

## **Reporting and Analyzing Racial and Ethnic Data Based on Seven Categories for the U.S. Department of Education related to IDEA State Performance Plan Indicators 4-B, 9 and 10 and Significant Disproportionality**

The Office of Special Education Programs (OSEP) of the U.S. Department of Education (Department) has received numerous questions from States on how to report and analyze data consistent with the Department's Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education, issued on October 19, 2007 (Final Guidance), 72 Fed. Reg. 59265,<sup>1</sup> when implementing requirements of Part B of the Individuals with Disabilities Education Act (IDEA) related to disproportionate representation, significant discrepancies (discipline), and significant disproportionality. Pursuant to the Final Guidance, States are required to report data to the Department using seven racial and ethnic categories<sup>2</sup> beginning with the 2010-2011 school year.<sup>3</sup> OSEP is providing this guidance to address questions on analyzing data in the new "two or more races" category, maintaining data on race and ethnicity for OSEP monitoring purposes, and, for States using a longitudinal analysis for identifying local educational agencies (LEA) with disproportionate representation, significant disproportionality, or significant discrepancies, bridging the old racial and ethnic data based on five categories to the new racial and ethnic data based on seven categories.

### Background

The IDEA requires that States report data to the Department on the number and percentage of children with disabilities by race, ethnicity, and disability category receiving special education and related services under the IDEA. 20 U.S.C. 1418(a)(1)(A)(i). The IDEA also requires that States report disaggregated data for children with disabilities being served in particular educational settings, and receiving certain types of discipline. 20 U.S.C. 1418(a)(1)(A)(ii), (iii) and (v). The Part B data collection forms available at [www.ideadata.org](http://www.ideadata.org) provide instructions on reporting these data to the Department.

As part of their State Performance Plans/Annual Performance Reports (SPP/APR) for addressing Indicators 9 and 10, under section 616 of the IDEA and 34 CFR §300.600(d)(3), States are required to report on the percent of districts with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories, to the extent the representation is the result of inappropriate identification, including reporting on the number of districts with disproportionate representation and the number of districts identified

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<sup>1</sup> <http://www.ed.gov/legislation/FedRegister/other/2007-4/101907c.pdf>

<sup>2</sup> The seven categories are: (1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only; (2) American Indian or Alaska Native; (3) Asian; (4) Black or African American; (5) Native Hawaiian or Other Pacific Islander; (6) White, and; (7) Two or more races.

<sup>3</sup> In limited circumstances when a state has not fully implemented methods for collecting racial and ethnical data using the new seven categories by the 2010-2011 school year, the state will need to use an allocation method for reporting the 2010-2011 data using the seven categories. See OMB Bulletin No. 00-02, [http://www.whitehouse.gov/omb/bulletins\\_b00-02/](http://www.whitehouse.gov/omb/bulletins_b00-02/).

with disproportionate representation that is the result of inappropriate identification. States are required to analyze their 618 data in reporting on Indicators 9 and 10.

States are also required to examine their 618 data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities as part of their SPP/APR for Indicator 4B. 20 U.S.C 1412(a)(22); 34 CFR §300.170. Discrepancy can be computed by either comparing the rates of suspensions and expulsions for children with individualized education programs (IEPs) to rates for nondisabled children within the LEA or by comparing the rates of suspensions and expulsions for children with IEPs among LEAs within the State.

The IDEA further requires that States collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and in LEAs of the State with respect to the identification of children as children with disabilities, including the identification of children in specific disability categories; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. 20 U.S.C. 1418(d); 34 CFR §300.646. States are not required to report their examination of these data in the SPP/APR. However, a State must require any LEA identified with significant disproportionality based on race and ethnicity to reserve the maximum amount of funds under 20 U.S.C. 1413(f) (15%) to provide comprehensive coordinated early intervening services (CEIS) to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified. 20 U.S.C. 1418(d)(2)(b); 34 CFR §300.646(b)(2). See also, 34 CFR §300.226 (CEIS).

#### Application of the Final Guidance to Data Collection under the IDEA and Reporting in the SPP/APR

OSEP strongly encourages States and school districts to give all students (or their parents/guardians) the opportunity to re-identify their race and ethnicity according to the new categories in the Final Guidance for the 2010-2011 school year. Re-identification is important for States and school districts because it provides students of multi-racial backgrounds the opportunity to express their races and ethnicity and promote data consistency and comparability within schools, districts, and States.

