

# The Advocacy INSTITUTE

*A not-for-profit organization dedicated to services and projects that work to  
improve the lives of children, youth and adults with disabilities*

December 21, 2018

Johnny Collett  
Assistant Secretary  
Office of Special Education and Rehabilitative Services  
400 Maryland Ave., S.W.  
Washington, D.C. 20202-7100

RE: Results Driven Accountability. Submitted via email to: [RethinkRDA@ed.gov](mailto:RethinkRDA@ed.gov)

Dear Assistant Secretary Collett:

The Advocacy Institute appreciates the opportunity to comment on the Rethinking Special Education process as it relates to Results Driven Accountability (RDA). We are a non-profit, tax-exempt organization dedicated to the development of products, projects and services that work to improve the lives of people with disabilities.

The comments that follow reflect our careful review of the three key components of RDA: State Performance Plans/Annual Performance Reports, Annual Determinations and Differentiated Monitoring and Support. We also wish to express support for and agreement with comments submitted by the National Center for Parent Leadership, Advocacy, & Community Empowerment, the Council of Parent Attorneys and Advocates, The ARC, National Down Syndrome Congress and the National Disability Rights Network.

As your work moves forward, we would be pleased to contribute further to discussions regarding the current RDA process. Meanwhile, we hope our comments are useful.

Sincerely,



Candace Cortiella  
Director  
[Candace@AdvocacyInstitute.org](mailto:Candace@AdvocacyInstitute.org)

## Introduction

The “Rethinking Special Education” initiative recently undertaken by the Office of Special Education and Rehabilitative Services (OSERS) presents an opportunity for a comprehensive review of current policies and practices and how these are working to raise expectations and improve outcomes for individuals with disabilities.

Any review or evaluation of the current processes involving the functions of the Office of Special Education Programs (OSEP) must be both informed and constrained by section 616 of IDEA, which lays out the monitoring, technical assistance, and enforcement responsibilities of the U.S. Department of Education (ED) (See <https://sites.ed.gov/idea/statute-chapter-33/subchapter-II/1416>).

In updating these responsibilities in the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA), Congress made clear its intent to refocus ED’s work in such a way that would lead to improved results for students with disabilities (SWDs). As the Senate report stated

*“The revision of section 616 represents a significant departure from past practice of Federal monitoring and enforcement of IDEA. For the first time, the statute provides the Secretary with clear authority to take action against a State when there has been a persistent lack of progress in the area of student achievement. The new focus on substantive performance indicators under section 616 contrasts with previous statutory obligations to collect data that primarily addressed demographic issues. The purpose of these provisions is to shift the Federal monitoring and enforcement activities away from SEA and LEA administrative process issues that have historically driven compliance monitoring, to a system that primarily focuses on substantive performance of students with disabilities.”<sup>1</sup>*

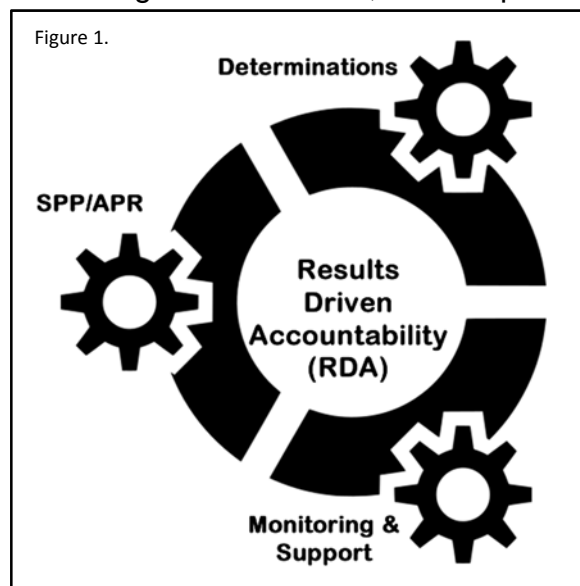
What has followed the enactment of IDEA 2004 has been ED’s attempt to design and implement a system of monitoring and enforcement that reflected the intent of Congress. Specifically, the design and implementation of the State Performance Plan and Annual Performance Report (SPP/APR), the criteria for states’ annual determinations and the system of monitoring and support of States.

