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The National Association of State Directors of Special Education (NASDSE) appreciates having the opportunity to comment on proposed changes to the State Performance Plan/Annual Performance Report (SPP/APR) indicators. We appreciate that the Office of Special Education Programs (OSEP) has recognized the need to re-evaluate the indicators after the state education agencies (SEAs) have had an opportunity to submit their State Performance Plans (SPP) and first Annual Performance Report (APR) for review by OSEP.

NASDSE is the not-for-profit organization that represents the state directors of special education in the 50 states, the District of Columbia, the U.S. territories, the Department of Defense Education Agency, the Bureau of Indian Education and the Freely Associated States. Its Board of Directors, at the direction of the NASDSE membership, has spent time over the course of the past year analyzing and discussing the indicators with OSEP staff. The NASDSE board has conducted a thorough review of the proposed changes for the Part B indicators and these comments reflect both that review as well as a recent discussion with NASDSE members.

We begin our analysis with some overarching comments about the process followed by specific comments on each of the indicators.

First, and of utmost importance, NASDSE members are united that our work needs to focus on improving outcomes and accountability for students with disabilities. State directors of special education had high hopes that the SPP/APR process would continue the continuous improvement process undertaken in conjunction with the Office of Special Education Programs (OSEP) and provide for a more focused approach to helping students with disabilities achieve good outcomes. Unfortunately, that has not been the case. Many of our members report that the process has turned into an exercise in compliance and the focus on outcomes has been compromised.

Second, while we recognize that IDEA 2004 includes specific language regarding monitoring and enforcement activities, our members believe that the approach adopted by OSEP, with the large number of indicators for both Parts B and C, goes beyond what is required by the law. This approach inhibits a genuine focus on results for students and support for their families and threatens to destroy the sound construct of continuous improvement that OSEP embarked upon several years ago, a process that thoroughly engaged all stakeholders.

The SPP/APR process has resulted in a huge shift in resources – both financial and human -- at the state level that keeps personnel from focusing on activities specifically designed to improve outcomes for students to one of working on the collection of data. We recognize the importance of data collection as a means of identifying what works and where problems exist. However, the SPP/APR data collection process demands have states literally having to choose between hiring data processors and reading coaches and more often than not, having to hire the former rather than the latter.

Further, the large number of indicators means that states cannot focus on particular concerns. It is not possible to direct full attention to 20 priorities (which in reality are more than 20 because

of several components to some of the indicators) and states are struggling to figure out exactly where they need to focus. NASDSE members want to ensure that all students with disabilities have access to the general curriculum and have improved outcomes.

The SPP/APR process is predicated on the underlying assumption that better data, higher levels of compliance and data analysis will lead to better outcomes. However, one state's analysis found that there was absolutely no correlation between compliance and outcomes. What our members are finding instead is that the focus on compliance demanded by the indicators detracts from their ability to focus on the improved outcome requirements of the No Child Left Behind Act (NCLB) and helping more students with disabilities reach proficiency. It is also inhibiting the ability of SEA special education staff to collaborate with their general education counterparts because there is simply no time or staff available to take on those tasks.

Adding to the overall frustration on the part of SEAs, directions from OSEP are sometimes unclear and have constantly shifted, requiring states to make continuous changes in their IT systems. State IT systems are not set up to handle the constant changes made by OSEP in the past three years. We note for example, that if the proposed change in indicator 6 is made, SEAs will have had to change their baseline three times in the six-year span of the SPP. This makes it impossible to track trends based on the data collection. Divisions of special education often are at the mercy of their state's IT divisions, which have their own competing demands. In addition, the constant changes mean that data collected is not comparable from year to year, thereby reducing the data's usefulness for comparison purposes.

Compounding the data collection issue is the fact that the timing of state data collection may not fit into the timelines for data reporting by OSEP or that the data required by the indicators may be identical or similar to data states are required to collect and report under NCLB. This means that the timing of the APR reporting may result in the submission of either incomplete or untimely data. This resulted in OSEP giving "lower grades" to states in their determinations letter for indicator 20. In the case of NCLB data, states are already required to report similar data in different formats at different times. NASDSE recommends, as noted below, that any indicator that requires data already being collected under NCLB be deleted.

We note all of the problems articulated above are exacerbated for small states, which have the same reporting requirements with far fewer staff to compile, analyze and report their data.