In reporting to the Department on the percent of districts with disproportionate representation as a result of inappropriate identification for Indicators 9 and 10 of the SPP/APR, a State will need to analyze data for the “two or more races” category in the same manner as it analyzes the other six racial and ethnic categories. For example, a State using a risk ratio<sup>4</sup> as its methodology for

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<sup>4</sup> In calculating risk ratios, the risk for each racial and ethnic group must be compared to the risk for a comparison group. The Data Accountability Center (DAC) recommends that States compare the risk for each racial and ethnic group to the risk for all other students combined. Therefore, the risk for the “two or more races” category group would be compared to the risk for all other students combined. This would apply to any analyses (disproportionate representation, significant discrepancies, or significant disproportionality) where the State is using risk ratios. See pg. 10 of DAC’s Technical Assistance Guide on Assessing Racial/Ethnic Disproportionality in Special Education, <http://www.ideadata.org/docs/Disproportionality%20Technical%20Assistance%20Guide.pdf>.

calculating disproportionate representation may determine that a district exceeded the State's threshold of 2.0 for students in the "two or more races" category identified as having mental retardation for Indicator 10. The State would then need to determine if the students in the "two or more races" category were identified as having mental retardation as a result of inappropriate identification. If this is the case, this district would be included in the number of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification (numerator of the measurement for Indicator 10<sup>5</sup>), along with any other identified district(s) in one or more of the other six racial and ethnic categories.

Similarly, in reporting to the Department on Indicator 4B of the SPP/APR (the percent of districts that have (1) significant discrepancies, by race and ethnicity, in the rates of suspensions and expulsions of greater than 10 days in a school year of children with IEPs; and (b) policies, procedures or practices that contributed to the significant discrepancy and do not comply with the requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards), a State will need to analyze the "two or more races" category in the same manner as it analyzes the other six racial and ethnic categories. For example, if the State determined that five districts met the State's suspension/expulsion criteria for significant discrepancy in the "two or more races" category in the rates of suspensions and expulsions of greater than 10 days in a school year of children with IEPs, it would need to review those districts' policies, procedures, and practices. If, after the State reviewed policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards for these five districts, it determined that some of those policies, procedures, and practices in those districts did not comply with the IDEA and contributed to the significant discrepancy, these five districts would be included in the numerator of the measurement for 4B<sup>6</sup>, along with any other district(s) meeting those criteria for one or more of the other six racial and ethnic groups.

OSEP will carefully review a State's submission to ensure that it is considering whether disproportionate representation of children in the "two or more races" category is occurring, beginning with the FFY 2010 APR, due February 1, 2012. States<sup>7</sup> are required to report under

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<sup>5</sup> The measurement for Indicator 10 is: [(the # of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification) divided by (the # of districts in the State)] times 100.

<sup>6</sup> The measurement for Indicator 4B is: [(the # of districts that have: (a) a significant discrepancy, by race and ethnicity, in the rates of suspensions and expulsions of greater than 10 days in a school year of children with IEPs; and (b) policies, procedures or practices that contributed to the significant discrepancy and do not comply with the requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards) divided by the (# of districts in the State)] times 100.

<sup>7</sup> States that have chosen to transition to the new standards for collecting and reporting racial and ethnic categories using school year 2009-10 data, will be required to report on disproportionate representation of children in the "two or more races" category for Indicators 9 and 10 of the FFY 2009 APR, due February 1, 2011 and on significant

Indicator 4B on significant discrepancies of children in the “two or more races” category beginning with the FFY 2011 APR, due February 1, 2013, because of the lag time in reporting section 618 discipline data.

#### Application of the Final Guidance to Significant Disproportionality under 34 CFR §300.646

Although States are not required to report data to the Department on significant disproportionality based on race and ethnicity, the Final Guidance does impact the data States must analyze under 34 CFR §300.646. States using 618 data to determine if significant disproportionality is occurring in the State and the LEAs of the State with respect to identification, placement, and discipline will need to examine data in all seven racial and ethnic categories, including the “two or more races” category. For example, if the State determined that seven districts (five for discipline of students in the “two or more races” category and two for over-identification of students in the “two or more races” category) met the data threshold for significant disproportionality based on the State’s methodology, those seven districts would be required to reserve 15% of their Part B 611 and 619 allocations to provide CEIS for students in the LEA particularly, but not exclusively, to children in those groups that were significantly overidentified.