---

<sup>1</sup> Senate report to accompany S. 1248 <https://www.gpo.gov/fdsys/pkg/CRPT-108srpt185/html/CRPT-108srpt185.htm>

Beginning in 2012, OSEP reconceptualized its accountability system. That system, called *Results Driven Accountability (RDA)*, was an attempt to best support States in improving results for students with disabilities. As Figure 1 illustrates, the components of RDA are intended to work together - each supporting and enhancing the others in an overall effort to improve student achievement.

Now, more than five years into implementation of RDA, it appears that little improvement is occurring. Exactly why this is happening and what needs to change to provoke improvement should be the focus of Rethinking. While the Rethinking Framework includes flexibility to States as a key element, flexibility may in fact be one of the factors standing in the way of improvement.



As the recent report from the National Council on Disability, *Federal Monitoring and Enforcement of IDEA Compliance*, points out, the “current system of monitoring and enforcement, while moving toward a more balanced approach of compliance and results, often fails to address noncompliance in a timely and effective manner, and utilize all of the options available to address issues.”<sup>2</sup>

Our comments focus on two key elements. First, to prompt action that will bring States into alignment with ED’s 2015 guidance to States regarding a Free Appropriate Public Education, which stated

*“To help make certain that children with disabilities are held to high expectations and have meaningful access to a State’s academic content standards, we write to clarify that an individualized education program (IEP) for an eligible child with a disability under the Individuals with Disabilities Education Act (IDEA) must be aligned with the State’s academic content standards for the grade in which the child is enrolled.”<sup>3</sup>*

<sup>2</sup> National Council on Disability, (IDEA Series) *Federal Monitoring and Enforcement of IDEA Compliance*, 2018, Author, available at <https://ncd.gov/publications/2018/individuals-disabilities-education-act-report-series-5-report-briefs>

<sup>3</sup> United States Department of Education Office of Special Education and Rehabilitative Services Dear Colleague Letter on Free and Appropriate Public Education (FAPE), November 16, 2015 available at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/guidance-on-fape-11-17-2015.pdf>.

Second, to prompt alignment with key provisions of the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act (ESSA). As ED stated in its 2015 FAPE guidance:

*“This interpretation also appropriately harmonizes the concept in the IDEA regulations of “general education curriculum (i.e., the same curriculum as for nondisabled children),” with the ESEA statutory and regulatory requirement that the same academic content standards must apply to all public schools and children in the State, which includes children with disabilities.”*

Much can be done to drive improved results for students with disabilities while continuing to satisfy the requirements of section 616 of IDEA.



### **IDEA Part B State Performance Plans/Annual Performance Reports (SPP/APRs)**

The SPP/APR is a critical component of RDA. OSEP has made several changes to the SPP indicators, most recently in 2017 with changes that went into effect with States' FFY 2016 SPP/APR that was submitted in February 2018. Changes over the years have been attempts to address duplicative reporting and streamline improvement activities.

In commenting on the SPP/APR changes proposed in 2017, this organization made several recommendations specific to Indicators 1, 2, 3A, 3C, and 13.<sup>4</sup> Those recommendations along with additional ones offered below attempt to address our key elements stated above.

#### **Indicator 1- Graduation**

- States should be required to report on performance against the annual targets for the four-year Adjusted Cohort Graduation Rate (ACGR) as well as performance against targets for any extended year ACGR the State may be using in its accountability system. The annual targets must be the same as the annual ACGR targets for the students with disabilities subgroup in the State's approved ESSA plan.
- States should be required to report on the gap between the ACGR of SWDs and students without disabilities.
- States should be required to disaggregate SWDs receiving a regular high school diploma and those receiving an Alternate Diploma (as authorized by ESSA) if the State is awarding an Alternate Diploma.

---

<sup>4</sup> Advocacy Institute comments to Department of Education's information collection Docket ID number ED-2017-ICCD 0010 [www.advocacyinstitute.org/resources/AdvocacyInstituteFFY2018SPPRevisions.pdf](http://www.advocacyinstitute.org/resources/AdvocacyInstituteFFY2018SPPRevisions.pdf)

To ensure that reporting of graduation data complies with IDEA and ESSA, OSEP should instruct States to report only SWDs receiving a regular high school diploma as defined in IDEA as amended by ESSA. OSEP should also instruct States to follow ED's non-regulatory guidance regarding High School graduation regarding calculation of the SWD subgroup (e.g., who gets counted and what gets counted) and Alternate Diplomas<sup>5</sup>.

