



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

June 13, 2019

Director of the Information Collection Clearance Division
U.S. Department of Education
550 12th Street SW, PCP, Room 9089
Washington, DC 20202-0023

Re: ED-2019-ICCD-0050 -- Comment Request: Individuals With Disabilities Education Act (IDEA) State and Local Implementation Study 2019

Dear Director,

The Consortium for Citizens with Disabilities (CCD) Education Task Force advocates for Federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society. The CCD Task Force sees these principles as critical elements in a society that recognizes and respects the dignity and worth of all its members.

The undersigned organizations submit the following comments in response to the Institute of Education Sciences (IES) notice regarding the Individuals with Disabilities Education Act (IDEA) State and Local Implementation Study 2019.

GENERAL COMMENTS

First, we wish to point out the mischaracterization of this study. The announcement states “This study is one component of a Congressionally-mandated National Assessment of IDEA.” The study mandated by Congress in the 2004 reauthorization of the IDEA is detailed at Section 1464(b).¹ A final report of the findings of the assessment was to be submitted not later than 5 years after December 3, 2004. Surveys of state agency directors and a nationally representative sample of district special education directors were conducted in 2009 and the study was completed in 2011.² This satisfied the requirements set forth at Section 1464(b) and there is no requirement for a repeat of this study. The Department of Education (ED) has, however, chosen to characterize the proposed 2019 study as **required by the IDEA** and further justifies the proposal by adding that the study is “necessary because a decade has passed since the previous IDEA

¹ See <https://sites.ed.gov/idea/statute-chapter-33/subchapter-IV/part-B/1464/b>

² Report available at <https://ies.ed.gov/ncee/pubs/20114026>

national implementation study, and subsequent developments may have influenced the context and implementation of special education and early intervention.”

We take the position that any activities undertaken by ED to provide an up-to-date view of IDEA implementation must be designed in such a manner as to capture the views of all critical stakeholders. As proposed, this survey and the study that will communicate its findings will provide information drawn *only from administrators of special education and early intervention, at the state, district and school/local provider levels*. While input from these stakeholders is important, it should not and must not be portrayed as representative of *all stakeholders*. In fact, we take exception to this statement in the IDEA National Assessment Implementation Study (NCEE 2011-4027) “The IDEA-NAIS provides a comprehensive national picture of the state and local implementation of IDEA for children and youth ages birth through age 21.”

In particular, we wish to highlight the lack of involvement of parents of children with disabilities and those who work closely with parents and families in the states. One of the stated purposes of the implementation study mandated by Congress was to measure “the effectiveness of schools, local educational agencies, States, other recipients of assistance under this chapter, and the Secretary in achieving the purposes of this chapter by improving the participation of parents of children with disabilities in the education of their children.” (Section 1464(b)(2)(D)(viii)). Significant among the “other recipients of assistance” are the Federally-funded Parent Training and Information Centers. Currently funded at \$27.4 million annually, these Centers have been in continuous operation for decades, building strong relationships with families and other agencies that provide services to children and youth with disabilities. Parent Centers compile and report copious data on their work with families. Given their years of experience, Parent Centers are uniquely qualified to provide information on how states, districts and schools are implementing IDEA. Parent Centers could also serve as a means to obtain valuable input from parents. The inattention to the critical role of parents is evident in the draft state survey, which poses only two questions in the area of Family Engagement (K1 and K2, Appendix A.4.), one of these being the rather useless question, “For the 2019-2020 school year does your state have a federally funded Parent Training and Information Center (PTI)?” We note that this question is particularly useless since every state, the District of Columbia, Puerto Rico, and the Virgin Islands has at least one PTI, and there is a PTI serving the other US territories. Any effort to study IDEA implementation must include a robust and meaningful parent component.

