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Disproportionality:

Understanding the Law

Agenda

- ✓ Background Information

- ✓ Differences/Similarities between Disproportionate Representation & Significant Disproportionality

- ✓ GAO Report on SD

- ✓ 12/19/16 SD Regulation

- ✓ For Further Study

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Background Information

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Billy identified as **"educable mentally retarded"**

Billy Hawkins

- **Early 70's:** Billy was HS football team's backup quarterback.

- One night Billy rallied his team from far behind, **running complicated plays**.

- While watching the game, the HS principal recognized the disconnect between Billy's football **performance** and **perceptions of his cognition**.

- With the principal's intervention, Billy enrolled in **regular classes** and received intensive instruction.

Billy earned a Ph.D. In 2008 he became Talladega College's President.

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Intent of PL 04-142

With PL 94-142's passage in 1975, believed law's **procedural protections** <u>would reduce disproportionately</u> of large number of minority children inappropriately identified with MR & ED, and educated in isolated sped settings

By 1997, **no improvement** in national data

1997 IDEA Reauthorization, Congress:

- Expressed **concern** about R/E disproportionality and poor educational results for minority students

- Found **greater efforts needed** to address problems connected with inappropriate identification/restrictive placements

2004 Reauthorization. Almost 30 years later, for 1st time IDEA required **specific actions** to address disproportionality in these areas & discipline

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Abbreviations

SwD	Students with Disabilities
S w/o D	Students without Disabilities
SD	Significant Disproportionality
DR	Disproportionate Representation
ID	Identification
R/E	Race & Ethnicity
PPP	Policies, Procedures & Practices
CCEIS	Comprehensive Coordinated Early Intervention Services
SPP	State Performance Plan
LEA	Local Education Agency
ED	U.S. Department of Education

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IDEA 2004 Disparity Provisions

- **Significant Disproportionality**

- **SPP Indicators**

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SD

Based on **race/ethnicity**:

- **Identification** of any disability or 6 disability areas (ID, SLD, ED S/L, OHI, autism)

- **Placement** in 2 most restrictive educational settings

- **Suspensions/expulsio**n: Incidence, duration & type

Must reserve use of 15% IDEA funds for CEIS

SPP

Indicators **4b, 9 & 10**

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Similarities/Differences:
SPP Indicators & SD Measures

	SPP Indicators (Related to Practice, Policy, Procedures)	Significant Disproportionality (Numbers Alone)
Overall ID	9. DR of all SwD **resulting from** inapprop ID	Don't consider inapprop ID
ID in 1+ of 6 Areas	10. DR <u>resulting from</u> **inapprop ID**	Same as above
Placement	**N/A**	<40% gen ed & separate class/school
Discipline	4b. Significant <u>discrepancy</u> in removal rates >10 days for SwD & **<u>PPP contribute</u>**	RR by Incidence, duration & type

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U.S. Government Accountability Office (GAO) Report