OSEP should also review and address the current disparity between the data reported in Indicator 1 based on the ACGR and the data being used in the Results Matrix for making annual determinations, which is an event rate. This is further discussed in our comments on Determinations.

For States that have identified graduation as its State-identified Measurable Result (SIMR) in its State Systemic Improvement Plan (SSIP), OSEP should direct states to ensure that the SIMR target reflects the ACGR targets set for the SWD subgroup in the State approved ESSA plan.

### **Indicator 2 - Dropout**

- Eliminate Option 2, which allows States to use the annual event school dropout rate and require States to use the same data that is used for reporting under section 618. This is also the dropout calculation used in the Results Matrix.

### **Indicator 3 - Statewide Assessments**

Indicator 3A was removed in the 2016 SPP changes. It should be reinstated and require States to:

- Report on the achievement of SWDs relative to the long-term goals and measurements of interim progress for proficiency on state assessments established in the State's approved ESSA plan.
- Report the gap in proficiency of SWDs and students without disabilities by grade and subject.

As noted in the 2018 Part B FFY 2016 SPP/APR Indicator Analysis:

*“Because states disaggregated data to varying degrees, rather than providing aggregate data for each subject area, not all states are represented in all data summaries. For example, some states disaggregated by grade or school level, or provided only information summed across grades for participation, performance, or both participation and performance.”*

---

<sup>5</sup> U.S. Department of Education, High School Graduation Rate Non-Regulatory Guidance, January 2017, available at <https://www2.ed.gov/policy/elsec/leg/essa/essagradrateguidance.pdf>

The National Center on Educational Outcomes (NCEO), which attempts to annually report on the participation and performance of SWDs on state assessments vs. non-SWDs, also notes the difficulty of compiling such information since “The comparison peer group varied by state, with some states reporting the performance of students without IEPs and others reporting the total student population that included students with IEPs.”<sup>6</sup>

ESSA requires States to report the performance of SWDs on state assessments compared to students without disabilities (not compared to all students). OSEP should require States to report disaggregated assessment participation and performance data as required by ESSA. Only by requiring consistent data reporting across States can these data be compared.

For States that have identified performance on state academic assessments as its State-identified Measurable Result (SIMR) in its State Systemic Improvement Plan (SSIP), OSEP should direct states to ensure that the SIMR target reflects the proficiency targets set for the SWD subgroup in the State approved ESSA plan.

### **Indicator 5 - Least Restrictive Environments (LRE)**

The 2018 Indicator Analysis reports that the six-year trend for Indicator 5B shows very little change in the mean percentage of SWDs served in general education settings 40% or less of the school day. A recent report from the National Council on Disability also reported that there is little to no change in placement practices for students with Intellectual/Developmental Disabilities during the past 10 years.<sup>7</sup>

Given that little improvement is occurring in 5B, OSEP should undertake a comprehensive review of State policies and practices. A new report from the TIES Center provides critical information on how States are interpreting the LRE clause of IDEA.<sup>8</sup> The report found that there is variation in state regulations that address LRE, likely due to the fact that states are permitted to elaborate on federal language associated with LRE (page 2). These variations could be standing in the way of more inclusive placement of millions of SWDs.

OSEP should use the TIES report to investigate States’ LRE policies and intervene in States where state regulations or administrative codes have interpreted LRE in a

---

<sup>6</sup> NCEO Report 405, 2014-15 Publicly Reported Assessment Results for Students with Disabilities and ELs with Disabilities, May 2017, available at

<https://nceo.info/Resources/publications/OnlinePubs/report405/default.html>

<sup>7</sup> National Council on Disability. IDEA Series (2018). The Segregation of Students with Disabilities. Available at [https://ncd.gov/sites/default/files/NCD\\_Segregation-SWD\\_508.pdf](https://ncd.gov/sites/default/files/NCD_Segregation-SWD_508.pdf)

<sup>8</sup> White, J. M., Cosier, M., & Taub, D. (2018). *How states interpret the LRE clause of IDEA: A policy analysis*. Minneapolis, MN: University of Minnesota, The TIES Center available at <https://files.tiescenter.org/files/YQ-9ytntpK/ties-center-report-101.pdf>

manner that does not comply with IDEA. At the same time, OSEP should seek to incorporate LRE data into the Compliance Matrix used to make annual state determinations. This could be done by rank-ordering States on 5B and awarding points based on those rankings (lowest states getting max. points, highest states getting none).

