



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

August 30, 2019

To: [OSEPDeterminations@ed.gov](mailto:OSEPDeterminations@ed.gov)

RE: OSEP Feedback Sessions: State Determinations 2020

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Education Task Force are writing in response to the Office of Special Education and Rehabilitative Services (OSERS) and Office of Special Education (OSEP) effort to solicit input regarding how data is used in making the Department's 2020 State Determinations. CCD has communicated extensively with OSERS on related matters, most recently in 2018<sup>1</sup> and supports any effort undertaken to raise expectations and improve outcomes for students with disabilities. In keeping with OSEP's goal to improve processes to make State Determinations, we would like to reiterate what CCD said in 2018, "Our goal has always been to help OSERS implement and oversee a system that reflected the intent of Congress which said:

"The new focus on substantive performance indicators under section 616 contrasts with previous statutory obligations to collect data that primarily addressed demographic issues. The purpose of these provisions is to shift the Federal monitoring and enforcement activities away from SEA and LEA administrative process issues that have historically driven compliance monitoring, to a system that primarily focuses on substantive performance of students with disabilities."<sup>2</sup>

Also, we remind OSEP that any review or evaluation of the current processes involving the functions of OSEP must be both informed and constrained by section 616 of Individuals with Disabilities Education Act (IDEA) This section of the law lays out the monitoring, technical assistance, and enforcement responsibilities of the U.S. Department of Education and must be adhered to.

For ease, we have included OSEP's communication [by section] *with the relevant questions*, providing a response as indicated from the CCD Education Task Force.

**State Systemic Improvement Plan (SSIP)**

OSEP is proposing that a two-factor approach to including the SSIP in determinations is implemented. First, States would get credit for meeting or exceeding the FFY target, which indicates progress toward the SiMR. Second, the SSIP report narrative would be reviewed using a rubric based

---

<sup>1</sup> See: CCD Co-Chair Letter to Collett, December 21, 2018, available at <http://www.c-c-d.org/fichiers/CCD-cochair-RDA-letter-12-18.pdf>

<sup>2</sup> See: U.S. Senate report to accompany S. 1248, available at <https://www.gpo.gov/fdsys/pkg/CRPT-108srpt185/html/CRPT-108srpt185.htm>

on objective criteria that assesses whether a State has demonstrated meaningful progress toward its self-identified goals and outcomes (progress implementing the SSIP), and how this progress is impacting infants, toddlers, children, and youth with disabilities. States demonstrating both SSIP implementation and FFY data progress would receive additional point(s) for results in the RDA matrix.

Questions:

1. For FY 2018, OSEP is proposing to use an SSIP score to award additional point(s) in the RDA matrix but not have it negatively impact a State's determination. How would your stakeholders react to the use of the SSIP as a supplemental data point that could improve but not lower a State's determination?
2. There is significant variability in the number and type of infrastructure improvement strategies and evidence-based practices implemented and evaluated by States. What are 3-5 critical elements or outcomes you think OSEP should consider when evaluating implementation progress (e.g., family engagement as a strategy or outcome, implementation of evidence-based practices with fidelity)?

**CCD Response:** CCD strongly opposes including the SSIP in state determinations. CCD also supports comments by CCD member The Advocacy Institute:

...the SSIP is a means to an end – the end being improvement in a particular area selected by the state (i.e. the SiMR). Most states selected a SiMR to improve the performance of SWDs in either the state's English/Language Arts or Math assessment or Graduation. Therefore, a state's performance on its SiMR would be captured in either existing or new results elements. ...These narrowly defined SiMRs do not represent improvement that would result in improved performance for a State's SWDs. Even if a state should achieve its 'measurable and rigorous' SiMR targets, there would be little if any impact on SWD overall performance statewide...Most states' SiMR impacts a narrowly defined subset of SWDs. Most do not align with the ELA/Math/Graduation goals set forth in the ESSA accountability plan. This is the major reason why including the SSIP in determinations makes little sense. States would likely water down their SiMR targets even more if the SSIP becomes part of the determination process.

Additionally, and as pointed out by CCD member National PLACE:

...diverse families and family-led organizations are not uniformly [part of] SSIP decision-making, and that, even if they are, their voices are too often not heard, considered, or included in decisions including identification of the State Identified Measurable Result (SiMR), setting of the SiMR target(s), planning and implementation of activities, and/or evaluation of results. Because of this, far too often the SiMR targets have been set artificially low and thus, achieving those targets would not necessarily demonstrate significant progress towards meaningful improvement of outcomes for infants, toddlers, children and youth with disabilities.