February 2013

New Jersey
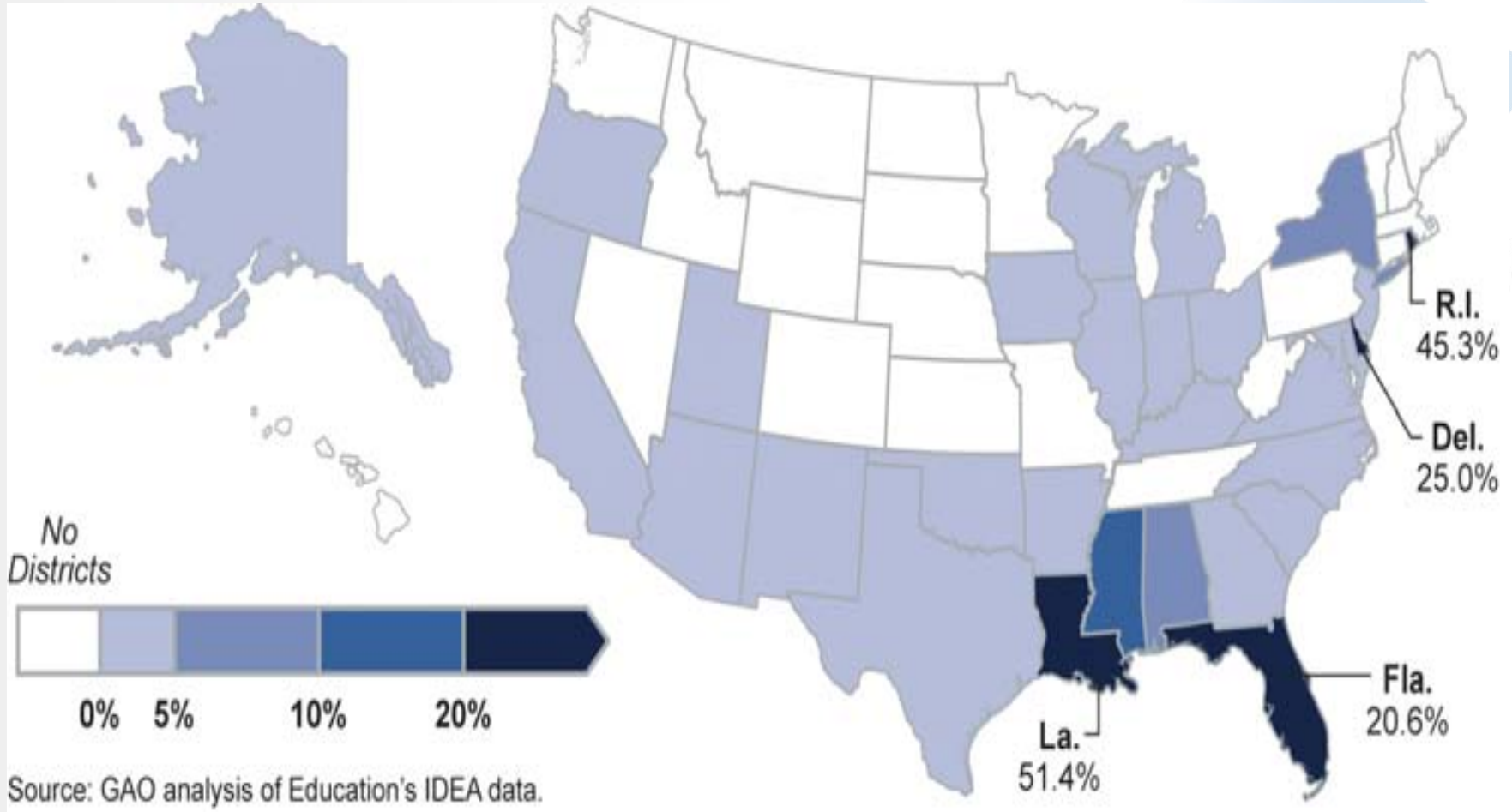Special Education
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GAO Report

Focused on **SD**

Found:

- **Inconsistent** SD/DR measures

- **Far fewer LEAs identified** with ID, placement & disciplinary removal than expected

- School districts officials reported **complicated, resource-intensive & duplicative** SPP/SD components

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Percentage of Districts by State Required to Provide CEIS in 2010-11

No Districts

0% 5% 10% 20%

Source: GAO analysis of Education's IDEA data.

R.I. 45.3%
Del. 25.0%
Fla. 20.6%
La. 51.4%

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GAO Survey of 16 States & Data Findings

2010-11. About **2% of all LEAs** cited for SD

- Involved **356 LEAs; <u>half</u>** in **5 states**

- **21%** LEAs in **LA**

- Remaining in **MI, MS, NY & RI**

- **12% lower** than 2009-10

2012–13. About **2.8%** of LEAs cited for SD

- **75%** in **7 states**

- Only **4 states/DC** identified LEAs with all **3 SD** categories (ID, placement & discipline)

- Some states had SD **definitions unlikely to apply to any LEA**

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Comparison of NJ & RI Data

	# LEAs	LEAs w/ CCEIS	LEAs w/ Voluntary CCEIS
NJ	643	3%	2%
RI	51	51%	10%

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GAO's Findings & Recommendations

Concerned **state by state** approach **not meeting** Congress' intent

Generally, **higher SD threshold** + **more years** meet + higher **minimum "N"** → **less likely** find SD

ED oversight hampered by state flexibility

- Although ED reviewed state measures during monitoring, **ED never required changes** when by definition unlikely state would identify SD

