

General Comments

Comment: Several commenters expressed general concerns with the SPP/APR process. One commenter suggested that the SPP/APR process placed an emphasis on process and compliance and disregarded instructional focus. One commenter noted that the increased focus on the State performance plan (SPP) and annual performance report (APR) has deemphasized initiatives that address improved results for children with disabilities and continuous improvement strategies to support school districts and other service providers. Another commenter suggested that focusing on some of the indicators diverts needed resources from programs that directly impact students with disabilities. Finally, one commenter suggested that the SPP and APR process does not meet the "practical utility" requirement in 5 CFR 1320.9(a), regarding agency certifications for proposed collections of information.

Discussion: We do not agree with the commenters that the SPP/APR process under Part B of the Individuals with Disabilities Education Act (Act or IDEA) will in any way negatively impact outcomes for students with disabilities, including diverting resources that would otherwise be directed towards instructional programs or is inconsistent with the "practical utility" requirement in 5 CFR 1320.9(a); rather the purpose of the SPP and APR process is to improve outcomes for

students with disabilities. As set forth in section 616(a)(2) of the Act, the primary focus of Federal and State monitoring is on: (a) improving educational results and functional outcomes for all children with disabilities; and (b) ensuring that States meet the program requirements under Part B, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities. Section 616(a)(3) of the Act requires the Secretary to monitor the States, and States to monitor LEAs, using quantifiable indicators and qualitative indicators, as needed, in the priority areas of: (a) the provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE); (b) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediations, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9) of the Act; and (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. The SPP indicators were developed by the Department, with significant input from the public and key stakeholder groups, to reflect these monitoring priorities.

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The SPP and its associated APRs provide a system through which a State collects and analyzes data related to the priority areas referenced previously to identify areas in which the State is progressing towards meeting the State's targets in the priority areas and priority areas in which the State must improve. The SPP and APR can also be used to examine State trends in each of the indicators over the life of the SPP. Therefore, the SPP and APR should guide and specifically target programs and resources to ensure improved educational results and functional outcomes for all children with disabilities and ensure that States meet the program requirements under Part B, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

Changes: None.

Comment: Several commenters remarked that the SPP contained an excessive number of indicators. Several commenters recommended deleting various indicators, e.g., Indicators 6, 8, 9, 10, 11, 12, and 14. Another commenter proposed adding several more indicators related to discipline and behavior.

Discussion: Unless otherwise noted under the comments and discussion for a specific indicator, we will not add or delete any indicators. Section 616(a)(3) of the Act requires the Secretary to monitor the States, and States to monitor LEAs,

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using quantifiable indicators and qualitative indicators, as needed, in the priority areas of: (a) the provision of FAPE in the LRE; (b) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediations, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9) of the Act; and (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. The SPP indicators were developed by the Department, with significant input from the public and key stakeholder groups, to reflect those monitoring priorities and key requirements in the IDEA. The indicators measure a State's performance on key compliance requirements, e.g., timely initial evaluations, effective transition planning and effective monitoring systems, and in critical results areas, e.g., graduation, dropout, and performance on assessment. Each State annually reports on its progress towards meeting its targets under each indicator over the duration of the life of the SPP. We believe, in order for the SPP process to demonstrate its full impact, it is important to maintain consistency and will, with some minor adjustments, retain the original indicators.

Changes: None.

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Comment: Several commenters recommended removing targets from Indicators 3A, 9, 10 and 14.

Discussion: Section 616(b)(2)(A) of the Act requires an SPP to include measurable and rigorous targets for the indicators in the SPP. Therefore, it would be inconsistent with the Act to eliminate the targets as the commenters requested.

Changes: None.

Comment: One commenter was concerned that some of the indicators were not supported by the Act or its implementing regulations.

Discussion: Section 616(a)(3) of the Act requires the Secretary to monitor the States, and each State to monitor LEAs located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the priority areas and using such qualitative indicators as are needed to adequately measure performance in the priority areas. The Secretary has determined that all indicators are needed to adequately measure performance in the priority areas and all are supported by the Act and its implementing regulations.

Changes: None.

Comment: One commenter suggested that Indicators 13, 18, and 19 not be included when making annual determinations under section 616 of the Act.

