



College of Education
TEMPLE UNIVERSITY®

RESEARCH CONCERNS AND IMPLICATIONS OF SIGNIFICANT
DISPROPORTIONALITY IN FEDERAL POLICY IMPLEMENTATION

EDWARD FERGUS, PH.D
ASSISTANT PROFESSOR, URBAN EDUCATION

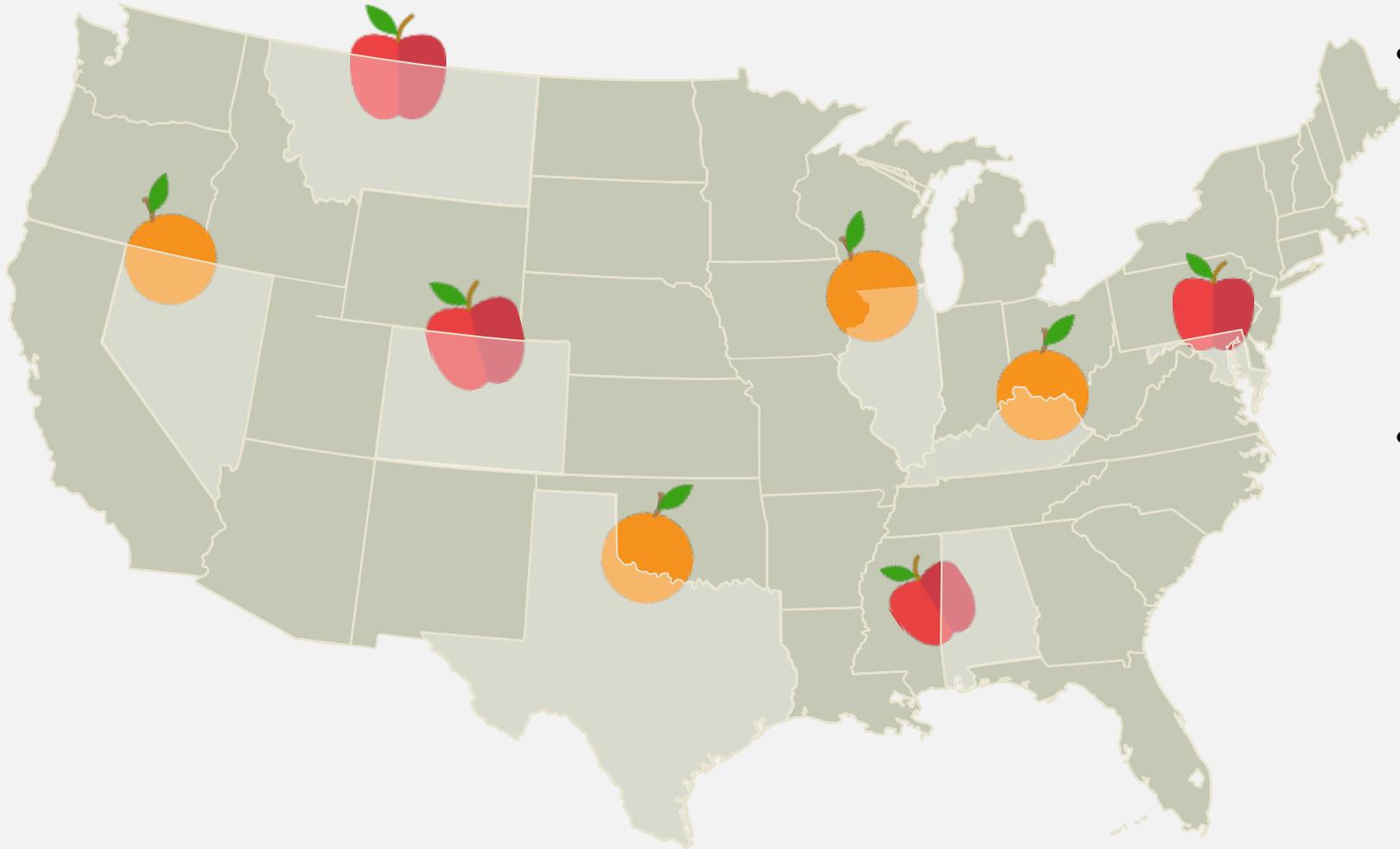
**POLICY CONTEXT OF
DISPROPORTIONALITY IN SPECIAL
EDUCATION AND SUSPENSION**

DISPROPORTIONALITY IS:

