**Oregon Department of Education
Significant Disproportionality: A Summary of Processes and Frequently Asked Questions**

# What is Significant Disproportionality?

The purpose of the Significant Disproportionality regulations under IDEA section 618(d) ([20 U.S.C. 1418(d)](https://sites.ed.gov/idea/statute-chapter-33/subchapter-ii/1418/d)) and § [300.646](https://sites.ed.gov/idea/regs/b/f/300.646/c)) is to promote equity in IDEA. Specifically, the regulations will help to ensure that States meaningfully identify LEAs with significant disproportionality and that States assist LEAs in ensuring that children with disabilities are properly identified for services, receive necessary services in the least restrictive environment, and are not disproportionately removed from their educational placements by disciplinary removals. These regulations also address the well-documented and detrimental over-identification of certain students for special education services, with particular concern that over-identification results in children being placed in more restrictive environments and not taught to challenging academic standards.

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 LEAs of the State.

# How is Significant Disproportionality Related to State Performance Plan (SPP) Indicators?

There are multiple SPP indicators that are related to disproportionality:

* B4: Considers disproportionality in discipline
* B5: Considers disproportionality in LRE/Educational Environment Placements
* B9: Considers disproportionality in special education eligibility
* B10: Considers disproportionality in specific disability categories

**Significant Disproportionality is a separate calculation** that stems from different requirements than the other indicators listed above, but that uses some of the same data used for those SPP Indicators. Prior to 2018, Significant Disproportionality was determined through a calculation using the B4, B9, and B10 data. Due to a Federal mandate requiring immediate implementation by State Education Agencies, the calculation for significant disproportionality changed quickly in 2019.

In December 2016, during the closing weeks of the Obama administration, Federal regulations related to significant disproportionality ([Equity in IDEA](https://www.naset.org/index.php?id=5043)) were finalized following a [public comment](https://www.federalregister.gov/documents/2016/12/19/2016-30190/assistance-to-states-for-the-education-of-children-with-disabilities-preschool-grants-for-children) period. These regulations required each state to update their calculation formula with the input of stakeholders. States were required to implement the updated regulation by July 1, 2018, with inclusion of children aged 3-5 by July 1, 2020. In November 2017 and February 2018, ODE conducted engagement sessions with the field to discuss how Oregon would determine significant disproportionality. In these engagement sessions, ODE discussed and arrived at the minimum cell size, N-size, threshold, years of data, and reasonable progress. The definitions currently in use were the result of these engagement sessions. Slides from this meeting on the [ODE website](https://www.oregon.gov/ode/students-and-family/SpecialEducation/GeneralSupervision/Documents/SigDisStakeholderHandout2017.pptx). In [February 2018](https://www.federalregister.gov/documents/2018/02/27/2018-04102/assistance-to-states-for-the-education-of-children-with-disabilities-preschool-grants-for-children), shortly after the start of the Trump administration, OSEP shared that they would pause implementation of the new regulations as part of a significant review of Federal regulations and oversight. In response, [COPAA sued Secretary DeVos and the Department of Education](https://www.disabilityscoop.com/2018/07/13/ed-department-sued-sped-rule/25280/). That lawsuit was resolved in the Spring of 2019; ultimately, when OSEP decided not to appeal, states were told to implement the Obama-era regulations immediately.

The [new calculation methodology](https://www.oregon.gov/ode/students-and-family/SpecialEducation/GeneralSupervision/Documents/sigdismethodolgy.pdf) does not use the SPP indicators to make its determination. This new calculation methodology includes children aged 3-5, who were previously not part of the calculation for school districts.

In 2018-19, therefore, ODE moved to implement the new formula determined with the input of stakeholders from 2017 and 2018. In SPR&I, the data ranges for the 2019-20 school year were adjusted to reflect one school year as the source for all data. This means that significant disproportionality data displayed in SPR&I for school year 2018-19 uses different data years for determinations than the significant disproportionality data displayed in SPR&I for school years 2019-20 and 2020-21. For example, the significant disproportionality data used for SPR&I school year 2019-20 used December Child Count data collected in 2016-17, 2017-18 and 2018-19. However, SPR&I school year 2018-19 also used December Child Count data collected in 2016-17, 2017-18 and 2018-19.