States also reported that some of the indicators fail to take into account actions that are beyond the control of state and local special education personnel (e.g., the percent of mediations that result in mediated agreements depends on multiple players, including parents (over which LEAs and SEAs have no authority). Furthermore, the process of mediation is, by definition, voluntary.) For OSEP to expect that SEAs and LEAs can increase targeted goals for successful mediation and to base its determinations in part on voluntary actions over which neither LEA or SEA staff have any control is simply unacceptable.

Our comments on the specific Part B indicators follow.

Indicator 1. We support the proposed deletion of the comparison to students without disabilities. We are confused as to what is meant by "raw data" in the instructions for this indicator and elsewhere. We therefore recommend that the instruction for this indicator be revised to state: "Provide raw state-level graduation data."

However, more importantly, we note that virtually identical information is being collected under reporting for the No Child Left Behind Act (NCLB) and that this indicator results in duplicative reporting by SEAs. At a minimum, we strongly recommend that OSEP use the **exact** same

definition as that used under NCLB for reporting graduation data. However, we strongly urge that this indicator, as well as others that are duplicative of data being reported under NCLB, be completely eliminated. All NCLB data is now required to be reported under the EDEN/EdFACTS reporting system. This data is readily available to OSEP under EDEN. As an alternative to the elimination of this indicator, we suggest that an appropriate response to this indicator would be for states to point OSEP to each state's website where this data is posted for purposes of NCLB and the instructions should be rewritten to reflect this. This would result in both a cost and time savings for SEAs.

Indicator 2. Our comments for this indicator are similar to those expressed above. First, we support the proposed deletion of the comparison to students without disabilities. Again, we are confused as to what is meant by "raw data." We recommend that the instructions be clarified by stating: "Provide raw state-level drop-out data." Second, because the data required is so similar to that being collected under NCLB, we strongly urge OSEP to use the NCLB definition, if this indicator is not eliminated. Please note that, as for indicator #1, we strongly urge that this indicator be eliminated because it duplicates data being submitted under EDEN. As an alternative to its elimination, we suggest that an appropriate response to this indicator would be for states to point OSEP to each state's website where this data is posted for purposes of NCLB and the instructions should be rewritten to reflect this.

Indicator 3. This is an extremely important indicator. However, as noted above for indicators #1 and #2, it duplicates data being collected under NCLB. Virtually the identical data is reported under Title I in the Consolidated State Performance Report (CSPR). Including the CSPR and the Annual Performance Report, this means that the exact same data is now being collected and reported three times to the Department of Education because it is also being reported to OSEP in Table 6 under Section 618 of IDEA. At a minimum, we request that the requirement of attaching Table 6 to the APR be removed since that Table is already being reported. However, as noted above, we strongly urge that this indicator should be eliminated because it represents duplicative reporting. If OMB and the Department are unwilling to eliminate this indicator, then we strongly urge OSEP to use the exact same definition that is used under NCLB.

Indicator 4. We strongly support OSEP's recommendation to remove indicator 4. We appreciate that OSEP recognized that there is no legal requirement under IDEA to report this data to the Secretary. In addition, there is a requirement in the Safe and Drug Free Schools Act to collect and report comparable data. Thus, it was a duplicated reporting requirement.

Indicator 5. We support the concept of aligning this indicator with Table 3. However, since OSEP is proposing changes to Table 3, we will comment on the proposed changes in a separate letter and continue to urge that these two reports be aligned.

Indicator 6. We have several comments regarding this indicator. First, as noted in our introductory comments, this indicator has changed several times over the past three years and it has been difficult for states to keep pace with these changes. Nevertheless, we do appreciate OSEP's efforts to have this indicator match the Child Count reporting requirement. However, as the indicator is now proposed, it is obsolete because of the pending proposed change to Table 3 upon which the indicator is now based. We have specific concerns about the proposed changes to Table 3 and will comment on them separately.

With respect to the proposed language for indicator 6, we are concerned that OSEP has focused reporting on the issue of "where a child attends preschool (if in fact the child does attend pre-school)" and **not** on what we believe is the more important issue – the provision of FAPE. The re-worded Child Count instructions focus on where a child is for the day and **NOT** where the child is receiving services. Because most states do not have mandatory pre-K

programs, attendance has always been predicated on a variety of factors – nearness to home, cost to parents, availability of transportation, parent preference for the type of setting (e.g., nursery school, day care center, home-based care, etc.). We therefore remain concerned that the Child Count requirement needs further reflection and we urge OSEP to meet with stakeholders to reconsider that table.

Also with respect to the proposed indicator 6, we are confused as to why subsections B and C include “kindergarten” and A does not. We therefore recommend that A be amended to clarify that it includes kindergarten. The indicator should be clarified so that it is clear that Option “C” includes being at home or in a family child care setting.

