



PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | Mark Johnson, *Superintendent of Public Instruction*

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MEMORANDUM

TO: Directors, Exceptional Children Program
Coordinators/Lead Administrators, Charter Schools

FROM: Sherry H. Thomas, Director
Exceptional Children Division

A handwritten signature in black ink, appearing to be "SHT", written over the name "Sherry H. Thomas" in the "FROM" field.

DATE: May 3, 2019

SUBJECT: Significant Disproportionality

On March 7, 2019, a federal judge ruled that the United States Education Department violated the law when it delayed by two years the implementation of a rule designed to tackle racial disparities in special education. U.S. District Judge Tanya Chutkan ruled that the department failed to provide a "reasoned explanation" for its decision last year to delay the rollout of the rule on significant disproportionality. Chutkan also said the department failed to consider the costs of the delay, "rendering the Delay Regulation arbitrary and capricious." In both cases, the judge said the department violated the Administrative Procedure Act, which governs the regulatory actions of federal agencies. The ruling in the United States District Court for the District of Columbia means the 2016 regulations immediately go into effect, according to a statement by the Council of Parent Attorneys and Advocates, an advocacy group for students with disabilities behind the lawsuit.

The EC Division spent time gathering feedback and input from stakeholders over two years ago, and determined the following guidelines in regards to significant disproportionality:

Definition of Significant Discrepancy in Discipline: ≥ 3.0 risk ratio or alternate risk ratio for five (5) disciplinary actions identified.

Definition of Disproportionate Representation in Identification: ≥ 3.0 risk ratio or alternate risk ratio in special education and six (6) specific disability categories.

Definition of Disproportionate Representation in Placement: ≥ 3.0 risk ratio or alternate risk ratio for placement options: regular class $< 40\%$ of day and separate environments.

The attachments will further explain the determination in each of these three areas. Determinations will be made for 2017-18 based on these formulas. LEAs determined to have significant disproportionality will be notified in the next two weeks.

Questions regarding this information should be addressed to Dr. Nancy Johnson (ntjohnso@uncc.edu)

SHT/NTJ:kb

C Regional Coordinators
LEA Superintendents

EXCEPTIONAL CHILDREN DIVISION

Sherry H. Thomas, *Director* | sherry.thomas@dpi.nc.gov

6356 Mail Service Center, Raleigh, North Carolina 27699-6356 | (919) 807-3969 | Fax (919) 807-3243

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

North Carolina's Significant Disproportionality Determination Process (Placement)
April 2019

Placement: Data are analyzed by seven (7) race/ethnicity categories for children with disabilities, ages 6 -21, for placement options: regular class < 40% of day and separate environments.

Definition of Disproportionate Representation in Placement: ≥ 3.0 risk ratio or alternate risk ratio for placement options: regular class < 40% of day and separate environments.

Process:

Step 1: Determination of Cell and "N" Sizes

Step 1a: Determine an LEA's cell size ≥ 10 for a given race/ethnicity for the placement option being considered.

For an LEA with a cell size ≥ 10 go to step 1b.

For an LEA with a cell size < 10 stop.

Step 1b: Determine an LEA's "N" size ≥ 30 for a given race/ethnicity for the overall population of students with IEPs. For an LEA with an "N" size ≥ 30 , go to step 2 and use the risk ratio calculation to determine if an LEA has disproportionate representation. For an LEA with an "N" size < 30 or a cell size of < 10 in the comparison group go to step 2 and use the alternate risk ratio calculation.

Step 2: Determination of Disproportionate Representation

Determine if an LEA has disproportionate representation for the current year, using either the risk ratio calculation or alternate risk ratio calculation (see step 1b above).

An LEA with ≥ 3.0 risk ratio or alternate risk ratio has disproportionate representation for the current year.

If an LEA has disproportionate representation for the current year, go to Step 3. If not, stop; an LEA does not have disproportionate representation and, thus, does not have significant disproportionality nor does it receive a warning.

Step 3: Determination of Disproportionate Representation in Consecutive Years

Determine if an LEA has had disproportionate representation for three (3) consecutive years.

If an LEA has had disproportionate representation for 3 consecutive years, go to Step 4. If not, stop; an LEA receives a warning for the current year and is in danger of having significant disproportionality in future years.

Step 4: Determination of Reasonable Progress

Determine if an LEA's current risk ratio or alternate risk ratio has decreased, remained the same or increased in each of the two prior consecutive years to determine if the LEA has made reasonable progress.

If an LEA's current risk ratio or alternate risk ratio has decreased, remained the same or increased by a ≤ 0.2 percentage point in each of the two prior consecutive years and the LEA now has a risk ratio or alternate risk ratio ≤ 5.0 , the LEA has made reasonable progress and receives a warning for the current year and is in danger of having significant disproportionality in future years.

If an LEA's risk ratio or alternate risk ratio has increased in each of the two prior consecutive years by a > 0.2 percentage point and/or the LEA now has a risk ratio or alternate risk ratio > 5.0 , the LEA is determined to have significant disproportionality for the current year.

North Carolina's Significant Disproportionality Determination Process (Discipline)
April 2019

Discipline: To determine if an LEA has significant disproportionality regarding discipline of students with disabilities, data are analyzed by seven (7) race/ethnicity categories for five (5) different disciplinary actions. Data analyzed include: 1) > 10-day out-of-school suspensions/expulsions; 2) > 10-day in-school suspensions; 3) 1 - 10 day out-of-school suspensions; 4) 1 – 10 day in-school suspensions; and 5) total disciplinary removals.

