

Riverside County Special Education Local Plan Area (SELPA)

Overrepresentation and Disproportionality

Table of Contents

Introduction.....	1
Policy.....	2
Criteria.....	3
State Performance Plan Indicators Associated with Disproportionality	4
Indicator 4: Rates of Suspension and Expulsion.....	4
Indicator 5: Placement in Least Restrictive Environment.....	4
Indicator 9: Overall Disproportionality	5
Indicator 10: Disproportionality by Disability	5
Procedural Information	5
Data-Driven Identification of Root Causes	6
Focus Area Selection and Planning	8
Coordinated Early Intervening Services (CEIS)	8
The specific requirements and forms for completing the	9
Summary and Conclusions.....	9
References and Resources	9

Introduction

Conversations about race, disproportionality, and equity can be difficult, but are necessary. Disproportionate representation of ethnically and linguistically diverse students in high incidence special education programs (mental retardation, learning disabilities, and emotional disturbance) has been a concern for decades. The importance of this issue is evident in a variety of research studies, recommendations from major professional organizations, litigation (e.g., *Larry P. vs. Riles* and *Diana vs. the California State Board of Education*), as well as policy and advocacy efforts (e.g., CEC Institutes on Disproportionality). Racial and ethnic minorities are protected from discrimination in The Equal Protection Clause of the 14th Amendment to the United States Constitution, Title VI of the Civil Rights Act of 1974, and Section 504 of the Rehabilitation Act of 1973. The 2004 Individuals with Disabilities Education Act (IDEA) makes racial disproportionality in special education one of three priority areas.

Evidence of disproportionality in special education programs does not necessarily result in per se race discrimination. Race discrimination requires discriminatory intent. In analyzing the over-representation of ethnic and linguistic minorities in special education, the courts did not find that reducing disproportionate representation per se was the appropriate remedy to assure equal educational opportunity and improve the educational success of culturally and linguistically diverse students. Legal opinion prevents defining disproportionality, itself, as a problem and, more specifically, disallows using any index of disproportionality as the means of

setting goals and tracking progress in placement rates. The U.S. Department of Education has taken the position that the problem must be defined as possible discrimination, or other inappropriate behavior or attitudes, which may be indicated by disproportionate placement numbers. Disproportionality numbers are thus a proxy for the measurement of these real problems.

Therefore, attention is being forced back to the policy, procedures, and practices that may result in unequal, unfair treatment of students from different racial/ethnic groups. This is an important perspective that aims to drive states and local educational agencies (LEAs) toward addressing fundamental inequities as opposed to taking steps that achieve proportional representation but further imperil the educational prospects of students of color and/or students with disabilities. Our goal is the improvement of educational experiences and outcomes for all students, not to limit access to needed resources based on externally determined disproportionate targets.

All the challenges faced do not have to be addressed at once. Small, steady, and determined changes can lead to major transformations for LEAs, individual school sites, and, most importantly, students. Robust and sustainable change requires masterful use of evidence that depicts what is and provides benchmarks for progress. As a special education local plan area (SELPA), we seek to support the work of the California Department of Education (CDE) to provide effective technical assistance and resources to support key stakeholders addressing the issues of potential over-identification and disproportionality of students with disabilities by race and ethnicity.

Policy

The Individuals with Disabilities Education Act (IDEA) requires that each state education agency (SEA) collect and examine LEA data to determine whether significant disproportionality based on race and ethnicity is occurring with respect to the identification of children as students with disabilities, including identification as students with particular impairments; the placement of students with an individualized education program (IEP) in particular settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions, of such students.

The SEA monitors compliance by collecting and analyzing data on these indicators annually. If a determination of significant disproportionality is made, the SEA shall provide for review and, if appropriate, public reporting of revision of policies, procedures and practices used in identification and placement to ensure compliance with the requirements of IDEA. In addition, if the SEA identifies a local educational agency (LEA) as significantly disproportionate, the LEA is required to reserve and use 15% of federal special education grants to provide coordinated early intervening services (CEIS) to K-12 students in the LEA who are not identified as needing special education or related services but who need additional academic or behavioral support to succeed in general education.

