



October 31, 2022

TO: Office of Special Education Programs, US Department of Education
SUBJECT: Determinations Feedback

Submitted via email to SPPAPR@ed.gov

I am writing on behalf of the National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE) with regard to the Office of Special Education Programs' recent request for "[suggestions for improvements and innovative solutions](#)" to the current Results Driven Accountability (RDA) system, with particular regard to issues of equity. "Specifically, we are considering 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."

National PLACE's mission is to strengthen the voice of families and family-led organizations at decision-making tables. As a national, family-led organization with 70 national, state, and local family-led organization members including Parent Centers, Family to Family Health Information Centers, Federation of Families for Children's Mental Health chapters, and Parent to Parent USA affiliates, we provide information and support to our members to assist them to support families, including families of children and youth with disabilities and special healthcare needs, and are aware of the critical importance of the State Performance Plans/Annual Performance Reports in implementation of the early intervention provisions of the Individuals with Disabilities Education Act (IDEA).

National PLACE strongly supports the comments of the Consortium for Constituents with Disabilities, of which we are a member, as well as the comments of National PLACE member The Advocacy Institute. We note that National PLACE submitted comments in response to the Request for Information regarding Executive Order 13985, Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government as well as earlier comments regarding Results-Driven Accountability (the State Performance Plan/Annual Performance Report/State Systemic Improvement Plan, section 615(d) determinations, and differentiated monitoring and support.

We also wish to draw attention to our numerous comments regarding the role of families and family-led organizations in all aspects of IDEA implementation, monitoring, and improvement. The position of National PLACE is that informed, knowledgeable, and empowered families must be at the heart of every initiative from every federal, state and local agency that serves children, youth and families, such as early intervention, special education, and vocational rehabilitation. National PLACE believes that the most effective and efficient way to educate, engage, and empower families is through supporting

family-led organizations whose primary commitment is to family empowerment and who bring the knowledge, skills, experiences, and expertise that only peers can bring to the work. We reiterate our underlying principle: any priorities or decisions made about our children's education must be conducted with the active and meaningful participation of representatives of parents of infants, toddlers, children, youth and young adults served by US ED-funded programs as well as the family/ parent organizations that provide them with information and support and represent their interests.

While National PLACE endorses all of the comments and recommendations of CCD and The Advocacy Institute, because of our focus on ensuring that families and family-led organizations have the information they need to hold state/territorial education and early intervention systems accountable, we highlight the following:

- Families endure a great deal before they take the step of filing IDEA written state complaints. This usually only happens after years of failure of the school district or EI system to comply with the requirements of IDEA. Thus, the fact that the current RDA system does not require states to report on the number of state complaints filed, the percentage of complaint decisions that found non-compliance, or the specific violations. As noted in the NCD report, [Federal Monitoring and Enforcement of IDEA Compliance \(2018\)](#), “State complaints and the investigation reports produced by SEAs can serve as critical sources of information in OSEP monitoring activities. An analysis of the issues raised in state complaints and findings of noncompliance should be a standard part of monitoring activities by SEAs and OSEP.” **A revised Determinations system should include a component on IDEA written state complaints.**
- Families with limited English proficiency (LEP) must have language access services (interpreters and translators) in order to be effective partners in their children's education including sharing information about their child, learning about the school's experiences with their child, and participating in an informed manner in the IEP and IFSP processes. Despite significant advocacy on this issue on the part of our members and other advocates, lack of language access continues to be a nationwide problem. Far too often parents and family-led organizations are told that neither IDEA nor Section 504 require language access such as translation of IFSPs or IEPs despite the reality that schools, districts and states are bound by the requirements of Title VI of the Civil Rights Act of 1964 and presidential Executive Order. For families who do not speak, read, or understand English, lack of language access means that they cannot understand or exercise their rights or those of their children. National PLACE strongly urges that the Office of Special Education Programs take meaningful steps to ensure compliance with 34 CFR 300.322(e), including monitoring states on the provision of qualified interpreters and translators, and to clarify to states, districts and schools that they are also bound by the language access requirements of Title VI of the Civil Rights Act and presidential Executive Order.
- Families of children and youth with disabilities desperately want their children to be included members of their school and community. There has been very little improvement in the inclusion of students with disabilities, especially those with intellectual/cognitive and emotional disabilities, in the past decade. National PLACE encourages OSEP to use the TIES Center report on states' LRE policies to investigate and intervene in states/territories where their regulations or administrative codes have limited LRE. In addition, 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.
- Families of children and youth with disabilities of color have yet to see any impact of IDEA's

prohibition against significant disproportionality in special education, from identification to disability category to placement to discipline to performance on state/local assessments to graduation. As noted by the CCD, "...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. 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. Joint work must occur between and among OESE, OSERS and OCR to address state implementation of the law." We further concur with CCD that a revised matrix should include a measure to indicate whether and how effectively states are implementing the Equity in IDEA regulations.

