# June 14, 2019

# MEMORANDUM

TO: Special Education Directors

FROM: Deborah Dominguez-Clark, Director of Special Education

RE: 30 day public comment on Significant Disproportionality

The U.S. Department of Education’s Office of Special Education Programs (OSEP) has issued guidance on the new regulations for significant disproportionality under the Individuals with Disabilities Education Act (IDEA) under 34 CFR §§300.646-647. To address and reduce significant disproportionality, the final regulations establish a standard methodology that each State must use in its annual determination under IDEA Section 618(d) (20 U.S.C. 1418(d)) of whether significant disproportionality based on race and ethnicity is occurring in the State and the Local Educational Agencies (LEAs) of the State.

These final regulations clarify ambiguities in the existing regulations concerning significant disproportionality in the identification, placement, and disciplining of children with disabilities based on race/ethnicity. Significant disproportionality exists when students in one racial/ethnic group have a higher risk for identification, placement, or discipline than students in all other racial/ethnic groups. These regulations adopt the Department’s long-standing interpretation that the required remedies in IDEA section 618(d)(2) apply when there is significant disproportionality in identification, placement, or any type of disciplinary removal from placement. In addition, funds reserved for comprehensive coordinated early intervening services (CCEIS) must be used to identify and address the factors contributing to significant disproportionality and may be used to serve children from age 3 through grade 12, with and without disabilities.

As part of the standard methodology, 34 CFR §300.647(b)(1) requires States to set reasonable risk ratio thresholds, reasonable minimum n-sizes, and reasonable minimum cell sizes. In addition, a state is not required to identify an LEA as having significant disproportionality under §300.646(a) and (b) until the LEA has exceeded the risk ratio for up to three years and the LEA has failed to demonstrate reasonable progress. This occurs with input from stakeholders (including their State Advisory Panels, subject to the Public Education Department’s oversight).

In accordance with these regulations and input from the IDEA Advisory Panel stakeholders, the Public Education Department (PED) is utilizing its discretion to put the following in place to meet the requirements of 34 CFR §§300.647(b)(1) and 300.647(d):

* A minimum cell size of 10 or greater and a minimum n size of 30 or greater have been established.
* An LEA is identified as having significant disproportionality only after the LEA exceeds a risk ratio threshold for three consecutive years.
* The reasonable risk ratio threshold is 5.0 or above.
* An LEA will not be identified as having significant disproportionality if it is making reasonable progress. Reasonable progress is defined as the risk ratio decreasing at least .10 percentage points in each of the two prior consecutive years.
* Per the standard methodology as set forth by the U.S. Department of Education, a risk ratio or alternate risk ratio will be used to determine a significant disproportionality finding.

DDC/cr

Enc: (1) Significant Disproportionality Essential Q and A

cc: Katarina Sandoval, Deputy Cabinet Secretary, Academic Engagement, PED

Education Administrators, Special Education Bureau, PED