- The over-representation of specific groups in special education programs in relation to their representation in the overall enrollment, and/or the under-representation of specific groups in accessing intervention services, resources, programs, rigorous curriculum and instruction.
- The over-representation of students with disabilities by race and ethnicity in suspension by duration, frequency, and intensity
 - The 1997 amendment of IDEA [20 U.S.C. §1418(c), 1998] established a specific policy approach for identifying disproportionality in special education and suspension.
 - The 2004 IDEA statute also included (a) guidance for states to monitor disproportionality, (b) to describe the formula used for identifying disproportionate districts, (c) to require districts found with “significant disproportionality” to set aside up to 15% of IDEA funds for coordinated early intervening services, and (d) require the school district to publicly report on the revision of policies, practices, and procedures.
 - The December, 2016 regulations on “significant disproportionality” included: (a) common use of relative risk ratio formula; (b) states establish threshold of disproportionality; (c) states establish a reasonable threshold with statewide stakeholder group; (d) states can determine reasonable progress and whether to identify districts.
 - Current NPRM February 2018, seeks commentary on delaying the implementation of the December 2016 significant disproportionality regulations until 2020.
 - July 2018, USDOE delayed implementation because “The Department also believes that the racial disparities in the identification, placement, or discipline of children with disabilities are not necessarily evidence of, or primarily caused by, discrimination,…”

Why the Revised Federal Regulation?

Useful Data Comparisons Across States



- In 2013, the Government Accountability Office (GAO) reported that 2% of all State districts used IDEA funds to provide **coordinated early intervening services (CEIS)**
- The way states defined significant disproportionality often made **identification unlikely**; it also made **comparison across states** and **Federal oversight difficult**

Revision to IDEA Regulation

What are the Methodology Parameters?

In December 2016, the U.S. Department of Education revised the IDEA regulation and adopted a **risk ratio** as the standardized methodology.