## How did ODE communicate these changes with the field?

Information was shared about the new calculation methodologies through multiple methods, including in person at a COSA/ODE special education conference and through a webinar ([slide deck](https://www.oregon.gov/ode/students-and-family/SpecialEducation/GeneralSupervision/Documents/SigDisStakeholderHandout2017.pptx)). The SPR&I system was also updated to reflect the new regulations and Oregon’s new calculation. Unfortunately, some of the data and other information previously added to the Significant Disproportionality SPR&I dashboards were misleading and did not entirely reflect the information that was in the calculation manual or shared with the field via presentations. As updated, SPR&I read:

### Significant Disproportionality

Major changes have occurred with respect to Significant Disproportionality since 2018-2019. Please see the ODE's updated [web page on Significant Disproportionality](https://www.oregon.gov/ode/students-and-family/SpecialEducation/GeneralSupervision/Pages/Significant-Disproportionality.aspx) for more information.

This report identifies significant disproportionality by race/ethnicity across three broad areas: Identification, Placement, and Removals. A district is flagged if they meet all of the following for any given Race/Ethnicity and category combination:

* the analysis group meets the minimum cell size of 10 (i.e., there is at least 10 Black/African American students identified with a disability); AND
* the comparison group meets the minimum N-size of 30 (i.e., there is at least 30 Black/African American students enrolled in the district); AND
* have a Risk Ratio (RR) or Alternate Risk Ratio (ARR) greater than 5 deviations from the median risk ratio for that category for three years in a row; AND
* **the current year's RR or ARR is greater than either of the prior two years' RR or ARR.** [**emphasis** added]

The emphasized language above is inconsistent with [the requirements established by OSEP](https://www.federalregister.gov/d/2016-30190/p-926) and ODE’s other communications that progress should be shown in ***each*** year (as opposed to ***either*** year).

### Data Sources:

* Identification and Placement (tables 1, 2 and 3) use the prior school year's December Child Count (SECC) and Fall Membership
* Removals (table 4) use the prior year's December Child Count (SECC) and Discipline Incidents

Special Note: The data used initially for school year 2020-21 determinations was inaccurate. These inaccuracies were identified as a result of multi-step validation processes conducted by the DOGM data team which revealed inaccuracies to the December Child Count Placement data, Discipline Incidents data and enrollment data for Significant Disproportionality. Data displayed in the SPR&I data tables and the data sheets generated for districts identified will contain data that has been validated multiple times to ensure accuracy prior to distribution and release to districts.

The following issues were identified and resolved:

