



Advocates for Children of New York

Protecting every child's right to learn

October 13th, 2023

Valerie Williams
Director of Office of Special Education Programs

Re: Comment re Information Collection on the IDEA Part B SPP/APR

Dear Ms. Williams,

Board of Directors

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Advocates for Children of New York (AFC) appreciates the opportunity to submit comments regarding the Special Education State Performance Plan (SPP) and Annual Performance Report (APR), Part B for fiscal year 2021, concerning New York State's report on compliance with SPP Indicator 13.

For over fifty years, AFC has worked with low-income families to secure quality public education services for their children, including students with disabilities. Through our post-secondary readiness project, AFC frequently represents and advocates for students with disabilities who are encountering barriers in their transition out of high school. According to the Individuals with Disabilities Education Act (IDEA), each student with a disability is entitled to transition services on their Individualized Education Program (IEP) to provide supports in planning the student's next steps after high school, whether that is postsecondary education, employment, or independent living.¹ Barriers to exiting high school often arise in part due to an inadequate transition plan on a student's IEP. AFC is uniquely positioned to comment on this report as we often work with families whose children have not received the transition services they need. We have frequently seen how a denial of transition services can negatively impact a student's future goals, especially those from underserved communities, further creating inequities and disparities within our education system.

Indicator 13 is the key indicator used to monitor New York State's compliance with respect to transition planning. The Indicator 13 checklist has eight components related to transition planning: (1) Measurable postsecondary goals; (2) Postsecondary goals updated annually; (3) Postsecondary goals based on age-appropriate transition assessment; (4) Transition services to meet postsecondary goals; (5) Courses of Study; (6) Annual goals related to transition services needs; (7) Evidence students were invited to the IEP team meeting to discuss transition; and (8) Evidence that

¹ 20 U.S. Code §1414.



participating agencies that could support or pay for transition services were invited to the meeting.² The purpose of Indicator 13 is to promote accountability at the state level and to incentivize educators and administrators to provide and implement comprehensive transition plans to students with disabilities by the time they turn 15.

New York's Special Education State Performance Plan and Annual Performance Report (SPP/APR) does not accurately measure compliance with Indicator 13. Instead, the results presented are based on self-review measures, outlined in an "IEP/Transition Self-Review" monitoring protocol document. These measures are not objective, which could lead to an inflated percentage of compliance. Moreover, the selected Individualized Plans (IPs) undergo initial review through random sampling, followed by correction and revision by schools or districts. The corrected versions are then utilized for reporting purposes. This post-correction compliance approach does not provide genuine insight into the state of transition planning in New York. The absence of a comprehensive pre-review and post-correction comparison undermines the accuracy of this oversight mechanism, leading to potential misconceptions. The checklist used during the self-review process allows for too much subjectivity by those conducting the reviews for there to be meaningful results reflected in the SPP/APR.³

The State is presenting a result of 91.01% compliance for FFY 2020 and 87.85% compliance for FFY 2021. The report explains that these numbers were arrived at by sampling 3,036 IEPs and finding that 2,667 of those IEPs included the required components for secondary transition.⁴ These IEPs were initially reviewed through a "self-review" process, which gave each of the reviewing districts an "IEP/Transition Self-Review" monitoring protocol document to establish criteria for the review. When analyzing the checklist included in this protocol document, most of the criteria used by reviewers are focused on measuring if there were any transition services or goals listed on the IEP--not measuring if they were appropriate for the student.⁵ When measuring compliance, the concern should not be whether the IEP was "filled in," but whether the services afforded to the student were in line with their goals, abilities, and needs as a student. For example, under item 1 of the "Instructions for Completing Individual Student Record Review Form," reporters are asked:

If the identified postsecondary goals for training, education, employment, and, where appropriate, independent living skills appear to be *appropriate* for the student, *based on*

² See 20 U.S.C. § 1416(a)(3)(B)); NEW YORK STATE EDUCATION DEPARTMENT, STATE PERFORMANCE PLAN (SPP) INDICATOR 13: SECONDARY TRANSITION, <https://www.nysed.gov/special-education/state-performance-plan-spp-indicator-13-secondary-transition>.

³ See NATIONAL TECHNICAL ASSISTANCE CENTER ON TRANSITION, NTACTION: C INDICATOR 13 CHECKLIST – FORM A, https://transitionta.org/wp-content/uploads/docs/NTACTC_ChecklistFormA.pdf.

⁴ SPP / APR: Part B for STATE FORMULA GRANT PROGRAMS under the IDEA for reporting on FY 2021 New York, U.S. DEP'T OF EDUC., at 74.