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Discussion: The Department reviews each indicator to determine if valid and reliable data were reported by the State, as required by section 616(b)(2)(B) of the Act and §300.601(b)(1). In addition, since the Act requires the Department to determine if the States meet the requirements of the IDEA, the Department considers compliance with compliance indicators in making determinations. Therefore, it is necessary to consider all indicators, including Indicators 13, 18, and 19, in the Department's determinations.

Changes: None.

Comment: State education agencies (SEAs) and an organization representing SEAs recommended that the Department accept trend data as demonstration of correction of noncompliance.

Discussion: We do not believe that it is appropriate to allow the use of trend data to demonstrate the correction of noncompliance because the Act does not make allowances for noncompliance with the requirements of Part B of the Act. Trend data may demonstrate improvement over time, but, in the absence of data indicating 100% compliance, falls short of demonstrating compliance with the requirements of this part. Therefore, we will not accept trend data as demonstration of correction of noncompliance.

The Department, however, does recognize that an SEA may not be able to ensure that every local educational agency (LEA) is

in full, continuous compliance with the requirements of Part B of the Act at all times. Therefore, the Department factors into its determination of whether a State is in compliance with the Act evidence that when the State identifies noncompliance, the State ensures that the noncompliance is corrected in a timely manner.

Changes: None.

Indicator 1

Comment: One commenter requested that the calculation for Indicator 1 be aligned with the similar calculation required under the No Child Left Behind Act (NCLB). One commenter requested that States be allowed to submit NCLB data and use the NCLB definition of "graduation" as the NCLB data and definition have more meaning for LEAs.

Discussion: We agree with the commenter that the calculation for Indicator 1 should be aligned with the similar calculation under NCLB. In the past we have encouraged States to report and set targets for graduation consistent with NCLB. We will revise the data source and measurement for Indicator 1 to better align NCLB and IDEA required data reporting.

Changes: We have revised the data source and measurement for Indicator 1. States must report using the graduation rate calculation and timeline established by the Department under the Elementary and Secondary Education Act (ESEA).

Comment: One commenter requested that SEAs only be required to report on Indicator 1 every other year.

Discussion: Section 616(b)(2)(C)(ii) of the Act requires each SEA to report annually to the Secretary and the public on the performance of the State and each local educational agency (LEA) located in the State under the State's performance plan.

Therefore, it would be inconsistent with the Act to allow a State to report on Indicator 1, or any other SPP indicator, every other year.

Changes: None.

#### Indicator 2

Comment: One commenter recommended retaining Indicator 2, but recommended aligning the calculation with that of NCLB. Another commenter requested that States be allowed to submit NCLB data and use the NCLB definitions of "dropout" as the NCLB data and definition have more meaning for LEAs.

Discussion: There are no specific requirements under the ESEA for calculating dropout rates. States that choose to use dropout rate as a factor in calculating adequate yearly progress (AYP) under the ESEA may select their calculation methodology. Therefore, we will not amend the Part B Indicator Measurement Table as the commenters requested. Under the data source and measurement requirements for Indicator 2, a State has the flexibility to select the State data source and measurement it

will use to determine the percent of youth with IEPs dropping out of high school. States are encouraged to align their data source and measurement with any calculation methodology used for all youth in the State. Indicator 2 requires that a State provide in its SPP a narrative that describes what counts as "dropping out" for all youth and, if different, what counts as "dropping out" for youth with IEPs. A State must also provide an explanation of any difference between the two standards of "dropping out."

Changes: None.

Comment: One commenter was concerned that States are allowed to determine State specific definitions of "dropout." For example, the commenter explained that some States may choose to include students who have received a GED as a "dropout," while other States do not include those students in their calculation of dropouts. The commenter requested that OSEP establish a clear, concise definition of "dropout." Further, the commenter questioned OSEP's ability to compare data across States when definitions are not consistent.

Discussion: The purpose of the information collection under Indicator 2 is not to compare data across States but rather for a State to compare its performance against its targets over time. Pursuant to section 616(b)(2)(C)(ii)(II) of the Act, a State reports annually to the Secretary under Indicator 2, and

all other indicators, to demonstrate State-specific performance under the SPP. In the absence of a specific Federal definition of "drop-out" that applies to all students, we decline to require that States report using a common definition of "drop-out" for purposes of the SPP and APR.