Definition of Significant Discrepancy in Discipline: ≥ 3.0 risk ratio or alternate risk ratio for five (5) disciplinary actions identified.

Process:

Step 1: Determination of Cell and "N" Sizes

Step 1a: Determine an LEA's cell size of ≥ 10 for the type of disciplinary action.

For an LEA with a cell size ≥ 10 go to step 1b.

For an LEA with a cell size < 10 stop.

Step 1b: Determine an LEA's "N" size ≥ 30 for a given race/ethnicity for the overall population of students with IEPs. For an LEA with an "N" size ≥ 30 , go to step 2 and use the risk ratio calculation to determine if an LEA has disproportionate representation. For an LEA with an "N" size < 30 or a cell size < 10 in the comparison group go to step 2 and use the alternate risk ratio calculation.

Step 2: Step 2: Determination of Significant Discrepancy

Determine if an LEA has a significant discrepancy in a disciplinary action for the current year, using either the risk ratio calculation or alternate risk ratio calculation (see step 1b above).

An LEA with ≥ 3.0 risk ratio or alternate risk ratio has significant discrepancy for the current year.

If an LEA has a significant discrepancy for the current year, go to Step 3. If not, stop; an LEA does not have a significant discrepancy and, thus, does not have significant disproportionality nor does it receive a warning.

Step 3: Determination of Significant Discrepancy in Consecutive Years

Determine if an LEA has had a significant discrepancy in a disciplinary action for three (3) consecutive years. If an LEA has had a significant discrepancy in a disciplinary action for 3 consecutive years, go to Step 4. If not, stop; an LEA receives a warning for the current year and is in danger of having significant disproportionality in future years.

Step 4: Determination of Reasonable Progress

Determine if an LEA's current risk ratio or alternate risk ratio has decreased, remained the same or increased in each of the two prior consecutive years to determine if the LEA has made reasonable progress.

If an LEA's current risk ratio or alternate risk ratio has decreased, remained the same or increased by a ≤ 0.2 percentage point in each of the two prior consecutive years and the LEA now has a risk ratio or alternate risk ratio ≤ 5.0 , the LEA has made reasonable progress and receives a warning for the current year and is in danger of having significant disproportionality in future years.

If an LEA's risk ratio or alternate risk ratio has increased in each of the two prior consecutive years by a > 0.2 percentage point and/or the LEA now has a risk ratio or alternate risk ratio > 5.0 , the LEA is determined to have significant disproportionality for the current year.

North Carolina's Significant Disproportionality Determination Process (Identification)

April 2019

Identification: Data are analyzed by seven (7) race/ethnicity categories for an LEA's overall population of children with disabilities (special education) and in specific disability categories, including autism; intellectual disability; other health impairment; serious emotional disability; specific learning disability; and speech-language impairment.

Definition of Disproportionate Representation in Identification: ≥ 3.0 risk ratio or alternate risk ratio in special education and six (6) specific disability categories.

Process:

Step 1: Determination of Cell and "N" Sizes

Step 1a: Determine an LEA's cell size ≥ 10 for a given race/ethnicity for the LEA's overall children with disabilities (special education) population and each of the six disability categories identified above.

For an LEA with a cell size ≥ 10 go to step 1b.

For an LEA with a cell size < 10 stop.

Step 1b: Determine an LEA's "N" size ≥ 30 for a given race/ethnicity for the overall enrollment population. For an LEA with an "N" size ≥ 30 go to step 2 and use the risk ratio calculation to determine if an LEA has disproportionate representation. For an LEA with an "N" size of < 30 or a cell size of < 10 in the comparison group go to step 2 and use the alternate risk ratio calculation.

Step 2: Determination of Disproportionate Representation

Determine if an LEA has disproportionate representation for the current year, using either the risk ratio calculation or alternate risk ratio calculation (see step 1b above).

An LEA with ≥ 3.0 risk ratio or alternate risk ratio has disproportionate representation for the current year.

If an LEA has disproportionate representation for the current year, go to Step 3. If not, stop; an LEA does not have disproportionate representation and, thus, does not have significant disproportionality nor does it receive a warning.

Step 3: Determination of Disproportionate Representation in Consecutive Years

Determine if an LEA has had disproportionate representation for three (3) consecutive years.

If an LEA has had disproportionate representation for 3 consecutive years, go to Step 4. If not, stop; an LEA receives a warning for the current year and is in danger of having significant disproportionality in future years.

Step 4: Determination of Reasonable Progress Made

Determine if an LEA's current risk ratio or alternate risk ratio has decreased, remained the same or increased in each of the two prior consecutive years to determine if the LEA has made reasonable progress.

If an LEA's current risk ratio or alternate risk ratio has decreased, remained the same or increased by a ≤ 0.2 percentage point in each of the two prior consecutive years and the LEA now has a risk ratio or alternate risk ratio ≤ 5.0 , the LEA has made reasonable progress and receives a warning for the current year and is in danger of having significant disproportionality in future years.

If an LEA's risk ratio or alternate risk ratio has increased in each of the two prior consecutive years by a > 0.2 percentage point and/or the LEA now has a risk ratio or alternate risk ratio > 5.0 , the LEA is determined to have significant disproportionality for the current year.