



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

April 30, 2015

Honorable Tom Torlakson
State Superintendent of Public Instruction
California Department of Education
1430 N Street, Suite 5602
Sacramento, California 95814-5901

Honorable Michael W. Kirst
President
California State Board of Education
1430 N Street, Suite 5111
Sacramento, California 95814-5901

Dear Superintendent Torlakson and President Kirst:

This letter is in follow-up to the hearing held on September 15, 2014, and our analysis of the information that California provided prior to and during that hearing. The hearing was held in response to California's July 7, 2014 request for a hearing regarding the U.S. Department of Education's (Department's) June 23, 2014 determination under section 616(d) of the Individuals with Disabilities Education Act (IDEA) that the State of California "needs intervention" in meeting the requirements of Part B of the IDEA. The Department appreciated the information provided at the September 15, 2014 hearing by representatives of the California Department of Education (CDE) and other stakeholders that attended the hearing.

As detailed below, after careful consideration of the information presented by CDE in its July 7, 2014 letter, and further information that the State provided both prior to and during the September 15, 2014 hearing, I have determined that California has demonstrated that the Department should revise California's 2014 determination under Part B of the IDEA from "Needs Intervention" to "Needs Assistance." This letter replaces the Department's June 23, 2014 California 2014 Part B determination letter. This revised determination is based on the totality of the State's data and information, including the Federal fiscal year (FFY) 2012 Annual Performance Report (APR) and revised State Performance Plan (SPP), other State-reported data, and other publicly available information.

Your State's 2014 revised determination is based on the data reflected in the State's "2014 Part B Compliance Matrix" and revised "2014 Results Driven Accountability [(RDA)] Matrix."

Enclosed with this determination letter are the following: (1) the State's "2014 Part B Compliance Matrix" and revised "2014 Results Driven Accountability Matrix;" (2) a document

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entitled “How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2014: Part B – Revised April 2015” (HTDMD), which provides a detailed description of how the Office of Special Education Programs (OSEP) evaluated States’ data using the Compliance and Revised RDA Matrices; (3) your State’s FFY 2012 Response Table (unchanged), which provides OSEP’s analysis of the State’s FFY 2012 APR and revised SPP; and (4) a Data Display (unchanged), which presents certain State-reported data in a transparent, user-friendly manner. The Data Display has been posted on OSEP’s Web site and is helpful in providing the public a broader picture of State performance in key areas.

For the 2014 determinations, the Department is using results data on the participation of children with disabilities (CWD) on regular Statewide assessments; the proficiency gap between CWD and all children on regular Statewide assessments; and the performance of CWD on the National Assessment of Educational Progress (NAEP). At this time, we can meaningfully use data on the participation rate and proficiency gap on regular Statewide assessments. We plan to measure growth in the proficiency of CWD when States have transitioned to college- and career- ready standards and assessments. In the interim, we are using data from NAEP on the performance of CWD, which provide a consistent and fair benchmark for performance of children across all States

As noted above and further explained in the enclosures to this letter, the Department’s revised determination is that California “Needs Assistance” in implementing the requirements of Part B of the IDEA. A State’s 2014 RDA Determination is “Needs Assistance” if the RDA Percentage is at least 60% but less than 80%. A State would also be “Needs Assistance” if its RDA Determination percentage is 80% or above, but the Department has imposed Special Conditions on the State’s FFYs 2011, 2012, and 2013 IDEA Part B grant awards, and those Special Conditions are in effect at the time of the 2014 determination.

BASIS FOR CHANGING THE DETERMINATION

In its July 7, 2014 appeal letter, the State raised a number of “Technical Objections” and “Policy Objections” to the Department’s 2014 determination. One of the State’s “Technical Objections” was to the use of the National Center for Education Statistics’ (NCES) “exclusion rate” on the NAEP¹ to measure the participation of CWD on the NAEP. California pointed out that NCES calculated and published both exclusion and inclusion rates for the NAEP. California argued that the inclusion rate was a more appropriate rate to use for RDA determinations, because while the inclusion rate was based only on IDEA-eligible children with individualized education programs (IEPs), the exclusion rate was based on both IDEA-eligible children with IEPs and children who were not IDEA-eligible but were protected under Section 504 of the Rehabilitation Act of 1973 (Section 504).

