



August 5, 2020

*Submitted via regulations.gov*

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The National Down Syndrome Congress (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. NDSC submits the following comments in response to the Department of Education's Office of Special Education and Rehabilitative Services (OSEERS) information collection Docket No. ED-2020-SCC-0030 on Proposed Revisions to the SPP/APR IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR) published in the Federal Register on July 10, 2020.

We appreciate that the comments we submitted on April 20, 2020 regarding the proposed revisions to the SPP/APR IDEA Part B were considered as reflected in the Comments and Analysis published with this information collection.

**General Comments**

NDSC commented previously on the "Rethinking Results Driven Accountability (RDA) Initiative" and submitted comments in April on proposed revisions to the SPP/APR. In our April comments we emphasized the importance of looking at the SPP/APR indicators in the context of how they are used as part of the "annual determination" process with respect to whether states have met the requirements of the Individuals with Disabilities Education Act (IDEA) The components of RDA are intended to "work together to improve student achievement." Rather than requesting comments on the SPP/APR indicators without the context of how they fit into the rest of the RDA process, we urged the Office of Special Educations Programs (OSEP) to provide a comprehensive RDA plan for this round of comments. The relationship between the SPP/APR and the annual determinations is especially important. We are disappointed that this request was not granted and do not feel that OSEP's explanation addressed our concerns. We want to take this opportunity to reiterate that data for students who take alternate assessments from the SPP/APR indicators does not impact the annual determinations of whether states have met the requirements of IDEA, and that needs to change.

NDSC supports the detailed comments that have been submitted by The Advocacy Institute on the proposed revisions to the SPP/APR. We will focus our comments on two points of particular concern to the families we represent; Least Restrictive Environment and Competitive Integrated Employment.

### **Least Restrictive Environment (LRE)**

As we have recommended many times in past comments, NDSC urged OSEP in its April comments to add a requirement that states' least restrictive environment data by disability category be included in the targets to be set under Indicator 5. We stated that this is necessary to increase the inclusion of students in the general education classroom for disability categories that fall far below the average for all students with disabilities, including the intellectual disability category. OSEP's responded to our comment with the following statement:

“It is not intended or appropriate for a data collection to drive placement decisions. Further, the disaggregation that the commenter requests is publicly available in the IDEA section 618 educational settings data collection.”

NDSC respectfully disagrees with this response. The purpose of SPP targets and APR reporting (and the connection to annual determinations) is to ensure that states properly implement all the tenets of IDEA. Longitudinal data demonstrates that negligible progress has been made in ensuring that students with intellectual disabilities (ID) are educated to the maximum extent appropriate in the general education classroom, while much greater progress has been made with respect to the “all students with disabilities” group. We assert that the progress for the “all students with disabilities group” has been aided by the targets for that group in the SPP/APR. Since students with ID are such a small percentage of all students with disabilities they can easily be left behind if there is not a specific focus on their educational setting.

Although it is true that LRE data by disability category is already collected, that is clearly not sufficient. Specific expectations for improvement based on disability category are needed. The fact that the data is already collected makes it easier to add targets to the SPPs. In the OSEP response to our LRE comments a concern was raised that the data collection would inappropriately drive placement decisions. Presumably this is a reference to inappropriate decisions to include more students with ID in the general education classroom. We contend that the percentage of students with ID included most of the day in general education classes is so low (well below 20% and much lower if the student takes an alternate assessment) that it is highly unlikely the percentage will rise to a level that is inappropriate. Moreover, it is a much greater concern that inappropriate decisions in favor of segregated educational settings will continue to be made for the vast majority of students with ID without a requirement that states address segregating placement practices. Research has long demonstrated the academic, social and post-school benefits of inclusion for these students. Our comments on LRE are in line with recommendations for OSEP made in the National Council on Disability report at [https://ncd.gov/sites/default/files/NCD\\_Segregation-SWD\\_508.pdf](https://ncd.gov/sites/default/files/NCD_Segregation-SWD_508.pdf):

“Analyze state data by disability, ethnicity, and other available demographics to identify where subgroups of students with disabilities are in more segregated settings:

- a. Prepare and widely disseminate disaggregated data reports in a timely fashion (for the previous school year) based on disability label, race, and geographic and demographic disparities.
- b. Require states to address segregating placement practices, and provide technical assistance and incentives for states to remove group programs based on labels.”

### **Competitive Integrated Employment (CIE)**

NDSC continues to strongly urge OSEP to require States to use the definition of the term “competitive integrated employment” that appears in section 7(5) of the Rehabilitation Act, as amended by the Workforce Innovation and Opportunity Act (WIOA) and its implementing regulations in 34 CFR §361.5(c)(9). Doing so will ensure alignment for purposes of IDEA and Vocational Rehabilitation funding and improve transition for youth from school to the adult employment system. Inconsistent definitions of CIE will cause confusion. The WIOA CIE definition aligns with the definition of integration in other civil rights laws, including the IDEA, the ADA, the Supreme Court’s *Olmstead v LC* decision, and the Medicaid HCBS Settings Rule; with practice in state’s disability employment systems; and with the employment priorities of the disability community.

Thank you for this opportunity to provide feedback

Sincerely,

A handwritten signature in black ink that reads "David Tolleson". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Tolleson  
Executive Director  
National Down Syndrome Congress