

Thomas Stenson (OR No. 152894)
tstenson@droregon.org
Joel Greenberg (OR No. 943233)
jgreenberg@droregon.org
Disability Rights Oregon
511 SW 10th Avenue, Suite 200
Portland, OR 97205-2748
(503) 243-2081

Seth M. Galanter (D.C. No. 479919)*
sgalanter@youthlaw.org
Alice Y. Abrokwa (D.C. No. 1023510)*
aabrokwa@youthlaw.org
National Center for Youth Law
1313 L Street NW, Suite 130
Washington, DC 20005-4141
(202) 868-4786

*Admitted pro hac vice

Attorneys for Plaintiffs

Selene Almazan-Altobelli (MD No. 10506)*
selene@copaa.org
Council of Parent Attorneys and Advocates
8 Market Place, Suite 300
Baltimore, MD 21202-4113
(844) 426-7224 ext. 702

Ira A. Burnim (D.C. No. 406154)*
irab@bazelon.org
Lewis Bossing (D.C. No. 984609)*
lewisb@bazelon.org
Bazelon Center for Mental Health Law
1101 15th Street NW, Suite 1212
Washington, DC 20005-5002
(202) 467-5730

Peter Simshauser (MA No. 665153)*
peter.simshauser@probonolaw.com
Michael Folger (NY No. 5151337)*
michael.folger@probonolaw.com
500 Boylston St.
Boston, MA 02116
(617) 573-4800

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION**

J.N., et al,

Case No. 6:19-CV-00096-AA

Plaintiffs,

v.

**DECLARATION OF MELODY
MUSGROVE In Support of Plaintiffs’
Motion for Class Certification**

OREGON DEPARTMENT OF EDUCATION,
et al,

Defendants.

DECLARATION OF MELODY MUSGROVE

I, Melody Musgrove, do hereby declare as follows:

1. I submit this declaration in support of Plaintiffs' Motion for Class Certification. I have personal knowledge of the facts set forth herein, and, if called as a witness, I could and would competently testify thereto under oath.

2. I am presently the Co-Director of the Graduate Center for the Study of Early Learning and an Associate Professor of Special Education at the University of Mississippi. I have held these positions since August 2016. A detailed curriculum vitae outlining my credentials and professional experiences is enclosed with this Declaration as Exhibit 1.

3. Prior to my current work, I was the Director of the Office of Special Education Programs (OSEP) in the United States Department of Education, which administers the federal Individuals with Disabilities Education Act (IDEA) and is obligated to monitor whether states meet the requirements of that act. I served as OSEP Director from August 2010 through December 2015. As OSEP Director, I was closely involved in the Department's efforts to add a focus on the educational outcomes of students with disabilities to its traditional focus on states' compliance with the procedures required by the IDEA.

4. I hold a Doctorate in Education from the University of Southern Mississippi as well as a master's degree in special education and undergraduate degree in secondary education from Mississippi College. From 2001 to January 2007, I served as State Director of Special Education for the Mississippi Department of Education. Prior to that role, I worked as a special education teacher, assistant principal, assistant superintendent, and a due process hearing officer.

5. Drawing upon my experiences and substantive knowledge, this declaration describes how a state educational system can effectively address systemic problems like the

unnecessary use of shortened school days and ensure that all students with disabilities receive a free appropriate public education (FAPE) in the least restrictive environment (LRE) without disability-based discrimination. First, I provide background on relevant federal laws and policies. *See infra* pp. 2-7. Next, I discuss existing research related to shortened school days and the effects of this practice on students. *See infra* pp. 7-16. I then identify essential components of an effective state system and explain how states can prevent, identify, and correct school districts' noncompliance with the law, including the unnecessary use of shortened school days for students with disability-related behaviors. *See infra* pp. 16-34.

6. At this stage of the above-captioned case, prior to discovery, my declaration does not speak directly to the particulars of the State of Oregon's special education system. None of the views I assert in this declaration depend on the particular disabilities that students have.

7. My billing rate for my work on this declaration is \$350 per hour.

8. **Federal Laws Require High Expectations for and Meaningful Inclusion of Students with Disabilities.** As Congress has clearly stated, disability "in no way diminishes" an individual's right to fully participate in society. 20 U.S.C. § 1400(c)(1); *see* 29 U.S.C. § 701(a)(3); 42 U.S.C. § 12101(a)(1). When enacting and later amending Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), Congress found that "individuals with disabilities continually encounter various forms of discrimination" in critical areas like education, 29 U.S.C. § 701(a)(5), and that "historically, society has tended to isolate and segregate individuals with disabilities," 42 U.S.C. § 12101(a)(2). Consistent with the findings underlying these nondiscrimination laws, Congress passed the IDEA's predecessor in 1975 based on its "perception that a majority of handicapped children in the United States were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time

when they were old enough to drop out.” *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017) (internal citations and quotation marks omitted).

9. In enacting the current version of the IDEA in 2004, Congress found that: “[a]lmost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible.” 20 U.S.C. § 1400(c)(5)(A). High expectations and access to the general education curriculum in the regular classroom enables students with disabilities to meet “the challenging expectations that have been established for all children” and to “be prepared to lead productive and independent adult lives.” *Id.* Congress envisioned the coordination of local, state, and federal efforts “to ensure that [children with disabilities] benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent.” *Id.* § (5)(C).

10. In 2017, the U.S. Supreme Court confirmed that a student’s individualized education program (IEP) “must aim to enable the child to make progress,” since “the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Endrew F.*, 137 S. Ct. at 999. As the Court explained, “[a] substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.” *Id.* Given that the IDEA is an “ambitious” piece of legislation, *id.*, the Court further held that “every child should have the chance to meet challenging objectives,” even though the students’ goals may differ, *id.* at 1000.

