August 30, 2019

Laurie VanderPloeg, Director

Office of Special Education Policy (OSEP)

U.S. Department of Education

400 Maryland Ave., SW

Washington, DC 20202-7100

Re: OSEP Feedback Sessions: State Determinations 2020

Dear Director VanderPloeg:

On behalf of the National Disability Rights Network (NDRN), thank you for the opportunity to comment on the Office of Special Education Program’s (OSEP) effort to solicit input regarding the Department’s 2020 State Determinations. NDRN is the membership association for the 57 Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies as well as the federally funded training and technical assistance provider to the P&A/CAP network.

The P&A and CAP agencies are a nationwide network of congressionally mandated, cross disability rights organizations operating in every state, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands). There is also a P&A and CAP affiliated with the Native American Consortium, which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. The P&A/CAP Network has the authority to provide legally based advocacy services and legal representation to all people with disabilities. The P&As and CAPs pursue legal, administrative, and other appropriate remedies under all applicable federal and state laws to protect and advocate for the rights of individuals with disabilities. Collectively, these programs make the P&A/CAP Network the largest provider of legally based advocacy services to people with disabilities in the United States. Education cases comprise a significant percentage of the caseload. In 2016 the P&As handled just under 14,000 education related cases for individuals.

Amanda Lowe at NDRN is also a Co-Chair of the Consortium for Citizens with Disabilities (CCD) Education Taskforce and NDRN signed on to the CCD comments to these recommendations. We fully agree with the CCD comments and add our own specific comments here.

In recent years, the performance of and outcomes for students with disabilities has improved in many ways, but students with disabilities continue to lag behind their peers without disabilities in critical areas, including academic achievement, high school graduation, college completion and employment rates. They are subjected to discipline and school removal at higher rates than their nondisabled peers. Therefore, as OSEP considers re-visiting its State Determination process, it must make sure it maintains the Individuals with Disabilities Education Act’s (IDEA’s) primary focus of its monitoring system as required by 20 U.S.C. § 1416(a):

(2) Focused monitoring

The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

(A) improving educational results and functional outcomes for all children with disabilities; and

(B) ensuring that States meet the program requirements under this subchapter, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

As a general comment, NDRN’s members have seen how state determinations can foster significant reform in a State. For example, in Michigan the determinations have prompted the formation of an “outcomes group” to focus on improving the outcomes for students with disabilities in the State. Therefore, OSEP must not to diminish the standards for achieving IDEA compliance through its monitoring process.

**State Systemic Improvement Plan (SSIP)**

OSEP is proposing to add a SSIP score to its Results Driven Accountability (RDA) matrix, which could raise but would not lower a State’s determination. NDRN is strongly opposed to adding the SSIP to the RDA matrix. The SSIP is State defined and it has been the experience in our network that parents and disability rights advocates are too often not heard when developing the SSIP as well as the State Identified Measurable Result (SiMR). In our view, this would be a step backward in the OSEP monitoring effort.

NDRN also encourages OSEP to stress the importance of all stakeholder groups in the State Determination process, including the P&A programs and the Parent Training and Information Centers, as well as other State and local disability advocacy organizations.

**Family Outcomes**

NDRN strongly agrees with adding race/ethnicity and family income as factors to consider for representativeness and agrees with CCD that Limited English Proficiency (LEP) status should be included.

**Part B Performance Indicators – Weighting**

NDRN agrees with CCD that all of the current indicators should be retained and equally weighted as they are all closely correlated with improving outcomes for children with disabilities.

We also propose long-term consideration of adding the least restrictive environment (LRE) as a compliance indicator. The education of students with disabilities in the LRE is one of the lynchpins of the IDEA. In fact, as spelled out in 20 U.S.C. § 1414(a(3)(A) (emphasis added), LRE is one of the identified priority areas for monitoring:

(3) Monitoring priorities

The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

(A) Provision of a free appropriate public education *in the least restrictive environment*.

(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 1401(34) and 1437(a)(9) of this title.

(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

**Preschool Outcomes**

NDRN supports the inclusion of preschool outcomes in the RDA matrix. As stated, preschool outcomes are very important in promoting later school success for students with disabilities.

**Graduation**

NDRN strongly agrees with CCD’s recommendation that OSEP change its graduation definition to make it consistent with the Every Student Succeeds Act (ESSA) and the IDEA, as amended by ESSA. This means OSEP should be using the Four-Year Adjusted Cohort Graduation Rate (ACGR). It is hard to believe that OSEP is still not using this definition.

**Participation and Performance of Children with Disabilities in Assessments**

NDRN strongly opposes use of State assessment results instead of the National Assessment of Educational Progress (NAEP). The NAEP is an objective reference point making it easy to compare one State to another as well as progress within a State. State assessments can regularly change making it virtually impossible to measure longitudinal progress on closing achievement gaps.

OSEP should also maintain separate data for reading/English language arts and math. Merging these scores can serve to mask critical gaps in State IDEA progress. Similarly, OSEP should continue to focus on the specific performance at 4th grade, 8th grade and high school. Averages should not be used because, again, they can mask important differences in performance.

Additionally, measuring gaps in achievement between students with disabilities and those who do not have disabilities is critical. One of the core purposes of both ESSA and IDEA is to close achievement gaps. It is equally critical to continue tracking the percentage of students with disabilities who are achieving at proficient or above on State assessments.

Finally, if OSEP continues to use the NAEP, concerns about mitigating factors such as changes in State assessments or achievement standards would be minimized.

I appreciate the opportunity to share NDRN’s views on the OSEP State Determination process. Should you have any questions, please do not hesitate to contact Amanda Lowe, Senior Public Policy Analyst at [Amanda.lowe@ndrn.org](mailto:Amanda.lowe@ndrn.org).

Sincerely,



Curt Decker

Executive Director