4. How likely is it that your State will make substantial changes in SiMR targets and improvement strategies if the SSIP is included in determinations (based on progress toward annual targets and achieving implementation outcomes)? What kind of changes would you anticipate?

**CCD Response:** CCD agrees with National PLACE and strongly recommends that OSEP "...strengthen the requirement for stakeholder engagement, especially meaningful engagement of diverse families and family-led organizations."

CCD encourages OSEP to also encourage States to include young adults with disabilities and invite the Protection and Advocacy Agencies and other state and local disability advocacy organizations be included in developing the SSIP [and SiMR].

### **Family Outcomes**

As noted in the legislation, families are vital to the results of infants and toddlers in early intervention. When families do not know their rights, they are not able to effectively advocate for their children's needs. And if families leave Part C without being able to effectively communicate their children's needs and help their children develop and learn, then Part C of the Individuals with Disabilities Education Act (IDEA) has not met the intent of the law for supporting families and their infants and toddlers. We see the inclusion of family outcomes in the determination process as a way to elevate family voice.

The data States report for each family outcome shows that, on average, above 90 percent of families indicate that early intervention has helped them meet all three outcomes. If we just used the percentage of families meeting the three outcomes, then most States would score highly in this area and it would not have much meaning within the determinations process.

Instead, OSEP is proposing to look at the representativeness of the family outcome data. If the State is not using a representative sample, then it speaks to data quality and being able to use the data to make program improvements. OSEP recognizes that every State is at different places and is proposing that States would set an annual target to increase the representativeness of their data. The score for determinations would be based on whether the State's data is representative of the demographics of the State and whether they met their target or made progress towards the target annually.

States currently report to OSEP, under Indicator C4, on whether or not their family outcomes data are representative. However, while some States provide great detail, including the demographics of their data to support their conclusion of whether or not their data is representative, other States provide minimal information to support their conclusions. OSEP recognizes the importance of clearly defining the factors States would need to report on to determine representativeness.

We understand that for some States reporting out this level of detail will take time. We want to allow a reasonable period of time for States to prepare to collect new data and meet with Stakeholders to determine appropriate baselines and targets. We are therefore envisioning a phased in approach for this factor within the determinations process.

#### Questions:

1. The two factors we are considering for representativeness are "race/ethnicity" and "family income." Are these the right factors to include? Would you recommend other factors?

**CCD Response:** CCD strongly supports including these factors. We agree with National PLACE that limited English proficiency (LEP) status must also be included and support that OSEP require,

...detailed information, including demographic data, to support the conclusion that the Family Outcomes data is representative of the population served, and to be able to see if traditionally underserved families are not only appropriately included in the survey response data but also reporting as effective services and outcomes.

CCD further encourages OSEP to ensure data is also available by disability category. While outcome data at the student with disability subgroup level is meaningful, it is more important than ever to understand how students are faring by disability category. States have this data and OSEP must help provide more transparency with it so that communities are aware of the status of their children. In doing so, communities may meaningfully and credibly engage in advocacy for needed funding, reallocation of resources, targeted interventions and more.

2. We are considering phasing in this data collection. What infrastructure or systems would you need to put into place to be able to collect and report data for this factor?

**CCD Response:** State agencies should already be collecting this data and have the capacity to analyze and report on it.

### **Part B Compliance Indicators - Weighting**

Rather than weighting each compliance factor equally, OSEP is considering assigning greater weight to those compliance factors most directly related to improving results for children with disabilities.

#### Questions:

1. The current compliance indicators are 4B, 9, 10, 11, 12, and 13. Which of these compliance indicators would you consider most closely related to improving outcomes for children with disabilities, and why?

**CCD Response:** CCD strongly encourages OSEP to maintain each and sufficiently weight them, regardless of other factors in making state determinations. OSEP must reinforce through the state determination process that district and school practices regarding discipline(4b), disproportionality in identification for special education/by disability category (B9, B10), delays in initial evaluation (B11), ineffective transition from Part C to Part B (B12) and/or transition from school to postsecondary education/work (B13) are ALL integral to assuring students with disabilities also achieve academic outcomes. States must work with districts to ensure policies and procedures are aligned with the law, Child Find obligations are met, evidence-based practices are utilized and make technical assistance available on any or all of these indicators so that school teams can more effectively identify, support and teach students with disabilities. As stated by National PLACE:

...for different populations of infants, toddlers, children and youth with disabilities, each of these compliance indicators could be closely related to improving outcomes. For example, if, as is the case, African American children are disproportionately suspended/expelled from school, they are disproportionately losing instruction time, which negatively impacts their outcomes. If, as is the case, African American children are disproportionately and inappropriately identified as having significant cognitive disabilities, and thus having less access to the general curriculum along with lowered expectations of their performance, that negatively impacts their outcomes. If, as is the case, children who do not speak English are inappropriately identified as having a disability instead of being provided instruction in their own language (and then do not receive even special education instruction in their own language), that negatively impacts their outcomes. For youth who do not receive effective transition services and are not effectively and meaningfully engaged in their own transition to adulthood process, that negatively impacts their outcomes.