11. In exchange for federal funding under the IDEA, states must have policies and procedures in effect to ensure the statute’s requirements are met. 20 U.S.C. § 1412(a). The law

vests State Educational Agencies (SEAs) with general supervision powers and duties over local school districts, also known as Local Educational Agencies (LEAs), including duties to oversee the collection of all required data, *see infra* ¶¶ 54-59; analyze the data; make findings; and reach conclusions to prevent and remedy systemic problems. *See* 20 U.S.C. §§ 1412(a)(11), 1450(2).

12. To satisfy their obligations under the IDEA, SEAs must operate an effective general supervision system. The federal Office of Special Education Programs has identified eight essential components of such a system, further discussed below. *See infra* ¶¶ 36-71.

13. SEAs must “maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for *all* students.” 20 U.S.C. § 1450(4)(A) (emphasis added); *see* 20 U.S.C. § 1416(b)(2)(A).

14. States must specifically ensure that all eligible students receive a FAPE in the LRE. 20 U.S.C. § 1412(a)(1), (a)(5).

15. FAPE means the provision of “special education,” which is specially designed instruction to meet the student’s unique needs, and “related services,” which are services “required to assist a child with a disability to benefit from special education,” including developmental, corrective, and other supportive services. 20 U.S.C. § 1401(9), (26), (29); 34 C.F.R. §§ 300.34, 300.39.¹ Specially designed instruction means adapting, as appropriate to the needs of the child, “the content, methodology, or delivery of instruction . . . [t]o address the unique needs of the child that result from the child’s disability; and . . . [t]o ensure access of the

¹ In order to constitute a FAPE, the special education and related services must: “(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the [SEA]; (C) [i]nclude an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) [be] provided in conformity with the [IEP] required under section 1414(d) of this title.” 20 U.S.C. § 1401(9). *See* 34 C.F.R. § 300.17.

child to the general curriculum, so that the child can meet the educational standards . . . that apply to all children.” 34 C.F.R. § 300.39(b)(3).

16. LRE requires that “[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled.” 20 U.S.C. § 1412(a)(5)(A). As clarified by federal regulation, this requirement means that “[s]pecial classes, separate schooling, or other removal of children with disabilities . . . occurs only if the nature or severity of the disability is such that education in regular classes . . . cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2)(ii). A student with disabilities must be “educated in the school that he or she would attend if nondisabled” unless the student’s IEP requires otherwise, and, in selecting the LRE, “consideration [must be] given to any potential harmful effect on the child or on the quality of services that he or she needs.” 34 C.F.R. § 300.116(c), (d).

17. Eligible students under the IDEA are also protected from disability-based discrimination under the ADA and Section 504, both of which protect against the unnecessary segregation from students without disabilities and the denial of equal educational opportunity. *See* 28 C.F.R. 35.130(b)(1)(ii), (d); 34 C.F.R. § 104.4(b)(1)(ii), (b)(2). Section 504 also requires that students with disabilities receive FAPE, and developing an IEP in accordance with the IDEA is one means of providing FAPE under Section 504. 34 C.F.R. § 104.33(b)(2).

18. **Current Federal Policy Prioritizes Improving Student Results.** Over the past two decades, federal policy has shifted to emphasize the importance of improving results for students with disabilities. In enacting the current version of the IDEA, Congress recognized that “State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities.” 20 U.S.C. § 1450(3).

19. In 2002, the President’s Commission on Excellence in Special Education issued an extensive report finding that “there is little demonstrable link between process compliance and student results and success.”² The Commission therefore recommended that the “IDEA, its regulations and federal and state monitoring activities be fundamentally shifted to focus on results and accountability . . . and their continuous improvement.”³ The Commission made three principal recommendations: *first*, focus on results, not only on process; *second*, embrace a model of prevention, not a model of failure; and *third*, consider children with disabilities as general education children first.⁴ I personally agree with the recommendations because my own professional experience has validated that these specific actions are critical to the effectiveness of special education.

20. Consistent with this shift, Congress changed the name of the Act in 2004 to the “Individuals with Disabilities Education *Improvement* Act,” and the amended statute calls for improvement of the results and outcomes of children with disabilities, in accordance with the Commission’s key principles. *See* 20 U.S.C. §§ 1450(2), (3); 1400 (c)(5)(E), (d)(3); 1416(a)(2). Accordingly, with the support of the Secretary of Education and in collaboration with the OSEP

² U.S. DEP’T OF EDUC., OFFICE OF SPECIAL EDUC. AND REHAB. SERVS., A NEW ERA: REVITALIZING SPECIAL EDUCATION FOR CHILDREN AND THEIR FAMILIES 12 (2002), <https://eric.ed.gov/?id=ED473830> (original pagination).

³ *Id.*

⁴ *Id.* at 8-9. In recommending a focus on results, the Commission explained that “[w]hile the law must retain the legal and procedural safeguards necessary to guarantee a [FAPE] for children with disabilities, IDEA will only fulfill its intended purpose if it raises its expectations for students and becomes results-oriented—not driven by process, litigation, regulation and confrontation.” *Id.* at 8. The Commission’s second principal recommendation calls for a shift from a model for special education that “wait[s] for a child to fail” to a model that provides “early intervention to prevent failure.” *Id.* at 9. The third recommendation is centered on the Commission’s observation that “[s]pecial education and general education are treated as separate systems but, in fact, *share* responsibility for the child with disabilities.” *Id.*

team, I led the multi-year development and implementation in 2014 of a new approach for states to monitor and provide technical assistance to districts designed to improve educational outcomes—the Results-Driven Accountability framework (RDA).⁵

21. The RDA framework requires states to develop a State Systemic Improvement Plan (SSIP), which is designed to increase each state’s capacity to structure and lead meaningful changes in local school districts. Central to this requirement is the premise, with which I agree, that improvement in individual students’ results is much less likely to be achieved at the district-level without state-level support, coordination, leadership, and general supervision. The specific steps that states can and must take in order to ensure FAPE in the LRE consistent with this focus on improvement are detailed later in this declaration. *See infra* ¶ 34 *et seq.*

