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Manager

Strategic Collections and Clearance Governance and Strategy Division
U.S. Department of Education
400 Maryland Ave. SW, LBJ, Room 6W203
Washington, DC 20202-8240

SUBJECT: Docket No.: ED-2023-SCC-0083

Submitted via Regulations.gov

To Whom it May Concern,

The Consortium for Constituents with Disabilities (CCD) Education Task Force is writing to provide recommendations to the Office of Special Education (OSEP) regarding proposed changes to the Individuals with Disabilities Education Act (IDEA) Part B and Part C State Performance Plan (SPP) and Annual Performance Report (APR) respectively. CCD last wrote to OSEP on the SPP/APR in July 2022¹ and our comments here are consistent and in alignment with numerous CCD letters² urging OSEP to do more to improve the status of students with disabilities through IDEA's monitoring and compliance system.

CCD is pleased that OSEP has proposed revisions to the FFY-2020-FFY-2025 Part B and Part C SPP/APR. We believe the proposed revisions are necessary and will also contribute significantly toward ensuring OSEP oversees State implementation of a "system that primarily focuses on substantive performance of students with disabilities"³ –a key goal of changes made to IDEA when it was last amended by Congress. While we do support the proposals made, we offer the following recommendations which seek to improve these critical processes to drive accountability and improve results for children with disabilities under Part B and/or Part C of IDEA.

Part B: SPP/APR

FFY 2023 Submission

Introduction: 1(a)(i-viii): CCD supports the additional requirements added to (a) which ensure States add new details regarding their General Supervision responsibilities, **however, we recommend these**

¹ See: CCD Education Task Force Letter (July, 2022) at: <https://c-c-d.org/fichiers/CCD-Ltr-to-OSERS-OSEP-re-General-Supervision.pdf>

² See: CCD Education Task Force letters to OSEP 2013-2022 at: https://www.c-c-d.org/rubriques.php?rub=taskforce.php&id_task=2

³ See: U.S. Senate report to accompany S. 1248 at: <https://www.gpo.gov/fdsys/pkg/CRPT-108srpt185/html/CRPT-108srpt185.htm>

requirements **be moved out of the Introduction and into NEW Indicator 18, as amended (in bold)**. See Indicator 18 below.

Indicator 4A: Suspension/Expulsion All children with IEPs and 4B: Suspension Expulsion Race/Ethnicity

Proposed (1): CCD supports the requirement that States must define minimum N-size and provide a methodology and rationale. CCD has a longstanding record of supporting requirements that assure “N-size” is defined and determined using a rationale that assures as many students can be included in the data collection as possible. **Therefore, we urge OSEP to carefully review each State proposed N-size and reject those that are set too high.** As we noted via the Department’s own data, a State can set an N-size of 10 students, and even as low as 5 students, and fully meet requirements for statistical reliability and student privacy.⁴

Proposed (2): CCD supports the requirement that States provide the State-level long-term suspension and expulsion rate; **however, we believe all States must be required to compare the rates of long-term suspensions and expulsion for children with IEPs among local education agencies (LEAs) within the State and with students in the general population among LEAs.** This comparative data is essential to the LEAs, the State, to stakeholders and to OSEP— especially as it relates to the identification of significant disproportionality in the use of exclusionary disciplinary practices that negatively impact outcomes for students with disabilities. This is consistent with recommendations made by the U.S. Department of Education.⁵

Indicator 18: General Supervision

CCD supports the proposal to reestablish the General Supervision (Indicator 18) as a separate reporting requirement. However, to meet the goals of providing “greater transparency regarding a State’s monitoring and dispute resolution procedures used to identify noncompliance [with IDEA]”, CCD recommends the following:

- **Move the NEW requirements as noted in the FFY2023 submission under General Supervision: Introduction: 1(a)(i-viii) into Indicator 18.**
- **Clarify for States what is meant by “key IDEA requirements” and require that these [new but available] data be included:**
 - **Students with the Most Significant Cognitive Disabilities/LRE:** How the State is overseeing the use of required criteria to determine whether a student has a significant cognitive disability, assignment to the alternate assessment, and placement in the least restrictive environment, which is known to impact access to general curriculum. Additionally, provide information on the State’s adherence to the one percent cap on the number of students who can be assessed via the State’s alternate assessment including activities needed to come into compliance.
 - **Stakeholder Engagement:** How the State actively and meaningfully collaborates and partners with stakeholders including the Parent Centers (Parent Training Information Centers and Community Parent Resource Centers) and Protection and Advocacy System

⁴ U.S. Department of Education, National Center for Education Statistics, Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting (NCES 2011–603).