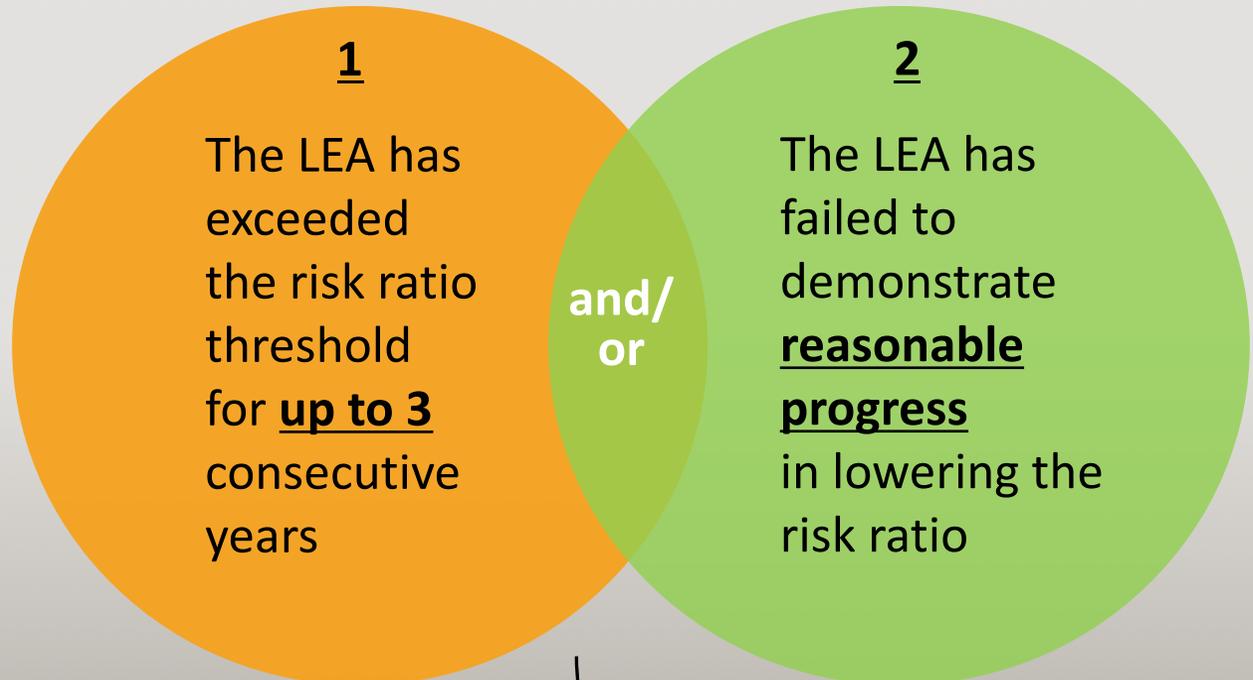


The requirements of the regulation become effective July 1, 2018.

Revision to IDEA Regulation

What are the Flexibility Options?

- A State is **not** required to identify a local education agency (LEA) as having significant disproportionality until:



Must be based on advice from stakeholders

Another Option:

The State is **not** required to include children ages 3-5 in the calculation of significant disproportionality in the area of identification until July 1, 2020

RESEARCH UNDERSTANDING OF DISPROPORTIONALITY

INTER-DISCIPLINARY RESEARCH EXPLORATION OF DISPROPORTIONALITY

- **Propensity of disproportionality in SpEd and Suspension**
 - Students of color (i.e., Black, Latino and Native American populations) are more likely to be classified with a disability compared to all other students (e.g., Coutinho and Oswald, 2000; Fabelo, et.al., 2012; Fierros and Conroy, 2002; Oswald, Coutinho and Best, 2002; Parrish, 2002; Skiba, et.al., 2011; Zhang, et.al., 2014)
- **School level factors interacting with rates of disproportionality**
 - Limited interventions, procedures and teams for implementing interventions (Gravois and Rosenfield, 2006); differential implementation of referral processes (Harry and Klingner, 2006); inappropriate approaches to behavior management (Milner, 2006; Skiba, et.al., 1997; Weinstein, et.al., 2003); inadequate framing of zero tolerance and other behavior management policies (Hoffman, 2014; Noguera, 2003; Skiba, et.al., 2002); and beliefs about poverty and race in student learning and behavior (Ahram, Fergus, & Noguera, 2011; Fergus, 2016; Skiba, Simmons, & Ritter, 2006).
- **Student level factors interacting with rates of disproportionality**
 - Student level demographic factors (i.e., gender, race, parent educational level, eligibility for free or reduced lunch program) and/or teacher race and gender operate as explanatory variables of disciplinary infractions (e.g., Beck & Muschkin, 2012; Bryan, 2012; McElderry and Cheng, 2014) and special education classification rates (Morgan, et.al., 2015).

2017 MORGAN AND FARKAS ARTICLE ON BLACK STUDENT “UNDER- REPRESENTATION”

- Author’s argument:
 - Research identifies link between poverty and cognitive and behavioral disorders; Black children maintain higher poverty levels than White children, thus it is reasonable to 1) examine poverty and other related variables (e.g., low birthweight) alongside race; 2) it is plausible to find a higher density of disability rates among Black children due to this association.
 - Academic achievement is a well-documented confounding variable – that is, minority children are more likely to struggle academically. And schools are more likely to use low academic achievement as a primer for identifying a disability. Thus looking at academic achievement is an important **confounding** variable to look at to determine disproportionality.
 - Statistical methods to account for these confounding variables is necessary.