## Preschool Outcomes

Using preschool outcomes for Part B determinations is consistent with the use of the early childhood outcomes factor that has been used for Part C determinations since 2015. In addition, including this factor emphasizes the importance of preschool outcomes in promoting later school success for students with disabilities.

**CCD Response:** CCD strongly supports using preschool outcomes, similar to the use of early childhood outcomes under Part C.

## Graduation

OSEP will be revisiting ways of measuring improvement in the graduation rate of students with disabilities.

### Questions:

1. What would you recommend OSEP consider for rethinking measuring improvement in the graduation rate of students with disabilities?
2. How would your stakeholders react to these proposed changes?

**CCD Response:** CCD has commented extensively since the passage of the Every Student Succeeds Act (ESSA) in 2015 on the critical need for OSEP to require States to use the Four-Year Adjusted Graduation Rate (ACGR) as the way to measure improvement in the graduation rate of students with disabilities. Unfortunately, the RDA Matrix, as developed by OSEP, currently uses an “event rate” for graduation, which varies significantly and does little to promote and support the goal of assuring more students with disabilities graduate high school with a regular diploma. Therefore, regarding OSEP’s questions, CCD supports comments made by The Advocacy Institute on this issue:

... OSEP should take the following steps to ensure that States’ enhanced focus on graduation (brought about via ESSA) will benefit SWDs: Ensure that States are reporting as graduates only those SWDs awarded a regular high school diploma that complies with the new definition in IDEA, as amended by ESSA; ... ensure that States are in compliance with ESSA and ED’s High School Graduation Rate Non-Regulatory Guidance<sup>3</sup> which clearly states that “students who graduate with a credential other than a regular high school diploma, such as a general equivalency diploma, modified diploma, certificate of completion, certificate of attendance, or a diploma based on meeting a student’s IEP goals, may not be counted in the numerator as having earned a regular high school diploma, but must be included in the denominator of the four-year and extended-year ACGR; ...ensure that the graduation targets in States’ SPPs reflect the goals in the States’ approved ESSA accountability plan. The graduation element should measure the state’s achievement of the annual target for SWDs in the state’s accountability plan, measured by the ACGR.

It is inconceivable to CCD that States are still allowed to use data inconsistent with both ESSA and IDEA (as amended by ESSA) when calculating and reporting students as graduates. We strongly urge OSEP to take steps to correct this for the 2020 determinations.

## Participation and Performance of Children with Disabilities on Assessments

OSEP is considering several changes to the results factors related to the participation and performance of children with disabilities on assessments, including: (1) using Statewide assessment results, rather than the NAEP performance data; (2) looking at year-to-year improvements in

---

<sup>3</sup> See: U.S. Department of Education, (2017), High School Graduation Rate Non-Regulatory Guidance.

Statewide assessment results and taking into account the full Statewide assessment system, including alternate assessments; and (3) no longer comparing each State's assessment performance with that of other States.

Questions:

1. Should OSEP look at reading/ELA and math separately, or combine them?

**CCD Response:** It is absurd to think that combining these distinct assessment measures would yield anything meaningful. As noted by National PLACE "...reading/ELA and Math are very different subjects. For this data to be meaningful to families whose children have different types of disabilities that impact reading/ELA and math differently? CCD urges OSEP to include them as separate measures.

2. Rather than comparing each State's assessment performance with that of other States, OSEP is considering using other approaches (e.g., State-established targets, research/evidence-based thresholds). What approach do you prefer, and why?

**CCD Response:** As stated by National PLACE, "Assessment performance should be measured against the state's annual goals for SWDs contained in state ESSA accountability plans for Reading/ELA and Math (separately). It is not useful...to compare state assessment results to that of other states since both content standards and achievement standards vary."

3. Many States did not establish annual assessment targets under ESSA. If State-established targets are preferred, what is the best way for States to identify and submit their annual targets to OSEP, and how long would States need to establish their targets?

**CCD Response:** As noted by National PLACE and The Advocacy Institute: "All states were required to submit 'measures of interim progress' toward their long-term goal for Reading/ELA and Math by student subgroup. Some states submitted annual targets of interim progress; others submitted targets of interim progress that did not include each year. For States that did not submit annual targets, those targets could be easily calculated by employing the methodology the state used in setting the long-term goal and measures of interim progress that were provided in their plans." This is not particularly difficult or time-consuming."