22. **The Use of Shortened School Days for Students Needing Behavioral Supports is Not Supported by Existing Research.** Based on decades of working in this field, I am aware that some districts shorten the length of the school day for students whose disabilities lead to challenging classroom behaviors. However, shortened school days are not an effective or evidence-based behavioral intervention; to the contrary, the relevant research makes clear that students with disabilities perform better behaviorally and academically when they are *included* in the classroom with proper supports in place. *See infra* note 18 and accompanying text. Shortened school days are generally appropriate only for a very small group composed almost exclusively of children with serious medical conditions who may not have the strength or stamina to endure a full school day. For students with behavioral needs who are physically able

⁵ Press Release, U.S. DEP’T OF EDUC., New Accountability Framework Raises the Bar for State Special Education Programs (June 24, 2014), <https://www.ed.gov/news/press-releases/new-accountability-framework-raises-bar-state-special-education-programs>.

to attend school, shortened school days are rarely necessary if effective behavioral supports are in place. In the few cases where a shortened school day may be necessary due to behavior, it should only be used after less restrictive alternatives have failed and only for a limited period of time. During this time, the school should ensure that the student receives intensive services to build and reinforce necessary social, emotional, and behavioral skills, and the school personnel who will working with the student should receive professional development to be prepared to provide the student with needed services and supports for the full school day.

23. In my experience, the use of shortened school days often becomes a “long term sentence” for students, doing harm rather than good. Rather than being a short-term strategy used to provide intensive instruction and services that quickly enable a child to successfully return to school with renewed enthusiasm and empowerment, I have seen shortened school day decisions frequently extend for the remainder of the school year and provide inadequate academic, social, emotional, and behavioral services. These decisions result in situations where children who are placed on shortened school days are isolated and unable to practice regulating their behavior and emotions, further impeding their academic and social progress.

24. There is no research showing that removing students from school improves a child’s behavior or provides any academic or social-emotional benefits. Instead, research confirms my opinion that the overwhelming majority of students with disability-related behaviors can be effectively and safely included in school and in the general education classroom if they receive the behavior supports they need to obtain meaningful academic benefits.⁶ To

⁶ See Virginia L. Walker et al., *Examining the Inclusion of Students with Severe Disabilities in School-Wide Positive Behavioral Interventions and Supports*, 43 RES. & PRAC. FOR PERSONS WITH SEVERE DISABILITIES 223, 225 (2018), <https://doi.org/10.1177/1540796918779370>

identify the needed behavior supports and develop a plan to provide the student with those supports, IEP teams should—and, in some circumstances, must—conduct a Functional Behavior Assessment (FBA) for the student, which is in turn used to develop a Behavioral Intervention Plan (BIP).⁷

25. Academic research specifically evaluating the impacts of shortened school days on students who need behavioral supports is scarce, but in my own experience, I have found that

(discussing evidence that “challenging behavior among students with severe disabilities can be addressed successfully within inclusive school settings” and that school-wide positive behavioral interventions and supports are effective in “promoting socially appropriate behavior and academic success among most students within K-12 school settings.”); Wayne Sailor & Blair Roger, *Rethinking Inclusion: Schoolwide Applications*, 86 PHI DELTA KAPPAN 503, 504 (2005), <https://doi.org/10.1177/003172170508600707> (explaining that if special education students “are placed in general education settings and provided with specialized services and supports,” with approved methodologies used to evaluate outcomes, “then there is an opportunity to achieve a measure of integrated education policy. And the sum of available evidence overwhelmingly supports integrated instructional approaches over those that are categorically segregated, regardless of the categorical label or severity of the disability.”); *see also* Sheldon L. Loman et al., *Promoting the Accessibility of SWPBIS for Students With Severe Disabilities*, 20 J. OF POSITIVE BEHAV. INTERVENTIONS 113, 122 (2018), <https://doi.org/10.1177/1098300717733976> (describing interventions that can be used to effectively support students with severe disabilities in general education settings); JENNI OWEN ET AL., DUKE CTR. FOR CHILD & FAMILY POL’Y AND CHILDREN’S LAW CLINIC, *INSTEAD OF SUSPENSION: ALTERNATIVE STRATEGIES FOR EFFECTIVE SCHOOL DISCIPLINE* (2015), https://web.law.duke.edu/childedlaw/schooldiscipline/downloads/instead_of_suspension.pdf (same); Rachel Freeman et al., *Building Inclusive School Cultures Using School-Wide Positive Behavior Support: Designing Effective Individual Support Systems for Students with Significant Disabilities*, 31 RES. & PRAC. FOR PERSONS WITH SEVERE DISABILITIES 4 (2006), <https://doi.org/10.2511/rpsd.31.1.4> (same).

⁷ An FBA “is a process for collecting information” in which “[t]he data the team collects are used to help determine why problem behaviors occur.” Dixie Jordan, *IDEAS THAT WORK, Functional Behavioral Assessment and Positive Interventions: What Parents Need to Know*, <https://osepideasthatwork.org/node/123> (last visited Jan. 27, 2020). A BIP “is used to teach or reinforce positive behaviors.” *Id.* *See also* U.S. DEP’T OF EDUC., *IDEA: QUESTIONS AND ANSWERS ON DISCIPLINE PROCEDURES* 14-16 (2009), <https://www2.ed.gov/policy/speced/guid/idea/discipline-q-a.pdf> (explaining when school districts are required to conduct FBAs and BIPs).

the effects of shortened school days on students are similar to those of out-of-school suspensions. In both instances, the students are removed from instructional, social, and extracurricular school activities and are isolated from their peers and the adults who should model and support the development of social, emotional, and behavioral skills. Consistent with OSEP's description of shortened school days as a form of exclusionary discipline,⁸ I find that the impacts of excluding students from the classroom due to their behaviors through shortened school days mirror the impacts of excluding students from the classroom due to their behaviors through suspensions. The research on the harms that suspensions cause students is clear and compelling.⁹

⁸ U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER ON THE INCLUSION OF BEHAVIORAL SUPPORTS IN INDIVIDUALIZED EDUCATION PROGRAMS 13 (2016), <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>. See also NAT'L COUNCIL ON DISABILITY, BREAKING THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS WITH DISABILITIES 22-23 (2015), <https://www.ncd.gov/publications/2015/06182015> (discussing the use of shortened school days as a form of student discipline).