Next, we wish to point out the abundant information regarding the implementation of the IDEA that is available to IES. Any study on IDEA implementation should encompass the vast body of information available through these and other sources on both Part B and Part C of the Act. For example:

- Annual Performance Reports (APR) submitted by every state.
- State Performance Plan/Annual Performance Report (SPP/APR) Analysis
- Annual Reports to Congress on the Implementation of the IDEA
- Annual State Determinations and Annual LEA Determinations
- Differentiated Monitoring and Support reports
- Civil Rights Data Collection administered by ED’s Office for Civil Rights

- National Center on Educational Outcomes (NCEO) annual reports on participation and performance of students with disabilities on state assessments
- Center for Appropriate Dispute Resolution in Special Education (CADRE) annual reports on dispute resolution by states
- Reports on critical IDEA implementation issues produced by the Government Accountability Office (GAO)
- Reports produced by the National Council on Disability (NCD) on IDEA, including a 2018 series
- National Assessment of Educational Progress (NAEP)
- Reports by the Education Commission of the States, including a 2019 report providing a [50-State Comparison of K-12 Special Education Funding](#)³
- Reports by the Congressional Research Service

We also wish to express our expectation that any surveys conducted by IES regarding IDEA implementation should be made available to the public. This would include all identifying information (State, district, school names) unless doing so could reveal personally identifiable information.

Lastly, we request that IES fund an update of the 2013 study, The Inclusion of Students With Disabilities in School Accountability Systems.⁴ This information is *urgently needed* given the new state accountability systems now in place as required by the Every Student Succeeds Act. IES should not delay this update and should move quickly to award a grant for this study.

SPECIFIC COMMENTS

Our Task Force has reviewed the state, district and school surveys and offers the following specific comments.

Part B Survey Questions

Recommendation: Coordinated Early Intervening Services (CEIS)

- **Add a question asking districts whether they are blending funding from other federal streams to support CEIS.**

Rationale: CEIS funds are intended to provide supports and services to students (K-12) who need additional academic and behavioral supports to succeed in a general education environment. CEIS funds can be used for teacher professional development related to evidence-based instruction and interventions. Because of the natural overlap between the intent of CEIS funds and other funding streams within ESSA, such as Title I, Title II, or Title IV funds, it is important to know whether LEAs are taking advantage of the ability to blend funding or use these streams to supplement and amplify their existing efforts.

³ See <https://www.ecs.org/50-state-comparison-k-12-special-education-funding/>

⁴ See <https://ies.ed.gov/ncee/pubs/20134017/>

Recommendation: Exclusionary criteria in eligibility determinations

- **Add a question asking schools how they use data to rule out exclusionary criteria when making special education eligibility determinations, and add a question to the state and district survey asking whether there is guidance or a policy about how schools should apply the exclusionary criteria in their decision making process.**

Rationale: Section 300.306(b) of the IDEA regulations make clear that a child cannot be deemed eligible for special education “(1) If the determinant factor for that determination” is a “lack of appropriate instruction” in reading or math or is “due to Limited English proficiency.”⁵ This exclusionary factor is especially critical for students who are overrepresented in special education. However, many schools and districts report that education professionals and IEP teams struggle to rule out this out, especially where implementation of a district’s tiered-intervention approach (such as RTI or MTSS) is not robust. In addition, to determine that a child is eligible for special education under the specific learning disability (SLD) category, additional exclusionary factors must be examined, including: “environmental, cultural, or economic disadvantage.”⁶ In practice, many of these factors are difficult to parse out and pinpoint in a student’s evaluation. Thus, it is essential that this survey determine how schools are interpreting and implementing this section of the law and whether districts and states are providing any guidance or technical assistance to ensure that schools are effectively considering these factors.

Recommendation: Evaluation timeline

- **Add questions asking states: (1) whether they allow extensions to the time period in which a special education evaluation must be completed; (2) what the process for requesting an extension entails; and (3) whether they have received any requests for an extension within the last school year.**

Rationale: Under IDEA regulations, LEAs are required to complete an evaluation within 60 days of the evaluation request (or parent consent to the evaluation).⁷ However, some states allow extensions to the 60-day requirement, but information about extensions is not readily available. For stakeholders to truly understand how IDEA is being implemented, a survey question must explore whether and which states allow extensions, what process LEAs must follow when making their request, and how frequently these requests are made.