CONFOUNDING VARIABLES

Disproportionate rates

Race/ethnicity

Poverty status

Academic achievement

School quality

Gender/sex

Birthweight

Food Stability

Intervention fidelity

Curriculum and instruction alignment



SO WHAT'S THE PROBLEM WITH THIS MORGAN AND FARKAS ARTICLE?

- Three core issues:
 - I. Association of poverty and disability, and race and disability assumes:
 - a) poverty is a primer for developing a disability; disability identification process maintains flaws and room for bias that may allow for false associations between poverty and disability;
 - b) the association of race and poverty assumes only negative effects of poverty and only having an effect of compromising human development without considering resilience development occurring within poverty that are not accounted for in special education evaluation; and
 - c) the association of race to disability through poverty creates a slipper slope argument that suggests a “eugenics-like” notion of minority kids as “environmentally” pre-disposed to having a disability.

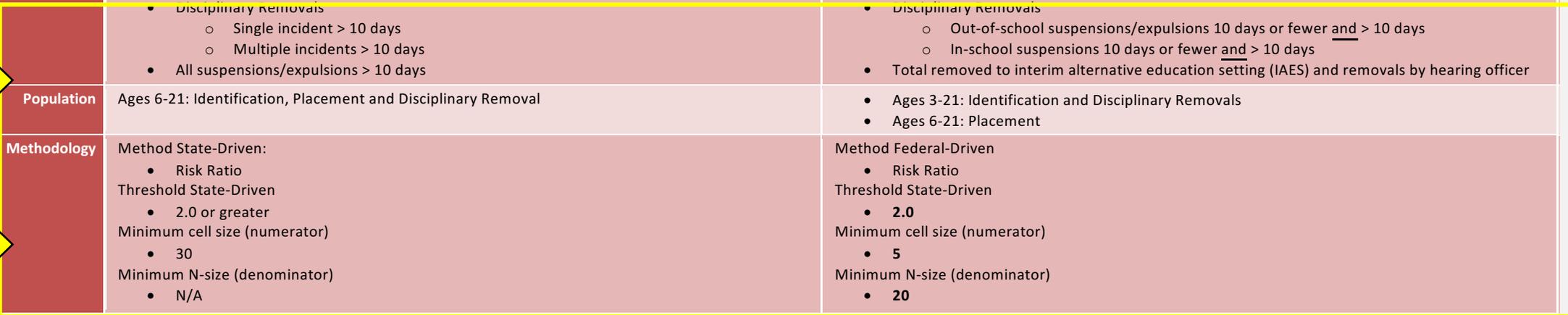
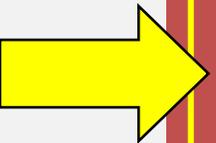
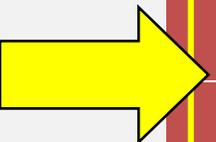
MARYLAND STATE DEPARTMENT OF
EDUCATION:
*SIGNIFICANT DISPROPORTIONALITY
RESPONSE*

Published:

<http://www.marylandpublicschools.org/stateboard/Documents/12052017/TabJ-13A.05.02.04StateAdministration.pdf>

