

## Memorandum

To: David Cantrell, Acting Director, Office of Special Education Programs,  
United States Department of Education

From: Justin Porter Ed.D., State Director, Department of Special Education Programs

Date: September 27, 2021

Subject: SPP Data Requested for CAR 2.c

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In their September 16, letter to TEA, OSEP makes the following data request:

- 1. TEA must provide additional information on how the data submitted for this CAR item was collected, including information demonstrating that it is valid and reliable data.*
- 2. The information requested under CAR 2.c. was explained in OSEP's October 19, 2020, letter (October letter) to TEA. In the required actions for the October letter OSEP requires TEA to collect the same data that was described in the August letter. As described in the OSEP analysis in the August letter, TEA submitted a one-page document titled Texas SPP data 10-22-2020 and a one-page memorandum on proposed data collection for CAR 2.c. The data submitted included information such as the number of students for whom signed, written parental consent to evaluate was received; children receiving a full evaluation who should have been evaluated in a prior school year; the number of students determined eligible; the number of children that were found not eligible; and the number of students for which the admission, review, and dismissal committee determined additional services were needed.*
- 3. During the September 10th teleconference, TEA staff also suggested that a study had been conducted that collected relevant data. However, it is not clear if the information previously submitted was extrapolated from a study, whether it was census data, or was based on other State data. Thus, OSEP cannot determine whether TEA has provided adequate information to address the required actions relating to finding number 2 in OSEP's January 11, 2018, monitoring report regarding TEA's failure to provide FAPE to all eligible children with disabilities in Texas.*
- 4. OSEP also notes that multiple authorities require grantees and pass-through entities such as TEA to monitor and ensure that LEAs receiving federal funds are following Federal laws, regulations, and terms and conditions of any grant awards in order to ensure compliance. TEA as an SEA also has the responsibility of general supervision to ensure that the requirements of IDEA Part B are carried out. In order for an SEA to determine if requirements of IDEA are met by LEAs, the SEA may need to collect data and review policies and procedures to ensure compliance. The following statutes and/or regulations authorize SEAs and pass-through entities to collect data and/or perform direct monitoring. 20 USC 1412(a)(11), 1416(a), 34 CFR 300.149 and 300.600(a) – SEA general supervision responsibility, 20 USC 1232d(b)(3)(A), 20 USC 1232c(a), GEPA sections 440 and 441; 2 CFR 200.332(d); and 2 CFR 200.332(d)(2) (Requirements for pass-through entities).*

TEA provides the following information in response to OSEP's September 16, 2021, request:

1. TEA collected data, specifically outlined in its Corrective Action Response (CAR) submitted to OSEP April 23, 2018, through its [Texas Education Agency Login \(TEAL\)](#) secure data system via the State Performance Plan (SPP) Indicator 11 application for reporting for school years 2018-19, 2019-20, and 2020-21. The system originally (2005-06 through 2017-18) required LEAs to report aggregate counts in specified categories that is then used in monitoring efforts and subsequent federal reporting under SPP 11. In response to OSEP's January 18, 2018 findings of noncompliance the State proposed to require LEAs to collect and retain certain data elements related to initial evaluations as seen in its [July 18, 2018 To the Administrator Addressed Letter](#) stating: *Essential Corrective Action 2.c. - This corrective action requires LEAs to collect and retain requests for evaluation data that includes the reason for the request and whether additional services are needed including the timeline for implementation. This information will not be collected by TEA until the summer of 2019, but LEAs are being notified now so that they may put local measures in place to collect the information throughout the 2018-2019 school year.*

Over the course of the 2018-2019 school year, TEA determined that it needed to obtain this data from not just a sample of LEAs in the state, but to initially collect this information from all LEAs. In order to eliminate LEA burden with multiple reporting requirements and systems, TEA noticed districts that the additional information would be collected within the SPP11 TEAL application during the same reporting period. LEAs were provided training and support through the State's 20 Education Service Centers and were given explicit instruction for reporting through resources located and disseminated on TEA's [SPP 11 website and instructions](#).