Recommendations: Response to intervention (RtI)

- **Maintain the questions from the 2009 survey asking districts to identify the main funding source for RtI implementation.**⁸

⁵ 71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61307, Oct. 30, 2007; 82 FR 29761, June 30, 2017

⁶ For a complete list of all factors to be considered in SLD identification, 20 USC 1401(30)(C).

⁷ 34 CFR §300.301(c)(1)

⁸ See page 17-18 of “National Assessment of IDEA Overview” (July 2011) from IES (NCEE 2011-4026 U.S. Department of Education) available at: <https://ies.ed.gov/ncee/pubs/20114026/pdf/20114026.pdf>

Rationale: RtI (or other multi-tier systems of support) has been increasingly implemented in schools across the country. In fact, ESSA specifically included multi-tier systems of support (MTSS) as an approach that can contribute to improved outcomes for students with disabilities. However, neither RtI or MTSS are frameworks that are specific to special education. Other funding sources can and should be used to develop the infrastructure for these approaches. Information about how districts are using funds to support RtI and MTSS can shed light on where additional funds are needed or how to better support these essential systems in all schools.

- **Add a question asking districts to identify the challenges they face in implementing RtI and specify the components they are or are not implementing, including comprehensive screeners, supplement interventions (during core instruction or outside of core instruction). Add a question asking schools how they engage parents and at which points in the process parents receive notification about interventions.**

Rationale: In the 2015 NCES national study on RtI implementation,⁹ research showed little to no effect of RtI as it was being implemented in the schools studied. This report gave way too much discussion about how to support schools to better implement RtI and ensure they are provided evidence-based instruction. Research showed that, by and large, schools were not consistently using comprehensive screeners as part of the RtI process, were not actually providing evidence-based interventions, and were providing interventions during core instruction, rather than outside of it. It is important to better understand the challenges schools are facing in RtI implementation so that more targeted technical assistance and resources can be provided.

Recommendation: Identification of students in the category of specific learning disabilities (SLD)

- **Maintain the questions from the 2009 survey asking states whether they permit or require the use of RtI data, the IQ-achievement discrepancy model, or an alternative method for identification of students in the category of SLD.¹⁰**
- **Add a question:**
 - **(1) asking whether these policies and practices differ between grade spans;**
 - **(2) asking each district which method they *actually* use in practice and whether the determination about which method to use is left up to districts; and**
 - **(3) asking whether SEAs allow alternative approaches to identification for SLD (something other than RtI or IQ-achievement discrepancy and what that approach is.)**
 - **(4) asking whether SEAs allow LEAs to determine the criteria used for SLD identification, resulting in intrastate differences.**

Rationale: Since the last IDEA implementation survey, practices have changed in many states and new research has emerged about the effectiveness of models such as the IQ-achievement method in making determinations about eligibility in the category of SLD. While advocates have investigated

⁹ U.S. Department of Education (2015). "Evaluation of Response to Intervention Practices for Elementary School Reading" Available at: <https://ies.ed.gov/ncee/pubs/20164000/pdf/20164000.pdf>

¹⁰ See page 18-19 of "National Assessment of IDEA Overview" (July 2011) from IES (NCEE 2011-4026 U.S. Department of Education) available at: <https://ies.ed.gov/ncee/pubs/20114026/pdf/20114026.pdf>

which states permit or require each method of identification, there are often discrepancies between state laws, state regulations, and practices on the ground. Further, the recent GAO report on eligibility found different practices across states.¹¹ It is important that a full survey be done of every state to understand state policies, while also asking districts which methods they're actually using, especially where more than one method is permitted.

Recommendation: Independent educational evaluations (IEEs)

- **Add a question asking districts how many (or what percentage of) IEEs the LEA paid for within the last year.**

Rationale: While some parents can afford to pay for a private, independent evaluation when a district will not conduct one on its own, not all parents can do so. The law provides, under certain circumstances, for a district to assume the cost of an IEE. Given that there is confusion among parents about when an IEE is appropriate and who assumes the cost, it is important to know how often IEEs are invoked and how frequently the district covers the cost.