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GAO Recommendations

- Promote **consistency** through **standard SD** measurement

- Provide **clarity** to public

- Increase **comparability** of data across states

GAO did NOT recommend increased consistency between SD & SPP related measures

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Final IDEA 2016 SD Regulation

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SD Regulatory Highlights

- **Standard methodology**

- Clarified **cited LEAs** must:
  - Review/revise **PPP** (if necessary)
  - Identify/address **factors contributing to SD**

- Added **CCEIS for SwD** (S w/o D)

- Added CEIS for **3/4 year olds** to grades K-12

Following information based on:

- SD regulation

- ED responses to comments (Federal Register)

- ED's Significant Disproportionality FAQs

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Implementation Time Frames

2017–18: States may implement

- **New SD measures** (NJ did not)

- **Revised remedies**, (e.g., CEIS for SwD) <u>w/o new methodology</u>

- **During interim,** must continue to measure SD

2020-21. Must measure SD overall/specific disability, including **3-5 year olds**

- **Rationale for delay: SPP 9/10 application** to ages **6-21** so delay supports expansion to **3-5 ages**

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Standard Methodology Components

State determines **reasonableness** with guardrails

- Risk ratio/alternate RR thresholds

- Minimum cell size

- Minimum n-size

- Years for data analysis

Based on advice from stakeholders, including State Advisory Panels

No exception for virtual schools

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Risk Ratio

Alternate Risk Ratio

Minimum Cell & N Sizes

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Risk Ratio Measure

> Likelihood students from one R/E group will have a specific outcome compared to all other student groups

- **RR simple** to calculate & **easy to interpret**

- **Some form of RR** been used by nearly 45 states

- **Weighted RR:** Any benefits outweighed by costs & complexity + low transparency

- States may use **other method(s)** for internal information, evaluation, assessment

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Current NJ Calculation

SPP 9 & 10: multiple measures to statistically determine disproportionate representation (Published 2/1/16)

- Chi-square &

- Measure of impact comparing expected vs. observed numbers of students identified as eligible for special education (Impact of 10 is disproportionate)

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Reasonable Threshold

Based on **sound judgment** <u>in light of facts & circumstances</u> –

- R/E composition of state/LEAs
- Enrollment demographics
- Factors correlated with disabilities/categories

No ED approval prior to implementation

ED address reasonableness during **routine monitoring**

- If threshold appears **unreasonable –** state must **justify**

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ED more likely to find **reasonable threshold** when –

- Leads to **reduced** disparities
- **Results in findings** against LEAs with greatest disparities

ED more likely to find **unreasonable threshold** if –

- **Avoids identification** of any LEAs
- Significantly **limits identification** of LEAs with SD to **preserve state/LEA capacity,** e.g.,
  - **Protecting LEAs** from CCEIS requirement
  - **Avoiding review** of PPP

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Minimum Cell & N Sizes

<u>Proposed</u> regulation set both at 10

Final regulation:

Cell Size: **NUMERATOR**

- # students experiencing particular outcome
- **Rebuttable Presumption = 10**

N-Size: **DENOMINATOR**

- **ID:** # students enrolled in LEA
- **Placement/discipline:** # SwD
- **Rebuttable Presumption = 30**

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Alternate Risk Ratio

Comparison group(s) = state students

Alt RR required when comparison group size < minimum

Alt RR NOT required if cell & N sizes too small for LEA/state

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SD Analysis: 2 Types of Flexibility

1. Up to 3 consecutive years of data

2. Reasonable progress in reducing SD

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1. Up to 3 Prior Consecutive SY of Data

Example

2018-19 analysis based on 2015-16, 2016-17 & 2017-18

SD: Must meet/exceed threshold in **each of 3 SYs**

Why? Flexibility designed to account for **volatility:** small annual data changes → large RR increases → SD finding

May set varying RR thresholds for each category, e.g., autism, <40% regular class placement, etc.

