C.F.R. §300.205 to reduce its required level of effort in FY 2015–2016. Because FY 2015-16 would have ended at the time the LEA is identified with significant disproportionality in February 2017, the LEA would already know whether it used the adjustment in 34 C.F.R. §300.205 to reduce its required level of effort in FY 2015-20, and if it had done so, could not use its FFY 2015 IDEA Part B funds to provide comprehensive CEIS because of the way the MOE adjustment provision and the authority to use IDEA Part B funds for comprehensive CEIS are interconnected.

Finally, an LEA must reserve IDEA Part B funds received from a single FFY IDEA Part B allocation, and not from multiple FFY Part B allocations. For example, if an LEA is required to reserve funds for comprehensive CEIS, it must reserve funds from a single year's allocation. The LEA could reserve $100 from its FFY 2017 IDEA Part B funds, but it could not reserve $50 of its FFY 2016 IDEA Part B funds and $50 of its FFY 2017 IDEA Part B funds to provide comprehensive CEIS. Once the LEA chooses to reserve funds from a particular FFY, it must reserve the entire amount for comprehensive CEIS from that FFY. Further, the LEA must expend the funds reserved to provide comprehensive CEIS.

D. EFFECTIVE AND COMPLIANCE DATES

Question D-1: What is the effective date of these regulations?

Answer D-1: Thirty days after their publication in the *Federal Register*: January 18, 2017.

Question D-2: Does that mean States must begin using the standard methodology on January 18, 2017?

Answer: D-2 No. The effective date is only the date where the new regulations become part of the *Code of Federal Regulations*.

Question D-3: When must States begin complying with these regulations?

Answer D-3: July 1, 2018, except that States are not required to include children ages three through five in the calculations for significant disproportionality in identification as children with disabilities and identification with a specific impairment until July 1, 2020.

The Department recognizes the practical necessity of allowing States time to plan for implementing these final regulations, including to the extent necessary, time to amend the policies and procedures necessary to comply. States will need time to develop the policies and procedures necessary to implement the standard methodology and the revised remedies. States must also consult with their stakeholders, including their State Advisory Panels, to develop reasonable risk ratio thresholds, reasonable minimum n-sizes, reasonable minimum cell sizes, and, if a State uses the "reasonable progress" flexibility, standards for measuring reasonable progress. States must also determine which, if any, of the available flexibilities they will adopt. To the extent States need to amend their policies and procedures to comply with these regulations, States will also need time to conduct public hearings, ensure adequate notice of those hearings and provide an opportunity for public comment, as required by 34 C.F.R. §300.165.

Accordingly, States must implement the standard methodology in SY 2018–19 and identify LEAs with significant disproportionality in SY 2018–19 using, at most, data from the three most recent school years for which data are available, if the State adopts the "multi-year" flexibility. We note that, in the case of discipline, States may be using data from four school years prior to the current year, as data from the immediate preceding school year may not yet be available at the time the State is making its determinations (i.e., final discipline data from SY 2017–18 may not yet be available at the time during SY 2018–19 the State is calculating risk ratios).

In the spring of 2020, therefore, States will report (via IDEA Part B LEA Maintenance of Effort (MOE) Reduction and CEIS data collection, OMB Control No. 1820-0689) whether each LEA was required to reserve

15 percent of its IDEA Part B funds for comprehensive CEIS in SY 2018–19.

States may, at their option, accelerate this timetable by one full year. In other words, States may implement the standard methodology in SY 2017–18 and assess LEAs for significant disproportionality using data from up to the most recent three consecutive school years for which data are available.

States that choose to implement the standard methodology to identify LEAs with significant disproportionality in SY 2017–18 may also require those LEAs to implement the revised remedies. Similarly, in SY 2017–18, States may choose to implement revised remedies without implementing the standard methodology.

Whether a State begins compliance in SY 2017–18 or 2018-19, it need not include children ages three through five in the review of significant disproportionality in identification of children as children with disabilities and the identification of children as children with a particular impairment until July 1, 2020.

Finally, the delayed compliance date does not mean that States are excused from making annual determinations of significant disproportionality in the intervening years. States must still make these determinations in accordance with the text of 34 C.F.R. §300.646 as of January 17, 2017.

GLOSSARY OF TERMS

(See 34 C.F.R. §300.647(a))

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 for children in all other racial and ethnic groups within the LEA.

Risk Ratio Threshold means a threshold, determined by the State, over which disproportionality based on race or ethnicity is significant under 34 C.F.R. §§300.646(a) and (b).