### Indicator 17 - State Systemic Improvement Plan (SSIP)

The SSIP indicator was added to the SPP in FFY 2013 as part of the RDA system. As OSEP stated in a SSIP Q&A<sup>9</sup>

*“In developing, implementing, and evaluating the SSIP, we expect that a State’s focus on results will drive innovation in the use of evidence-based practices in the delivery of services to children with disabilities, which will lead to improved results for children with disabilities.”*

The SSIP is executed in three phases over six years (FFYs 2013 through 2018 SPP/APR). Phase I required States to declare a State Identified Measurable Result (SIMR). As has been reported in indicator analyses, the majority of States selected a SIMR focused on improving reading or math proficiency (see Table 1 below).

**Table 1. SIMR with State Names**

SIMR	States
Reading (n=35)	AR, AS, AZ, CNMI, CO, CT, DE, FSM, GU, HI, IA, ID, IL, IN, KS, LA, MI, MS, NE, NV, NM, NY, OH, OK, OR, PW, SC, SD, TN, TX, VI, WA, WI, WY, MO
Mathematics (n=7)	KY, MD, ME, PR, RI, UT, VT
Reading and Math (n=1)	CA
Graduation (n=13)	AK, DC, FL, GA, MN, MT, NC, ND, NJ, PA, RMI, VA, WV
Post-School Outcomes (n=2)	AL, BIE
Early Childhood Outcomes (n=2)	MA, NH

Most States selected a subset of SWDs and/or a subset of LEAs to target for SIMR. For example:

<sup>9</sup> Questions and Answers for Indicators B-17 and C-11 available at <https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/78/OSEP%20-%20SSIP%20Questions%20and%20Answers.pdf>

**Hawaii SIMR:** Increase in the percent of proficient 3rd & 4th graders in reading, and increase in the MGP (median growth percentile) in 4th grade for reading for students with SLD, OHI, and SLI.

**Indiana SIMR:** Increase reading proficiency achievement on Indiana’s IREAD-3 assessment by .5% each year for 3rd grade male students eligible for free/reduced lunch, identified as having specific learning disabilities.

These narrowly defined SIMRs do not represent improvement that would result in improved performance for a State’s SWDs. Even if a State should achieve its “measurable and rigorous” SIMR targets, there would be little if any impact on SWD overall performance statewide. The OSEP SSIP Q&A states that:

*“If the State selects a SIMR that focuses on improving a result for a subset of districts/programs or populations, then the State must include in the SIMR section of Phase I of its SSIP an explanation of why improving that result for that subset of districts/programs or population would improve that result on a Statewide basis.”*

Given the narrow focus of most SIMRs and the enormous amount of time and energy States are required to devote to each phase, it could easily be concluded that the SSIP provides little return on investment (ROI). Thus, OSEP should examine the current SSIP for the following:

1. Amount of time invested in each of three phases
2. SIMR impact on total SWD population statewide
3. Collaboration within States between special ed and gen ed personnel
4. Coordination between States’ improvement initiatives and reform efforts, most specifically with States’ approved ESSA plans.

A 2014 letter to Chief State School Officers from the Ass’t Secretaries of OSERS and OESE<sup>10</sup> strongly encouraged points 3 and 4 above. However, in examining ESSA approved plans, little evidence was found of coordination within States. In fact, a recent report from the National Center for Learning Disabilities, *Assessing ESSA: Missed Opportunities for Students with Disabilities*<sup>11</sup>, found that roughly half of states did not provide any description of how the SSIP and state education plan will work in concert to meet the needs of all students in their ESSA state plans. As the report warned, this “may lead to states retrofitting the goals of the SSIP into the plan, which is inefficient and less likely to be effective” (page 22).

