



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

April 25, 2014

Larry Ringer
Attention: IDEA Determinations RFI
U.S. Department of Education
400 Maryland Avenue SW.
Room 4032
Potomac Center Plaza
Washington, DC, 20202–2600

Re: Docket No. ED-2013-OSERS-0150
Request for Information on the Use of Results Data in Making Determinations Under Sections 616(d)(2) and 642 of the Individuals with Disabilities Education Act (IDEA)

Dear Mr. Ringer,

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Education Task Force appreciate this opportunity to comment on the Request for Information on the Use of Results Data in Making Determinations Under Sections 616(d)(2) and 642 of the Individuals with Disabilities Education Act (IDEA).

Our members have been carefully following the Office of Special Education Program's (OSEP) Results Driven Accountability (RDA) initiative and while we believe that there are still numerous components of the initiative to be finalized, we are encouraged that the proposed changes to the SPP/APR and their focus on outcomes for children and youth with disabilities are consistent with the RDA approach that focuses on both compliance and outcomes. Overall, we believe that the proposed changes reflect a better balance between these two components of IDEA implementation.

Our responses to the questions posed by the Department of Education follow.

Question 1: How should the Department use results data such as assessment data, graduation data and/or postschool outcomes data in making determinations under Part B of IDEA?

According to the Federal Register announcement OSEP is "considering using the following results data in making determinations, including examining a State's progress over time: (1) For Part B, data related to:

- (a) Participation in and proficiency on assessments (reported publicly through *either* statewide assessments *or* the National Assessment of Educational Progress) in reading/language arts and math,
- (b) Rates of students graduating with a regular diploma *and/or*
- (c) Postschool outcomes."

Comment: OSEP *must* consider participation and proficiency on *both* statewide assessments (Indicator 3) *and* National Assessment of Educational Progress (NAEP) in reading/language arts

and math. Including only one of these performance measures (state assessments or NAEP) would present only a partial picture of how students with disabilities are performing within the state.

OSEP must work to ensure that all assessments used in making determinations are fully accessible and that states are working toward a goal of full accessibility. Assessments should provide a valid measure of the proficiency of students with disabilities through built-in access features, compatibility with assistive technology along with policies that allow needed accommodations and support students using their own assistive technology. Assessments cannot be a valid measure until they are truly accessible. Therefore, OSEP must work to make them accessible for students in these ways.

The Results Matrix should not consider Postschool outcomes data (Indicator 14) without also considering graduation rates of students. Postschool outcomes alone are not an adequate measure because sampling is used. The post school outcomes data has been collected via surveys, not studies that involved a representative sample of students (including representative at the disability category level). Therefore it does not necessarily meet the scientific requirements that would make it an effective method of data collection. The data source is “State selected” and states are required to provide “a description of the sampling methodology outlining how the design will yield valid and reliable estimates of the target population.” However, we have not seen these descriptions and question whether the estimates are valid.

We note that the Department’s ESEA Flexibility program has allowed States to establish different annual measurable objectives (AMOs) for student subgroups, whereas current law requires that the AMOs are the same for all subgroups. Some states did not exercise this option and continue to hold schools and districts accountable for a common set of AMOs. This has created significant variation in the rigor of AMOs among States, which compromises the value of using data from Indicator 3 A and, by association, 3 C.

In general, with regard to the use of assessment data, CCD supports the seven framing considerations developed by the [NCEO workgroup](#) and encourages the Department to use the considerations in formulating the Results Matrix.

The Results Matrix must include rates of students graduating with a regular diploma (Indicator 1) as measured by the Adjusted Cohort Graduation Rate required by ESEA. The ESEA Flexibility program has also disrupted the graduation targets as expressed by several groups most notably the Alliance for Excellent Education.

Question 3: Are there any additional or different types of results data, including data on assessments to measure proficiency in reading/language arts and math, or other results data that the Department should/could consider using in the IDEA Part B determinations process?

Comment: If states are not required to use indicators as the basis for their state-identified measurable objectives, states will reasonably focus their improvement efforts on only those things that do count toward their status determination. Therefore, OSEP should include as many results indicators as possible in the matrix and in making status determinations. Specifically, the Department should use the following types of results data as elements of the Results Matrix:

- Dropout rates (Indicator 2): This is the only way to capture youth who fall through the cracks or are removed from school. Indicator 2 is necessary to prevent increasing flow into the School to Prison Pipeline.
- Suspensions and expulsions of children with IEPs (Indicators 4A and 4B): These indicators are critical even in a system focused on student achievement. The more emphasis we place on

assessment performance, the more likely it is that students who are not making progress will fall through the cracks, become disengaged and/or be removed from school. In this way, Indicators 4A and 4B prevent increased flow into the School to Prison Pipeline. OSEP however should not rely on indicators 4A and 4B exclusively. The results matrix should measure suspensions of any length, as the current approach fails to connect suspensions of fewer than 10 days to potential child find and FAPE violations.

- Least restrictive environment (Indicator 5): If it is not included in status determination, there is no guarantee that it will be included as part of OSEP's review of state compliance with the IDEA.
- Child Find (Indicator 11): The current child find indicator only measures the percent of children evaluated within 60 days of parental consent for initial evaluation. The results matrix should go beyond timeliness of evaluations and delve into whether LEAs are fulfilling their earlier obligation to locate and identify students with disabilities. This also impacts student achievement, as failing grades, suspensions, and retentions are often evidence that should trigger child find.

With regard to data, a common measure or limited menu of measures for use in calculating "significant discrepancy" is needed in order for that measure to have meaning. In addition, comparison data is necessary for each of the selected indicators, otherwise we cannot compare children with disabilities to children without disabilities. The critical question is not only whether these children are making progress, but also whether we are closing the gap.

General comments:

- In making determinations, the Results Matrix should include as many results indicators as possible, as well as weigh *both* progress made *and* achievement of the State's target. Progress alone is insufficient as a measure of performance (i.e., assuming States have targets that represent acceptable performance, States with very poor performance will need to make *more progress* to achieve targets).
- Additionally, in providing new guidance to States, OSEP should direct states to make public the results of the status determination from OSEP (see, for example, Maryland's website at http://mdideareport.org/special_main.aspx) and also to publicly report the improvement activities taken by the SEAs against specific LEAs as a result of the monitoring process in a timely manner. Particularly for citizens of those particular LEAs, it is essential to instill faith in the monitoring system and to provide them with sufficient information to meaningfully participate.

Thank you for your consideration of these comments.

Sincerely,

ACCSES

American Speech-Language-Hearing Association

Association of University Centers on Disabilities

Brain Injury Association of America

Easter Seals

National Center for Learning Disabilities

National Disability Rights Network

Disability Rights Education and Defense Fund

National Association of School Psychologists

National Alliance on Mental Illness

The Advocacy Institute

The Judge David L. Bazelon Center for Mental Health Law

The Consortium for Citizens with Disabilities is a coalition national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the 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 the mainstream of society. For additional information, please contact:

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