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U.S. Department of Education  
Washington, DC 20004

Valerie Williams  
Director  
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Dear Deputy Assistant Secretary Neas and Director Williams,

The Consortium for Constituents with Disabilities (CCD) Education Task Force is writing to provide recommendations to the Office of Special Education and Rehabilitative Services (OSERS) and the Office of Special Education Programs (OSEP) regarding the monitoring and enforcement of state and district responsibilities under the Individuals with Disabilities Education Act (IDEA). We know OSERS/OSEP has requested informal input on General Supervision of states with regard to IDEA, however, most of CCD's work has been focused on the Federal monitoring and compliance under the law and we believe that continued efforts to strengthen these activities -by implementing the recommendations we provide- would likely result in better performance by states. We appreciate the opportunity to provide input to the critical processes that we believe must move closer to a system of accountability that raises expectations and improves outcomes for infants, toddlers, children, youth, and young adults with disabilities.

Since the last amendments were made to IDEA in 2004, CCD has written and communicated extensively<sup>1</sup> with OSERS/OSEP to make recommendations to proposed changes to the design and implementation of the IDEA Part B and Part C State Performance Plan and Annual Performance Report (SPP/APR), the addition and provisions of the State Systemic Improvement Plan (SSIP) and all components of Results Driven Accountability (RDA) since it was proposed in 2013. As we last wrote 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>

In light of OSEP releasing the 2022 State Determinations – which utilize data as outdated as the 2019 NAEP– and as we review recommendations made to OSERS/OSEP between 2013-2018 including those made by organizations we have endorsed<sup>3</sup>, we are discouraged to see that no progress has been made to improve these critical processes to drive accountability and improve results for students under Part B and/or Part C of IDEA.

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<sup>1</sup> See: CCD Education Task Force letters to OSEP 2013-2018 at: [https://www.c-c-d.org/rubriques.php?rub=taskforce.php&id\\_task=2](https://www.c-c-d.org/rubriques.php?rub=taskforce.php&id_task=2)

<sup>2</sup> See: *CCD Letter to Collett*, (2018) at: <https://www.advocacyinstitute.org/resources/CCD.ED.TF.RDA.Ltr12-18.pdf> and, U.S. Senate report to accompany S. 1248 <https://www.gpo.gov/fdsys/pkg/CRPT-108srpt185/html/CRPT-108srpt185.htm>

<sup>3</sup> ...The Advocacy Institute; The Arc; Council of Parent Attorneys and Advocates; National Center for Special Education in Charter Schools; National Disability Rights Network; and, the National Down Syndrome Congress whose letters can be found here: <https://www.advocacyinstitute.org/resources/RethinkingSpedRDA.shtml> , as endorsed by CCD, *Letter to Collett*, (2018), at: <https://www.advocacyinstitute.org/resources/CCD.ED.TF.RDA.Ltr12-18.pdf>

Our consternation is compounded by what continues to ring true and was pointed out to OSERS/OSEP by the National Council on Disability which is, “the current system of monitoring and enforcement...often fails to address noncompliance in a timely and effective manner, and utilize all of the options available to address issues.”<sup>4</sup> While we understand the COVID-19 pandemic has dramatically impacted family access to early intervention services for young children by qualified providers, as well as student access to quality education programs by well trained and certified school teams, the problems with the monitoring and compliance system and the related lack of systemic and appreciable change existed prior to 2020. As we have noted previously, the process is significantly flawed and is essentially a futile activity that does not result in action on either the Federal or State level to improve the quality and equity of services under the IDEA. Our concerns are not new and have been raised with OSERS/OSEP repeatedly by us and others. Given these realities, CCD is adamant that more must be done to improve both monitoring and enforcement of IDEA.

It is through this lens of disappointment and knowledge -that too many infants, toddlers and children do not have the access to quality early intervention programs as well as the K-12 educational supports they need- that we offer the following recommendations:

### **Data and Metrics that Drive Accountability**

OSEP must undertake a thorough re-evaluation of the current process which - by its design - systematically deflects and disguises poor student performance and disproportionality among other problems. In particular, OSEP must ensure an updated process will:

- I. Include a metric and performance indicator system designed to drive accountability for students. Such a system must:
  - End the practice of allowing states to use a [nominal] percent increase target setting and reporting mechanism(s).
  - Revise and improve the target setting in ways that assure states set indicator expectations that are reasonably aspirational and ambitious, not derived from prior-year baselines.
  - Stop states from grading on a self-drawn curve, which generates inflated praise and gives undue credit for meeting meaningless targets.

**Rationale:** As OSEP knows, the current process produces misleading data, prevents performance improvement, perpetuates harmful practices, penalizes strong performers, inhibits family engagement, condones disproportionality, and cloaks denial of FAPE. OSEP is also aware that year-after-year, annual data reflect substantial failure of students to achieve even woefully low targets for academic goals and progress, with systemic and notable disparities between students with disabilities and their typical peers, yet many states are found as ‘Meeting Requirements’ despite the low expectations they set and claim as successful achievement for students with disabilities. Most recently, OSEP condoned and furthered entrenchment of low expectations and results with no accountability as states adopted, with approval, new six-year targets where in some cases, 2025 targets have been set and approved that are as low or lower than 2017 pre-pandemic levels.