Side-By-Side Comparison

	CURRENT 34 CFR 300.646 Released August 14, 2006 MARYLAND PRACTICE	REVISED 34 CFR 300.646 and 300.647 Released December 12, 2016 PROPOSED RECOMMENDATIONS
Categories of Analysis	Based on race (all races) and ethnicity in any of the following: <ul style="list-style-type: none"> • Identification <ul style="list-style-type: none"> ○ As a student with a disability ○ With a particular disability • Placement <ul style="list-style-type: none"> ○ Inside regular class > 80% ○ Inside regular class < 40% ○ Inside separate schools/ residential facilities • Disciplinary Removals <ul style="list-style-type: none"> ○ Single incident > 10 days ○ Multiple incidents > 10 days • All suspensions/expulsions > 10 days 	Based on race (all races) and ethnicity in any of the following: <ul style="list-style-type: none"> • Identification <ul style="list-style-type: none"> ○ As a student with a disability ○ With a particular disability (ID, SLD, ED, SPL, OHI, Autism) • Placement <ul style="list-style-type: none"> ○ Inside RegEd < 40% ○ Inside separate schools/residential facilities • Disciplinary Removals <ul style="list-style-type: none"> ○ Out-of-school suspensions/expulsions 10 days or fewer <u>and</u> > 10 days ○ In-school suspensions 10 days or fewer <u>and</u> > 10 days • Total removed to interim alternative education setting (IAES) and removals by hearing officer
Population	Ages 6-21: Identification, Placement and Disciplinary Removal	<ul style="list-style-type: none"> • Ages 3-21: Identification and Disciplinary Removals • Ages 6-21: Placement
Methodology	Method State-Driven: <ul style="list-style-type: none"> • Risk Ratio Threshold State-Driven <ul style="list-style-type: none"> • 2.0 or greater Minimum cell size (numerator) <ul style="list-style-type: none"> • 30 Minimum N-size (denominator) <ul style="list-style-type: none"> • N/A 	Method Federal-Driven <ul style="list-style-type: none"> • Risk Ratio Threshold State-Driven <ul style="list-style-type: none"> • 2.0 Minimum cell size (numerator) <ul style="list-style-type: none"> • 5 Minimum N-size (denominator) <ul style="list-style-type: none"> • 20
Flexibility Options	None (based solely on State-driven methodology)	Not identify an LSS until the LSS has exceeded the threshold for 2 consecutive years and Not identify an LSS if the LSS has demonstrated reasonable progress <ul style="list-style-type: none"> • 0.15 for Risk Ratios 2.0 – 4.0 • 0.50 for Risk Ratios above 4.0
Process for Identification	LSS identified through: <ul style="list-style-type: none"> • State-driven methodology • Annually 	LSS identified through: <ul style="list-style-type: none"> • State-driven methodology within federal parameters • Annually
Response to	Review policies, procedures, and practices	Review policies, procedures, and practices



Decision Points

REVISED

34 CFR 300.646 and 300.647
Released December 12, 2016

PROPOSED RECOMMENDATIONS

Methodology

Method Federal-Driven

- Risk Ratio

Threshold State-Driven

- **2.0**

Minimum cell size (numerator)

- **5**

Minimum N-size (denominator)

- **20**

Flexibility Options

Not identify an LSS until the LSS has exceeded the threshold for **2** consecutive years