CAN'T set different thresholds by R/E within category
- Unlikely to meet constitutional scrutiny

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2. Reasonable Progress in Reducing SD

No SD <u>**IF**</u> LEA made **reasonable progress** reducing RR **in each of** <u>**2 consecutive prior years**</u>

Even if RR exceeds threshold in 1 year

Must **define reasonable progress** (e.g., -0.5 RR)

• **Consultation w/stakeholders,** including <u>State Advisory Panels</u>

May **define** reasonable progress by category - <u>but not by R/E</u>

Reasonable progress must show **meaningful benefit to students**, not <u>statistical noise or chance</u>

Balance

Sufficiently large # of LEAs & R/E groups	with	Prevention of inapprop ID of LEAS due to RR volatility

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Reasonable Progress Example

2018-19 Analysis: Review 3 years of data

2015-16: **3.6**   2016-17: **3.7**   2017-18: **3.4**

If RR is 2.5, exceeds all 3 years

May assess if LEA reasonably decreased RR between **each of 2 consecutive years**

2015-16: **3.8**   2016-17: **3.3**   2017-18: **2.8**

If RR reduced between **1 group of consecutive years only,** NO reasonable progress

2015-16: **3.6**   2016-17: **3.7**   2017-18: **3.2**

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ED Reporting & Monitoring

States must –

- **Report:** RR thresholds, cell/n-sizes & reasonable progress definitions

- **Provide rationales** for cell/n sizes <u>not presumptively reasonable</u> w/**detailed justification** of reasonableness

- Reporting process/timeframe **to be determined**

Unreasonable cell minimums **more likely** → **exclusion of:**

- R/E group from review in any category

- LEAs from any review

- Small numbers of LEAs & categories of students

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Public Reporting

ED agrees states should publicly report RRs, minimum cell/N sizes, etc.

BUT

Hasn't yet determined time & manner of reporting

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Application of (Alt) RR to Categories of Analysis

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Categories of Analysis

1. Identification

2. Placement

3. Discipline

- ✓ **SD doesn't include** such factors as R/E & gender, gender, EL, etc.

- ✓ **States may choose** to review PPP for these areas but can't mandate CEIS

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Identification

- All students with disabilities

- 6 categories (SLD, ID, ED, S/L, OHI & autism)

- **Ages 3-5 years** beginning in 2020-21

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IDENTIFICATION: RR Calculation for AA/ED

AA Students ED Risk
AA students w/ED (3,110) ÷ All AA students (73,653)
Numerator A: 0.04222 (4.22%)

Non-AA Students ED Risk
Non-AA students w/ED (4,923) ÷ All non-AA students (324,472)
Denominator B: 0.01517 (1.52%)

ED Risk Ratio for AA Students
A ÷ B = **2.78** likelihood AA students categorized as ED

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IDENTIFICATION: Alt RR Calculation for AA/ED

Compare to **STATE** enrolled students

LEA's AA Students ED Risk
AA students w/ED (189) ÷ LEA enrolled <u>AA students</u> (4,697) = **.04023845** (4.02%)

State's Non-AA Students ED Risk
<u>Non-AA</u> **state students** w/ED (4,923) ÷ <u>Non-AA</u> **state students** (324,472) = **.0157234** (1.57%)

ED Risk Ratio for AA Students
04023845 ÷ **.01417234** = **2.65**

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Placement (Ages 6-21)

1. **Regular class <40 %** of day (self-contained/separate class)

2. **Separate schools/residential** facilities (**excluding** homebound, hospital, correctional facilities & parentally placed students)

(Removed proposed reg category of <u>40-79% regular class</u>)

May exclude <u>noneducational agency placements in residential facility/group home</u> in **different state**

- **Resident state** & **school location**

Excludes LEAS serving **only SwD**

Does not address R/E <u>by disability area</u> – only all SwDs

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PLACEMENT: (Alt)RR Calculation for AA

Risk Ratio:

- AA students in reg class <40% ÷ **all AA SwD (A)**

- Non-AA students in same setting ÷ **all non-AA SwD (B)**

- **A** ÷ **B** = AA Risk Ratio

Alternate Risk Ratio:

- AA students in reg class <40% ÷ **all AA SwD (A)**

- **Non-AA state students** in same setting ÷ **Non-AA state SwD (B)**

- **A** ÷ **B** = AA Alt RR

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Discipline (Ages 3-21)

5 Areas of Analysis for Each R/E

Out-of-school suspensions (OSS) & expulsions

In-school suspensions (ISS)

For both categories:

- **<**10 days
- **>**10 days; and
- **Total** <u>disciplinary removals for each category</u>: OSS, ISS, expulsions, interim alt ed setting & hearing officer removals