⁹ See e.g., ELIZABETH PUFALL JONES ET AL., CTR. FOR PROMISE, DISCIPLINED AND DISCONNECTED: HOW STUDENTS EXPERIENCE EXCLUSIONARY DISCIPLINE IN MINNESOTA AND THE PROMISE OF NON-EXCLUSIONARY ALTERNATIVES 2 (2018), <https://files.eric.ed.gov/fulltext/ED586336.pdf>; Janet Rosenbaum, *Educational and Criminal Justice Outcomes 12 Years After School Suspension*, YOUTH AND SOC'Y 13, 16 (2018), <https://doi.org/10.1177/0044118X17752208>; Anne Gregory et al., *Eliminating Disparities in School Discipline: A Framework for Intervention*, 41 REV. OF RES. IN EDUC. 253 (2017), <https://doi.org/10.3102/0091732X17690499>; National PTA, *Position Statement: Positive School Discipline* 1 (2016), <https://www.pta.org/docs/default-source/files/advocacy/position-statements/positive-school-discipline-ps.pdf>; Michelle M. Massar et al., *Do Out-of-School Suspensions Prevent Future Exclusionary Discipline?* 1 (2015), https://assets-global.website-files.com/5d3725188825e071f1670246/5d79778ee21ac97f0bfeb9a6_evalbrief_may2015.pdf; Robert Balfanz et al., *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, 5 J. APPLIED RES. ON CHILD.: INFORMING POL'Y FOR CHILD. AT RISK 1 (2014), <http://digitalcommons.library.tmc.edu/childrenatrisk/vol5/iss2/13>; AM. ACAD. OF PEDIATRICS, POLICY STATEMENT: OUT-OF-SCHOOL SUSPENSION AND EXPULSION (2013), <https://pediatrics.aappublications.org/content/pediatrics/131/3/e1000.full.pdf>; AM. PSYCHOL. ASS'N ZERO TOLERANCE TASK FORCE, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? (2008), <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>; NAT'L ASS'N OF SCH. PSYCHOLOGISTS (NASP), ZERO TOLERANCE AND ALTERNATIVE STRATEGIES: A FACT SHEET FOR EDUCATORS AND POLICYMAKERS (2001), https://www.naspcenter.org/factsheets/zt_fs.html.

26. For example, researchers have found that students who are suspended and/or expelled are much more likely to repeat a grade, drop out of school, and become involved in the juvenile justice system.¹⁰ Suspensions are consistently associated with lower academic performance and higher dropout rates,¹¹ with researchers finding that students who are repeatedly suspended may lose significant instructional time, placing those “who are already likely to be disengaged from school[] at higher risk for falling significantly behind their peers.”¹² In my opinion, this research is applicable to the context of shortened school days because students placed on shortened school days due to their behaviors likewise lose significant

¹⁰ See Gregory et al., *supra* note 9, at 255-56; Balfanz et al., *supra* note 9 at 1; Christopher A. Mallett, *The School-to-Prison Pipeline: A Critical Review of the Punitive Paradigm Shift*, 33 CHILD & ADOLESCENT SOC. WORK J. 15 (2015), <https://doi.org/10.1007/s10560-015-0397-1>; TONY FABELO ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR. & PUBLIC POL'Y RES. INST., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 54, 56 (2011), http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf (study finding that 31 percent of suspended or expelled students repeated a grade and nearly 10 percent dropped out).

¹¹ See Talisha Lee et al., *High Suspension Schools and Dropout Rates for Black and White Students*, 34 EDUC. & TREATMENT OF CHILD. 167, 182 (2011), <https://www.jstor.org/stable/42900581> (study finding “high suspension rates were consistently associated with high school dropout rates.”); NASP, *supra* note 9 (“[D]iscipline practices that restrict access to appropriate education often exacerbate the problems of students with disabilities, increasing the probability that these students will not complete high school.”); KIM BROOKS ET AL., JUSTICE POLICY INST. & CHILDREN'S LAW CTR., INC., SCHOOL HOUSE HYPE: TWO YEARS LATER 22 (2000), http://www.justicepolicy.org/uploads/justicepolicy/documents/school_house_hype.pdf (explaining that “when students with disabilities are suspended or expelled, their education becomes disrupted: they are more likely to fall further behind, to become more frustrated, and too frequently, to drop out of school.”); ADVANCEMENT PROJECT & THE CIVIL RIGHTS PROJECT, OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES 13 (2000), <https://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf> (same).

¹² FABELO ET AL., *supra* note 10 at 20.

instructional time, and some may already be disengaged from school, just like students who are suspended due to their behaviors.

27. Similarly, research indicates that one suspension often leads to more suspensions, depriving students who may already be behind academically of the instructional time they desperately need.¹³ Some evidence even indicates that when students are suspended from school for their behaviors, students who are *not* suspended become “collateral damage” due to a “highly punitive” educational environment that “can breed anxiety, distrust, and uncertainty, even for students who do nothing wrong,” which leads to negative effects on reading and math achievement.¹⁴

28. Shortened school days are not only harmful; they are also unnecessary. Indeed, research shows that school districts *can* prevent the behaviors that often lead staff to use practices that exclude students from the classroom.¹⁵ When school districts work systematically to establish the culture and supports needed for all children to achieve success, they can avoid

¹³ See Massar et al., *supra* note 9 at 3 (study finding more than half of suspended students were suspended at least once more that school year and the likelihood of receiving another suspension and/or office referral was 71.9 percent); Russell J. Skiba & Kimberly Knesting, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*, 92 NEW DIRECTIONS FOR YOUTH DEV. 17, 33 (2001), http://indiana.edu/~equity/articles/Skiba_Knesting_Zero_Tolerance_2001.pdf (“Indeed, for some students, suspension is a strong predictor of further suspension, prompting some researchers to conclude that for these students, ‘suspension functions as a reinforcer . . . rather than as a punisher.’”) (internal citations omitted).