⁵ See NEW YORK STATE EDUCATION DEPARTMENT, OFFICE OF SPECIAL EDUCATION, STATE PERFORMANCE PLAN INDICATOR 13 SECONDARY TRANSITION SELF-REVIEW FOR STUDENTS WITH DISABILITIES, <http://www.p12.nysed.gov/specialed/spp/indicators/state-performance-plan-indicator-13-self-review.docx>; INDICATOR 13: SECONDARY TRANSITION, *supra* note 2.



other information regarding Present Levels of Academic and Functional Performance and/or the student's strengths, preferences, and interests, check "Yes."⁶

This begs the question of what “other information” is being evaluated when reviewing transition services on IEPs. On the self-review protocol document, it does not explicitly state what student documents are meant to be reviewed other than the IEP. If there are no objective criteria stated for what “other information” should be reviewed in tandem with the IEP, how is the State getting an objective result in measuring the “appropriateness” of the postsecondary goals? An IEP cannot be reviewed without also analyzing a comprehensive student record, and even then, conducting an objective review of appropriateness is difficult unless the reviewer is familiar with the student’s history. According to the SPP/APR, both indicators 9 and 10 also use self-reviewing methods, but according to the protocol in reviewing these indicators, there are specifications for what constitutes a “complete student record.”⁷ If the State wishes to continue conducting self-review as the first step in measuring compliance for indicator 13, it needs to include a requirement for what “other information” must be included in that review. Otherwise, those conducting the self-review can confine their analysis to the IEP without any further contextualization of the student. Requiring a review of certain other documents, such as progress reports and evaluations, is necessary to be able to gauge if the services listed for the student are effective based on the student’s performance, interests, and goals.

Additionally, the ambiguity surrounding the self-review process makes it more difficult for parents to advocate for transition services for their students. It would be helpful to have more objective criteria for assessing the appropriateness of transition plans, not only to give schools a clearer understanding of how to conduct these reviews, but to help ensure the data presented are accurate.

The State’s “correction” process is particularly problematic when identifying compliance with transition planning. Following the self-review, the State provided multiple opportunities for revisions and corrections, and even then, could not meet the desired target of 100%. The absence of knowledge regarding the original scores before corrections were applied makes it impossible to gain a genuine understanding of the quality of transition planning in New York State. While the State should certainly be requiring districts to correct non-compliant transition plans, the State should be required to report the percentage of compliance prior to those corrections. It is challenging to grasp the true state of transition planning in New York when the quality control metric or score is based on correcting a random sample without establishing a genuine baseline for the initially selected IEPs.

⁶ STATE PERFORMANCE PLAN INDICATOR 13 SECONDARY TRANSITION SELF-REVIEW FOR STUDENTS WITH DISABILITIES, at 10, *supra* note 5, (emphasis added).

⁷SPP / APR: Part B for STATE FORMULA GRANT PROGRAMS under the IDEA for reporting on FY 2021 New York, at 59, 62, *supra* note 4; NEW YORK STATE EDUCATION DEPARTMENT, OFFICE OF SPECIAL EDUCATION, SCHOOL DISTRICT SELF-REVIEW STATE PERFORMANCE PLAN (SPP) 9 AND SPP 10, at 3, <https://www.p12.nysed.gov/specialed/spp/indicators/documents/spp-indicator-9-and-10-self-review.pdf> (includes Referrals and written requests for referral, IEPs, Documentation of all CSE meetings, notices and minutes, PWN, evaluation reports, evidence of the student's native language, reports of student progress when provided RTI services in reading and math, documentation that referrals sent directly to the CSE).



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Furthermore, correcting a transition plan may not happen in time to help a student get the effective transition planning they need.

The results presented for Indicator 13 in the Special Education State Performance Plan and Annual Performance Report, Part B are the product of multiple rounds of corrections and interventions by the New York State Education Department (NYSED) directly. This is not a meaningful measure of compliance. Accountability metrics should help lead to a clear understanding of where there should be interventions made to improve transition services for those with disabilities. The State should be required to report compliance with transition planning prior to any corrections to IEPs. Furthermore, if the State wishes to continue to rely on self-reporting measures, there need to be clear, objective measures used when reviewing IEPs, especially when reviewing for the “appropriateness” of transition services.

Thank you for the opportunity to comment on the Special Education State Performance Plan and Annual Performance Report, Part B for fiscal year 2021. Please do not hesitate to contact me via the contact information below if you have any questions.

Respectfully,

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