Changes: None.

Indicator 3

Comment: A few commenters requested that OSEP adopt the NCLB definitions and calculation for Indicator 3.

Discussion: We agree and Indicator 3 has been revised to require that States use the AYP data used for accountability reporting under Title I of the ESEA for reporting on this indicator.

Changes: Indicator 3 has been revised to require States to use the AYP data used for accountability reporting under Title I of the ESEA in reporting on this indicator.

Comment: A few commenters requested that OSEP remove the requirement that an SEA must submit Table 6 for this indicator.

Discussion: As noted previously, this indicator has been significantly revised and now requires States to use the AYP data used for accountability reporting under Title I of the ESEA in reporting on this indicator. For that reason, States are no longer required to submit Table 6 with their APRs.

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Changes: Indicator is revised to no longer require the submission of Table 6.

Comment: A few commenters recommended adding the number of individual schools that have a disability subgroup that meets the State's minimum "n" size meeting the State's AYP objectives for progress for disability subgroup.

Discussion: The measurement for Indicator 3A only requires a State to disaggregate to the district level. While a State may chose to disaggregate to the school building level for the purposes of reporting annually to the public on the performance of each LEA in the State on the targets in the SPP, we decline to make this revision for this indicator.

Changes: None.

Comment: Some commenters requested that States be required to provide an analysis of the State assessment data.

Discussion: States are required to provide an analysis of the State assessment data in Indicator 3 in the section of the APR entitled "Analysis of Progress and Slippage." The "Analysis of Progress and Slippage" is a standard section for each indicator in the SPP/APR.

Changes: None.

Indicator 4

Comment: Many commenters noted that there is a disproportionate impact of school discipline practices on students with

disabilities, especially students with disabilities who are racial minorities. The commenters suggested that the removal of Indicator 4 would seriously undermine the ability and obligation of States to provide a free appropriate public education to all children with disabilities in States.

Another commenter was concerned that, by removing this requirement, the analysis of racial disparities in discipline will be dropped from IDEA compliance monitoring putting an end to all Federal oversight of State and district level review of disparities in discipline between various groups of students. One commenter suggested that, in the absence of this reporting requirement, the Department must implement an alternate method of collecting these data because the Statute requires the collection of these data.

Discussion: In the proposed information collection that went out for comment on July 17, 2007 the Department proposed to eliminate Indicator 4. Although section 612(a)(22) of the Act requires that States collect and examine data, including data disaggregated by race and ethnicity, on suspensions and expulsions and, to the extent that there are significant discrepancies, review, and if appropriate revise, policies, procedures and practices, it does not require that the result of the examination of the data be submitted to the Department. In addition, the Department was concerned that the instructions for

the indicator were not sufficiently clear regarding the establishment of measurements and targets, especially for Indicator 4B, and that the use of these targets could lead States to set race-based targets that would raise Constitutional concerns. We received many compelling comments from disability rights and advocacy groups expressing significant concerns about the elimination of Indicator 4. We agree with the commenters that Indicator 4 represents an important reporting requirement and have reinstated and revised the indicator. Indicator 4B has been significantly revised to eliminate the potential of raising Constitutional concerns related to race-based targets.

Changes: Indicator 4A has been reinstated. Indicator 4B has been reinstated and revised to measure the percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of children with IEPs of greater than 10 days in a school year by race and ethnicity and that have policies, procedures or practices that contribute to the significant discrepancy and that do not comply with the requirements relating to the development and implementation of IEPs, the use of positive behavioral supports, and procedural safeguards.

Comment: Some commenters opposed the deletion of Indicator 4, asserted that what was presented as a request for a "technical change" in the instructions for reporting actually constitutes a

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substantial policy change and termination of an important requirement for the monitoring and enforcement of the IDEA. One commenter explained that the deletion of this reporting requirement would be contrary to the intent of Congress.

One commenter was concerned that the public has not been given a meaningful opportunity to discuss and comment on the deletion of this indicator and suggested that the Department was in direct violation of 44 U.S.C. section 3506(d)(3), requiring that with respect to information dissemination, each agency shall provide adequate notice when initiating, substantively modifying, or terminating significant information dissemination products.