Because the due date for submitting comments for Table 3 is not until October, we urge OMB to put this indicator “on hold” so that the proposed changes may be considered in conjunction with the proposed changes for Table 3. However, the indicator and the Table may very well be out of synch again.

Indicator 7. We support the proposed change in reporting until further clarification is provided.

Indicator 8. While NASDSE recognizes the importance for SEAs and LEAs to have a mechanism to gauge meaningful parental involvement, there is no requirement in IDEA that this information be reported to OSEP. We know that SEAs and LEAs were collecting this data prior to the introduction of the SPP and APR in ways that were meaningful to the individual state. States should have the flexibility to determine the best methodology for collecting this data for use at the SEA and LEA levels. Therefore, there should be no requirement that these data be reported to OSEP and we recommend that this indicator be removed.

We are also concerned about OSEP’s emphasis on obtaining representative samples of feedback, whether the SEA is using sampling or a census to obtain data. Please see our comments under indicator 14.

Indicators 9 and 10. The issue of disproportionality is an important one and we believe that significant progress is being made in this regard. Nevertheless, there needs to be a national dialogue about the most appropriate ways in which to identify disproportionality. There should be continued support from OSEP for developing appropriate methodologies for making these calculations. Determinations should not be based on methodologies that are not sound. There needs to be more guidance on the methodology or making these calculations and more guidance on how to apply it. We remain concerned about unintended consequences that may keep children from being identified as having disabilities when LEAs have been cited for disproportionality. Furthermore, it is not realistic to expect that long-standing implementation issues regarding the inappropriate identification or categorizing of students can be completely corrected in a single year’s time. If states are improving on their targets, there should be no negative impact on the SEA or LEAs so long as progress is being made.

Furthermore, the introduction of identifying under-identification should be more carefully considered because of the potential unintended consequences that could result in the establishment of quotas for race and ethnicity and within specific categories of disability that may involve questions of constitutionality as indicated by OSEP’s comments for indicator 4 and as addressed most recently by the *Supreme Court in Parents Involved in Community Schools v. Seattle School District No. 1 et. al.*

We therefore recommend that OSEP continue to study this issue and that indicators 9 and 10 not be included in OSEP’s determinations regarding SEAs until there has been further research and discussion with stakeholders around these issues.

Indicator 11. We support the proposed clarification in the instructions. However, if the concern expressed by the indicator is about meeting the timeline, then there is no need to break out the data under (b) and (c) in the measurement. We therefore recommend that under the measurement that (b) and (c) be collapsed into a single measurement that calculates the number of children whose evaluations were completed within 60 days (or state established timeline.) Furthermore, the evidence of correction must be trend data that shows progress over time as errors affecting individual children cannot be remedied (e.g., one cannot go back and “re-do” the initial evaluation in order to complete it within the required timeline).

Indicator 12. For this indicator, we feel very strongly that the evidence of correction must be trend data that shows progress over time as errors affecting individual children cannot be remedied (e.g., you can’t go back and change a child’s third birthday in order to rectify the time lapse.) We strongly recommend that the instructions be reworded to reflect this.

We further note that “the number of children for whom parent refusal to provide consent caused delays in evaluation or initial services” is to be subtracted from the denominator. However, there are at least two other situations that should be subtracted: (1) parents who provide and then withdraw consent; and (2) the exemptions under 300.301(d), which apply to initial evaluations for three-year-olds just as they apply to 6-21 year olds. These exemptions are noted in the instructions under indicator 11 and should be noted in the instructions for this indicator as well.

Indicator 13. We believe that the appropriate way to address noncompliance for this indicator would be to address noncompliance in the context of implementation of policies and procedures and not the correction of an individual’s previous IEP. Improvement on this indicator should be shown with trend data to document that there is improvement in the adherence to established policies and procedures. We recommend rewording the instructions to reflect this.

Indicator 14. We are concerned about OSEP’s emphasis on obtaining “representative responses” to a sampling survey. If states are conducting a census, not sampling, there is no guarantee of what kind of responses they will get back. While states can take steps to encourage responses, they cannot “force” people to respond to a census. Otherwise, this becomes a question about how the survey was conducted as opposed to an analysis of the results obtained. States need to show good faith in the design of their survey. We also recommend that OSEP be more specific as to what is meant by “raw data” to be provided for this indicator. We assume that OSEP does not want to see all the survey responses, but we are unsure as to what other raw data OSEP wants.