* SPR&I Significant Disproportionality: Data tables were not validated by the staff member assigned to Significant Disproportionality. Districts were not given access to view data in SPR&I prior to receiving letters of notification. The latter allows districts to appeal to ODE if they have concerns with the data prior to ODE sending out notification letters
	+ Resolution: Protocol for SPR&I is that all data for the new school year are validated for accuracy before district’s can access. Significant Disproportionality data tables in SPR&I will be validated annually per protocol, and all districts will be given access to view data in SPR&I prior to notification letters being sent out.
* SPR&I Significant Disproportionality and Data Sheets attached to Letters: All placement counts were inaccurate and displayed double or triple counts for SPR&I school years 2019-2020 and 2020-2021 and on the Data Sheets for 2020-2021.
	+ Resolution: Staff member responsible for Significant Disproportionality will correct the load script used to populate the data tables in SPR&I and the Data Sheets.
		- Data in SPR&I will be validated after this is done before district’s can access.
		- Data in the Data Sheets for 2020-2021 has been repopulated and DOGM data team validated two times to ensure accuracy.
* SPR&I Significant Disproportionality and Data Sheets attached to Letters: Enrollment counts used for the Significant Disproportionality calculations were incorrectly pulled by Resident District rather than Attending District. This impacted the calculations and districts identified.
	+ Resolution: Staff member responsible for Significant Disproportionality pulled data by Attending District, and re-populated data tables on the Data Sheets. DOGM data team validated data two times for accuracy. Data will be revalidated in SPR&I after tables are repopulated with accurate data.
* SPR&I Significant Disproportionality and Data Sheets attached to Letters: Disciplinary Removals in Total counts were found to be inaccurate on data tables in SPR&I and on Data Sheets for all three years displayed. Data was pulled incorrectly as unduplicated statewide by district whereby a particular student with more than one disciplinary incident could only be included and accountable for one district.
	+ Resolution: Staff member responsible for Significant Disproportionality pulled data to include all students with disciplinary incidents whereby a student with disciplinary incidents occurring in multiple districts was included in each district's counts. DOGM data team validated data two times for accuracy.
* SPR&I Significant Disproportionality and Data Sheets attached to Letters: Discipline Incidents data for OSS <=10 Days were found to be inaccurate on data tables in SPR&I and on Data Sheets for all three years displayed. Data was pulled incorrectly as unduplicated statewide by district whereby a particular student with more than one disciplinary incident could only be included and accountable for one district.
	+ Resolution: Staff member responsible for Significant Disproportionality pulled data to include all students with disciplinary incidents whereby a student with disciplinary incidents occurring in multiple districts was included in each district's counts. DOGM data team validated data two times for accuracy.
* SPR&I Significant Disproportionality and Data Sheets attached to Letters: Discipline Incidents data for ISS <=10 Days were found to be inaccurate on data tables in SPR&I and on Data Sheets for all three years displayed. Data was pulled incorrectly as unduplicated statewide by district whereby a particular student with more than one disciplinary incident could only be included and accountable for one district.
	+ Resolution: Staff member responsible for Significant Disproportionality pulled data to include all students with disciplinary incidents whereby a student with disciplinary incidents occurring in multiple districts was included in each district's counts. DOGM data team validated data two times for accuracy.
* All data issues identified, resolved or will be resolved and re-validated:
	+ Data Sheets for all districts identified were regenerated using corrected data. Fewer, and one different, districts were identified. Data were revalidated two times to ensure accuracy.
	+ SPR&I Significant Disproportionality Data Tables will be corrected and validated in Test and in Production prior to district’s being given access. Load scripts will be revised for 2019-2020 and 2020-2021 school year (placement data, discipline data and enrollment data. Data will be revalidated to ensure accuracy.
* SPR&I Detail Notes, [2019‐2020 Significant Disproportionality Methodology Detail](https://www.oregon.gov/ode/students-and-family/SpecialEducation/GeneralSupervision/Documents/sigdismethodolgy.pdf), and Data Sheets: Districts were unclear about how data for prior years were used Significant Disproportionality determinations. SPR&I Detail Notes state “the current year's RR or ARR is greater than either of the prior two years' RR or ARR.” This implies if the current ratio is lower than the prior year the district would not be flagged. Data Sheet notes state “The District exceeded the calculated threshold in each year AND the district did not make improvement in each year, from one year to the next.” The Methodology Detail states “If the district’s risk ratio is reducing from year‐to‐year, then they are removed from the list.”
	+ Resolution: Clarify and make language consistent in all three documents.
		- Data notes and language on Data Sheets were revised for clarity and reviewed for accuracy prior.
			* OSS or ISS <=10 Days data sheet language revised to indicate 10 days or less rather than less than 10 Days in sheet and table titles.
			* Note indicating “The District exceeded the calculated threshold in each year AND the district did not make improvement in each year, from one year to the next” was unclear and did not indicate that consecutive year to year improvement is required. This note is being revised to clarify that consecutive year to year improvement is required.
			* Notes will be revised and rechecked to ensure clarity and accuracy prior to attaching to notification letters.
		- SPR&I Detail note stating “the current year's RR or ARR is greater than either of the prior two years' RR or ARR” will be revised to indicate that consecutive year to year improvement is required. Notes will be revised and rechecked to ensure clarity and accuracy prior to district’s being given access in SPR&I.
		- Methodology Detail states “If the district’s risk ratio is reduced from year‐to‐year, then they are removed from the list.” This language was unclear to districts that consecutive year to year improvement is required. Language will be revised if necessary to ensure clarity and accuracy and will be rechecked to ensure alignment with Data Sheets and SPR&I Detail notes.