Discussion: We do not agree that the public was not given a meaningful opportunity to discuss and comment on the proposed changes to the Indicator Measurement Table. The information collection for the Part B SPP and APR was provided to the public for comment pursuant to the requirements of the Paperwork Reduction Act of 1985. This is the required process for proposing changes to an information collection. The proposed changes were published in the Federal Register and the public had 60 days to submit comments. We believe this was adequate and appropriate notice regarding changes to this information collection.

Changes: None.

Comment: Many State educational agencies and local educational agencies supported the removal of Indicator 4 because the commenters note that there is no legal requirement in IDEA requiring SEAs to report this specific information to the Secretary.

Discussion: Although section 612(a)(22) of the Act requires that States collect and examine data on suspensions and expulsions and, to the extent that there are significant discrepancies, review policies, procedures and practices, the Act does not require that the result of the examination of the data be submitted to the Department. As noted earlier, based on numerous comments opposing the elimination of this indicator and the expressions of concern regarding the impact of this decision to eliminate the indicator, we have chosen to reinstate the indicator.

Changes: Indicator 4 is reinstated in the Indicator Measurement Table with the revisions discussed earlier.

#### Indicator 5

Comment: One commenter is concerned that any revisions to 618 Table 3 may not support the proposed alignment of Indicator 5 and Indicator 6.

Discussion: Data reporting for Indicator 5 was previously aligned with Table 3 and we have aligned reporting requirements for Indicator 6 with Table 3.

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Changes: Indicator 6 has been simplified to align with Table 3.

Comment: Some commenters requested that LEAs and IEP Teams be given the flexibility to determine the percentages that students with disabilities are removed from the regular class instead of having to report on the percentages that have been predetermined by the Department.

Discussion: It is not the Department's intent that reporting categories on Table 3 should drive placement decisions.

Pursuant to 34 CFR §300.324, a child's IEP team develops an IEP for that child to ensure that the child is provided FAPE.

Subsequently, pursuant to 34 CFR §300.327, a group, which must include the parents of the child, makes decisions on the educational placement of the child. Educational placement decisions must meet the requirements of 34 CFR §300.117 and be in conformity with the LRE provisions in Part B of the Act and its implementing regulations. Therefore, placement decisions must always be based on the provision of FAPE in the LRE.

Table 3 of Information Collection 1820-0517 simply collects data on the percent of children with IEPs aged 6 through 21 served inside the regular class 80% or more of the day, inside the regular class less than 40% of the day and served in separate schools, residential facilities, or homebound/hospital placements.

Changes: None.

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Comment: Two commenters recommended allowing States to split the number of students with disabilities who are five between Indicator 5 and Indicator 6. The commenters suggested that splitting the population of five year olds would allow States to set targets that more accurately reflect early childhood education programs.

Discussion: Splitting the reporting of children who are 5 between Indicator 5 and Indicator 6 would not be consistent with the Act or the 618 data collected in Table 3. Under section 619 of the Act, the Department provides grants to States for special education and related services for children with disabilities aged 3 through 5, inclusive. Data for preschool LRE collected in Table 3 are based on children aged 3 through 5, inclusive. Therefore, we do not believe it to be appropriate to split the population of five year olds between Indicators 5 and 6.

Changes: None.

Comment: One commenter recommended eliminating Indicator 5 and replacing it with a new indicator focused on measuring whether students with disabilities are receiving FAPE in the LRE. The commenter is concerned that the indicator, as currently designed, will encourage IEP Teams to place all students with disabilities in general education settings. The commenter noted that the IDEA does not presume, or set a standard, that a

general education setting is the least restrictive environment for all students.

Discussion: The IDEA does not assume that a general education setting is the LRE for all students but it does indicate a preference for children with disabilities receiving special education and related services in general education settings. As previously discussed, decisions about LRE are made on a child-by-child basis and should in no way be driven by the reporting requirements for Table 3 or Indicators 5 or 6.

Changes: None.

#### Indicator 6

Comment: Several commenters recommended that Indicator 6 be tabled until such time that the elements in Table 3 are finalized.