Different from SPP Indicator 4a

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Criteria for In-school Suspension

- **Temporary** removal from class for disciplinary reasons

- Appropriately participates in **general curriculum**

- Receives **IEP-required services**

- **Participates with S w/o D** as would without ISS

- Under **direct supervision** of school personnel

    Direct supervision = school personnel physically in same location as students under their supervision

RR & alt RR analysis is same as placement analysis

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Review/Revision of PPP & State Monitoring

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If LEA identified for SD, state ensures LEA:

- Reviews PPP for IDEA compliance; and
- Revises them if needed

Discipline: Review PPP for—

- Manifestation determinations
- Functional behavioral assessments
- Behavioral intervention plans
- Rules for/use of school-wide discipline rules

LEAs must **publicly report** revisions

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Case Study

LEA with SD for white students with autism

Long-standing practice that requires <u>medical diagnosis</u> of autism

Problem. Minority students much less likely to obtain diagnosis, e.g., lack of consistent early screening, referral by health professionals, etc.

IDEA. LEAs can't set eligibility criteria not required by state & inconsistent with IDEA

- Medical diagnosis must be at <u>no cost</u> to parent
- Requirement can't result in <u>delay</u> of sped
- <u>State doesn't require</u> medical diagnosis for autism

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Compliance v Noncompliance

SD ≠ noncompliance

- Indicates **PPP warrant further attention** & **action**

If state finds **IDEA noncompliance** through PPP review, LEA must correct ASAP but <u>no later than 1 year later</u>

After review of updated data (on-site monitoring or state data system), state determines if LEA corrected –

- Any <u>child specific noncompliance</u>
- Implementation of <u>compliant PPP</u>

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Comprehensive Coordinated Early Intervening Services

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CCEIS funds expanded for students **age 3 through 12th grade** (by next SY)

CCEIS **particularly - but not exclusively** - for students in <u>R/E groups significantly overID</u>, including –

- **Students not receiving sped** but need additional academic/behavioral support to succeed in general ed

- **Students receiving sped**

LEAs may not limit provision of CCEIS to SwD

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When SD found LEAs must use **15% IDEA funds** for CCEIS

Must address **PPP contributing to SD**

PPP factors may include –

- Lack of access to **scientifically based instruction**

- **Economic/cultural/linguistic barriers** to appropriate ID or restrictive placement

- Inappropriate use of **disciplinary removals**

- Lack of access to appropriate **diagnostic screening**

- Differences in **academic achievement** levels

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May use CCEIS for PD, educational/ behavioral evaluations, services & supports

When SD in a disability area relates to **underidentification** of another:

- ED encourages consideration of how **differences in academic achievement** may contribute to SD

- May use CEIS to address **causes of underidentification**

If no SD, may **voluntarily use** up to 15% for CCEIS

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Future Guidance from OSEP

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- ✓ How to **publicly report** (Alt) RRs, including minimum cell/N sizes

- ✓ How to **prevent racial discrimination** in identification of SwD, including under & delayed ID

- ✓ Will evaluate **implementation of SD regulation** to assess **impact** on how LEAs identify SwD

- ✓ Will exam extent to which states/LEAs **incorrectly interpret** RR thresholds & implement **racial quotas** <u>to avoid</u> SD finding

- ✓ Will consider any modifications to **MOE reduction** & **CCEIS data collection** may be needed to assist States/LEAs

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For Further Study

Maintenance of Effort

https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/significant-disproportionality-qa-03-08-17.pdf
(See FAQ A C-3-9 & 10)

IDEA & ESEA Funds

Implementing RTI Using Title I, Title III, and CEIS Funds Key Issues for Decision-makers, US Department of Education
http://www.ed.gov/programs/titleiparta/rtifiles/rti.pdf

PowerPoint presentation at the OSEP Data Managers Meeting, June 22, 2009
https://www.ideadata.org/docs/DataMeetings/2009/Ensuring%20Inter-rater%20Reliability%20for%20Monitoring,%20Test.pdf.

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OSEP Frequently Asked Questions

https://www.osepideasthatwork.org/osep -meeting/significant- disproportionality?tab=prework

United States Government Accountability Office Report

(February 2013) Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special   Education http://www.gao.gov/products/GAO-13- 137

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