The policies, procedures, and practices within Riverside County SELPA and each LEA member are designed to prevent inappropriate disproportionate representation by race and ethnicity of students with disabilities, including overall proportion in relation to the general population, disproportionate identification of students within a particular disability category, rates of suspension and expulsion, and placement in support of the least restrictive environment. LEAs shall ensure that prior to children being referred for an evaluation to determine eligibility for special education services that all general education program options and services have been considered and, where appropriate, utilized. All evaluation materials and procedures shall be selected and administered so as not to be racially, culturally, or sexually discriminatory and be administered by qualified staff. The SELPA and LEAs shall monitor student data trends with the

intent of preventing over-identification and disproportionate representation by race and ethnicity of students with disabilities, including disaggregation by specific disability category.

Legal References:

Federal Requirements: 20 USC §1418(d), §1412(a)(24); CFR §300.646, §300.173

California Requirements: EC §56205(a), §56320(a), §56324(a); CCR §52040

Criteria

Although sometimes used interchangeably, there are distinct differences in key terms used herein. Disparity is the unequal access of services or resources for a percentage of children of a specific race or culture and/or their families when compared to children and families of other races or cultures. Disproportionality refers to being out of proportion. Here, disproportionate representation is the determination that, within a LEA, students in special education are over- or under-represented based on race/ethnicity in specific categories. Similarly, Significant Disproportionality is the determination that a LEA has significant over-representation based on race and ethnicity overall, by disability, by placement in particular educational settings, or by disciplinary actions. A LEA is considered to meet these criteria under the following conditions.

Disproportionality

- Fails ethnic disparity calculations for the most recent year for which data are available;
- Has one or more areas of over-representation by race/ethnicity in general, by disability, by disciplinary action, or by placement; and
- Identifies any areas of noncompliance with state or federal requirements using CDE self-assessment of policies, procedures, and practices.

Significant Disproportionality

- Fails the ethnic disparity calculation for the most recent three years; and
- Has one or more areas of over-representation by race/ethnicity in general, by disability, by disciplinary action, or by placement.

If a LEA is identified as having disproportionate representation, the LEA is required to complete corrective action plans developed by CDE and to publicly report any changes to their policies, procedures, and practices. If a LEA is found to be significantly disproportionate, it is required to take the following correction actions:

1. Conduct a review of policies, procedures and practices using CDE required forms;
2. Publicly report any changes to its policies, procedures and practices;
3. Conduct an in-depth programmatic self-assessment using a nationally recognized assessment tool;
4. Prepare a Significant Disproportionality Coordinated Early Intervening Services (SD-CEIS) Plan; Verify it contains all required components;
5. Reserve at least 15% of its federal IDEA grant funds to address the issues of significant disproportionality; and
6. Lose the ability to use IDEA funds to reduce its maintenance of effort (MOE) by up to 50% of increased federal funds.

State Performance Plan Indicators Associated with Disproportionality

CDE's monitoring activities are part of an overall Quality Assurance Process (QAP) designed to ensure that procedural guarantees of the IDEA are followed and that programs and services result in educational benefits to students. The State Performance Plan (SPP) is designed to evaluate the state's efforts to implement the requirements and purposes of IDEA and describe how the state will improve results. The U.S. Department of Education, Office of Special Education Programs (OSEP) has identified monitoring priorities and indicators relating to the priority areas that must be reported in the SPP. Some of the indicators are based on performance targets while others are based on 100% compliance. The indicators relevant to disproportionality are described below.

Indicator 4: Rates of Suspension and Expulsion

The IDEA regulations require states to annually collect and examine data to determine if significant disproportionality based on race or ethnicity is occurring with respect to the incidence, duration, and type of disciplinary action, including suspensions and expulsions. The term "incidence" refers to the number of times children with disabilities ages 3 through 21 were subject to disciplinary actions. The term "duration" refers to the length of suspensions or expulsions. The type of disciplinary action refers to, at a minimum, data on both in-school and out-of-school suspensions and expulsions, but could also include other disciplinary actions (e.g., exclusion from extracurricular activities).

California has decided to meet this requirement by determining the percent of districts that have:

1. a significant discrepancy, by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and
2. policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards.

To meet these requirements, the CDE annually establishes the state rate of suspension and/or expulsion of students with disabilities for greater than ten days in the school year (i.e., 0.60 with an added 2 percent variation, resulting in the state bar of 2.60% as the target). Districts identified to have a rate greater than the state bar of 2.60 percent, either overall and/or by race/ethnicity, are required to review their policies, procedures and practices related to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards.