Discussion: Although at the time of this writing, Table 3 has not yet been finalized, we will not "table" Indicator 6 because it is important for States to focus on preschool LRE. We have revised the indicator such that it will be appropriate with any of the proposed revisions to Table 3.

Changes: Indicator 6 has been revised to measure the number of children aged 3 through 5 with IEPs who are receiving special education and related services in a separate special education class, separate school or residential facility. States will project a decrease in the number of children in these settings.

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Changes: None.

Comment: Many commenters wondered why kindergarten was included in subparts B and C of the calculation, but was not included in subpart A.

Discussion: Indicator 6 no longer includes three separate calculations; rather a single calculation measures the percent of children aged 3 through 5 with IEPs attending a separate special education class, separate school or residential facility. Children aged 5 who are in kindergarten and receiving preschool special education services should be included in the State-reported data and reflected in Indicator 6. Because of the change in the indicator, the commenters' concern is no longer relevant.

Changes: None.

Comment: Several commenters requested that "home" and "family child care" be included as examples of regular settings where young children may receive special education and related services.

Discussion: Revised Indicator 6 measures the percent of children aged 3 through 5 with IEPs attending a separate special education class, separate school or residential facility. Therefore, "home" and "family child care" are no longer relevant to the reporting on this indicator.

Changes: None.

Indicator 7

Comment: A few commenters opposed the requirement that an SEA must provide raw data in its reporting.

Discussion: The language requesting raw data was not entirely clear in the proposed Indicator Measurement Table. We understand commenters' concern and have revised this language in all indicators previously requesting "raw data." It is necessary that States provide the "actual numbers used in the calculation" as a means to verify the validity and reliability of the reported data percentage and accuracy in calculation.

Changes: Indicators 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 15, and 20 have been revised to require States to provide the actual numbers used in the calculation.

Comment: A few commenters requested that the measurement for Indicator 7 be simplified. The commenters recommended that the indicator measure the percent of preschool children with disabilities who improved functioning to a level nearer to (or equal to) same-aged peers (i.e., closed the gap).

Discussion: We understand the commenters' concerns. Therefore, for clarity and comparison purposes, we have worked with the Early Childhood Outcomes (ECO) Center to revise the reporting for this indicator. The ECO Center provided several opportunities for input from State Preschool Coordinators. Based on that input, we will revise the measurement for

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Indicator 7 to include two summary statements. States will no longer be required to provide 15 baselines and targets for this indicator which will greatly simplify the indicator. Instead, States will report baseline and targets on each summary statement for the three outcome areas (i.e., six baselines for FFY 2008 and six targets each for FFYs 2009 and 2010).

Changes: We revised Indicator 7 to include two summary statements and measurements for those summary statements.

Summary statement one describes the percent of preschool children who entered the preschool program below age expectations in Outcome A, B or C and subsequently substantially increased their rate of growth by the time they turn six years of age or exit the program. Summary statement two describes the percent of preschool children who are functioning within age expectations in Outcome A, B or C by the time they turn six years of age or exit the program.

### Indicator 8

Comment: Commenters representing parent and advocacy groups support the requirements of this indicator. While many commenters representing SEAs and LEAs requested that this indicator be removed because: (1) the information required to be collected is not statutory; and (2) data collected by this indicator are dependent on the voluntary participation of parents.

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Discussion: The Act and the Part B regulations encourage parental input and involvement in all aspects of a child's educational program, including those areas set forth in section 616(a)(3) of the Act as priority areas. In addition, the Secretary recognizes the vital role parents play in the education of their child. Therefore, we feel that it is critical to include an indicator measuring the percent of parents with a child receiving special education services who report that the school facilitated parent involvement as a means of improving services and results for children with disabilities.

Changes: None.

Comment: A few commenters requested that the Department allow SEAs and LEAs to develop their own ways to gauge parent participation and satisfaction.

Discussion: Under the data source requirements for Indicator 8, a State has the flexibility to determine the State data source it will use to determine the percent of parents with a child receiving special education services who report that school facilitated parent involvement as a means of improving services and results for children with disabilities.

Changes: None.

## Part B Information Collection Comments and Analysis

Comment: A few commenters expressed concern regarding the requirement that reporting for this indicator be representative of State demographics.