Upon review of information in its first year collection, TEA engaged in analysis and study which resulted in some technical adjustments to the SPP 11 application, and in technical assistance, training, and monitoring efforts to ensure LEAs were considering compensatory services for any delay to IEP implementation required in 34 CFR §300.323. TEA observed increased reporting validity through numerical edit checks during the 2019-20 second year submission, and increased training and awareness across the state.

TEA additionally collected information relating to CAR item 2.c. for the 2020-2021 school year. Evidenced in *Table 1. Additional Data Collection – Child Find 2018/19 – 2020/21*, LEAs are collecting and reporting instances in which the request for evaluation indicates the child should have been **referred** prior to the current school year, and additionally that for students determined eligible and the ARD committee determined additional services are needed, taking into consideration support and services previously provided, compensatory services are being awarded.

2. TEA agrees with synopsis of what OSEP describes in the October 22, 2020, data submission based on the agreed upon corrective actions under CAR item 2.c. However, TEA would point out that OSEP's August 27, 2021, letter outlined the agreed upon information collection differently and supposed additional data that TEA did not agree to include in its CAR item 2.c. (*See Table 2. Timeline – CAR item 2.c.*)
3. TEA provides the following clarification to the discussion on September 10, 2021:
  - a. TEA reaffirms that information was provided by all (census) LEAs via reporting through the SPP 11 statewide data collection for school years 2018-19, 2019-20, and 2020-21 regarding CAR item 2.c. specific to agreed upon items i., ii., and iii outlined in 2.c.
  - b. TEA reaffirms that information obtained from LEAs relating to CAR item 2.c. has and continues to be used to study what additional technical support or statewide needs exist; engage with LEAs over compensatory needs; and to report findings in response to CAR item 2.c. that demonstrate LEAs are ensuring FAPE through processes of consideration for compensatory services with IEP implementation delays occur.
4. TEA understands its responsibility of general supervision to ensure that the requirements of IDEA Part B are carried out, and of its need to collect data and review policies and procedures to ensure compliance

with both federal and state requirement. TEA takes its data collection requirements seriously, but is also mindful of the burden to LEAs when applying its data collection authority under both the IDEA and statutorily required efforts to ensure all children eligible for special education and related services are provided a FAPE.

As a result, TEA determined that monitoring under its Child Find requirements needed improvement and began in spring 2020, building a robust, student level data collection via its [Texas Student Data System \(TSDS\)](#) for all initial evaluations reported under SPP 11 and 12. LEAs were notified [July 8, 2021](#) for the [TSDS Child Find Collection](#) launch on September 13, 2021. TSDS Child Find will be the primary collection for data federally reported meeting SPP 11 and 12 reporting requirements. Using the student level database that will be collected during the 2020-2021 school year, TEA will monitor every district, every year, at the student level. All noncompliance cited after a review of the data submission will require a Corrective Action Plan and include requirement under OSEP Memo 09-02 for correction, including evidence under a 2 prong review for both student level correction, although late, and implementation of the regulatory requirements including consideration of compensatory services if warranted.

TEA proposes that monitoring efforts included in both cyclical (all LEAs receive a cyclical review once every 6 years) and targeted or intensive reviews (all LEAs are eligible for a targeted or intensive review in non-cyclical years based on their overall Determination Level score) continue to address statewide concerns specific to compensatory services due to any delays to IEP implementation, including those specific to delays in Child Find activities.

TEA proposes that both cyclical and targeted or intensive reviews would specifically include engagement during monitoring and any subsequent monitoring follow-up activities regarding initial evaluation requests in determining

- whether the reason for request indicates a claim that the child should have been referred for an initial evaluation prior to the school year the evaluation was completed; and
- if the child is found eligible, whether additional services are needed, taking into consideration supports and services previously provided, and what those services are determined to be, including the timeline for implementation.

TEA requests that OSEP consider these actions demonstrate correction in utilizing data collections along with monitoring activities and engagement to ensure that FAPE was made available to all children with disabilities residing in the State in Texas's mandated age ranges (ages 3 through 21), as required by IDEA section 612(a)(1) and its implementing regulation at 34 C.F.R. § 300.101.

TEA requests that OSEP provide timely feedback within 30 calendar days in order to implement or consider any concerns OSEP may still have under CAR item 2.c.