Further, we recommend that SEAs not be required to set targets for this indicator because there is no research available that would suggest what a valid and reliable target less than 100% would be.

Indicator 15. NASDSE and our members have been strong supporters of the continuous improvement monitoring process. With that as our starting point, we have significant problems with this indicator and with the table that was shared at the OSEP Leadership Conference (only with those who attended the specific break-out session that addressed this indicator). The indicator does not say that the response has to be disaggregated by each of the other indicators. We struggle to understand how disaggregating these data by indicator will help OSEP in its analysis of the APR. What is important is that noncompliance is identified and corrected. Further, it is unclear exactly what OSEP is asking the SEAs to do.

The focus on compliance and the amount of data required are extensive and overly burdensome. It is so burdensome that it negates states’ ability to focus on the indicators.

Additional resources will have to be added to address this single component. Particularly for small states that have only 3-5 staff people, there are insufficient resources to perform the analyses required by the instructions. It is counterproductive to existing best practices. Further, if LEAs are required to do a corrective action plan for every single finding, it will not result in effective self-assessments, because LEAs will simply not conduct accurate self-assessments in order to avoid this requirement. Some findings can be corrected with a simple telephone call. This requirement will result in states simplifying their monitoring system to such an extent that it will produce much less effective monitoring than what currently exists.

In addition, the instructions do not describe the wording in the indicator, but are a description of a completely *different* indicator. The instructions should be rewritten to match the indicator, which as written, is less burdensome than the instructions are. The instructions do not state NOT to report by LEA. This should be added to the instructions. Under “data source and measurement,” it states: “indicate the number of agencies.” This direction is the opposite of information given out at the OSEP Leadership Conference.

This indicator, by the extent of the instructions, has gone way beyond what was originally envisioned and understood. It will dilute the amount of monitoring undertaken by the states. If OSEP adheres to instructions column, not a single SEA will be in compliance with the indicator. As stated above, NASDSE and the SEAs supported the continuous improvement process instituted by OSEP several years ago and this indicator as currently conceived by OSEP is a step in the wrong direction. We therefore strongly urge OSEP to reconsider what is appropriate, meaningful and doable for SEAs and LEAs under this indicator. We urge OSEP to work with its stakeholders to address changes to this indicator.

Indicators 16-19. We recommend that all references to these indicators be removed from indicator 15 as they are their own separate indicators. We further question why 20% (4 out of 20) of the indicators focus on complaints and mediation, which affects a very small subset of students with disabilities and their families. We recommend that OSEP work with stakeholders to figure out what is the most meaningful data to collect that is required by IDEA 2004 and rework these four indicators accordingly.

Indicators 18/19. We note that there is no evidence-based research indicating what are acceptable targets for these two indicators. While IDEA 2004 requires the SEAs to have mediation and resolution processes in place, their viability is wholly dependent on **all** the parties involved. While it is the responsibility of the SEAs to ensure that both SEA and LEA staff are appropriately trained to participate in these sessions, there are instances where individuals over whom the SEA has absolutely no control will be involved in the process. Both mediation and resolution sessions are completely voluntary on the part of parents. We believe that it is a compliance issue to ensure that the SEA has appropriate processes in place, but that the SEA cannot be evaluated on the basis of how many parents choose to participate in these processes or whether or not they agree to a resolution without having a due process hearing. We therefore recommend that while states can collect these data, that these indicators not be a consideration in OSEP’s determination process.

Indicator 20. As noted in our preliminary comments, states frequently collect data at times that are not consistent with the reporting requirements of the SPP/APR. Most SEAs have told NASDSE that they cannot provide “clean” data by February in a given year. Therefore, SEAs are simply unable to report timely *and* accurate data by the due date of the APR in February. We believe that the “hard and fast” deadline for reporting data by February 1 is not consistent with the reality of state data systems. We therefore strongly urge OSEP to decide which is more important – the timeliness of reporting or giving SEAs a realistic opportunity to scrub their data

in order to make it meaningful. We believe that it is not productive for OSEP to make determinations based on data that SEAs have not had an opportunity to scrub for accuracy. We urge OSEP to work with SEAs to address this concern so that the end result IS accurate, which we believe is more important than delivering the data on a due date that is picked at random.

NASDSE thanks you for the opportunity to comment on the Part B indicators and we look forward to working with you to ensure the best possible outcomes for students with disabilities.

Sincerely,



Jacquelyn Thompson, Ph.D.
President



Bill East, Ed.D.
Executive Director

cc: Patty Guard, Acting Director, OSEP, U.S. Department of Education
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