Discussion: Section 616(b)(2)(B)(i) of the Act requires that the information collected by States and used to report annually to the Secretary must be valid and reliable. We believe that the information collected must be representative of State demographics in order to be determined valid and reliable.

Changes: None.

### Indicator 9 and Indicator 10

Comment: One commenter suggested the use of the phrase "provide raw data" as used in these indicators is too generic and requires clarification.

Discussion: We agree with the commenter that the use of the phrase "provide raw data" as used in the instructions for the indicator/measurement for Indicators 9 and 10 may have caused confusion. To clarify, we revised the instructions for Indicators 9 and 10 to indicate that a State must provide the number of districts identified with disproportionate representation and the number of districts identified with disproportionate representation that is the result of inappropriate identification.

Changes: We have replaced the phrase "provide raw data" with "provide the number of districts identified with

disproportionate representation of racial and ethnic groups in special education and related services and the number of districts identified with disproportionate representation that is the result of inappropriate identification.”

Comment: Many commenters opposed the requirement that States examine the underrepresentation of racial and ethnic groups in special education and related services.

Discussion: Section 300.600(d)(3) of the Part B regulations requires States to identify disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. The Department has determined that a reasonable interpretation of disproportionate representation includes both overrepresentation and underrepresentation; both conditions may constitute disproportionate representation. Disproportionate representation in this context relies on a comparison of groups of students by race and ethnicity that are identified for special education and related services, generally, and for specific disability categories. Disproportionate representation occurs when students from a particular racial or ethnic group are identified for special education and related services or for a specific disability category either at a greater or lesser rate than all other students.

The Department's intent in requiring States to consider underrepresentation in their examination of data concerning disproportionate representation is to ensure that all children who are suspected of being a child with a disability under 34 CFR §300.8 and in need of special education and related services, are identified.

Changes: None.

Comment: Some commenters requested that Indicators 9 and 10 not be considered when making determinations.

Discussion: When making determinations, the Act requires the Secretary to determine if States are meeting the requirements and purposes of the IDEA. Section 616(a)(3)(C) specifically establishes the disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification as a monitoring priority. Therefore, Indicators 9 and 10 must be included in order to determine if States are meeting statutory requirements related to disproportionate representation.

Changes: None.

Comment: One commenter recommended removing autism from the list of disabilities that States must consider for Indicator 10.

Discussion: Section 616(a)(3) of the Act and its implementing regulation in 34 CFR §300.600(d)(3) require a State to monitor

the LEAs located in the State, using quantifiable indicators and using such qualitative indicators as are needed to adequately measure the performance in disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. At a minimum, a State must provide data for children with disabilities in the following six categories: mental retardation, specific learning disability, emotional disturbance, speech or language impairment, other health impaired, and autism. While neither the Act nor the regulations indicate the disability categories that must be included when calculating the data for Indicator 10, in an effort to reduce the reporting burden for States, the Department selected the six most common disability categories.

Changes: None.

Comment: One commenter requests that the Department clarify how States determine inappropriate policies, practices, and procedures in relation to disproportionality.

Discussion: If an LEA identifies disproportionate representation based on the calculation of data, then the LEA must determine if the identified disproportionate representation is the result of inappropriate identification.

Some acceptable methods include reviewing district policies, procedures, and practices regarding screening,

referral, evaluation and eligibility through State monitoring activities, which include an onsite review and additional data collection and analysis. The State may also require a district to complete a self-assessment tool or a self-study and then report back to the State, which would verify the findings.

Changes: None.

Indicator 11

Comment: A few commenters recommended removing the requirement that SEAs report on the reasons for delay and the range of days of the delays. One commenter suggested that the Department's interpretation of eligibility determination timelines in section 616(a)(3)(B) of the Act and the associated reporting requirements in Indicator 11 goes beyond the intent of the Act. Specifically, the commenter does not agree that the statute requires States to document reasons for delay.

Discussion: Section 614(a)(1)(C)(i)(I) of the Act, and its implementing regulation in 34 CFR §300.301(c)(1)(i), requires the initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation. Indicator 11 requires an SEA to report percent of children who were evaluated within 60 days of receiving parental consent for initial evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. States are required to provide, for any evaluations not completed

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within the timeframe, the range of days beyond the timeline when the evaluation was completed and any reasons for the delays.

