

December 15, 2011

Melody Musgrove, Ed. D.
Director
Office of Special Education Programs
United States Department of Education
550 12th Street, S.W.
Washington, DC 20202

Re: Pending Collection No. 4736: IDEA State Performance Plan/Annual Performance Report (SPP/APR) Performance Indicators

Dear Dr. Musgrove:

Thank you for the opportunity to submit comments regarding the SPP/APR Performance Indicators. Data collection is extremely important for several reasons: data allow measurement of outcomes and their impact, enable the determination of whether or not efforts are effective, and permit standards to be re-adjusted upwards as they are attained.

The Individuals with Disabilities Education Act (IDEA) clearly states that the primary focus on federal and state monitoring activities shall be on “improving educational results and functional outcomes for all children with disabilities.” 20 USC 1416 (a) (2) (A); 34 CFR §§300.600-300.604.

Toward that end, data are critical to assure that:

- 1) Parents have accurate and timely information in order to be meaningful partners in the special education process;
- 2) Diverse stakeholders working towards system change have access to the information that will form the basis for their efforts; and
- 3) Local education agencies (LEAs) are accountable for implementation of the IDEA and for meaningful outcomes for students with disabilities on an ongoing basis.

We urge OSEP to heed the recent advice of Assistant Secretary for Civil Rights Russlyn Ali, who said: “Transparency is the path to reform, and it’s only through shining a bright spotlight on where the opportunity gaps exist that we can really make headway on closing the achievement gap.” (Education Daily, Wednesday, July 13, 2011.)

We are concerned, not with the indicators themselves, but with the manner in which OSEP uses the annual performance results (APR). By not putting any weight on the performance indicators in its determinations regarding compliance, and by advising state education agencies not to do so when monitoring local education agencies, OSEP undercuts the inherent value of the indicators. The lack of clarity and uniformity of the requirements applied in measurement of the indicators also undercuts their value.

We have concern with the Department's intention to make regulatory changes based primarily upon "burden" to States. 76 Fed. Register 7611. Any reform efforts need to include not only better outcomes and results for students with disabilities but also an enhanced ability to measure those outcomes and results. Valuable time, resources, and money are spent on data collection. Such effort can only be well spent if it leads to action. Districts should be provided with incentives to improve their performance and should be sanctioned if they do not.

We do not agree with the elimination or combination of indicators, especially without clear understanding of how the net result of so doing will have a positive impact on student outcomes.

We recommend the following as necessary steps to ensure that the SPP/APR process is meaningful and effective:

- 1) **Use all of the indicators, both compliance and performance, in making determinations.** Failure to do so results in only a partial picture of a district's level of compliance and does not address the fundamental purpose of monitoring, which is to determine if students are actually benefiting from the educational services they are receiving. OSEP has issued guidance stating that the focus of monitoring should be on compliance, not performance. We believe this is a misguided and short-sighted approach that undoes many years of work by education experts, state education agency personnel, advocates, and OSEP staff to build a robust monitoring system focused on outcomes, a system that recognizes that compliance and performance belong together. Data collected for SPP/APR purposes must be meaningfully used by the Education Department to identify states, and by states to identify local education agencies, that are in need of enhanced monitoring, technical assistance and, ultimately, enforcement.
- 2) **Import data from other sources, if possible, to save time, then add drill-down measures to make the data more meaningful.** OSEP should adopt a focused monitoring model that incorporates principles, indicators, incentives, and sanctions, and that includes a "look behind" or "drill down" process to analyze data. For example, in determining if students are successfully included, it would be important to look at suspension rates and whether IEPs include supplementary aids and services and programmatic modifications and supports, not just at the number of students in general education.
- 3) **Provide consistent, meaningful definitions and targets.** It is important that data collection be transparent and that comparisons be similar so that apples are compared with apples and oranges with oranges. Often, no data have been collected, or the sample size has not been large enough for an informed decision to be made as to whether or not a state has met its SPP goal. Consistent measures are important so that data are reflective. For example:
 - a. States have different mean and standard distribution for each race. Eight percent of all Caucasian students are students with disabilities, while 12% of all Black students are students with disabilities. However, the standard deviations of the groups are different, with Blacks having a much higher standard deviation. As a result, the disproportionate representation of Black students in special education is hidden in the IDEA Part B numbers. Allowing state education agencies to define disproportionality themselves is a

- problem. We recommend that OSEP coordinate with the Office for Civil Rights to develop meaningful definitions and target ranges.
- b. Allowing states to set their own performance standards has led to some states identifying, and OSEP approving, miniscule increases in performance. For OSEP to approve a target simply because it is greater than zero makes a mockery of Congress' intent to require "measurable and rigorous" standards. 20 USC 1416 (b)(2)(A).
 - c. Progress needs to be meaningful, and it must be achievable in a reasonable amount of time. Although it is not unreasonable to expect incremental progress rather than immediate complete transformation, the increments must be achievable in the foreseeable future. It is not appropriate for OSEP to accept an annual improvement rate that is so low that the target will not be achievable in the school lifetime of a young student.
- 4) **Computerize data and make data available more easily and sooner.** States are required to report to the public annually on the performance of each local education agency and early intervention services agency in the state on the targets in the state performance plan. These reports should be more easily publicly available to the broader public in a format that is easy to access. Both NCLB and IDEA reports should be available in one location on the state's website, and OSEP should link to the reports on its own website. Guides, fact sheets, and a glossary of terms should be provided to assist the public in understanding the reports.

We appreciate the opportunity to provide you with our comments. Please feel free to contact us if you would like to discuss these comments or if you have any questions.

Sincerely,

Denise Stile Marshall, M.S.
Executive Director

Leslie Seid Margolis, Esq.
COPAA Board Governmental Relations Committee Member

Robert I. Berlow, Esq.
COPAA Board Governmental Relations Committee Co-Chair

Dawn R. Smith, Esq.
COPAA Board Governmental Relations Co-Chair