- National PLACE's members are committed to using available data to analyze the strengths and weaknesses of their state/territorial early intervention and special education programs, and to partner with lead agencies to improve these systems when data indicates such improvement is needed. But in order for them to do so, they must have easier access to and greater transparency in data available to the public. We support The Advocacy Institute's recommendations to:
 - Release states' result matrix at the same time the annual determinations are made, as opposed to the current timing when determinations are released in June and the results matrix, which is critical to understanding why the Department made its determinations, is not available to the public until September. There appears to be no justification or reasoning for this delay.
 - Speed up the timing of release of states' SPP/APRs so that families, family-led organizations, and other advocates aren't waiting for a full 7 months between submission and OSEP determinations.
 - Make all information easy to find. Currently the results matrix and dispute resolution reports – which are OSEP-developed documents – are embedded at the end of the SPP/APR – which is a state/territorial-developed document. The placement of these OSEP-developed documents within the SPP/APR submission document is counter-intuitive. Multiple National PLACE members have complained that it is impossible to tell from the OSEP website where they can find the documents that provide the foundation for OSEP's determination decisions. Further, OSEP should not only require states to post their SPP/APR submissions and the OSEP determinations letters on their website, but should also require that all of the background information including the results matrix for their state/territory be posted at the same location. In addition, OSEP should monitor state websites and ensure that they include this information and engage the Office for Civil Rights if they notice that no information is available in other languages.
 - Families and family-led organizations are under-resourced and busy. We need easily digestible information about early intervention and special education in each state/territory. OSEP should begin issuing the "Data Displays," very helpful fact sheets, that had been posted in the past.

National PLACE has been disturbed to hear from our members that their states are being removed from having conditions placed on their IDEA awards with no evidence of having completed the required steps to come back into compliance. We urge OSEP to follow up to ensure that the state/territory has actually

completed all OSEP-required measures from previous year(s) prior to OSEP finding that the state/territory “meets requirements” in a subsequent year. We have heard that in some cases where states were required by OSEP to take certain steps to come into compliance to “meet requirements,” OSEP has failed to assure that every such obligation has actually been met, as opposed to just accepting the state/territory’s assertion that they have done so. Families, family-led organizations, other advocates, and the public school have access to OSEP’s documentation that demonstrates that the required actions were actually implemented by the state to meet federal requirements.

National PLACE also strongly recommends that OSEP assemble stakeholders and experts, such as the group that made recommendations for changes a decade ago, in 2012, to revisit the current RDA system. It is long past time to address the numerous flaws in the current RDA system.

Finally, National PLACE is encouraged by the reintroduction of opportunities for families and family-led organizations to be part of the OSEP monitoring process. We have made several recommendations regarding ways to strengthen the family and family-organization voice and impact and would appreciate the opportunity to discuss these recommendations in greater detail. The formal inclusion of families, whose children are the intended beneficiaries of IDEA, and Parent Centers, which are OSEP’s family engagement investment, in the monitoring process is long overdue.

In closing, we remain seriously concerned about the ongoing failure of OSEP to adequately monitor the implementation of IDEA around the country. As noted in the 2018 NCD report, Federal Monitoring and Enforcement of IDEA Compliance, “It should be noted that no state has ever been designated as “needing substantial intervention,” despite the fact that the Bureau of Indian Education has received a needs intervention determination for 5 consecutive years and the District of Columbia has received a needs intervention determination for 10 consecutive years. In other words, there appears to be no amount of noncompliance that rises to the level of this determination.” As indicated by The Advocacy Institute in their comments, “an improved determinations system is only as good as OSEP’s willingness to take the necessary actions when States consistently fail to implement IDEA.” Families cannot wait another decade under the current RDA system that is not producing the compliance or outcomes results that were anticipated when it was developed.

Thank you for the opportunity to provide these comments, and for considering and responding to our earlier comments regarding the need to strengthen family and family-led organization engagement in and impact on the SPP/APR/SSIP process. Please feel free to contact me with any questions or for further discussion regarding the perspectives and recommendations of National PLACE and its members.

Sincerely,

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 Ensuring a Place at the Table for Every Family