#### Maintaining Disaggregated Racial and Ethnic Data

The Final Guidance requires, at a minimum, consistent with the Department’s regulations in 34 CFR §80.42<sup>8</sup>, that educational institutions and other recipients keep the original individual responses to their collection of racial and ethnic data for three years from the date the information was collected. An exception applies when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action. If the State educational agency (SEA) requires additional information on the race or ethnicity of a student in the “two or more races” category in order to carry out its functions fully and effectively, it will request this information from the LEA (unless the SEA maintains this information at the State level). If OSEP requires such additional information, it will request this information from the SEA.

#### Bridging Data Collected under the old Racial and Ethnic Reporting Categories with Data Collected under the New Racial and Ethnic Reporting Categories

To the extent States are using a longitudinal analysis to identify LEAs with disproportionate representation, significant disproportionality, or significant discrepancies, OSEP will permit those States to use a bridging and/or allocation measure for a specific period of time in order to analyze their 618 data for purposes of Indicators 4B, 9 and 10 and 34 CFR §300.646.

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discrepancies of children in the “two or more races” category for Indicator 4B of the FFY 2010 APR, due February 1, 2012.

<sup>8</sup> This regulation requires each grantee or sub-grantee to retain for three years all financial and programmatic records, supporting documents, statistical records, and other records.

As explained in OMB's December 15, 2000 Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity<sup>9</sup> and the National Center for Education Statistics' (NCES) Forum Guide to Implementing New Federal Race and Ethnicity Categories: Managing an Identity Crisis,<sup>10</sup> "bridging" refers to the process of making data collected using the new standards comparable to data collected using the previous standards, to allow time trend analyses using those data. Since the new standards in the Final Guidance allow children to choose multiple races, States using trend data will need to use two sets of data (i.e., a set based on seven racial and ethnic categories as well as a set based on five racial and ethnic categories for the same school year) for a finite length of time referred to as a "bridge period."

If States decide to bridge, a single bridging methodology should be selected based on such considerations as the characteristics of local populations as well as data processing capabilities and the same method should be used by all districts in the State. If a State uses a bridging technique when analyzing racial and ethnic data, the bridging method should be documented and available for the Department to review, if necessary.

OSEP will permit States that are using two-year longitudinal analyses to identify LEAs with disproportionate representation, significant disproportionality, or significant discrepancies to use a bridging method to analyze their 618 data for the 2010-2011 school year for purposes of Indicators 4B, 9 and 10 and 34 CFR §300.646. OSEP will also permit States using three-year longitudinal analyses to identify LEAs with disproportionate representation, significant disproportionality, or significant discrepancies to use a bridging method to analyze their 618 data for the 2010-11 and 2011-12 school year for purposes of Indicators 4B, 9 and 10 and 34 CFR §300.646.

For example, if a State that uses two-year longitudinal analyses to identify LEAs with disproportionate representation, significant disproportionality, or significant discrepancies begins to collect and report its racial and ethnic data by the seven categories in the 2010-2011 school year, the State will need to use a bridging technique for one year in order to link the data collected in the 2010-2011 school year using the seven categories with the data collected in the 2009-2010 school year using the five racial and ethnic categories. However, for the 2011-2012 school year data, the State will have to identify LEAs with disproportionate representation, significant disproportionality, or significant discrepancies based on the seven racial and ethnic categories. Further, although the State is permitted to use the five racial and ethnic categories for its decisions based on school year 2010-11 data, the State must maintain records of the seven racial and ethnic categories collected in 2010-2011 to conduct its longitudinal analysis in order to make decisions regarding disproportionate representation, significant disproportionality, or significant discrepancies based on the school year 2011-12 data.

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<sup>9</sup> [http://www.whitehouse.gov/omb/inforeg/re\\_app-ctables.pdf](http://www.whitehouse.gov/omb/inforeg/re_app-ctables.pdf).

<sup>10</sup> <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2008802>. See also, Appendix C.