The Department has reviewed California’s arguments and NCES’ description of the two rates, and concluded that either would be appropriate to use in making RDA determinations. After careful consideration of the information submitted by California, the Department has decided to

¹ As defined in the HTDMD attached to the June 23, 2014 determination letter, this rate is the “reported percentage of identified CWD [children with disabilities], by grade (4 and 8) and subject (math and reading), who were excluded from taking the NAEP in [School Year] (SY) 2012-13.”

use the inclusion rate rather than the exclusion rate in making 2014 RDA determinations. We think it is more appropriate to use the inclusion rate in making 2014 determinations under Part B of the IDEA, because the inclusion rate, unlike the exclusion rate, is based only on IDEA-eligible CWD. Therefore, the Department has changed four of the Results Elements on the 2014 RDA Matrix² to reflect the “inclusion rate,” rather than the “exclusion rate.” As shown in the enclosed revised HTDMD³ and revised RDA Matrix for California, this revision results in California receiving an RDA Percentage of 60.23%, which is at least 60% but less than 80%. Therefore, I have changed the State’s 2014 Part B determination from “Needs Intervention” to “Needs Assistance.”

As further discussed below, none of the other Technical or Policy Objections that the State raised resulted in any change in the Results Elements, in the Department’s criteria for making 2014 determinations, or in the State’s determination as reflected in the RDA Matrix. The Department addresses each of the State’s other objections in the numbered list below. The text immediately following the number is the heading the State used in its letter of July 7, 2014.

RESPONSE TO Other Technical Objections

1. “The RDA component which measures participation in Statewide assessments improperly excludes the use of alternate assessments, mischaracterizing the State’s testing practices.”

Two of the Results Elements in the 2014 RDA Matrix measure the “Percentage of CWD Participating in Regular Statewide Assessments.”⁴ The State is correct that the Department included in its calculations of this percentage only CWD who participated in the regular Statewide assessment, and not CWD who participated in an alternate assessment. The State argued that not also including CWD who participated in an alternate assessment unfairly measures the participation of California’s CWD in Statewide assessments. The State correctly points out that the IDEA requires IEP teams to determine whether a CWD will participate in a regular assessment or an alternate assessment, and that the measurement for Indicator 3B of the Part B SPP/APR is the percentage of CWD participating in Statewide assessments (including both the regular assessment and alternate assessment). The Department continues to believe that it is important to focus on CWD being involved in, and making progress in, the general

² The RDA Matrix includes scoring on Results Elements and a Results Performance Percentage (collectively, “Results Matrix”), a Compliance Performance Percentage, and an RDA Percentage and Determination.

³ As defined in the revised HTDMD, this rate is the “reported percentage of identified CWD [children with disabilities], by grade (4 and 8) and subject (math and reading), who were included in the NAEP testing in [School Year] (SY) 2012-13.” The revised HTDMD document notes that “standard error estimates were reported with the inclusion rates of CWD and taken into account in determining if a State’s inclusion rate was higher than or not significantly different from the National Assessment Governing Board goal of 85 percent.”

⁴ As defined in the HTDMD, this is “the percentage of CWD, by grade (4 and 8) and subject (math and reading), who took regular Statewide assessments in school year (SY) 2012-13 with and without accommodations. The numerator for this calculation is the number of CWD participating with and without accommodations on regular Statewide assessments in SY 2012-13, and the denominator is the number of all CWD participants and non-participants on regular Statewide assessments in SY 2012-13, excluding medical emergencies. The calculation is done separately by grade (4 and 8) and subject (math and reading).”

education curriculum and being able to demonstrate that they are learning to high standards as measured by a regular Statewide assessment, with or without accommodations. Therefore, the Department maintains that it was appropriate to use Results Elements in 2014 that measure the participation of CWD on regular Statewide assessments.

2. “The State cannot adequately demonstrate its progress without access to the data used by ED in its calculations.”

The data used for RDA determinations are publicly available through the NAEP web site at <http://nces.ed.gov/nationsreportcard/> and the Department’s web site at <http://www2.ed.gov/programs/osepidea/618-data/index.html>. How the data were used to get to final scores is explained in detail in the HTDMD document.

RESPONSE TO POLICY OBJECTIONS

1. “The process by which the RDA was adopted offered little opportunity for stakeholder input.”

The Department offered multiple opportunities for stakeholders to provide input into the RDA framework, including how the Department should use results data in IDEA annual State determinations. Beginning in 2012 with the announcement that the accountability system would be revised to increase the focus on child outcomes and results, the Department sought input through blogs, webinars, meetings, conference calls, and conference presentations. A version of the IDEA Part B Results Matrix was shared through a blog post in 2013 and the public had the opportunity to provide input.

On March 26, 2014, the Department published in the Federal Register a Request for Information (RFI) in which the Department invited broad stakeholder input on how the Department should use results data, including data from NAEP, in the annual State determinations process. The Department carefully considered all of the input it received through the RFI before deciding on 2014 determination criteria.

In addition to the above-described Department efforts to receive input from stakeholders, including States, advocates and families, regarding RDA determinations, the Department has continued to meet with groups to discuss how to use results data in the determinations process. Recently, Department staff met with the Board of Directors for the National Association of State Directors of Special Education and also met with representatives from TASH, an advocacy group for persons with significant disabilities. The Department also sought broad stakeholder input on how to use results data in the determinations process under Part C of the IDEA in a meeting with stakeholders and through a blog posted on the Department’s website.