⁵ Sec. L. State Oversight and Data Reporting Responsibilities, Q&A: Additional Needs of Children with Disabilities and IDEAs Disciplinary Provisions, U.S. Department of Education(2022), at: <https://sites.ed.gov/idea/files/qa-addressing-the-needs-of-children-with-disabilities-and-idea-discipline-provisions.pdf>

- on an ongoing basis (in addition to stakeholder information required in Introduction Section d.).⁶
- **Dispute Resolution:** How the State is using State complaint investigations resulting in findings of LEA noncompliance to identify systemic issues or trends within an LEA or across the State and how the State is ensuring full compliance with corrective actions resulting from complaint investigations
 - **On-Site Review:** How the State is using SPP/APR indicators to improve timeliness and accuracy of on-site reviews.
 - **Consideration of Special Factors in IEP Development:** How the State is ensuring that all student IEPs include full consideration of each of the Special Factors: behavior, limited English proficiency, Braille, blindness and/or visual impairment, speech-related communication needs (including augmentative and alternative communication), and assistive technology as required by Section 300.324(a)(2).
 - **Restraint and Seclusion:** How the State is addressing the use of restraint and seclusion including activities undertaken in partnership with the Office for Civil Rights based upon data from the Civil Rights Data Collection, including the initiative announced in 2019.⁷
 - **Charter Schools:** How the State uses all available data to actively monitor LEAs that include charter schools, and how such State activities may contribute to improved transparency in charter schools' compliance with IDEA requirements.

As stated earlier, it is our strong recommendation that Indicator 18 needs more specificity if it is to result in improved outcomes for students with disabilities. Without more detail, States are likely to report on a variety of requirements without regard to how those requirements drive improved results. We believe that the “key” requirements to be reported in Indicator 18 should be based on our best and most current knowledge on what is having a significant negative impact on the results for students with disabilities. The list of issues suggested above is by no means exhaustive, but simply represents those we find to be persistent issues as raised previously by CCD and our member organizations.

Part C: SPP/APR

CCD supports the proposal to reestablish the General Supervision indicator (Indicator 12) in Part C of the IDEA. In addition, we encourage OSEP to do the following:

- **Do not delay to FFY2026 the addition of the general supervision requirement.**

A delay of more than three years means States and stakeholders will not have adequate transparency and access to implementation and compliance information regarding the status of infants and toddlers with disabilities.

- **Move the NEW requirements as noted in the FFY2023 submission under General Supervision: Introduction: 1(a)(i-vi) to Indicator 12.**

For transparency and improved accountability, the proposed Indicator 12 must include these details as part of the indicator itself and not just merely as part of the Introduction provided by the State/agency.

⁶ As noted by CCD in the [Letter to Neas and Williams \(2022\)](#), “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](#) (pg. 54), and could not be more pressing as we continue to support students impacted by the pandemic and other factors.”

⁷ See: <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>

Consistent with CCD recommendations to OSEP in July 2022,⁸ we also recommend the following:

- **Least Restrictive Environment (LRE):** Change the OSEP 618 Data Collection rules for early childhood programs used for monitoring to accord with the joint recommendations of the U.S. Department of Health and Human Services and U.S. Department of Education.⁹

This change will ensure that preschool student placement meets the IDEA’s LRE requirements. The policy document says that States should “ensure that the principle of natural proportions guide the design of inclusive early childhood programs.”¹⁰ 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.

- **Prioritize the strengthening of State dispute resolution systems for Part C.**

Most State/Territory Part C systems have at most a handful of formal disputes, if any. 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 Centers (PTIs and CPRCs) report that their State/Territory Part C system does not refer families to them, so families often have limited information about their rights to pursue disputes.

- **Prioritize and strengthen the focus in Part C monitoring on reducing/eliminating disparities in access by race.**

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.¹¹

CCD appreciates this opportunity to provide comments and recommendations to OSEP. Please reach out to any of the Education Task Force cochairs with questions or to request a meeting. We look forward to discussing our recommendations and working with you to ensure the Part B and Part C monitoring and compliance processes are improved and strengthened to the benefit of students with disabilities.

Sincerely,

Access Ready
American Music Therapy Association
American Printing House for the Blind
Assistive Technology Industry Association

⁸ CCD Letter to Neas, Williams, (July, 2022) at: <https://c-c-d.org/fichiers/CCD-Ltr-to-OSERS-OSEP-re-General-Supervision.pdf>

⁹ 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>

¹⁰ *Id.* (pg. 9)

¹¹ Magnusson, D., et al, *Beliefs Regarding Development and Early Intervention Among Low-Income African American and Hispanic Mothers*, *Pediatrics* (2017) 140 (5): e20172059, at: <https://doi.org/10.1542/peds.2017-2059>

Association of University Centers on Disabilities
Autistic People of Color Fund (APOC)
Autistic Self Advocacy Network
Autism Society of America
Autistic Women & Nonbinary Network
Center for Learner Equity
Children and Adults with Attention-Deficit/Hyperactivity Disorder
CommunicationFIRST
Council for Learning Disabilities
Council of Parent Attorneys and Advocates (COPAA)
Learning Disabilities Association of America
National Center for Learning Disabilities
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Down Syndrome Congress
National Disability Rights Network (NDRN)
Perkins School for the Blind
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.

www.c-c-d.org