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September 23, 2022

Office of Special Education Programs
U.S. Department of Education

Dear Director Williams and Office of Special Education Programs Staff:

The National Down Syndrome Congress (NDSC) thanks you for the opportunity to provide comments in response to the Office of Special Education Programs (OSEP) call for feedback on how it can advance equity in the programs it administers specifically through the 2023 determinations process. NDSC is the country's oldest national organization for people with Down syndrome, their families, and the professionals who work with them. We provide information, advocacy and support concerning all aspects of life for individuals with Down syndrome, and work to create a national climate in which all people will recognize and embrace the value and dignity of people with Down syndrome.

As stated in the solicitation for feedback, we too understand and acknowledge that the determinations process is complex and we thank OSEP for intentionally and thoughtfully seeking feedback on how the process can be improved. NDSC appreciates that Executive Order (E.O.) 13985 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government includes people with disabilities and are pleased to see OSEP using this as justification to review the determinations process. Our comments are as follows:

Results Driven Accountability (RDA)

NDSC remains concerned with RDA because of the critical impact on students who take state alternate assessments aligned with alternate academic achievement standards (AA-AAAS). The RDA Results Matrix, which is a focus of making annual determinations whether states have met the requirements of IDEA, does not use measures that include these students. A contributing factor to this 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. We urge OSEP to include measures that take into account students who are assessed via a state's AA-AAAS and not rely on NAEP data, which excludes these students.

It is unclear to us how OSEP can accurately determine if a state is meeting its obligations under IDEA when an entire group of students such as those assessed via a state's AA-AAAS are excluded from the annual determinations Results Matrix and are buried in the Compliance Matrix data, which focuses on all students with disabilities. The participation and performance of students who take the AA-AAAS should be included in the results

matrix. In addition, the Compliance Matrix would be more equitable if the indicators were examined based on disability categories. The data for certain groups of students, such as those with an intellectual disability, is often quite different than the data for other disabilities. The Least Restrictive Environment (LRE) data, discussed below, is an example of this issue.

We also recommend that RDA have a greater focus on LRE. The TIES Center, which provides technical assistance on the inclusion of students with significant cognitive disabilities, published the report *How States Interpret the LRE Clause of IDEA A Policy Analysis*¹. We recommend OSEP use this report 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 Compliance Matrix used to make annual state determinations and look at all the compliance data by disability category. The most recent Annual Report to Congress on IDEA showed that the national average for students with an intellectual disability who are included in the general education classroom 80% or more of the day was only 16.6%; a percentage that has been stagnant for a long time. In addition, TIES reports that only 3 percent of students who take the AA-AAAS are being educated in the general education classroom². It should also be noted that based on states' requests for a waiver of the 1 percent cap under ESEA on the use of the AA-AAAS, students who participate in this assessment are often disproportionately Black and/or from other underserved racial groups³. We believe that including LRE data in RDA (preferably by disability category) and holding states accountable would go a long way towards improving educational outcomes for students with intellectual disabilities, especially those from certain racial groups.

Conclusion

NDSC appreciates the focus of E.O. 13985 on equity for individuals with disabilities and all other historically underserved communities and OSEP's efforts to implement the E.O. with fidelity. For there to be equity for students with the most significant cognitive disabilities who take their state's alternate assessment, there must be improvements in federal monitoring regarding whether states are implementing the requirements of IDEA in a way that improves their academic performance and ensures an education in the least restrictive environment. The fact that only 3% of students who take the alternate assessment are educated in the general education classroom indicates the high likelihood that the LRE provisions are being violated for many of these students. The work of the federally funded TIES Center⁴ and decades of prior research shows that students with significant cognitive disabilities can and should be educated in the general education classroom. We thank you for the opportunity to provide this input. Please contact Cyrus Huncharek, NDSC Director of Policy and Advocacy at cyrus@ndscenter.org should you have any questions.

¹ See: <https://files.tiescenter.org/files/YQ-9ytntpK/ties-center-report-101>

² See: <https://ici.umn.edu/products/impact/312/Lessons-Learned/#Lessons-Learned>

³ See individual state waiver requests for data. For example, see page 5 of Virginia's waiver request <https://oese.ed.gov/files/2022/03/va-one-percent-cap-waiver-letter-post.pdf>.

⁴ See <https://tiescenter.org/>