¹⁴ Brea L. Perry & Edward W. Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*, 79 AM. SOC. REV. 1067, 1071, 1082-83 (2014), <https://doi.org/10.1177/0003122414556308>.

¹⁵ See *supra* note 6 and accompanying text; see also Francis L. Huang & Dewey Cornell, *The Relationship of School Climate with Out-of-School Suspensions*, 94 CHILD. AND YOUTH SERVS. REV. 378 (2018), <https://doi.org/10.1016/j.chilyouth.2018.08.013> (study finding association between positive school climate and lower likelihood of a student receiving a suspension).

exposing students to punitive, reactionary, and ineffective strategies. One way school districts can support students is by implementing a framework that is based on teaching the students desirable behaviors and preventing rather than punishing disruptive behaviors. These interventions are more likely to succeed in schools with a strong school culture of differentiated supports that are based on data and tailored to the needs of students, specifically a Multi-Tiered System of Support (MTSS) that includes positive behavior interventions and supports (PBIS).¹⁶

29. MTSS, previously known as “Response to Intervention,” is “a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students’ needs, with regular observation to facilitate data-based instructional decisionmaking.” 20 U.S.C. § 7801(33) (defined in Every Student Succeeds Act). The emphasis is on a “system” where educators use routine processes to deploy a variety of supports. MTSS includes the use of academic interventions and PBIS. PBIS, when implemented with measurable fidelity, improves school climate and academic and behavioral outcomes for all students, including students with disabilities, through the systematic delivery of social, emotional, and behavioral supports. A strong body of research supports the effectiveness of well-implemented PBIS at the schoolwide

¹⁶ See generally Catherine P. Bradshaw et al., *Examining the Effects of School-Wide Positive Behavioral Interventions and Supports on Student Outcomes: Results From a Randomized Controlled Effectiveness Trial in Elementary Schools*, 12 J. POSITIVE BEHAV. INTERVENTIONS 133 (2012), <https://doi.org/10.1177%2F1098300709334798> (training in schoolwide positive behavioral interventions and supports associated with lower rates of office discipline referrals and suspensions); James Luiselli et al., *Whole-School Positive Behaviour Support: Effects on Student Discipline Problems and Academic Performance*, 25 EDUC. PSYCHOL. 183, 192 (2005), <https://doi.org/10.1080/0144341042000301265> (finding that “[s]tudent discipline problems decreased and academic performance improved” following positive behavior support intervention at an urban elementary school).

level.¹⁷ By using a system such as MTSS, research shows that schools can reduce or eliminate the need for exclusionary practices, such as shortened school days.

30. While exclusionary practices are neither helpful nor necessary, inclusionary practices, by contrast, help all students. Research confirms that placing students with disabilities in general education classrooms results in students with disabilities performing better on academic and behavior measures than those students who are placed in segregated schools or classrooms.¹⁸ Additionally, there is evidence showing that when students with disabilities are properly served in the general education classroom, students without disabilities also do better.¹⁹ Essentially, when children are getting what they need, all children benefit.

31. **The Use of Shortened School Days Undermines Students' Ability to Receive FAPE in the LRE.** In order to support states and districts in meeting their responsibilities to provide FAPE in the LRE to students with behavioral needs, in 2016, OSEP issued significant guidance mandating that IEP teams provide behavior supports to students with disabilities:

“[T]he failure to consider and provide for needed behavioral supports through the IEP process is likely to result in a child not receiving a meaningful educational benefit or FAPE. In addition, a failure to make behavioral supports available

¹⁷ See ROBERT H. HORNER ET AL., IS SCHOOL-WIDE POSITIVE BEHAVIOR SUPPORT AN EVIDENCE-BASED PRACTICE? (2015), https://assets-global.website-files.com/5d3725188825e071f1670246/5d79730226acc65b8ce8a9a6_2014%2007-07%20evidence%20base%20for%20swpbs.pdf (collecting research).

¹⁸ See Daniel M. Maggin et al., *A Comparison of the Instructional Context for Students with Behavioral Issues Enrolled in Self-Contained and General Education Classrooms*, 36 BEHAV. DISORDERS 84, 92 (2011), <https://www.jstor.org/stable/43153527> (students with emotional and behavioral disorders in self-contained classrooms tend to perform significantly worse than peers in general education who are at risk for emotional and behavioral disorders); see also Walker et al., *supra* note 6, at 225; Freeman et al., *supra* note 6, at 14; Sailor & Roger, *supra* note 6, at 505.

¹⁹ See Sailor & Roger, *supra* note 6, at 505 (“[S]pecial education has developed evidence-based practices that have been shown to work for general education students as well. . . . [M]ounting evidence suggests that integrated applications of special education practices can yield positive outcomes for all students.”).

throughout a continuum of placements, including in a regular education setting, could result in an inappropriately restrictive placement and constitute a denial of placement in the LRE. While such determinations are necessarily individualized, this guidance is intended to focus attention on the need to consider and include evidence-based behavioral supports in IEPs that, when done with fidelity, often serve as effective alternatives to unnecessary disciplinary removals, increase participation in instruction, and may prevent the need for more restrictive placements.”²⁰

Based on my experience and the relevant research, the repeated use of classroom removals like shortened school days and suspensions frequently indicates that an IEP does not adequately meet the behavioral needs of the child it is intended to serve or is not being properly implemented.