# When determining Significant Disproportionality, where does ODE have discretion?

There are four areas where ODE has discretion, with community partner engagement, that will affect the calculation.

* *Minimum Cell Size and N-size*. Think of the Cell Size and N-size as the Numerator and Denominator of a fraction. The state has the ability to decide to use the standard of 10 and 30, respectively, something lower than the standard, or something higher if the state can provide a reasonable justification for using higher minimums.
* *Threshold*. The state must set a reasonable risk ratio threshold.
* *Lookback Years*. The state may use up to three prior consecutive years preceding the identification to exclude districts from identifying as significantly disproportionate.
* *Reasonable Progress*. The state may use a reasonable progress metric where a district can show lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years to exclude the district from identifying as significantly disproportionate.

ODE does not have any discretion related to Significant Disproportionality outside of that listed above. This means that ODE must identify districts annually, that we must use a Risk Ratio (or Alternate Risk Ratio if the comparison group does not meet the minimum cell or N-size), and if ODE did not utilize the lookback years or reasonable progress more districts would be identified.

Of note, OSEP explicitly informed States that we are unable to postpone identification under the lookback component until we had three years of data under the new calculation. See question 2 of the Frequently Asked Questions section.

# What happens when a district is flagged for Significant Disproportionality?

When a district is identified with Significant Disproportionality, they must redirect 15% of their IDEA allocation towards Comprehensive Coordinated Early Intervening Services (CCEIS). Districts always have the option to use a percentage of these funds voluntarily for Coordinated Early Intervening Services (CEIS), which is a different process than the mandatory CCEIS when significant disproportionality has been identified. This [resource from the IDEA Data Center](https://www.ideadata.org/resources/resource/1580/a-comparison-of-mandatory-comprehensive-coordinated-early-intervening) provides a comparison of CEIS and CCEIS.

A district’s use of CCEIS funds must address the factors and policy, practice, or procedure contributing to the identified significant disproportionality. One resource ODE recommends that districts use in planning for use of these funds is California’s State Performance Plan Technical Assistance Project’s (SPP-TAP) [section on Significant Disproportionality](https://spptap.org/significant-disproportionality/).

# American Recovery Plan Act (ARP) Supplement to IDEA

At the June 24, 2021 OSEP webinar, OSEP shared that the ARP supplements would count toward calculating the 15% districts are required to withhold for Comprehensive Coordinating Early Intervention Services (CCEIS). You can view the recording on their YouTube page. [The discussion starts at the 18:02 mark](https://youtu.be/yQ85WhaT3PA?t=1082). This includes Proportionate Share calculations as well. On July 1, 2021, the USDOE released a [fact sheet](https://www2.ed.gov/policy/speced/leg/arp/arp-idea-fact-sheet.pdf) for the IDEA and ARP supplement. The CCEIS topic begins on page 13 and reads (emphasis added):

“Under section 618(d)(2)(B) of the IDEA and the regulations in 34 C.F.R. § 300.646(d), the State or the Secretary of the Interior shall require any LEA identified under 34 C.F.R. § 300.646(a) and (b) to reserve the maximum amount of funds under section 613(f) of the IDEA (i.e., 15 percent of the amount the LEA receives under Part B for any fiscal year) to provide CCEIS to address factors contributing to the significant disproportionality. **The 15 percent is calculated based on the aggregate of the LEA’s section 611 and section 619 amounts for both the regular formula IDEA awards and the supplemental IDEA awards made available by the ARP**.”

