

**Districts with Over-Representation of Minorities
in Existing Special Education Programs
Must Allocate 15 Percent of IDEA Funding
For Prereferral or Early Intervening Services**

*A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT*

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A widely held interpretation of a provision in the proposed IDEA regulation is that State Education Agencies (SEAs) must require districts with an over-representation of minorities in special education programs (i.e., “disproportionality”) to allocate 15 percent of their IDEA funding for early intervening services. An earlier interpretation, which we addressed in the TechMIS Special Report (June 30, 2005), would have left the decision whether to allocate up to 15 percent at the district level for early intervening services up to the discretion of the district. While districts which do not have “disproportionality” may still elect to expend early intervention services, the vast majority of state special education directors agree that the proposed June 21 IDEA regulations in Section 300.646 “Disproportionality,” make it very clear that any LEA with “disproportionality” must be required to reallocate the 15 percent for prereferral interventions; the state must “require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613 (f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section.”

While conceivably as much as 15 percent of \$10.5 billion could be reallocated from local IDEA budgets to Title I or other offices responsible for early interventions, several data sources suggest that the actual amount being reallocated is closer to about two-thirds of that amount, or around \$1 billion nationwide. SEAs are currently identifying school districts with an over-representation of minorities in special education and requiring them to reallocate 15 percent of their IDEA funding for early intervening services, which can include professional development. For example, in early August, the Maryland SEA announced that 18 of the 24 districts in the state must reallocate 15 percent for early intervening services beginning immediately. The states that are most likely to have districts with disproportionality are those with overall disproportionality statewide. Based upon the data compiled by the NCCRST (funded by USED), states with the greatest statewide disproportionality include Alabama, Alaska, Connecticut, Delaware, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, North Carolina,

North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, and Wisconsin. Even though some states such as Indiana, California, Illinois, Maine, Oregon, New Jersey, and Vermont reportedly do not have disproportionality statewide, it is likely that some districts in the state do have over-representation of minorities in special education. Districts most likely to have over-representation of minorities are those serving large numbers of students designated and placed in programs for “emotionally disturbed” and programs for “mentally retarded” students. Nationwide, 11 percent and 17 percent of Black students are placed in these two categories, respectively, vs. only 8 percent of White students. As in the case of Maryland, the districts requiring the largest amount of IDEA funds for reallocation are the larger urban districts. For example, \$8 million is to be reallocated in Montgomery County and in Anne Arundel County public schools for literacy interventions for up to 100 days. The schools in which early intervening services will be created or expanded are the schools which have the largest degree of “over-representation” in special education programs. For example, Hillsborough County, Florida, began pilot testing early intervening services in four schools with the largest disproportionality more than 18 months ago. They will be expanding such interventions to over ten schools next school year.

While there might be some exceptions, most SEAs have decided to implement these provisions immediately prior to the publication of final regulations (anticipated at the earliest in December). Most SEAs want to see if the intervention is effective in alleviating reading or other problems, or if not, they want to place the student in special education programs before December 1 in order that state funds are allocated to the district to serve that student (i.e., students placed in special education after the December 1 “count” do not generate state special education funding). Some states and districts are concerned that USED may be overly-prescriptive in terms of what evaluation instruments and/or instructional interventions should be used (such as those approved for Reading First); these states want to allow districts the flexibility to select those interventions which districts feel would be most cost-effective. Yet another reason may be that the state directors of special education wish to diffuse a politically sensitive concern at the district level -- namely that the superintendents will hesitate to reallocate funds from the office of special education to another office for fear of creating “turf battles.” By having the state mandate such allocations in districts where there is disproportionality, conflict at the district level can be minimized.

While the early intervening services provisions are directed at borderline students who may or may not need to be placed in special education, many of the same interventions could be used with “gap students” who are already enrolled in special education and if the intervention were successful in developing, for example, reading skills, then the special education student could “exit” from special education back to the regular instruction. However, USED policies create a disincentive for districts to do that because once a special education student exits from special education, his/her achievement scores are no longer counted as part of the special education subgroup. Most states have sought waivers in this area, but have been turned down by USED.

On August 11 and 12 during the USED institute on state reporting on IDEA implementation, USED announced its three priorities over the next six years. One priority is to reduce disproportionate representation of minorities within special education services as measured by (a) percentage of districts with disproportionality in special education and related services because of inappropriate identification; and (b) percentage of districts with disproportionality of racial and ethnic groups in individual disability categories. According to Education Daily (August 16), the first State Performance Plans are due December 2, 2005, with Annual Progress Reports beginning February 1, 2007. According to knowledgeable experts familiar with district data on disproportionality, the only source of districts with disproportionality will be the SEAs, which have a greater incentive to reduce the number of districts in the state with disproportionality of representation of ethnic and racial groups in special education programs.

While we will continue to monitor and report on the states and districts which have disproportionality, TechMIS subscribers are urged to monitor SEA websites, particularly in the states identified above.