32. Students placed on shortened school days often miss out on specially designed instruction they need, and this lost instructional time impedes students’ ability to make progress in the general education curriculum, as required for students to receive a FAPE. Furthermore, it is unlikely that students will receive effective related services to address their behavioral needs during shortened school days. In 2014, the National Association of School Psychologists reported that the overwhelming majority (70-80%) of children who receive any behavioral or mental health services receive them at school, thus concluding that “[s]chools are uniquely positioned to lead youth prevention and early intervention programming.”²¹ While school districts can provide related services to students on shortened school days at home, in my experience, this is less likely to occur than for students in school, and any in-home services will lack the classroom interactions that are part of the learning experience. In order to apply newly-learned behavioral skills in the classroom setting, students must be able to practice those skills in the classroom. The ultimate measure of the effectiveness and adequacy of the services that

²⁰ U.S. DEP’T OF EDUC., *supra* note 8, at 3.

²¹ NASP, POSITION STATEMENT ON PREVENTION AND WELLNESS PROMOTION 1-2 (2014), <https://www.nasponline.org/research-and-policy/professional-positions/position-statements>.

students receive on shortened school days is whether and when the students return to school with more instructional time and receive educational benefit in the least restrictive environment.

33. When used in response to student behavior, shortened school days are likely to deny students with disabilities FAPE in their LRE. OSEP has made clear that exclusionary discipline measures such as shortened school days often result in a denial of FAPE,²² and has advised that “IEP Teams must consider the need for [PBIS] for children with disabilities whose behavior impedes their learning or that of others, and, when determined necessary to ensure FAPE, include or revise needed behavioral supports in the child’s IEP.”²³ Further, when imposing shortened school days or any other classroom removal that impacts a student’s ability to learn in their LRE, the IEP team must consider “any potential harmful effect on the child or on the quality of services that he or she needs” as a result of that exclusion. 34 C.F.R. § 300.116(d). It is my view that, just as with suspensions, IEP teams should consider the need for PBIS, and implement and revise the services as needed, before imposing shortened school days.

34. **An Effective State Educational System Can Adequately Address Systemic Problems and Ensure FAPE in the LRE and Nondiscrimination.** The local school district is the front line of implementing the IDEA, as school districts develop IEPs and deliver services directly. However, the state has a broad, proactive obligation to implement a comprehensive system that prevents, identifies, and corrects districts’ noncompliance with the IDEA and provides assistance to school districts to support and ensure compliance. *See* 20 U.S.C.

²² U.S. DEP’T OF EDUC., *supra* note 8 at 13.

²³ *Id.* at 14.

§ 1416(a); 34 C.F.R. § 300.600.²⁴ General supervision is an ongoing process that requires *every* state to constantly reevaluate the status of special education services and where changes are needed, coordinating with other state agencies as needed.

35. If the state's general supervision system is functioning properly, school districts that use shortened school days unnecessarily to respond to challenging behaviors will come to the state's attention through multiple components of the state system. Relying heavily or exclusively on an administrative complaint mechanism to detect problems is not an adequate means for the state to identify potential noncompliance and ensure the provision of FAPE, and doing so shifts the state's duties onto parents and advocates. Instead, as described below, the IDEA requires states to gather relevant data, analyze the specific reasons why the practice is occurring, and proactively assist school districts to correct noncompliance and develop strategies for preventing future noncompliance.

36. ***There are Eight Essential Components of an Effective State General Supervision System.*** OSEP has articulated eight legally-required components of an effective state system of general supervision: (1) the State Performance Plan/Annual Performance Report; (2) policies, procedures, and effective implementation; (3) integrated monitoring activities; (4) fiscal management; (5) data on processes and results; (6) improvement, correction, incentives,

²⁴ In turn, OSEP monitors whether states have complied with their own duty to ensure that districts provide FAPE. *See, e.g.*, U.S. DEP'T OF EDUC., LETTER FROM RUTH E. RYDER, ACTING DIRECTOR OF OSEP TO MIKE MORATH, COMMISSIONER OF TEXAS EDUCATION AGENCY (Jan. 11, 2018), <https://www2.ed.gov/fund/data/report/idea/partbdmsrpts/dms-tx-b-2017-letter.pdf> (finding SEA in noncompliance for failing to ensure that LEAs met child find and FAPE requirements and to fulfill its general supervisory and monitoring duties); U.S. DEP'T OF EDUC., TEXAS PART B 2017 MONITORING VISIT LETTER ENCLOSURE, <https://www2.ed.gov/fund/data/report/idea/partbdmsrpts/dms-tx-b-2017-enclosure.pdf> (OSEP's full monitoring report finding SEA noncompliance).

and sanctions; (7) effective dispute resolution; and (8) targeted technical assistance and professional development.²⁵

37. A state can ensure FAPE in the LRE by operating a supervisory system that contains each of these components and by utilizing them effectively to prevent, detect, and correct noncompliance. In doing so, states are expected to: (1) support practices that improve educational results and functional outcomes for students with disabilities; (2) use multiple methods to identify and correct noncompliance as soon as possible; and (3) utilize enforcement mechanisms to encourage and support improvement and to ensure compliance.²⁶

38. These components work together like pieces in a puzzle; if any component is isolated from the others or not implemented properly, the state's system cannot ensure FAPE in the LRE and freedom from discrimination as it must.