This information is required to demonstrate that the State has analyzed the data to determine root causes for the delays and lead to the development of effective corrective actions.

Changes: None.

Comment: One commenter suggested that exceptions to the evaluation timeline specifically include any delay caused because the child is involved in the foster care system.

Discussion: The exceptions to the evaluation timeline are set forth in section 614(a)(1)(C)(ii) of the Act. Therefore, it would be inconsistent with the Act to amend Indicator 11 as the commenter requested.

Changes: None.

Comment: Several commenters recommended collapsing subparts B and C of this indicator and simply collect data on the number of children whose evaluations were completed within 60 days (or State established timeline).

Discussion: We agree with the commenters that States should only report on the number of children for whom consent to evaluate was received whose evaluations were completed within 60 days (or State established timeline).

Changes: We have collapsed subparts B and C from the measurement for Indicator 11 into one subpart B.

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Comment: A few commenters opposed the requirement that States provide a copy of the checklist or questions/criteria used to collect the data for Indicator 11.

Discussion: A copy of the checklist or questions/criteria used to collect data for Indicator 11 is required in order to verify the validity and reliability of the data.

Changes: None.

Indicator 12

Comment: One commenter opposed the requirement that States provide a copy of the checklist or questions/criteria used to collect the data for Indicator 12.

Discussion: A copy of the checklist or questions/criteria used to collect data for Indicator 12 is required in order to verify the validity and reliability of the data.

Changes: None.

Comment: A few commenters recommended adding additional timeline exceptions.

Discussion: We agree with the commenters that the measurement for Indicator 12 should include an additional exception.

Therefore, we will revise the measurement to include the number of children who were referred to Part C less than 90 days before their third birthdays.

Changes: We have revised Indicator 12 to include an additional exception.

Indicator 13

Comment: A few commenters recommended that this indicator be reworded. The commenters suggested several different wordings including that the indicator reflect the percent of youth aged 16 and above with an IEP that includes measurable postsecondary goals and transition services that will reasonably enable the student to reach their postsecondary goals.

Discussion: We agree with the commenters that Indicator 13 should be reworded. Additionally, to ensure accurate and complete reporting that is aligned with statutory and regulatory requirements, we will revise Indicator 13. Indicator 13 will measure the percent of youth aged 16 and above with: an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment; an IEP that includes transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals; an IEP that includes annual goals related to the student's transition services; evidence that the student was invited to the IEP Team meeting where transition services will be discussed; and evidence that a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority.

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Changes: Indicator 13 has been revised to reflect statutory and regulatory requirements.

### Indicator 14

Comment: Many commenters opposed the requirement that the data collected for Indicator 14 be representative because the districts and the States cannot control who responds to the survey.

Discussion: Section 616(b)(2)(B)(i) of the Act requires that the information collected by States and used to report annually to the Secretary must be valid and reliable. We believe that the information collected must be representative of State demographics in order to be determined valid and reliable. States may over-sample or use different methodologies to gather data from groups that typically don't respond to surveys in order to get representative samples for reporting on this indicator.

Changes: None.

Comment: One commenter requested that the Department require that data for this indicator be disaggregated by disability category.

Discussion: We believe that this is too burdensome for reporting in the SPP/APR, however, States may wish to report in this manner within the States.

Changes: None.

Comment: None.

Discussion: States submitted data for Indicator 14 for the first time on February 1, 2008. In the February 2008 submission, States reported the percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of postsecondary school, or both, within one year of leaving high school. This first submission established States' baseline for reporting progress on this indicator and all 60 States and entities submitted data. In our review of the data, the Department noted a large variation in the percent reported by States. Specifically, States' baseline percentages ranged from 36% to 96%. We are concerned that this wide variation is the result of a lack of clarity in the indicator and therefore, have revised the indicator to include more specific definitions of enrollment in higher education and employment.

Changes: Indicator 14 has been revised to include specific reporting requirements, including definitions for "enrolled in higher education," "competitively employed," "enrolled in other postsecondary education or training program," and "in some other employment." In addition, specific timeframes for enrollment and employment are included in the definitions.