It is also troubling to note that only twenty-four states (40%) reported meeting their SIMR targets for FFY 2016 according to the 2018 SPP/APR Indicator Analysis.

<sup>10</sup> <https://www2.ed.gov/about/offices/list/osers/osep/rda/050914rda-lette-to-chiefs-final.pdf>

<sup>11</sup> National Center for Learning Disabilities, *Assessing ESSA: Missed Opportunities for Students with Disabilities*, 2018, available at <https://www.nclld.org/assessing-every-student-succeeds-act-2018>





## Determinations

The Advocacy Institute undertook a comprehensive review of the Determinations process in November 2018.<sup>12</sup> That review, which is submitted along with these comments, includes several recommendations for improving the current Determinations process. However, in addition to these recommendations, it must be emphatically stated that the Results Matrix of the Determinations process is almost completely disconnected from other elements of RDA and should be completely dismantled as soon as possible. A new Results Matrix should be assembled in a timely manner so that States are given ample notice of impending changes and the new determination matrix can begin with the next SPP/APR 6-year cycle.

The current RDA Results Matrix:

- **Relies too heavily on NAEP elements.** Given every other year in Grades 4 and 8, NAEP results are reported only at the state level, making it impossible for states to investigate NAEP performance at the LEA or school level in order to foster improvement. Since NAEP is given every other year, the same data must be used for two determination cycles. NAEP does not capture SWDs who take a state's alternate assessments, as these students do not participate in NAEP, nor does it include SWDs who attend specialty schools or those who cannot participate on NAEP with allowable accommodations. In fact, NAEP included the following warning in its release of 2017 results regarding Interpreting NAEP Reading Results and Interpreting NAEP Mathematics Results:<sup>13</sup>

### Students with Disabilities (SD)

Results are reported for students who were identified by school records as having a disability. A student with a disability may need specially designed instruction to meet his or her learning goals. A student with a disability will usually have an Individualized Education Program (IEP) which guides his or her special education instruction. Students with disabilities (SD) are often referred to as special education students and may be classified by their school as learning disabled (LD) or emotionally disturbed (ED). The goal of NAEP is that students who are capable of participating meaningfully in the assessment are assessed, but some students with disabilities selected by NAEP may not be able to participate, even with the accommodations provided. Beginning in 2009, NAEP disaggregated students with disabilities from students who were identified under

<sup>12</sup> The Advocacy Institute, *Results-Driven Accountability Needs Substantial Intervention*, 2018, available at <http://www.advocacyinstitute.org/resources/AdvocacyInstitute.RDA.Report.Nov2018.pdf>

<sup>13</sup> Nation's Report Card, 2017, Interpreting NAEP Reading Results available at [https://nces.ed.gov/nationsreportcard/reading/interpret\\_results.aspx](https://nces.ed.gov/nationsreportcard/reading/interpret_results.aspx) and [Interpreting NAEP Mathematics Results](https://nces.ed.gov/nationsreportcard/mathematics/interpret_results.aspx) available at [https://nces.ed.gov/nationsreportcard/mathematics/interpret\\_results.aspx](https://nces.ed.gov/nationsreportcard/mathematics/interpret_results.aspx)

section 504 of the Rehabilitation Act of 1973; however, trend results dating back to 1998 are available in reading for the SD variable that includes section 504 students. The results for SD are based on students who were assessed and could not be generalized to the total population of such students.

This statement was further explained in an email from NAEP<sup>14</sup>, which stated:

“The NAEP SD performance does not include the performance of students who attend specialty schools (such as schools for hearing/visual impaired or more significant cognitive/physical disabilities) or students with a disability(ies) who cannot participate on NAEP with allowable accommodations. While it is likely an accurate measure of the type of students who are able to participate on NAEP, we can not say it is an accurate measure of those who are not in the sample or cannot demonstrate what they know and can do with the accommodations NAEP permits.”

In addition to the question regarding the generalizability of NAEP results for SWDs, it is also important to note that States’ NAEP performance and the ranking among states plays no role in ESSA state accountability systems. In fact, how students perform on NAEP is heavily influenced by where each state’s standards falls on the NAEP scale and in relation to the NAEP achievement levels. How States performed on the latest NAEP State Mapping Study<sup>15</sup> correlates closely with how States rank on NAEP performance of SWDs<sup>16</sup>.

