



DATE: October 31, 2022
TO: Office of Special Education Programs, U.S. Department of Education (ED)
SUBJECT: IDEA Determinations Feedback
FROM: CCD Education Task Force
Submitted: via email to SPPAPR@ed.gov

The Consortium for Constituents with Disabilities Education (CCD) Education Task Force has prepared this memo in response to the Office of Special Education Programs' (OSEP) request for input regarding "how the 2023 determinations process can promote equity." Our input to determine state compliance under the Individuals with Disabilities Education Act (IDEA) is designed to complement and reinforce the relevant recommendations made by CCD in these recent letters. We ask OSEP to include their contents as part of this process.

- [CCD recommendations](#) to OSEP regarding IDEA Part B and Part C monitoring and compliance, dated July 28, 2022.
- [CCD recommendations](#) to the Office of Management and Budget regarding *Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government* (which was also shared with OSEP), dated July 6, 2021.

To reinforce these recent recommendations and to address OSEP's considerations as to "whether and how to use data from the current SPP/APR that can be seen in the [Part B](#) and [Part C](#) measurement tables, data from the current [IDEA 618 data collections](#), and other publicly available data," as part of the Results Driven Accountability Results Matrix, CCD urges OSEP to also consider the following:

New and Improved Measures

- **Include data inclusive of students with the most significant cognitive disabilities.** As noted by CCD in July 2021,
...The matrix does not use measures that include students who take state alternate assessments aligned with alternate academic achievement standards (AA-AAAS). Part of the problem is the reliance on the National Assessment of Education Progress (NAEP), which excludes students who take an AA-AAAS. In addition, the results matrix does not measure performance or participation of students who are assessed via a state's AA-AAAS.
A revised matrix should include measure(s) that assure students with the most significant cognitive disabilities are meaningfully included.
- **Include a focus on Least Restrictive Environment.** As noted by CCD in July 2021,
...Another issue with RDA, which impacts all students with disabilities, is the lack of focus on LRE. OSEP should use the [TIES Center report](#) on states' LRE policies to investigate and intervene in states where state regulations or administrative codes have interpreted LRE in a manner that does not comply with the IDEA. At the same time, OSEP should seek to incorporate LRE data into the Matrix used to make annual state

determinations. TIES has found that only 3 percent of students who take the AA-AAAS are being educated in the general education classroom. It should be noted that based on states' requests for a waiver of the 1 percent cap on the use of the AA-AAAS, students who participate in this assessment are often disproportionately Black.

A revised matrix should include a measure that assures state/district definitions and practices regarding LRE are in compliance with federal law.

- **Include a focus on significant disproportionality.** As noted by CCD in July 2021.
...the impact of lax state policies to identify significant disproportionality in districts has led to egregious practices that are harmful to students including in the over and under identification for special education; placement decisions that segregate students from their peers; and, the overuse of harsh disciplinary practices, including suspension, expulsion, and the use of aversives such as seclusion and restraint. The data are both clear and overwhelming that states must do more to help districts end these discriminatory practices.¹ In addition to these known data, we also point to a report released in March 2021. The data analysis conducted by the UCLA Civil Rights Project shows that students with disabilities in 181 districts are experiencing disproportionate rates of school removals compared to their peers, but 28 states flagged none of their districts for that purpose.² Joint work must occur between and among OESE, OSERS and OCR to address state implementation of the law.

A revised matrix should include a measure to indicate whether and how effectively states are implementing the Equity in IDEA regulations.

- **Include chronic absenteeism.** A majority of States selected chronic absenteeism as the sole or one of the indicators of school quality or student success in their ESSA accountability plans. The SWD subgroup has one of the highest rates of chronic absenteeism so this attention has required States to explore reasons for absenteeism specific to SWDs in order to improve rates. Chronic absenteeism is also reported as a significant issue for SWDs as schools have reopened following closures due to the COVID pandemic. Chronic absenteeism is a major contributor to the poor academic performance of SWDs. **A revised matrix should include a measure of how the State is performing on SWD absenteeism versus non-SWDs.**
- **Include a measure that specifically examines how states are meeting their federal obligation³ to provide accommodations to students with disabilities, including the provision of assistive technology (AT).** Because there is overwhelming anecdotal data from students and their families as well as qualified AT providers that too many IEP teams decline to thoughtfully consider and implement AT as a needed and effective support and intervention strategy to help meet students' special education goals and objectives. Further, there has been growing issues concerning IDEA student's access to accommodations as part of federally mandated testing and that state-designed testing platforms are not adhering to basic accessibility principles. **Due to IDEA's requirement to consider and provide accommodations and AT as part of a student's IEP and the impact this decision has on equity and access to the general curriculum and assessments, OSEP must consider the provision of AT as a means of determining compliance under the IDEA.**
- **Include a measure of the provision of language services (interpreters) for parents of students with disabilities having limited English proficiency (LEP parents) as required by IDEA⁴.** Without

¹ Letter to Director of Information, Consortium for Citizens with Disabilities, Education Task Force, (2019). At: <http://www.c-c-d.org/fichiers/CCD-letter-on-Significant-Disproportionality-Survey-2019.pdf>

² D. Losen, P. Martinez et. al., *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies*, UCLA Civil Rights Project, (2021). At: <https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies>

³ [§§300.320-324](#)

⁴ [34 CFR 300.322\(e\)](#)

interpreters, LEP parents cannot knowledgeably participate in and consent to each of the critical procedural milestones specified in IDEA – identification, eligibility determination, IEP development or dispute resolution – thereby denying these children a free appropriate public education. **To support equity and access, a revised matrix should include a measure of how states are complying with requirements to provide access and support to the IEP process for parents/guardians under the IDEA.**

Accountability and Transparency

- **Ensure the state has actually completed all OSEP-required measures from previous year(s) prior to finding that state as ‘meeting requirements’ in a subsequent year.** CCD is aware that in some cases -where states were required by OSEP to take certain steps to come into compliance to ‘meet requirements’ under IDEA- OSEP failed to assure every obligation had been met. Also, the public should have access to OSEP’s documentation that demonstrates actions taken by the state to satisfactorily meet federal requirements.
- **Make the Results Matrix data [by each state] easily accessible on state and federal websites.** The current process embeds the Results Matrix within the state’s performance information which makes accessing it nearly impossible for the general public.

CCD appreciates the focus to improve the Results Matrix as a major contributor to determining state compliance under the IDEA. Please contact the CCD Education Task Force cochairs with any questions.

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