Indicator 15

Part B Information Collection Comments and Analysis

Comment: One commenter suggested the use of the phrase "provide raw data" as used in this indicator is too generic and requires clarification.

Discussion: We agree that the phrase "provide raw data" is too generic and will replace it with the phrase "actual numbers used in the calculation."

Changes: We have replaced the phrase "provide raw data" with the phrase "actual numbers used in the calculation."

Comment: One commenter expressed concern that the proposed revisions to this indicator would contribute to States implementing less rigorous monitoring systems and would deter States from completing meaningful data analysis that would drive improved practice.

Discussion: We do not believe that the proposed revisions to this indicator will contribute to States implementing less rigorous monitoring systems but rather ensure that States are submitting valid and reliable data. The focus of this indicator is ensuring that States have general supervision systems that identify and correct noncompliance in a timely manner. The Department is committed to working with States to improve their general supervision systems and has provided guidance through OSEP Memoranda, conference presentations and Q and A documents.

Changes: None.

Comment: One commenter suggested that this indicator is duplicative of all of the other indicators in the SPP/APR. Other commenters opposed the requirement that the data for this indicator be disaggregated by indicator.

Discussion: Indicator 15 reports on the number of findings of noncompliance corrected as soon as possible and in no case later than one year from identification. Other compliance indicators report on specific findings, e.g., the number of children evaluated within timelines. When evaluating information on correction under other compliance indicators, the Department considers whether the noncompliance has been corrected, not solely whether correction occurred within one year of identification. It is important that the timely correction data presented in Indicator 15 is disaggregated by SPP indicator. This allows the Department to determine if States are identifying and correcting noncompliance on the related requirements for an indicator and highlights for States areas that might need more comprehensive improvement. We believe this disaggregation is important information and will continue to require Indicator 15 data to be submitted in this manner. To that end, we are requiring States to use a worksheet designed to assist them in providing these disaggregated data.

Part B Information Collection Comments and Analysis

Changes: Attachment 1 has been added to this information collection to assist States in providing disaggregated data related to identification and correction of noncompliance.

Comment: Some commenters recommended eliminating the requirement that noncompliance be corrected within one year of identification.

Discussion: The requirement that noncompliance be corrected as soon as possible, but in no case later than one year from identification is the Department's long-standing requirement and we believe that it is necessary to ensure that States are effectively exercising general supervision of the Part B program.

Changes: None.

Comment: One commenter requested that the directions for this indicator specify that the State does not have to report by LEA.

Discussion: We believe that the directions for this indicator are sufficiently clear that an SEA does not have to report by LEA.

Changes: None.

Comment: A few commenters recommended reporting noncompliance and correction data from dispute resolution activities, particularly complaints, separately and only under Indicator 16.

Discussion: Indicator 16 measures resolution of complaints within required timelines, not the correction of noncompliance

identified in complaint investigations. It is most appropriate to report on identification and correction of noncompliance from all sources under Indicator 15.

Changes: None.

Indicator 18

Comment: One commenter recommended combining Indicator 18 and Indicator 19.

Discussion: Indicators 18 and 19 measure two distinct statutory requirements and we do not believe they should be combined.

Changes: None.

Indicator 20

Comment: One commenter requested that SPP/APR yearly submission dates be flexible.

Discussion: The Department selected February 1<sup>st</sup> as the submission date for the SPP/APR yearly submission because determinations must be completed prior to July 1<sup>st</sup> when the grants for the next fiscal year may be made, as the Secretary's determinations may affect those grants. A later submission would not facilitate the Department's determinations and an earlier submission would not allow States adequate time to prepare their submissions.

Changes: None.

Comment: None.

Part B Information Collection Comments and Analysis

Discussion: The data provided by States for Indicator 20 has varied greatly in quality across States. Many States asked questions related to the measurement of timely and accurate data. To assist States in providing data for Indicator 20 in a consistent manner, the Department worked with State data managers to develop a form for States to use in evaluating the timeliness and accuracy of their data. This form will be required as part of this information collection.

Change: Attachment 2 has been added to this information collection to assist States in providing consistent data related to timeliness and accuracy of their State reported data.