Indicator 5: Placement in Least Restrictive Environment

Students with disabilities may be primarily taught in general education classrooms with special education support provided therein or as a part-time pullout, self-contained special education classes, or specialized schools that are completely separate from regular public schools. Students' IEP teams decide what the most appropriate and least restrictive educational environment is for each student. Indicator 5 measures the percent of children with IEPs aged 6 through 21 served:

- A. Inside the regular class 80% or more of the day;
- B. Inside the regular class less than 40% of the day; and
- C. In separate schools, residential facilities, or homebound/hospital placements.

Although data has been collected in this category, the CDE is starting to develop a means to determine if the policies, procedures, and/or practices in a LEA create disproportionality in placement decisions.

Indicator 9: Overall Disproportionality

This indicator identifies districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification. Data used for determination includes both the E formula plus a disparity index compared to prior year. Determination level is reported as:

4. Meets Requirements: May have disparity but meets statutory and regulatory requirements.
3. Needs Assistance: Disproportionate with some noncompliant policy and procedures; decreased from prior year.
2. Needs Intervention: Disproportionate with noncompliant policy and procedures; increased from prior year.
1. Needs Substantial Intervention: Significantly disproportionate; Cells of overrepresentation in disproportionality overall.

Indicator 10: Disproportionality by Disability

In comparison, indicator 10 identifies districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification. Data used for determination includes over/under representation plus disparity with E formula. Determination level is reported as:

4. Meets Requirements: No cells with over or under representation or disparity above the benchmark and have cells with over or under representation with compliance.
3. Needs Assistance: 1-9 race/ethnic-disability cells with over or under representation and some non-compliance.
2. Needs Intervention: 10 or more race/ethnic-disability cells with over or under representation and some non-compliance.
1. Needs Substantial Intervention: Significantly disproportionate and non-compliant policy, procedures and practices.

Procedural Information

The CDE has established “Special Self Review” processes for findings of potential over-representation in SPP Indicators 4A, 4B, 5, 9 and/or 10. The procedures include completion of a policies and procedures checklist in the identified indicator(s), a review of practices as demonstrated in individual pupil record reviews, and uploading the findings into a CDE portal. LEAs that report noncompliant findings from the initial student record review process are required to complete the Prong Two components. The Prong Two Process requires that a second set of student records be reviewed until the LEA demonstrates correction and continuing compliance.

Once a LEA has been identified as disproportionate, the likelihood that it will be identified as significantly disproportionate increases. The steps described herein become mandatory when a LEA is identified as significantly disproportionate. California’s multi-step process utilized with LEAs to address disproportionality is supported by the State Performance Plan Technical Assistance Project (SPP-TAP).

Data-Driven Identification of Root Causes

The success of any systems change efforts can be judged only by changes in the data. Addressing issues of equity is more likely to be ongoing, leading to sustainability, when (1) it is viewed as an effort that benefits all children; (2) it is incorporated into the LEA's overall plans for school improvement and other initiatives; and (3) the community is involved. Leaders that question assumptions, examine their own beliefs, and empower those they work with to do the same can influence the process of creating equitable change. The process begins with establishing stakeholder group membership, whose functions are to provide ongoing action planning and monitoring of implementation based on data and best practices. Effective district leadership is critical for the flow of knowledge of best practices, consistent use of data, communication between stakeholder groups, and ensuring sustainability. Membership needs to include representatives from the central office and school sites, general and special education, new and veteran educators, as well as community, family, and student perspectives. The SPP-TAP (State Performance Plan-Technical Assistance Program) offers expert facilitators to work with identified LEAs to address the issues of significant disproportionality.

Stakeholder groups must have decision making power, including the ability to effectively link to other initiatives, assure accurate data collection, and possess the willingness and skill to consider issues of race and equality. Some stakeholder group responsibilities include looking at the data, making meaning of the data, developing a *culturally responsive lens* leading to equitable interventions, and evaluating if the system is working equally well for all students. Through dialogue, participants examine and question assumptions, seek common ground and consensus, reflect on and generate joint actions.

Planning and evaluation must be based on local data. Local data on equity provides a framework that can motivate and guide local remediation efforts. The success of the systems change efforts can only be judged by changes in the data. Key roles for data include improving the quality of criteria used in problem solving and decision making; describing institutional processes, practices and progress in schools and the district; examining institutional belief systems, underlying assumptions, and behaviors; mobilizing the school or district community for action; monitoring implementation of reforms; and accountability.