- II. Eliminate over-reliance on the use of the National Assessment of Educational Progress (NAEP) and scoring based on rank-ordering of states in the RDA Results Matrix.

**Rationale:** The use of NAEP data is flawed on many levels and the problems with using NAEP are well known to OSERS/OSEP (e.g., NAEP data is only available at the state level, students taking the AA-AAS are not included, it is only given every other year, etc.).<sup>5</sup> Additionally, it is *indefensible* that OSEP has used the NAEP 2019 data in making state determinations for the past three consecutive years.

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<sup>4</sup> National Council on Disability, (IDEA Series) *Federal Monitoring and Enforcement of IDEA Compliance*, (2018), at: <https://nccd.gov/publications/2018/individuals-disabilities-education-act-reportseries-5-report-briefs>

<sup>5</sup> See: The Advocacy Institute, *Report on RDA*, (2018), at: <https://www.advocacyinstitute.org/resources/RethinkingSpedRDA.shtml>

Annual state assessment participation and proficiency data for all students with disabilities is available and should be used as part of the determination process, including measures of achievement gaps between students with disabilities as those without disabilities. As noted in various reports (including those we have cited), the current RDA Results Matrix uses rank-ordering of states to award points for half of the Results elements. This approach results in one-third of states *always failing to earn any points regardless of how the students with disabilities perform* compared to students without disabilities in the states or how much improvement and/or gap closing has occurred. It also makes it impossible for all states to achieve a “Meets Requirements” determination.

- III. Use Least Restrictive Environment (LRE) data to improve accountability for students including students with the most significant cognitive disabilities.

**Rationale:** The RDA system needs to take into account the LRE data in order to be meaningful for students, especially students with intellectual disabilities. The CCD and its members have previously told OSERS/OSEP:

While the percentages of students with disabilities who are educated in the general education classroom 80% or more of the day is approximately 63% across the nation (2016-17 data collection), the percentage for students in the Intellectual Disability category is only 17%. When you look at the research related to educational environment for students who take an alternate assessment on alternate achievement standards (AA-AAS), the data is even more dismal. Only 7% are educated either in general education classes or resource rooms. When the TIES Center later broke down the study data for the general education classroom, not counting the resource room, it was only 3%. As the Advocacy Institute report points out, the current Results Matrix for annual determinations excludes indicators for students who take an AA-AAS and while the Compliance Matrix has indicators that apply to all SWDs, it does not focus on anything that would bring attention to students who take the AA-AAS — they are just buried in the data.<sup>6</sup>

- IV. Incorporate LRE data (Indicator 5) into the Compliance Matrix used to make state determinations.
- V. 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.

**Rationale:** As previously reported, TIES has found that only 3 percent of students who take the AA-AAS 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-AAS, students who participate in this assessment are often disproportionately Black.<sup>7</sup> Including LRE data in RDA and holding states accountable for their general supervision responsibility to ensure compliance for IDEA LRE requirements for these students would go a long way towards improving educational outcomes for students with intellectual disabilities.

- VI. Ensure that states are requiring districts to meet the LRE requirements for each preschool child with a disability including paying for a private inclusive preschool placement if there are no public inclusive preschool options available. An inclusive preschool class should be defined in the 618 data collection instructions as having natural proportions of students with disabilities.

**Rationale:** A 2017 OSEP Dear Colleague on preschool LRE makes it clear that: ..."the least restrictive environment (LRE) requirements in section 612(a)(5) of the Individuals with Disabilities Education Act

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<sup>6</sup> See: National Down Syndrome Congress, *Letter to Collett*, (2018), at: <https://www.ndscenter.org/wp-content/uploads/NDSC-Comments-on-rethinking-RDA.pdf> and, The Advocacy Institute, *Report on RDA*, (2018), at: <https://www.advocacyinstitute.org/resources/RethinkingSpedRDA.shtml>

<sup>7</sup> National Down Syndrome Congress, *Letter to Collett*, (2018), citing *How States Interpret the LRE Clause of IDEA, A Policy Analysis*, (2018), at: <https://files.tiescenter.org/files/YQ-9ytnpk/ties-center-report-101>

(IDEA or Act) are fully applicable to the placement of preschool children with disabilities."<sup>8</sup> OSEP also states the following:

If there is an LEA public preschool program available, the LEA may choose to make FAPE available to a preschool child with a disability in the LEA's public preschool program. While the number of public pre-kindergarten programs has increased, many LEAs do not offer, or offer only a limited range of, public preschool programs, particularly for three-year-olds. In these situations, the LEA must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability.<sup>9</sup>

- VII. Change the OSEP 618 Data Collection rules for early childhood programs used for monitoring in accordance with joint recommendations made by the U.S. Department of Health and Human Services and U.S. Department of Education.<sup>10</sup>

**Rationale:** This change will ensure that the placement meets the LRE requirements. The policy document says that states should "ensure that the principle of natural proportions guide the design of inclusive early childhood programs."<sup>11</sup> Currently, an early childhood setting is counted as a regular early childhood program (inclusive) if it has more than 50% nondisabled children, which does not reflect natural proportions. "Natural proportions" is the inclusion of children with disabilities in proportion to their presence in the general population, which according to the National Center for Education Statistics is generally about 14% of all students.