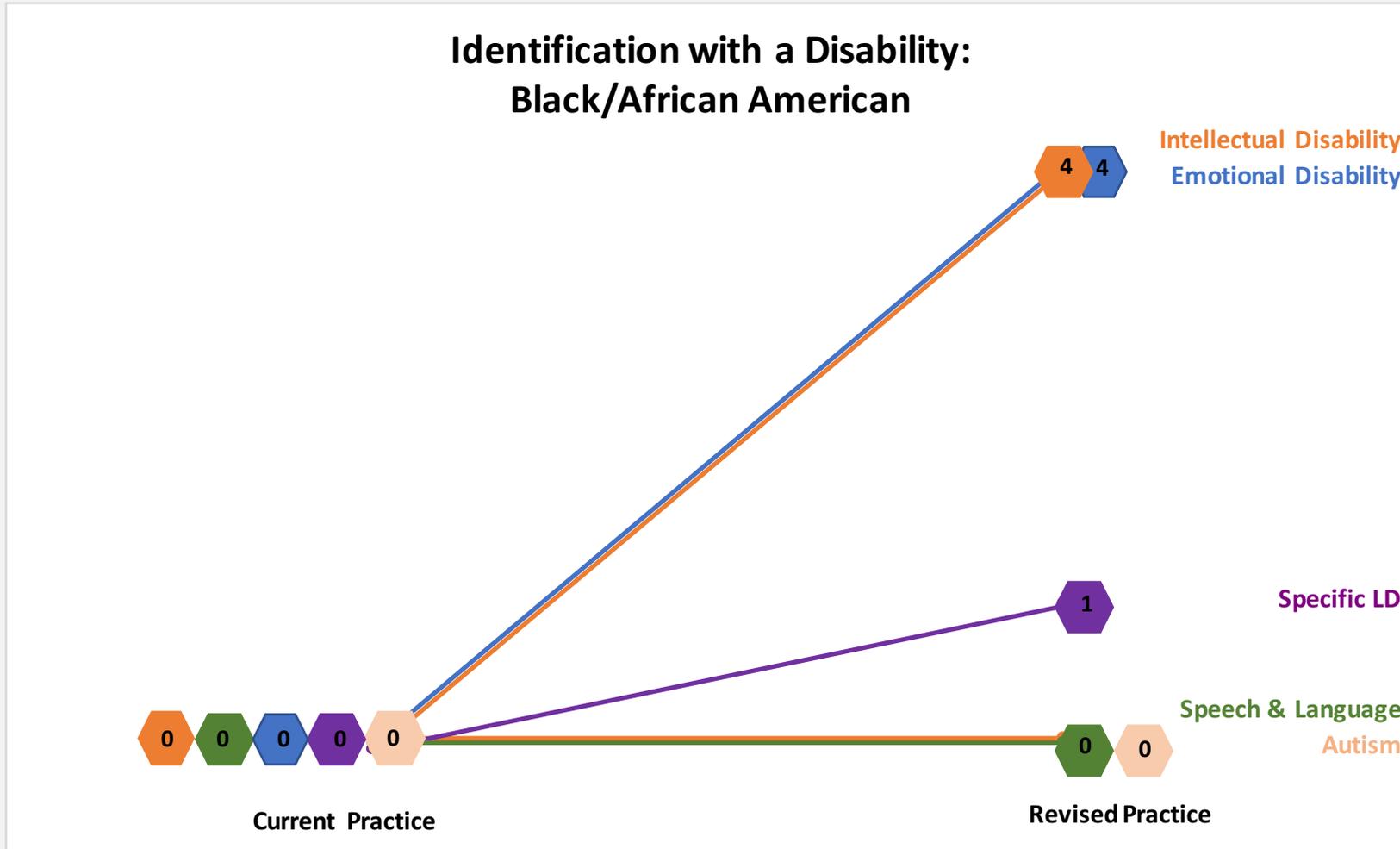
AND

Not identify an LSS if the LSS has demonstrated reasonable progress

- **0.15 for Risk Ratios 2.0 – 4.0**