Recommendation: Least restrictive environment (LRE)

- **Add a question for states, districts, and schools exploring the amount of time students spend in general education by disability category.**

Rationale: It is critically important that the issue of LRE implementation be explored in any comprehensive study on state and local IDEA implementation, particularly for students in the intellectual disability (ID) category and, if possible, students who take alternate assessments. A recent article in the University of Minnesota Impact magazine¹² by Harold Kleinert, Director Emeritus of the Human Development Institute, University of Kentucky, provides troubling data on the failure of states and districts to implement the Least Restrictive Environment provisions of IDEA for students with significant cognitive disabilities. As the data shows only 17% of students in the ID category are educated 80% or more of the day in general education classrooms. The data is far worse for students who take alternate assessments—only 3% educated in general education classrooms. This is consistent with the information provided by families where the diagnosis of Down syndrome, an IQ score and/or the fact that the student takes the alternate assessment are inappropriately used to determine placement. We recognize that data is not generally collected regarding LRE based on participation in the state alternate assessment, but there is already data on LRE by disability category that can be explored. It is impossible to believe that LRE decisions are being made properly when the result is widespread segregation of certain students.

¹¹ U.S. Government Accountability Office (2019). "Special Education: Varied State Criteria May Contribute to Differences in Percentages of Children Served." Available at: <https://www.gao.gov/assets/700/698430.pdf>

¹² <https://ici.umn.edu/products/impact/312/Least-Restrictive-Environment-Data/#Least-Restrictive-Environment-Data>

Recommendation: Professional development

- **Add to the school and district surveys a question (similar to H8 in the school survey) that explores whether professional development is provided to educators on topics such as: special education; instruction of students with disabilities; effective implementation of behavioral support plans and high-quality FBAs; risk-factors or signs of disability; evidence-based practices; provision of accommodations; effective implementation of assistive technology (AT); teaching students from diverse racial, cultural, and linguistic backgrounds; or other topics related to effectively serving students with disabilities.**

Rationale: The survey currently only asks whether professional development is provided related to strength-based IEPs. While it is essential that educators are familiar with and prepared to develop strengths-based IEPs, recent research shows that educators are vastly underprepared to serve the students with disabilities in their general education classrooms. In fact, recent research from the National Center for Learning Disabilities found that: only 17% of general educators feel well-prepared to teach students with moderate learning disabilities; only 30% feel strongly that, when they try their best, they can be successful with students with learning disabilities; and 50% feel that students with learning disabilities can achieve at grade-level standards.¹³ Without positive mindsets toward inclusion and their own ability in the classroom, educators will not be able to effectively serve students with disabilities. Even though most teachers have had ineffective professional development and have learned most of their skills through trial and error, teachers are eager to learn more and improve their skills in the classroom. It is essential that we ask schools and districts to evaluate the professional development they are currently providing on essential topics related to students with disabilities.

Recommendation: Significant Disproportionality

- **Add questions about whether the state is using the example risk ratio of two median absolute deviations (MADs) above the national median of school district risk ratios for identification, placement, and discipline. If they are not, then they should explain why the thresholds they have chosen are reasonable.**

Rationale: The critical part of the state's definition of significant disproportionality is the threshold for the state's risk ratio or alternate risk ratio. Under the regulations, states can continue to set their own thresholds for risk ratios so long as they are "reasonable." While the regulations do not define a reasonable risk ratio, the Department had previously published in its NPRM, a set of example risk ratio thresholds that are two median absolute deviations (MADs) above the national median of school district risk ratios. The threshold of two MADs was selected to identify school districts whose numbers are far off from the national picture. Instead of picking an arbitrary threshold, this approach helps to ensure equity by highlighting districts that are far outliers when compared to other school districts across the country.