It is important that the stakeholder team members understand that the research has not identified the root causes of disproportionality. There is no one over-riding cause of racial and ethnic disparities in special education or school discipline. Rather our best knowledge suggests that a number of factors contribute and each of these needs to be considered to identify local influencers: special education eligibility processes, unequal educational opportunities, resources, poverty, test bias, classroom behavior management, and issues related to culture. Research indicates common root causes can center around:

- Gaps in curriculum and instruction implementation: minimal core curriculum, too many interventions, poorly structured intervention programs, and inconsistent knowledge of assessments
- Limited beliefs of ability: poor and racial/ethnic minority students viewed as not ready for school; special education viewed as fixing students
- Inconsistent pre-referral process: inconsistent referral forms and process; limited information on intervention strategies

A root cause process to distinguish difference from disability should focus on examining the various areas of the schooling process in order to understand the interaction of school practice (inputs) and student outcomes. This process involves examining:

1. Quality of curricular and instructional supports (e.g., type of core program, stage of core program implementation, capacity of instructional staff, and learning outcomes of students);
2. Intervention services for struggling students (e.g., type of available interventions, frequency of intervention usage, stage of implementation, and number of students participating in intervention programs by race/ethnicity, gender and grade level);
3. Predominant cultural beliefs (e.g., perceptions of race, perceptions of different learning styles versus a disability, perceptions of how race and class interact in school practice, and cultural responsiveness of current policies and practices).

A review of policies, procedures, and practices is a core component of root cause analysis. The review process may include any, or all, of the following monitoring activities:

1. Review of selected pupil records and individualized education programs (IEPs) to determine educational benefit, compliance, and accuracy of data reported to CDE.
2. Interviews and follow-up discussions with parents or guardians, general and special education teachers, and other school personnel.
3. Interviews with district administrators regarding prior noncompliance and other areas of the IDEA.
4. Review of local policies, procedures, and the Special Education Local Plan for compliance with the IDEA.

Together with CDE staff, LEA staff and stakeholders will summarize the review findings, identify any systemic issues, and review corrective actions. CDE will prepare a report and a corrective action plan, as needed, to address noncompliance identified as a result of the review of policies, procedures, and practices. This is the compliance portion of the review and any changes in policies, procedures, and practices will need to be reported to the public and to the district board of education.

The stakeholder group is responsible for selecting data-driven self-assessment tools to identify the root causes of disproportionality in their school system. The resources below cite existing and related data sources, training materials, manuals, checklists and forms that can be utilized.

- [The California School Climate, Health, and Learning System \(Cal-SCHLS\)](#)
- [California Healthy Kids Survey \(CHKS\)](#)
- [California School Climate Survey \(CSCS\)](#)
- [California School Parent Survey \(CSPS\)](#)
- [Annotated Checklist for Addressing Racial Disproportionality in Special Education](#)
- Assessment and Strategic Planning Process (www.nccrest.org/publications/tools.html) has two forms: [Form A: Administrators](#) and [Form B: Assessment Only](#).
- [Racial/Ethnic Disproportionality in Special Education: Data Analysis Workbook](#)
- [Using Data to Address Equity Issues in Special Education](#)
- [Equity in Education - Addressing Racial/Ethnic Disproportionality in Special Education: Technical Assistance Manual for Identifying Root Causes, Volume 1](#)

LEAs identified as significantly disproportionate will find their options limited. The California Healthy Kids Survey (CHKS) and the California School Climate Survey (CSCS) do not cover the

knowledge and methods for analyzing district practices revealing information about significant disproportionality and what is needed to be done to address them as the three programmatic self-assessment tools do. There are then only three options:

1. [Annotated Checklist for Addressing Racial Disproportionality in Special Education](#), with a corresponding Training Module 1: Using the Annotated Checklist for Addressing Racial Disproportionality in Special Education.
2. [Equity in Special Education Placement: A School Self-Assessment Guide for Culturally Responsive Practice Preventing Disproportionality by Strengthening District Policies and Procedures—An Assessment and Strategic Planning Process](#). There are six corresponding training modules.
3. [Equity in Education—Addressing Racial/Ethnic Disproportionality in Special Education](#). There is a webinar and six training modules.