- **0.50 for Risk Ratios above 4.0**

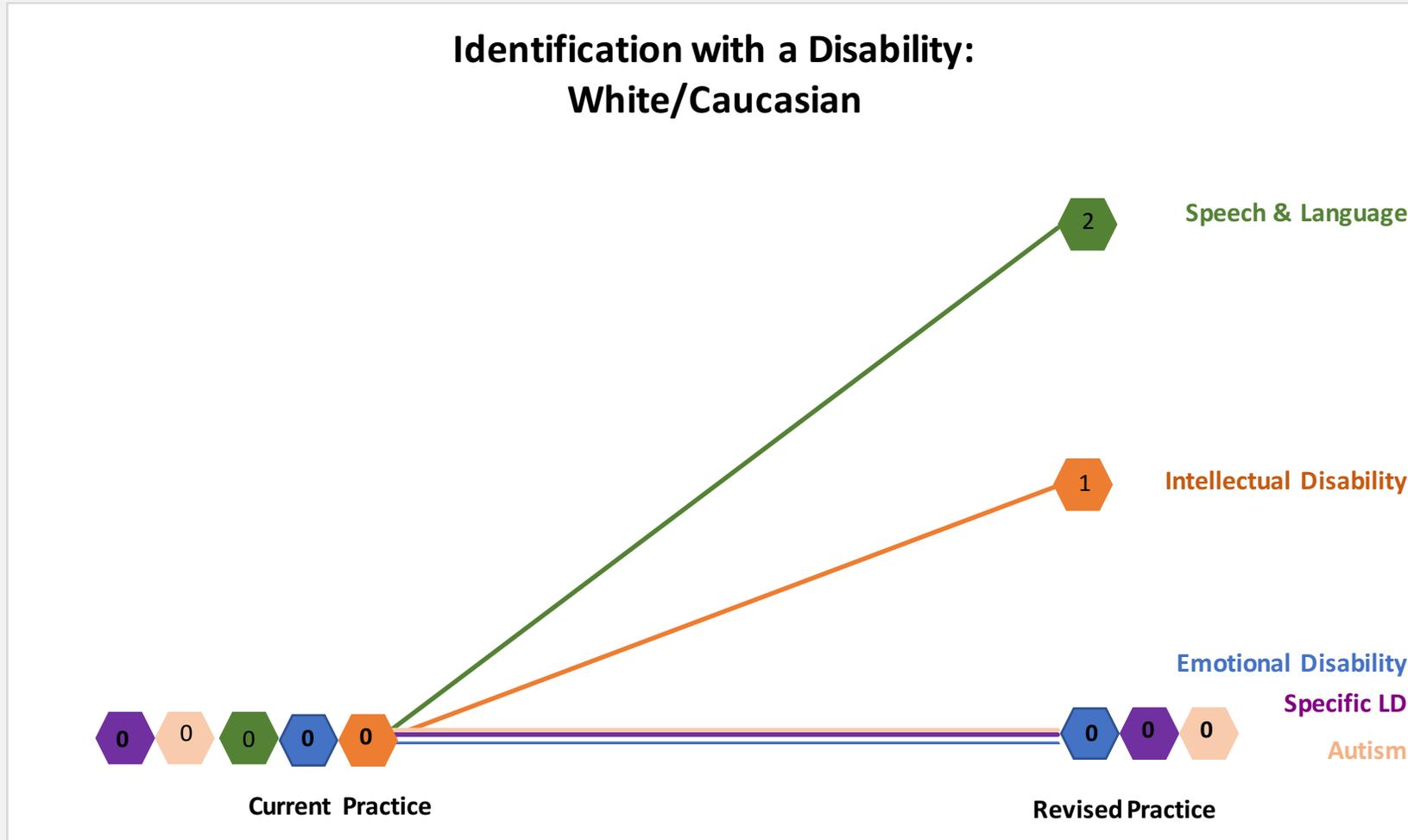
Projected Impact

LSSs Identified as Having Significant Disproportionality (CEIS)