¹³ National Center for Learning Disabilities (2019). *Forward Together: Helping educators unlock the power of students who learn differently*. Available at: www.nclld.org/forwardtogether

- **Add as the first option under Question C.2 regarding state actions to address significant disproportionality: Review and revision (if appropriate) of policies, practices, and procedures.**

Rationale: The regulations¹⁴ require that, upon a finding of significant disproportionality, states provide for the annual review and, if appropriate, revision of the policies, practices, and procedures used in identification, placement, or disciplinary removals and that the state require the LEA to publicly report on the revisions.

Recommendation: Assessment

- **Add a question about whether states are using standardized alternate assessments based on alternate achievement standards (AA-AAS). If so, they should list whether they are using the National Center and State Collaborative Partnership, Dynamic Learning Maps, or list any other standardized assessments**

Rationale: The IDEA requires IEP goals must be aligned with grade-level content standards for all children with disabilities. Alternate academic achievement standards must also be aligned with grade-level content standards.¹⁵ The Department of Education funded testing consortia to develop assessments to meet the common core standards, which have been adopted, at least in part, by a majority of states. Two of these consortia developed AA-AAS - the National Center and State Collaborative Partnership and Dynamic Learning Maps - to standardize assessments for students with the most significant cognitive disabilities and move away from the more subjective measures such as portfolios and teacher rating scales. Standardized assessments allow for greater comparability of proficiency for this population across schools, districts, and states.

Recommendation: Universal Design for Learning (UDL)

- **Add a question asking schools and districts whether they are implementing UDL.**

Rationale: While IDEA does not require the use of UDL in schools, UDL is essential to providing a free, appropriate public education (FAPE) in the least restrictive environment for students, allowing them to access the general education curriculum. Further, UDL is referenced numerous times throughout the ESSA, and states are encouraged to design assessments using UDL principles, to award grants to LEAs who use UDL, and to adopt technology that aligns with UDL. Additionally, many states have indicated in their ESSA plans that they are implementing UDL as a means to facilitate inclusion and ensure students have access to grade-level standards. This survey presents an opportunity to determine whether UDL is being implemented as planned in schools across the country.

¹⁴ See <https://www.govinfo.gov/content/pkg/CFR-2017-title34-vol2/xml/CFR-2017-title34-vol2-sec300-646.xml>

¹⁵ <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/guidance-on-fape-11-17-2015.pdf>

Recommendation: Transition

- **The survey includes questions exploring which services are offered to students in different disability categories, but it could be enhanced by adding a question about when those services are provided (in which grade).**

Rationale: The transition period is one of the most pivotal times for students with disabilities. There are essential skills that students must possess to succeed in life after high school, including self-advocacy. While it is important that transition services are being provided to students with disabilities, it is essential that these services be provided early. Schools should indicate at which grade their transition services begin.

- **Add a question that asks schools to indicate which students are transitioning, disaggregated by disability category, and which percentage are moving on to post-secondary education.**

Rationale: While IDEA includes specific requirements about when transition planning should begin, we know little about the students who are graduating and moving on to post-secondary opportunities. It would be helpful for schools to share information on the number or percentage of students in each category who are transitioning from secondary school and which opportunities they are pursuing, such as post-secondary education.

Recommendation: IEP Development and Quality

- **Add questions regarding how the state is ensuring compliance with standards established by the Supreme Court decision in *Endrew F. v. Douglas County School District Re-1*, 137 S. Ct. 988.**

Rationale: The decision in *Endrew F.* updated and clarified the scope of the IDEA's FAPE requirements. The US Department of Education issued substantive guidance on this matter in 2017. In it, ED stated that "SEAs should review policies, procedures, and practices to provide support and appropriate guidance to school districts and IEP Teams to ensure that IEP goals are appropriately ambitious and that all children have the opportunity to meet challenging objectives."¹⁶ The survey should seek to discover if SEAs have, in fact, taken steps to ensure that IEPs are being developed in accordance with the standards established in *Endrew F.*

Recommendation: Dispute Resolution

- **Add questions about the most common topics of disputes (similar to 2009 IDEA-NAIS State Part B survey) including written state complaints**
- **Add questions about the role of alternative dispute resolution approaches, which have expanded significantly since the 2009 survey.**

¹⁶ Questions and Answers (Q&A) on U. S. Supreme Court Case Decision *Endrew F. v. Douglas County School District Re-1*, U.S. Department of Education, December 7, 2017 <https://sites.ed.gov/idea/files/qa-endrewcase-12-07-2017.pdf>.