4. Should OSEP focus on a subset of specific grades (e.g., 4<sup>th</sup> grade, 8<sup>th</sup> grade, and HS) or calculate an "average" for each State across all grades 3-8, and HS?

**CCD Response:** OSEP should focus on specific grades of 4th grade, 8th grade, and HS, which are standard data point periods in education research. Averages should not be used as they can mask important differences in performance at elementary, middle school, and high school levels. (Note: achievement for each tested grade is available in state report cards, disaggregated by required subgroups).

5. Is measuring year-to-year gains or declines in State assessment results important, and if so why; or if not, why not?

**CCD Response:** Information on year-to-year gains, measured by the percentage of SWDs achieving at proficient or above on state assessments is recommended.

6. Is measuring gaps in achievement between students with disabilities compared to other students important, and if so why; or if not, why not?

**CCD Response:** Consistent with The Advocacy Institute, CCD urges:

...Measuring gaps between SWDs and non-SWDs is critical. Closing achievement gaps is the core purpose of ESSA and should be the core purpose of special education. Gaps should always be expressed as performance of SWDs vs. non-SWDs (rather than “all students”) Many states are not reporting this comparison.<sup>4</sup> ESSA requires states to provide all disaggregated data required to be collected under the Act to the public in a user-friendly manner that can be cross-tabulated by, at a minimum, each major racial and ethnic group, gender, English proficiency status, and children with or without disabilities, so there is no excuse for states not having these data.” This data is vital to parents of children with disabilities, the Parent Centers and other family-led organizations who serve them, and advocates.

7. What are some potential mitigating factors that might heavily influence, up or down, assessment results (e.g., State changes its assessment and/or its achievement standards between school years—other mitigating factors)? What should OSEP do in such circumstances and why?

**CCD Response:** OSEP is encouraged to consult with assessment experts (NCEO, Center on Assessment) for guidance on such issues. OSEP should develop several new rubrics for determinations and test them to see which are most reliable.”

### **Additional Comments**

**Least Restrictive Environment:** The CCD would like to reinforce the critical importance of the Least Restrictive Environment (LRE) indicator. As stated in the CCD Statement of Principles, Least Restrictive Environment: A Requirement under IDEA,

...Research shows that students who spend most of their time in general education classrooms are closer to grade level in their reading and math abilities and have higher test scores in those same areas than students who spend more time in segregated settings. Students with disabilities who are educated alongside students without disabilities experience fewer disciplinary incidents, and better outcomes related to graduation, employment and postsecondary education. Students without disabilities also benefit from the inclusion of students with disabilities in their classrooms: they make positive academic gains in math and reading when they are taught in settings with students with disabilities, are offered enhanced learning opportunities, and benefit from social relationships with students with disabilities. To overcome the presumption that a child should be in a general education setting requires evidence that the student’s education -- even after supplementary aids and services are provided in the general education classroom -- cannot be achieved satisfactorily there. After almost 45 years of families, people with disabilities, and disability advocates working to expand and enhance the inclusion of children with disabilities in general education settings, it is imperative that federal policy continue to reinforce and advance the true purpose of LRE.<sup>5</sup>

---

<sup>4</sup> See: National Center for Educational Outcomes, *Using Assessment Data as Part of a Results-Driven Accountability System: Input from the NCEO Core Team* at: <https://www2.ed.gov/about/offices/list/osers/osep/rda/using-assessment-data--core-team-input.pdf>

<sup>5</sup> Consortium for Citizens with Disabilities, *Least Restrictive Environment: A Requirement under IDEA*, (2019) at: <http://www.c-c-d.org/fichiers/CCD-LRE-Position-Statement-final.pdf>

OSEP must strive to support inclusion in general education with appropriate supports and services because of the direct correlation to the positive outcomes for students with and without disabilities. LRE is an important indicator for all children with disabilities and their families and must play an important role in determinations.

Thank you for the opportunity to comment on OSEP's considerations for 2020 State Determinations.

Sincerely,

American Physical Therapy Association  
American Speech-Language-Hearing Association  
Association of University Centers on Disabilities (AUCD)  
Children and Adults with Attention-Deficit/Hyperactivity Disorder  
Council for Learning Disabilities  
Council of Parent Attorneys and Advocates  
National Center for Learning Disabilities  
National Center for Special Education in Charter Schools  
National PLACE  
National Disability Rights Network  
National Down Syndrome Congress  
TASH  
The Advocacy Institute  
The Arc of the United States

CCD, headquartered in Washington DC, is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Since 1973, CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into society.