The NCEO report, *Using Assessment Data as Part of a Results-Driven Accountability System: Input from the NCEO Core Team*<sup>17</sup>, did not recommend using NAEP as the sole measure of performance of SWDs in a State for determinations. In fact, the report recommended use of NAEP only to communicate the relative difficulty of state assessments.

The purpose of IDEA is to provide special education and related services so that SWDs can meet the same standards as all other students in the state. The purpose

---

<sup>14</sup> Personal communication with Grady Wilburn, Ph.D., Statistician, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education dated 12/17/18.

<sup>15</sup> Nation’s Report Card, Mapping State Proficiency Standards 2015 available at <https://nces.ed.gov/nationsreportcard/studies/statemapping/>

<sup>16</sup>The Advocacy Institute, 2017 NAEP Results of Students with Disabilities :: Rank-ordered by State available at <http://www.advocacyinstitute.org/NAEP/StatePerformance2017RankOrdered.shtml>

<sup>14</sup> NCEO, *Using Assessment Data as Part of a Results-Driven Accountability System: Input from the NCEO Core Team* available at <https://www2.ed.gov/about/offices/list/osers/osep/rda/using-assessment-data--core-team-input.pdf>

of ESSA is to close achievement gaps among student subgroups on state assessments. The use of NAEP performance fulfills neither of these purposes.

The element measuring SWD participation in NAEP should be eliminated. While exclusion has been a problem, it has been substantially improved since the 2010 NAGB policy on NAEP participation of SDs and ELs was issued.<sup>18</sup>

[https://nagb.gov/content/nagb/assets/documents/newsroom/press-releases/2010/release-20100309/nagb\\_policy\\_on\\_naep.pdf](https://nagb.gov/content/nagb/assets/documents/newsroom/press-releases/2010/release-20100309/nagb_policy_on_naep.pdf)

- **Does not measure performance on general state assessments.** Since 2015, there is no element that addresses the performance of students with disabilities on the state’s general assessment. ESSA requires States to establish ambitious long-term goals and measurements of interim progress for the performance of students with disabilities on state assessments in reading and math. IDEA requires that all SWDs participate in statewide testing. ESSA requires States to include at least 95 percent of SWDs in annual state assessments. Unlike NAEP, state assessments are aligned to each States’ academic content standards. Thus, performance on state assessments is a much more complete picture of how SWDs are performing. In addition, performance on state assessments is a primary indicator of state ESSA accountability systems.
- **Does not measure performance gap between students with disabilities and students without disabilities on state assessments.** Closing the performance gaps between SWDs and those without disabilities, as well as other historically poor performing subgroups, is the primary purpose of ESSA. Failing to include the performance gap in RDA determinations does nothing to assist with this gap-closing effort. Since the purpose of moving to the RDA system was to provoke more attention to the performance of SWDs (i.e., gap closing) then performance gaps should be a key element of determinations.
- **Does not measure performance or participation of students with the most significant cognitive disabilities who are assessed via a state’s alternate assessment on alternate academic achievement standards (AA-AAAS).** These students—approximately 10 percent of students with disabilities—are completely ignored in the current Results Matrix since students who take a state’s AA-AAAS do not participate in NAEP. Meanwhile, ESSA has smoothed out state-to-state discrepancies regarding alternate assessments by prohibiting all but the AA-AAAS and capping the percentage of students who can be assessed, making this an

---

<sup>18</sup> National Assessment Governing Board, Policy Statement on NAEP Testing and Reporting on Students with Disabilities and English Language Learners available at [https://nagb.gov/content/nagb/assets/documents/newsroom/press-releases/2010/release-20100309/nagb\\_policy\\_on\\_naep.pdf](https://nagb.gov/content/nagb/assets/documents/newsroom/press-releases/2010/release-20100309/nagb_policy_on_naep.pdf)

important group to capture both participation and performance. Further, incorporating the participation of SWDs who take a state's AA-AAAS into the Results (or Compliance) Matrix will support efforts to adhere to the cap imposed by ESSA.