Rationale: The SEA survey has no questions regarding dispute resolution. This is an important issue as it relates to IDEA implementation and should be fully explored.

Recommendation: Family Engagement

- **Add questions relating to the SEA’s efforts to support the Federally-funded Parent Training and Information Center (PTI).**
- **Add question: Does your state require districts and schools to provide parents with information about your state’s Parent Training and Information Center (PTI) along with Procedural Safeguards Notice?**

Rationale: As noted in our general comments, the proposed survey does not properly examine the critical role of parents in IDEA implementation nor does it seek to gain information from the PTIs.

Recommendation: Monitoring and Compliance of LEAs

- **Add questions regarding the SEAs administrative costs (in time and funds) to monitor LEA compliance, issue annual LEA determinations, provide corrective action plans and monitor implementation of those plans.**

Rationale: The SEA survey has no questions regarding the responsibilities of the state to monitor and enforce IDEA compliance in its LEAs, yet this is a core responsibility of SEAs. See the recommendations contained in the National Council on Disability report, Federal Monitoring and Enforcement of IDEA Compliance (IDEA Series)¹⁷ at Page 50.

Part C Survey Questions

Recommendation: Family Engagement

- **Add questions relating to the SEA’s efforts to support the Federally-funded Parent Training and Information Center (PTI).**

Rationale: As noted in our general comments, the proposed survey does not properly examine the critical role of parents in IDEA implementation nor does it seek to gain information from the PTIs. Early intervention is a particularly important time to prepare parents for their role as an advocate for their children and a partner with professionals in developing appropriate plans for their children.

Recommendation: Individualized Family Service Plans (IFSPs)

- **Add questions relating to how the Part C lead agency ensures that their IFSPs are based on the family’s issues, priorities and concerns, and that IFSPs aren’t just about providing services directly to infants/toddlers but are also focused on building/enhancing family capacity.**

¹⁷ https://ncd.gov/sites/default/files/NCD_Monitoring-Enforcement_Accessible.pdf

Rationale: Unlike the Part B system, where IEPs focus primarily on services to children with disabilities, IFSPs include services to infants and toddlers *and their families* based on evaluations of the infant-toddler and “a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family’s capacity to meet the developmental needs of that infant or toddler,” which must include “the family’s description of its resources, priorities, and concerns related to enhancing the child’s development.” It is critical that information about the extent to which Part C lead agencies ensure that early intervention providers base services on family issues, priorities and concerns, and include services aimed at enhancing the family’s capacity to meet their child’s developmental needs, be part of the survey.

We appreciate the opportunity to provide comments and share recommendations relating to the Institute of Education Sciences (IES) notice regarding the Individuals with Disabilities Education Act (IDEA) State and Local Implementation Study 2019. We would be happy to speak further or answer questions about our recommendations related to this survey and look forward to the findings being shared publicly.

Sincerely,

The Advocacy Institute
Allies for Independence
American Foundation for the Blind
American Physical Therapy Association
American Therapeutic Recreation Association
The Arc of the United States
Autism Society
Council for Exceptional Children
Council for Learning Disabilities
Disability Rights Education & Defense Fund (DREDF)
Judge David L. Bazelon Center for Mental Health Law
National Center for Learning Disabilities
National Center for Parent Leadership Advocacy, and Community Empowerment (National PLACE)
National Disability Rights Network
National Down Syndrome Congress

Education Task Force Co-Chairs:

Annie Acosta, The Arc of the United States
Amanda Lowe, National Disability Rights Network
Kim Musheno, Autism Society of America
Meghan Whittaker, National Center for Learning Disabilities

acosta@thearc.org
amanda.lowe@ndrn.org
kmusheno@autism-society.org
mwhittaker@ncld.org