39. *State Performance Plan/Annual Performance Report*. Each year, states must submit a State Performance Plan to OSEP that evaluates the State's efforts to implement the IDEA and describes how the State will improve implementation. 34 C.F.R. § 300.601; *see also* NCSEAM, *supra* note 25, at 4-5. States must also submit an Annual Performance Report to OSEP reporting on their performance under the State Performance Plan. 34 C.F.R. § 300.602(b)(2). As part of the Annual Performance Report, states must collect and report

²⁵ U.S. DEP'T OF EDUC., GENERAL SUPERVISION: DEVELOPING AN EFFECTIVE SYSTEM: IMPLICATIONS FOR STATES (2007), https://sites.ed.gov/idea/files/General_Supervision_Breakout_3-29-07.pdf; *see also* NAT'L CTR. FOR SPECIAL EDUC. ACCOUNTABILITY MONITORING (NCSEAM), DEVELOPING AN EFFECTIVE SYSTEM OF GENERAL SUPERVISION: PART B (2007), https://www.hdc.lsuhs.edu/docs/TIERS/resources/Effective%20General%20Supervision%20Part_Part%20B.pdf (guide describing the regulatory requirements for the eight components).

²⁶ NCSEAM, *supra* note 25, at 3. *See* 34 C.F.R. § 300.600(a)(3) (listing examples of appropriate enforcement mechanisms, including, but not limited to, technical assistance, conditions on district funding, corrective action plan or improvement plan, and withholding of funds).

specific data, but they have wide latitude to collect additional data as necessary to effectively implement their general supervision systems.

40. In the past, OSEP emphasized improving states' procedural compliance with their supervisory obligations (e.g., improving compliance with timeline requirements). States improved in those procedural areas, but there was no improvement in student outcomes. Instead, we saw little to no progress nationally in reading and math skills for students with disabilities. Accordingly, when OSEP implemented Results-Driven Accountability in 2014, it added a qualitative indicator to the State Performance Plan/Annual Performance Report requiring states to develop a comprehensive State Systemic Improvement Plan for how they would improve results and functional outcomes for students with disabilities and support local districts in doing so.

41. States generally focus on the issues that OSEP focuses on, and, in turn, school districts focus on what the state focuses on. States are allowed to choose which outcomes to prioritize and to set their own targets for achieving the improved results and outcomes, taking into account stakeholder input. States must set targets—and consider whether to raise or lower them—consistent with the federal law and policies explaining that FAPE is an ambitious educational standard that requires students with disabilities having access to the same curriculum as students without disabilities, which is more likely to occur in a general education classroom.²⁷

42. States can both ensure procedural compliance and improve outcomes by using multiple data sources to inform policy decisions, by including stakeholders in solving problems

²⁷ See *Endrew F.*, 137 S. Ct. at 999; see generally U.S. DEP'T OF EDUC., OSERS POLICY GUIDANCE ON FREE APPROPRIATE PUBLIC EDUCATION (FAPE) (2015), <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/guidance-on-fape-11-17-2015.pdf>.

and setting priorities, and by focusing the state’s resources to address identified areas in need of improvement. In my experience as a special education director in Mississippi and as director of OSEP, I concluded that procedural compliance alone is not sufficient to improve outcomes as required by IDEA. For example, an IEP team could develop a procedurally compliant IEP that checks the necessary procedural boxes but is not designed to help the student meet grade-level standards or that unnecessarily segregates the student, thereby failing to provide the student with FAPE in the LRE. I further found that procedural noncompliance—like a failure to include parents in IEP decision-making—may limit substantive student outcomes. In my view, procedural compliance without a focus on outcomes is not compliance with the IDEA. States must develop a plan that uses the IDEA’s procedures to ensure delivery of effective instructional practices, supports, and services that most impact results and also protect the rights of students.

43. Students with disabilities typically need *more* services and supports, not fewer. I have yet to encounter a student with disabilities who needed fewer services and supports than students without disabilities. Thus, a state in which shortened school days are common should give special consideration in its plan to how it can support districts in improving results and functional outcomes for students who receive less instruction due to shortened school days.²⁸

44. *Policies, procedures, and effective implementation.* States must have policies and procedures in place to ensure that school districts meet the IDEA’s procedural and substantive

²⁸ For instance, some students placed on shortened school days receive their instruction through virtual or online programs, even though there is little evidence on the effectiveness of such programs for students with disabilities. OSEP issued a 2016 Dear Colleague Letter reminding states of their obligation to ensure that all programs, whether online or “brick and mortar,” meet the requirements of IDEA. See U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER ON ONLINE AND VIRTUAL SCHOOLS AND THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) (2016), <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/dcl--virtual-schools--08-05-2016.pdf>.

requirements, including to improve educational results, and must have an effective infrastructure for implementing and enforcing those policies and procedures. 34 C.F.R. § 300.100; *see also* NCSEAM, *supra* note 25, at 6-7. A state could adopt all the “right” policies and procedures on paper to address a systemic issue, but those policies and procedures will have no effect if they are not actually being implemented. To learn whether their policies and procedures are being implemented properly, states must meaningfully engage with all relevant stakeholders. In addition to school districts, states must engage with parents, principals, teachers, advocates, early childhood and higher education leaders, administrators, paraprofessionals, related service providers, and others to analyze all available data in an organized and systematic manner.

45. Broad stakeholder engagement is critically important in getting to the root causes of systemic failures and identifying solutions. In my experience, it is not unusual for stakeholder groups to be convened by the state to “admire the problems” with little meaningful state-level action thereafter. For effective stakeholder engagement, it therefore can be valuable to bring in outside facilitators and data analysts to guide the analyses and discussions, as we did when I was state special education director in Mississippi. The state should also convene the stakeholders in a way that makes clear that the convening is a safe place for stakeholders to be candid and to problem-solve collaboratively. Further, states must be willing to accept responsibility for the existing state of affairs, make difficult decisions, and dedicate sufficient resources to “move the needle” toward improvement. Otherwise, participants are likely to view the stakeholder process as an empty exercise. The IDEA requires the creation of state advisory panels, 34 C.F.R. § 300.167, and I have found that states must seriously consider and value the recommendations of their advisory panels if they are to achieve meaningful improvement.

