

To: OSEP Director Laurie VanderPloeg
From : National Down Syndrome Congress
Re: Proposed Changes to IDEA Annual Determinations
Date: August 15, 2019



Thank you for the opportunity to provide input on the changes OSEP is considering with respect to how data is used in making the Department's 2020 Annual Determinations on state implementation of the Individuals with Disabilities Education Act (IDEA). We support the comments submitted by The Advocacy Institute and National PLACE in response to the questions you shared with stakeholders at the OSEP Leadership Conference. However, the most critical issues impacting students with Down syndrome and other intellectual and developmental disabilities were not addressed in these questions. As we stated in our letter sent November 14, 2018 in response to the Rethinking Results Driven Accountability (RDA) initiative, we believe changes must be made to the Annual Determination calculations to focus on Least Restrictive Environment and to include students who take alternate assessments in the results and compliance matrices in a more meaningful way.

The most critical changes we recommend are below

- Least Restrictive Environment (LRE) data for all students with disabilities should play a significant role in RDA.
- LRE data by disability category should be added to RDA in a meaningful way.
- Failure to meet LRE targets should impact Annual Determinations regarding whether a state has met IDEA requirements.
- Participation and performance on alternate assessments should be counted in the Annual Determinations (and greater oversight should be provided to ensure that states do not continue to exceed the 1% cap on alternate assessment participation under ESSA).

Least Restrictive Environment

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. As part of that mission we support the inclusion of individuals with Down syndrome in all aspects of the community, including an education in the general education classroom pursuant to the LRE provisions of IDEA. The proper implementation of LRE is a priority for NDSC as a critical civil rights issue. NDSC urges the department to include IDEA educational environment data from Indicator 5 in annual determinations, preferably by disability category (the disability category data is already collected even though it currently is not used in Indicator 5). We understand the Department's position that education environment data is about setting and not specifically about outcomes. However, decades of inclusive education research have demonstrated positive academic and postschool outcomes for students with and without disabilities who are educated together in the general education classroom.

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 research on educational environment for students who take alternate assessments the data is even more dismal. Only 7% are educated either in general education classes or resource

rooms.¹ Federally funded projects like the National Center and State Collaborative and the new Center on Inclusive Policies and Practices (the TIES Center focused on students with the most significant cognitive disabilities) have shown that inclusive education for these students maximizes their access to and progress in the general education curriculum in their enrolled grade. This work, which is funded by the U.S. Department of Education, is critically important and much appreciated by NDSC and our families. However, this technical assistance will not create systems change if the message sent by IDEA determinations does not focus on the disparity between the opportunities for an education in the general education classroom for students with disabilities in general, and the struggle for inclusion faced by students with Down syndrome and others with intellectual and developmental disabilities. As you know from attending our National Convention, these students and their families are counting on OSEP to ensure that the states are properly implementing the LRE provisions for every student with a disability.

During the original development of the RDA process we were told that inclusion is not a “result” and therefore LRE data is not given the same focus as other data. However, even if students are doing well academically in separate settings, the fact that they are not being educated with their nondisabled peers is still an issue of serious concern. In the recent case *L.H. v Hamilton County Department of Education*, the Sixth Circuit Court of Appeals said.: “[i]n some cases, a placement which may be considered better for academic reasons may not be appropriate because of the failure to provide for mainstreaming.” While inclusion is a best practice that leads to other positive school results, we urge you to consider that inclusion in all aspects of community life—including the opportunity to be educated alongside typical peers—is also a “result” we should strive to achieve. It communicates to the individual child and the school community that students with disabilities are a valued part of the whole. Therefore, Annual Determinations regarding whether states have met IDEA requirements should include data related to LRE in either the results or compliance matrix.

Alternate Assessment Participation/Performance

The RDA results matrix does not sufficiently focus on students who take alternate assessments in because of the high degree of focus on the National Assessment of Educational Progress (NAEP). Students who take an alternate assessment do not participate in the NAEP, in spite of advocacy efforts to encourage NAEP to develop an alternate assessment. Therefore, data on the participation and performance of students with disabilities on the alternate assessment should be included in making the Annual Determinations. An additional way to help students with Down syndrome and other intellectual and developmental disabilities is to ensure that states understand that every student with a cognitive disability should NOT participate in an alternate assessment. These assessments are designed and field tested for students with the MOST significant cognitive disabilities. Until states develop and properly use guidelines for alternate assessment participation they will continue to violate the 1% participation cap under ESSA.

The NDSC appreciates the opportunity to provide this input. Please contact NDSC’s Senior Education Policy Advisor, Ricki Sabia, with any questions at ricki@ndscenter.org.

¹ Kleinert, H., Towles-Reeves, E., Quenemoen, R., Thurlow, M., Fluegge, L., Weseman, L., & Kerbel, A. (2015). Where Students With the Most Significant Cognitive Disabilities Are Taught: Implications for General Curriculum Access. *Exceptional Children*, 81(3), 312–328.