

281—41.647(256B,34CFR300) Determining significant disproportionality.**41.647(1) Definitions.**

“*Alternate risk ratio*” is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that outcome for children in all other racial or ethnic groups in the state.

“*Comparison group*” consists of the children in all other racial or ethnic groups within an LEA or within the state, when reviewing a particular racial or ethnic group within an LEA for significant disproportionality.

“*Minimum cell size*” is the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

“*Minimum n-size*” is the minimum number of children enrolled in an LEA with respect to identification, and the minimum number of children with disabilities enrolled in an LEA with respect to placement and discipline, to be used as the denominator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

“*Risk*” is the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a specified racial or ethnic group (or groups), calculated by dividing the number of children from a specified racial or ethnic group (or groups) experiencing that outcome by the total number of children from that racial or ethnic group or groups enrolled in the LEA.

“*Risk ratio*” is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA.

“*Risk ratio threshold*” is a threshold, determined by the state, over which disproportionality based on race or ethnicity is significant under subrule 41.646(1).

41.647(2) Significant disproportionality determinations. In determining whether significant disproportionality exists in the state or LEA under subrule 41.646(1), the state must do all of the following:

a. General. The state must set a:

- (1) Reasonable risk ratio threshold;
- (2) Reasonable minimum cell size;
- (3) Reasonable minimum n-size; and
- (4) Standard for measuring reasonable progress if the state uses the flexibility described in paragraph 41.647(4) “*b.*”

b. Flexibility. The state may, but is not required to, set the standards set forth in paragraph 41.647(2) “*a*” at different levels for each of the categories described in paragraphs 41.647(2) “*f*” and 41.647(2) “*g*.”

c. Development and review of standards. The standards set forth in paragraph 41.647(2) “*a*”:

- (1) Must be based on advice from stakeholders, including state advisory panels, as provided under Section 612(a)(21)(D)(iii) of the Act; and
- (2) Are subject to monitoring and enforcement for reasonableness by the Secretary consistent with Section 616 of the Act.

d. Presumption of reasonability. When monitoring for reasonableness under subparagraph 41.647(2) “*c*”(2), the following are presumptively reasonable:

- (1) A minimum cell size under subparagraph 41.647(2) “*a*”(2) no greater than ten; and
- (2) A minimum n-size under subparagraph 41.647(2) “*a*”(3) no greater than 30.

e. Application. The state must apply the risk ratio threshold or thresholds determined in paragraph 41.647(2) “*a*” to risk ratios or alternate risk ratios, as appropriate, in each category described in paragraphs 41.647(2) “*f*” and 41.647(2) “*g*” and the following racial and ethnic groups:

- (1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only;
- (2) American Indian or Alaska Native;
- (3) Asian;
- (4) Black or African American;

- (5) Native Hawaiian or Other Pacific Islander;
- (6) White; and
- (7) Two or more races.

f. Calculation of risk ratio: identification. Except as provided in paragraph 41.647(2)“h” and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2)“e” with respect to:

- (1) The identification of children ages 3 through 21 as children with disabilities; and
- (2) The identification of children ages 3 through 21 as children with the following impairments:
 - 1. Intellectual disabilities;
 - 2. Specific learning disabilities;
 - 3. Emotional disturbance;
 - 4. Speech or language impairments;
 - 5. Other health impairments; and
 - 6. Autism.

g. Calculation of risk ratio: placement and disciplinary removals. Except as provided in paragraph 41.647(2)“h” and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2)“e” with respect to the following placements into particular educational settings, including disciplinary removals:

- (1) For children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day;
- (2) For children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools;
- (3) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of ten days or fewer;
- (4) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than ten days;
- (5) For children with disabilities ages 3 through 21, in-school suspensions of ten days or fewer;
- (6) For children with disabilities ages 3 through 21, in-school suspensions of more than ten days; and
- (7) For children with disabilities ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer.

h. Alternate risk ratio. The state must calculate an alternate risk ratio with respect to the categories described in paragraphs 41.647(2)“f” and 41.647(2)“g” if the comparison group in the LEA does not meet the minimum cell size or the minimum n-size.

i. Identification as having significant disproportionality. Except as provided in subrule 41.647(4), the state must identify as having significant disproportionality based on race or ethnicity under subrule 41.646(1) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs 41.647(2)“f” and 41.647(2)“g” that exceeds the risk ratio threshold set by the state for that category.

j. Reporting under this subrule to the Secretary. The state must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under subparagraphs 41.647(2)“a”(1) through 41.647(2)“a”(4), and the rationales for each, to the U.S. Department of Education at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph 41.647(2)“d” must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the state is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.

41.647(3) Exception. The state is not required to calculate a risk ratio or alternate risk ratio, as outlined in paragraphs 41.647(2)“f,” 41.647(2)“g,” and 41.647(2)“h,” to determine significant disproportionality if:

a. The particular racial or ethnic group being analyzed does not meet the minimum cell size or minimum n-size; or

b. In calculating the alternate risk ratio under paragraph 41.647(2) “*h*,” the comparison group in the state does not meet the minimum cell size or minimum n-size.

41.647(4) Flexibility. The state is not required to identify an LEA as having significant disproportionality based on race or ethnicity under subrule 41.646(1) until:

a. The LEA has exceeded a risk ratio threshold set by the state for a racial or ethnic group in a category described in paragraphs 41.647(2) “*f*” and 41.647(2) “*g*” for up to three prior consecutive years preceding the identification; and

b. The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the state, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.

41.647(5) Rule of construction. Nothing in this rule shall be construed to require identification or classification of any child by impairment.

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