Focus Area Selection and Planning

Data discovery and self-assessment leads the team to conduct reflective data analysis and determine the root cause(s) based on the data. Once the root cause is identified, the LEA must identify and describe one or more pathway(s) to be used to address significant disproportionality. A pathway:

- Is a core topic area aligned with the SPP that offers a set of professional development sessions, tools, and resources including direct services to targeted students that the LEA can use to address disproportionality
- Is content identified in collaboration with partners building upon existing work and avoids reinventing content material whenever possible
- Has multiple points of intersection with the other pathways chosen by the LEA.

Some suggested pathways identified to address disproportionality include the Individuals with Disabilities Education Act (IDEA), closing the achievement gap, culturally responsive practices, prevention and early intervention via Response to Instruction (RtI), improved pre-referral intervention teaming, improved assessment techniques, improved behavior management, and encouraging family and community involvement. Specific strategies for implementing such strategies are available through the SELPA office and various web-based resources.

When choosing a pathway and developing an action plan, it is important to consider: (1) which strategies and interventions have the best value for the district; (2) what needs to be considered systematically to sustain efforts; (3) what is in place that might be working and could be applied to more areas if the intervention was adopted to include considerations of culture; and (4) what funds be used for this. Some strategies may be short-term solutions (e.g., reduction oriented, data scrubbing, revision to Student Success Team process and procedures, training around identification). Other strategies may be designed for long term solutions (e.g., establishing systems for problem solving and providing interventions, strengthening data systems, promoting culturally responsive education, consulting on least restrictive environment, hosting regionalized equity meetings, enhancing capacity for positive behavioral interventions and supports).

Coordinated Early Intervening Services (CEIS)

Once a LEA is identified as significantly disproportionate, it must use 15% of its IDEA funds for that year to address the disproportionality by providing coordinated early intervening services (CEIS). Allowable uses of IDEA funds for CEIS include services to targeted students, professional development for teachers and other school staff, and providing educational and

behavioral evaluations for classroom supports. CEIS services are to be provided to students who are in kindergarten through grade 12, not currently identified as needing special education or related services, and in need of additional academic or behavioral supports to succeed in the general education environment. Funds may be spent over 27 months, thus allowing for fuller implementation of the plan.

The specific requirements and forms for completing the Significant Disproportionality Coordinated Early Intervening Services (SD-CEIS) Plan are available in CDE's website: <http://www.cde.ca.gov/sp/se/qa/disproguidance>. In addition to fiscal tracking, districts are expected to track data on the number of children who receive CEIS and the number of those children who subsequently receive special education and related services under Part B during the next two-year period. States and LEAs must maintain these records for audit and monitoring purposes but are not required to report these data to the Department unless requested to do so.

Summary and Conclusions

Disproportionality is a complex issue that will not respond to simplistic solutions. Although well documented, its causes and the pathways to improvement are not fully understood. It is important to refrain from assigning blame and to work together to understand the data and its implications. Data indicating disparity must be taken seriously. Creating equitable school systems is a long-term process requiring long-term institutional commitment, including attention to difficult topics like race, and an ongoing integration of cultural competence as a key component in policy and practice. Typically implementation can take 2-4 years, and go through a series of stages:

- Exploration: assessment of needs, examination of options, examining implementation, assessment of fit
- Installation: acquiring resources, preparing the organization, preparing for implementation, and preparing staff
- Initial Implementation: implementation drivers, management of change, data systems analysis, and improvement cycles
- Full Implementation: implementation drivers expansion, implementation outcomes measured, innovation outcomes measured, and standard practices in place

Successful reform efforts typically have (1) ongoing progress monitoring of implementation, (2) regular professional development, (3) celebration of "wins", (4) constant "tweaking" of the plan to ensure it is on target and sustainable, (5) public displays of what is being done and why it is important, (6) collection of perception data (asking people's opinions on the reform), and (7) frequent updates of progress to all stakeholders. Experienced educational leaders recognize the need to know themselves, the culture of their organization and their community, and the strategies needed to shift the culture of a school or district from responding to learning gaps (or disproportionality) as compliance issues to responding in ways that transform the organization's culture.

References and Resources

Many of the disproportionality articles and resources utilized in this document were accessed via the California Department of Education (CDE) (www.cde.ca.gov), State Performance Plan Technical Assistance Project (SPP-TAP) (www.spptap.org), and/or the Southwest SELPA Disproportionality Tool Kit. The SPP-TA Project operates out of the Napa County Office of Education as a grant supported by the California Department of Education, Special Education Division (CDE/SED). Southwest SELPA's work was supported by a Cal-Stat grant and their Intervention4Success Initiative.