# Frequently Asked Questions

1. **My district sees numerous children move in and out frequently throughout the school year. Could a large number of move-ins or move-outs impact a district’s identification?**

Yes, it is possible that particular districts with highly mobile children may see a spike in its Risk Ratio. For this and other reasons, the federal regulation allows states to look at up to three years of data before making a determination. From the [public comment document about this concern](https://www.federalregister.gov/d/2016-30190/p-387): “There is no reason States cannot determine, in accordance with § 300.647, whether significant disproportionality is occurring in LEAs with highly mobile children. To the extent that highly mobile children make an LEA vulnerable to large swings in the risk ratio from year to year, the standard methodology will help to prevent inappropriate identification due to rapid changes in enrollment by allowing States to take into consideration up to three years of data prior to making a determination of significant disproportionality.”

1. **Since the formula changed and we can use up to three prior consecutive years of data, can we wait until we have three years of data using the new formula to identify districts with Significant Disproportionality?**

No. OSEP clarified that states are specifically prohibited from waiting to make a determination. Please see the [public comment document on this topic](https://www.federalregister.gov/d/2016-30190/p-891) for further information. OSEP also clarified in [this comment](https://www.federalregister.gov/d/2016-30190/p-901) that “[...] States must examine their LEAs for significant disproportionality every year.”

1. **Why are we being penalized for previous years?**

This is a common misconception. Your district was identified due to the prior year Child Count data. The child count data from the two years previous to that are used to attempt to remove your district from the list. The data from the three years used is calculated using the current formula because the formula has changed in those intervening years. The data found in SPR&I for a given school year is a report that is frozen for that school year. These reports are not live data. Comparing different school years in SPR&I under Significant Disproportionality will give misleading results because as stated previously, the calculation has changed.

1. **Did COVID-19 impact the 2020-21 Significant Disproportionality determinations?**

No. The 2020-21 determinations were based on data starting in 2019-20. When the data was collected in December 2019, COVID-19 had not reached the United States.

1. **If the new formula uses 10/30 or more, does this mean we should not allow inter-district transfers to come to the district of their choice since this could easily make it so districts are penalized?**

In [its discussion](https://www.federalregister.gov/d/2016-30190/p-1106) on this topic, OSEP wrote how such a quota system would be “[...] inconsistent with IDEA's child find requirements in section 612(a)(3) ([20 U.S.C. 1412](https://api.fdsys.gov/link?collection=uscode&title=20&year=mostrecent&section=1412&type=usc&link-type=html)(a)(3)) and the evaluation requirements in section 612(a)(7) and section 614(a)-(c) of IDEA ([20 U.S.C. 1412](https://api.fdsys.gov/link?collection=uscode&title=20&year=mostrecent&section=1412&type=usc&link-type=html)(a)(7) and [20 U.S.C. 1414](https://api.fdsys.gov/link?collection=uscode&title=20&year=mostrecent&section=1414&type=usc&link-type=html)(a)-(c)).” They further note that “[...] States have an obligation under IDEA both to identify significant disproportionality, based on race and ethnicity, in the identification of children with disabilities and to ensure that LEAs implement child find and evaluation procedures appropriately.”

1. **Why did we meet with County Contacts about disproportionality and get the notification we did? Is ODE saying this now does not apply?**

Meetings with County Contacts about disproportionality were part of the required follow-up related to the State Performance Plan/Annual Performance Report (SPP/APR) (i.e., identification and verification of correction of noncompliance). Though it is a common misconception, these discussions were not related to Significant Disproportionality.

Significant Disproportionality was historically tied directly to three other indicators: Discipline (B4), Federal Placement (B5), and Disproportionality (B9 & B10). When the new regulations went into effect, those ties were severed. This is due to the vastly different methods of calculating each of the previously mentioned indicators. Disproportionality in Oregon currently uses a Weighted Risk Ratio, but ODE could use one or more different methods. Significant Discrepancy in Discipline currently uses a Rate Ratio comparing the district discipline rate to the state discipline rate.