- **Does not provide recognition of growth (i.e., improvement, gap closing) within each state from year to year in performance on state assessments.** ESSA provided states the opportunity to use growth as an indicator in state accountability systems. RDA should do the same.
- **Relies too heavily on scoring based upon rank ordering of states.** Half of the possible points in the current Results Matrix are based on how a state ranks among all states on the element. This approach results in one-third of states always failing to earn any points regardless of how SWDs perform compared to students without disabilities in the state or how much improvement and/or gap closing has occurred. The use of rank ordering should be eliminated in a new Results Matrix and replaced with scoring similar to the Compliance Matrix. For example, scoring on assessment performance and graduation should be based on achievement of the goals for the SWD subgroup in the state's ESSA accountability plan.
- **Uses a different metric for graduation.** ESSA requires states to use the four year Adjusted Cohort Graduation Rate (ACGR) for goal setting and accountability purposes (identifying high schools in need of improvement). States must use the ACGR and the graduation goals in their state ESSA plan for their State Performance Plan and Annual Performance Report. The RDA Matrix uses an "event rate" for measuring graduation and scoring. The two rates vary significantly. This discrepancy should be corrected. Meanwhile, graduation should weigh more heavily than most other Results Matrix elements.



## Differentiated Monitoring and Support (DMS)

First, we wish to express agreement with the findings and recommendations of the recent National Council on Disability report, *Federal Monitoring and Enforcement of IDEA Compliance*<sup>19</sup>. The report provides the history of OSEP's monitoring and compliance activities. The decision to dispense with verification visits was found to be problematic by the stakeholders interviewed for the report. We encourage OSEP's review of the report and its recommendations for ED, all of which can be achieved through changes to current practices. The recommendations are:

---

<sup>19</sup> National Council on Disability, (IDEA Series) Federal Monitoring and Enforcement of IDEA Compliance, 2018, Author, available at <https://ncd.gov/publications/2018/individuals-disabilities-education-act-report-series-5-report-briefs>

- Engage in more aggressive enforcement and utilize its authority to withhold federal funds and make referrals to DOJ for enforcement as permitted by IDEA;
- Establish a formal procedure for submission of complaints to ED and OSEP;
- Continue and accelerate efforts to improve validity and reliability of systems of data gathering and analysis;
- Shorten the length of time between SPP/APR submission and release of determinations and other findings;
- Provide clear instructions that enable stakeholders to locate OSEP's response to each state's SPP/APR and any actions required by the states;
- Provide links to the information each state is required to make available in OSEP's SPP/APR online portal to improve the public's access to LEA determinations;
- Provide comprehensive guidance to SEAs on investigating and enforcing state complaints, including corrective actions for denial of FAPE.

Regarding Differentiated Monitoring and Support, little information is available regarding the current system, which was begun in 2016 as part of RDA. The description below (available at <https://www2.ed.gov/fund/data/report/idea/dmsrpts/index.html>) provides scant assistance in understanding how the system works:

*OSEP differentiates its approach for each state based on the state's unique strengths, progress, challenges, and needs.*

*Based on an annual Organizational Assessment of Risk Factors of each state, OSEP annually provides differentiated monitoring and support to states on:*

- *Ensuring improved outcomes for infants, toddlers, children, and youth with disabilities.*
- *Complying with the IDEA programmatic requirements.*
- *Complying with federal fiscal requirements.*
- *Collecting and reporting valid and reliable data.*
- *Ensuring implementation of the state's State Systemic Improvement Plan (SSIP).*

According to DMS letters to states, OSEP uses the information from the Organizational Assessment and an Engagement Decision Tree to make designations of universal, targeted, or intensive monitoring and support that a State will receive.

It appears from the DMS reports generated so far (CA, IL, NH, NM, NY, OH, PR, TX) that the threshold for selecting a state for DMS and the areas to be addressed are gleaned from States' APRs. The level of assistance to be provided appears to be determined by the State's performance on selected SPP indicators and the Compliance and Results elements of the annual determinations. This makes the suggested changes

to the SPP and the Results Matrix even more critical. For example, identifying a state for poor performance on the NAEP (as was the case in the DMS of New Mexico<sup>20</sup>) will do little if anything to help the state improve the performance of SWDs on state assessments. In fact, no activities were offered to address this failing performance.