- IX. Prioritize the strengthening of state dispute resolution systems for Part C.

**Rationale:** Most state/territory Part C systems have at most a handful of formal disputes. This does not necessarily mean that all families receiving Part C services are receiving the services to which their infant/toddler and family are entitled but rather, weak, or non-existent Part C dispute resolution systems. OSEP should ensure that Part C complaint systems are sufficiently robust, meet the requirements of IDEA, and are known by and accessible to families. Many Parent Training and Information Centers (PTIs) report that their state/territorial Part C system does not refer families to them, so families often have limited information about their rights to pursue disputes.

- IX. Strengthen the focus in Part C monitoring on reducing/eliminating disparities in access by race.

**Rationale:** The probability of a child being identified as having a developmental delay and using English Language (EL) services is drastically different depending on their race and ethnicity. Compared to their White peers with developmental delays, Black and Latino children with developmental delays are 78% less likely to have their need for EL services identified; Black children with developmental delays are 78% less likely to receive EL services.

## Differentiated Monitoring and Support 2.0

### Stakeholder Engagement

- I. Make the list of Part C and Part B cohort states public well in advance of any state site visit(s) so that stakeholders can engage and participate in meaningful ways.

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<sup>8</sup> U.S. Department of Education, Dear Colleague Letter (2017), at: [https://sites.ed.gov/idea/files/policy\\_speced\\_guid\\_idea\\_memosdcltrs\\_preschool-lre-dcl-1-10-17.pdf](https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_preschool-lre-dcl-1-10-17.pdf).

<sup>9</sup> *Id.* (pg. 4): ...These methods may include: (1) providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than LEAs (such as Head Start or community-based child care); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular public elementary schools; or (4) providing home-based services. If a public agency determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent.

<sup>10</sup> U.S. Departments of Health and Human Services and Education, *Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs*, (2015), at: <https://sites.ed.gov/idea/files/joint-statement-full-text.pdf>

<sup>11</sup> *Id.* (pg. 9)

- II. Change OSEP’s monitoring visits preparation to include collection and analysis of data provided by the PTIs and Protection and Advocacy Agencies (P&As) and ensure any stakeholder data is responded to by the state with an explanation of how the data are/are not included and why.
- III. Provide clear instructions that enable stakeholders to locate OSEP’s written response to each state’s SPP/APR and any actions required by the states.
- IV. Provide links to the information each state is required to make available in OSEP’s SPP/APR online portal to improve the public’s access to district determinations.
- V. Encourage states to collaborate and partner with the PTIs and P&As on both monitoring and student outcomes.

**Rationale:** While it is a requirement that stakeholders participate in monitoring and compliance under IDEA, these communities continue to have too little information about the timeline and process OSEP undertakes to evaluate performance of districts and states under IDEA. Stakeholders should also be informed by states how their input is/is not being used and why. Additionally, we are aware of examples of states collaborating proactively with the Federally supported P&As and PTIs on monitoring to better ensure the rights of students with disabilities are protected under IDEA and recommend that OSEP consider promoting and supporting this more broadly. Stakeholder engagement and input can be especially meaningful and help inform and strengthen accountability. We encourage OSEP to work with states to rethink and reprioritize how the required engagement supports an improved process for all. The recommendations are consistent with those made by the National Council on Disability in 2018<sup>12</sup>, and could not be more pressing as we continue to support students impacted by the pandemic and other factors.

CCD appreciates this opportunity to provide updated input. Please reach out to any of the Education Task Force cochairs with questions or to meet. We look forward to discussing our recommendations.

Sincerely,

American Music Therapy Association  
 Association of University Centers on Disabilities  
 Autistic Self Advocacy Network  
 Autism Society of America  
 Center for Learner Equity  
 Council of Parent Attorneys and Advocates  
 Learning Disabilities Association of America  
 National Center for Learning Disabilities  
 National Center for Parent Leadership, Advocacy, and Community Empowerment  
 National Disability Rights Network  
 National Down Syndrome Congress  
 National Down Syndrome Society  
 The Advocacy Institute  
 The Arc of the United States

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The Consortium for Constituents with Disabilities (CCD) Education Task Force monitors federal legislation and regulations that address the educational needs of children and youth with disabilities and their families, including regulatory efforts under federal law such as the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). We advocate for high expectations for children with disabilities under these and other laws.

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<sup>12</sup> National Council on Disability, (IDEA Series) *Federal Monitoring and Enforcement of IDEA Compliance*, pg. 54, (2018), at: <https://ncd.gov/publications/2018/individuals-disabilities-education-act-reportseries-5-report-briefs>