2. “The RDA and compliance indicators are scored differently than originally indicated in the Federal Register notice and, as a result, unfairly penalize California.”

California is correct that, after considering all of the stakeholder responses to the RFI, the Department made final decisions regarding the scoring of the RDA Matrix for 2014 determinations, which differed in some ways from the preliminary approach that the Department outlined in the RFI. The purpose of the RFI was not to inform States of the Department’s final decisions related to the scoring of the RDA Matrix in 2014. The final criteria that the Department used in 2014, as detailed in the HTDMD, were applied equally to all States.

3. “The way ED combines compliance and results scores results in unequal treatment between States.”

As explained in the HTDMD, using the cumulative possible number of points as the denominator, and using as the numerator the actual points the State received, the Department calculated a Results Performance Percentage and a Compliance Performance Percentage. Each State’s RDA Percentage was calculated in 2014 by adding 50% of the State’s Results Performance Percentage and 50% of the State’s Compliance Performance Percentage. California objected to the manner in which the Department combined these percentages into a single RDA Percentage, which was the basis for each State’s 2014 determination. Having considered all of the input, including input from the RFI, the Department decided that, for the 2014 determinations, compliance and results should have an equal weight in calculating the RDA Percentage and making the State’s determination. While the State argues that this approach resulted in unequal treatment between States, the Department has determined that the approach the Department used in fact results in more equitable treatment of States, because despite variability in the number of compliance components included in a State’s Compliance Matrix, compliance and results had equal weight in the final RDA Determination.

4. “The timing of adoption of the new RDA rubric does not allow States an opportunity to address existing concerns in time to impact next year’s determination.”

California argued that, because the Department did not notify States until June 2014 that the Department would use participation in the NAEP as part of 2014 annual State determinations, it was too late for California to encourage districts to improve NAEP participation during the 2013-2014 school year. For all States, the Department makes annual determinations based on data collected in a prior fiscal reporting period. This is necessary to ensure that the data used in the determinations process are complete, valid, and reliable. The NAEP data the Department used in making determinations in 2014 were from the 2012-2013 administration of NAEP, which occurred between January 28 and March 8, 2013. We would assume that California is working continuously to increase the participation of, and improve results for, children with disabilities, whether or not these data are included in determinations.

5. “NAEP data is not an appropriate means of measuring student performance.”

California argued that the generally accepted purpose of the NAEP is to provide a common metric for comparing general performance across States, and not to make high-stakes determinations. California asserted that it was inappropriate to use NAEP data in the manner in which the Department used it in making 2014 determinations, because of: (1) differences between States regarding accommodations and inclusion of students with disabilities under both IDEA and Section 504; and (2) the small sample size in each State, including California. California further indicated that, in a report requested by the Department, the National Center on Educational Outcomes (NCEO), NCEO stated that NAEP can be used to validate State test scores and indicate relative difficulty of each State’s assessment, but does not provide data that can be used to measure raw performance.

The Department included NAEP data as part of the RDA Matrix in the 2014 annual State determinations process to provide a quantifiable representation of the educational results of CWD in each State. As noted above, using NAEP data, which provides a consistent and fair benchmark for the performance of CWD across States, is an interim measure as States transition to assessments that are aligned with College and Career Readiness Standards.

NAEP uses a statistical sampling methodology that aims to be representative of all public school students in the 4th and 8th grades by subject in each State. In most States, a significant percentage of CWD meaningfully participate in the NAEP (over 85 percent), and accommodations for CWD who take NAEP are designed to provide those students with the tools they need to ensure an accurate and reliable assessment of their knowledge and skills in the content area(s) being assessed. For this reason, NCES is confident that the results represent those CWD that are included in the sample that can meaningfully participate in the assessment.

6. “The changing RDA metrics make it impossible for a State to be responsive to negative determinations.”

California expressed its concern that it does not know the results factors on which it needs to focus in order to improve its RDA Percentage and determination in future years. As we have stated, the RDA framework is designed to support States in improving results for children with disabilities. The Department assumes that States are continuously working to improve assessment results and exiting/postschool outcomes for youth with disabilities. The Department will continue to work with States in improving results for all CWD in all of these important areas.

We are committed to supporting California’s efforts to improve results for children and youth with disabilities and their families, and look forward to working with California over the next year. If you have any questions or you wish to request technical assistance, please contact Susan Murray, the OSEP Contact for California, at 202-245-8247.

Sincerely,

/s/ Sue Swenson

Sue Swenson
Acting Assistant Secretary

Enclosures

cc: Dr. Fred Balcom
State Director of Special Education