We offer two additional observations regarding DMS:

1. It appears to be a very secretive process. DMS reports are not posted on States' websites to the best of our knowledge. Nor are they shared with the State's Parent Training and Information Center, Protection and Advocacy office and other stakeholders in the state.
2. The activities provided to a State identified for DMS "engagement activities" appear to involve some degree of technical assistance – generally provided by one or more of the OSEP funded TA centers – do not include outside stakeholders who could prove helpful in implementing improvements. More importantly, implementation of activities to improve results appear to be left in the hands of the States. As such, DMS is largely a "self-help" model that relies on the States' willingness and capacity to implement improvement activities with fidelity.

We offer the following specific areas of focus that should be incorporated into OSEP's monitoring and support activities, which are intended to support and align with States ESSA accountability plans:

### **High School Graduation**

ESSA has elevated the importance of high school graduation rates in state accountability. By requiring States to include high school graduation as an indicator in the state accountability system, establish goals for graduation rates and identify high schools failing to graduate one third or more of their students, States' attention to graduation has been increased dramatically.

OSEP should take the following steps to ensure that States' enhanced focus on graduation will benefit SWDs:

1. Ensure that States are reporting as graduates only those SWDs awarded a regular high school diploma that complies with the new definition in IDEA, as amended by ESSA. An NCEO report issued in 2015, *Graduation Policies for Students with Disabilities Who Participate in States' General Assessments*<sup>21</sup>, provided information

<sup>20</sup> New Mexico Monitoring and Support Visit Summary and Next Steps, August 31, 2016 -September 2, 2016 available at <https://www2.ed.gov/fund/data/report/idea/partbdmsrpts/dms-nm-b-2016-results.pdf>

<sup>21</sup> Thurlow, M. L., Albus, D. A., & Lazarus, S. S. (2015). *Graduation policies for students with disabilities who participate in states' general assessments* (Synthesis Report 98). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes available at <http://www.cehd.umn.edu/nceo/OnlinePubs/Synthesis98/SynthesisReport98.pdf>

on each States' course requirements for graduation. It found that only 14 states held the same graduation requirements for their students with disabilities and their peers; 30 of the 51 states had course requirements for their students with disabilities that were not the same (less rigorous) as those for their peers. The report also lays out the nature of the course requirements in those states that had different course requirements for students with disabilities. Yet many States are reporting SWDs awarded a diploma based on significantly different requirements as having earned a "regular high school diploma." OSEP has a responsibility to correct these practices and ensure that States are in compliance with ESSA and ED's High School Graduation Rate Non-Regulatory Guidance. That guidance clearly states that "students who graduate with a credential other than a regular high school diploma, such as a general equivalency diploma, modified diploma, certificate of completion, certificate of attendance, or a diploma based on meeting a student's IEP goals, may not be counted in the numerator as having earned a regular high school diploma, but must be included in the denominator of the four-year and extended-year ACGR." (Page 13).

OSEP should also ensure that the graduation targets in States' SPPs reflect the goals in the States' approved ESSA accountability plan.

## 2. Chronic Absenteeism

A majority of States selected chronic absenteeism as the sole or one of the indicators of school quality or student success in ESSA accountability plans. The SWD subgroup has one of the highest rates of chronic absenteeism so this new attention will require States to explore reasons for absenteeism specific to SWDs in order to improve rates. In light of this and to ensure that this focus doesn't result in negative consequences for SWDs, OSEP should provide technical assistance to States. While NCEO has issued several briefs on the subject<sup>22</sup> much more assistance should be provided to states, particularly on a state-by-state basis. Some states have been addressing the issue of chronic absenteeism for several years and their knowledge could be shared.

### Closing Comments: Family Engagement

One of the three elements in the Rethink Framework is a focus on Partnerships. Specifically, partnering with parents and families, and diverse stakeholders to raise expectations and improve outcomes for individuals with disabilities. OSEP should examine its current practices, including funding of projects that provide information and technical assistance to families of infants, toddlers, children and youth with disabilities, and youth with disabilities. Authentic family engagement requires much more attention and funding.

---

<sup>22</sup> National Center on Education Outcomes, Brief on Students with Disabilities and Chronic Absenteeism available at <http://nceotacenter.org/newsletter/june-2018/new-brief-on-students-with-disabilities-and-chronic-absenteeism/>