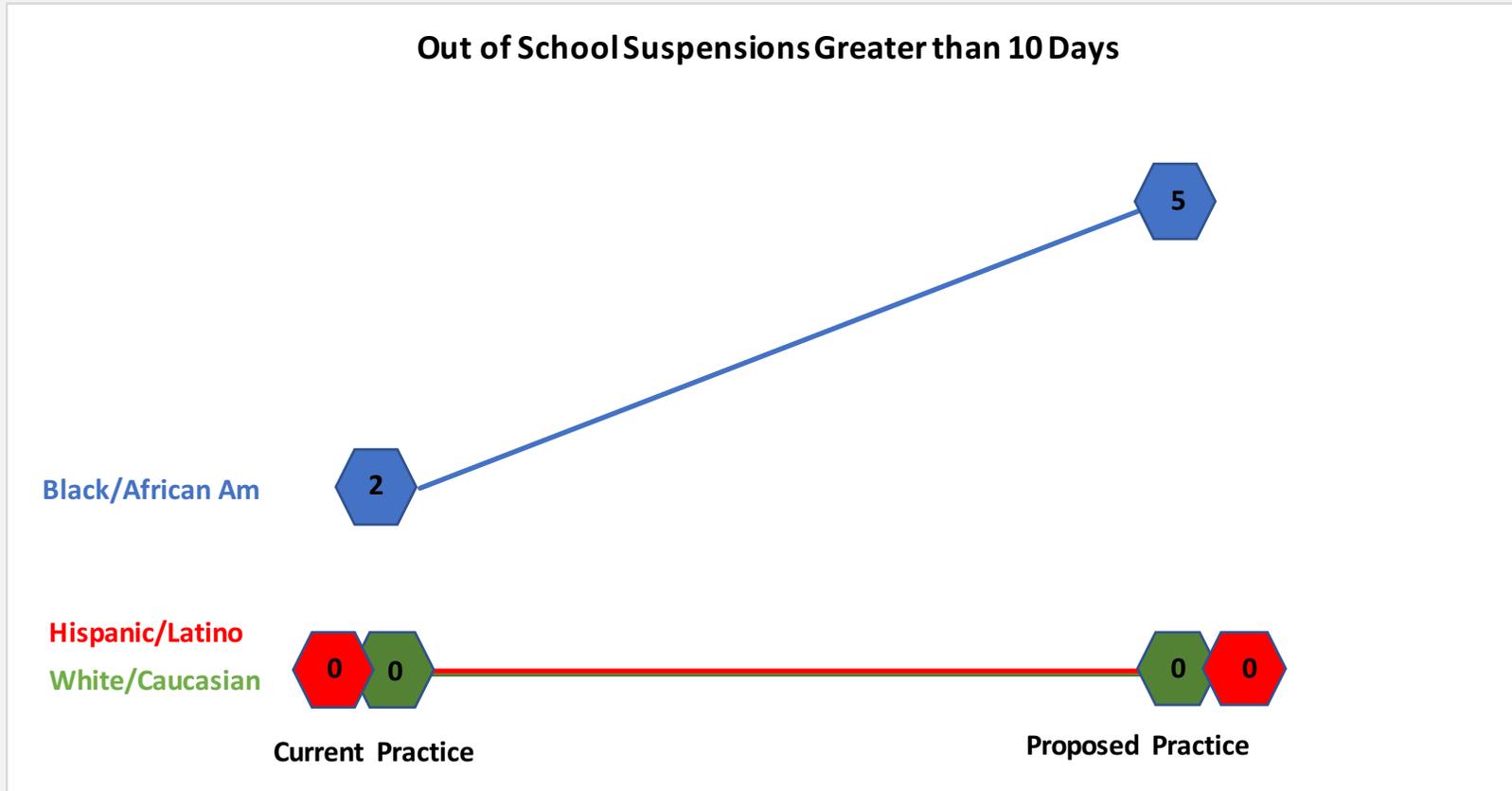
Projected Impact

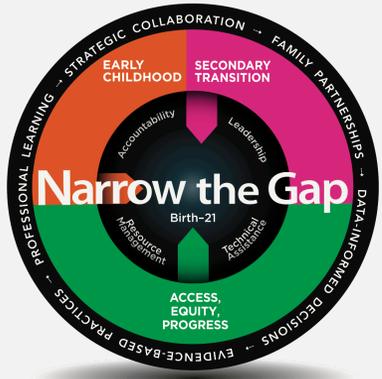
LSSs Identified as Having Significant Disproportionality (CEIS)



Projected Impact

LSSs Identified as Having Significant Disproportionality (CEIS)





DSE/EIS Strategic Plan for Implementation and Technical Assistance To Support Local School Systems

Hire

1.0 FTE Equity Specialist in the DSE/EIS

Partner

With National Expert on Disproportionality (Dr. Edward Fergus)

Develop

Self-Assessment Tool

- Onsite data review
- Onsite consultation

Conduct

Regional Professional Learning Opportunities

- Local Implementation Plans
- Discretionary IDEA Funds

Create

Procedural Facilitator Tool to Assist IEP Team Decision Making

QUESTIONS AND ANSWERS

THANK YOU!