46. *Integrated monitoring activities.* States must monitor every school district program in every year to identify districts' compliance and performance. 34 C.F.R. § 300.600; *see also* NCSEAM, *supra* note 25, at 11-12. Integrated monitoring is an ongoing process of collecting and analyzing data with stakeholders, and adjusting the state's monitoring priorities based on analyses of both results and compliance metrics; it cannot be a one-time process. State personnel do not necessarily need to go on-site every year; many states use on-site visits, desktop monitoring, file reviews, self-assessments, and other processes as part of integrated monitoring activities. To effectively implement integrated monitoring activities, a state must consistently require correction of noncompliance and must consider whether a systemic issue exists when it finds school district noncompliance.

47. Focused Monitoring is a data-informed approach to integrated monitoring that focuses on a small number of carefully chosen priorities that have the greatest potential to improve results for students with disabilities. In my role as state special education director in Mississippi, we determined that the state's key priorities concerned the Least Restrictive Environment, over-identification of Black students, and identification of students with Emotional Disturbance, and we focused our monitoring on those priorities. Similarly, to address systemic noncompliance resulting from the misuse of shortened school days, the State of Oregon could select shortened school days as one of its monitoring priorities. In Focused Monitoring, once a state has adequately addressed its top priorities, it then selects new monitoring priorities.

48. In an effective system of Focused Monitoring, findings of district noncompliance are based on data that are triangulated, i.e., confirmed by multiple data sources. This process maximizes the state's resources, emphasizes its priorities, and increases the probability of improved student learning and behavioral outcomes.

49. Focused Monitoring represents a shift from a culture of compliance and process to a culture of accountability for student learning. Unlike monitoring for procedural compliance alone, Focused Monitoring is not “box checking,” but rather it seeks a deep understanding of root causes of poor performance. Instead of a “one-size-fits-all” approach, Focused Monitoring requires a differentiated system of decision-making, supports, and sanctions where the supports and sanctions vary according to the severity and frequency of the noncompliance and the district’s progress toward correction.

50. Teachers and school administrators, particularly principals, must value the expertise of those on the monitoring team and believe that the monitors can properly identify noncompliance and provide useful guidance for taking corrective action and implementing effective strategies that lead to improved results. States must carefully select individuals for monitoring teams who have the needed qualifications and experience to be considered credible by local personnel, build relationships with school and district staff, and establish adequate mechanisms for enforcement. An effective state monitoring program includes parents and advocates as part of its monitoring teams. In Mississippi, we solicited parent volunteers who were involved in every part of the monitoring process, serving as a voice for parents.

51. When a state finds noncompliance during its monitoring, it must generate written reports that require evidence of correction. To improve correction efforts, it may be necessary for the state to provide both internal technical assistance—to build its own capacity to support districts’ implementation of corrective action—and external technical assistance and professional development—to equip district personnel to properly implement state policies and procedures and effective instructional practices. Without sufficient technical assistance and professional development resources from the state, school districts may implement one-time corrections to

remedy noncompliance but then engage in new instances of the same or similar noncompliance, harming other students. In my experience, when states direct school districts to correct one exclusionary practice (e.g. restraints and seclusion) without providing them the guidance, technical assistance and professional development that local personnel need to effectively support students in the classroom, those personnel often engage in other exclusionary practices instead (e.g., suspensions, expulsions, or shortened school days).

52. *Fiscal management.* This component assesses how the state ensures that IDEA funds are distributed and used in a manner consistent with federal requirements. *See* NCSEAM, *supra* note 25, at 16-17. The IDEA provides that states “shall not use a funding mechanism . . . that will result in the failure to provide a child with a disability a [FAPE],” nor may the state funding mechanism “result in placements that violate the [LRE] requirements.” 20 U.S.C. § 1412(a)(5)(B); 34 C.F.R. 300.114(b)(1). Among other statutory requirements, states must: ensure that school districts use IDEA funds to pay the excess costs of providing special education and related services, 34 C.F.R. § 300.202(a)(2); allocate adequate funds to support their system of general supervision;²⁹ and allocate state-level activity funds to support districts’ improvement efforts, 34 C.F.R. § 300.704(b)(4)(xi).

53. Subject to the applicable legal requirements, states generally have wide discretion in how they use their IDEA funding to ensure FAPE in the LRE. This discretion allows states the flexibility to use federal IDEA funds to address any issues that result in FAPE denials, such as the misuse of shortened school days. States should have policies in place to ensure that fiscal resources are directed to those areas needing improvement, as outlined in their Annual

²⁹ *See* NCSEAM, *supra* note 25, at 17; *see also* 34 C.F.R. § 300.600 (monitoring and enforcement requirements).

Performance Report. In allocating funding for state-level activities, states may direct funds towards: support and direct services; technical assistance and personnel preparation; assisting school districts in providing PBIS; and improving the use of technology in the classroom.³⁰ Districts likewise have discretion in how special education funds are distributed among schools, but most states have an application process by which the state approves district allocation plans.

54. *Data on processes and results.* The data that states are required to submit to OSEP under Section 618 of the IDEA (Section 618 Data Collection) are another key aspect of general supervision. 34 C.F.R. § 300.640; *see* NCSEAM, *supra* note 25, at 8-11. The required data, which must be made public, consists of data concerning: child count; educational environments; personnel; exiting; discipline; assessment; dispute resolution; and maintenance of effort reduction/coordinated early intervening services.³¹

55. In order to effectively address systemic problems, the state must use all available data to identify where there may be systemic issues that could result in FAPE denials and it then should proactively address those issues. If multiple sources of data point to the same root problem, that data pattern should raise a concern for the state and prompt further action.

56. Among the Section 618 Data Collection indicators, discipline data, depending on the accuracy of the data, can be particularly relevant in evaluating whether school districts are using shortened school days appropriately. This is because a shortened school day due to student behavior is essentially a suspension by another name, even if the shortened school day is

³⁰ *See* U.S. DEP'T OF EDUC., *Purpose, SPECIAL EDUCATION—GRANTS TO STATES*, <https://www2.ed.gov/programs/osepgts/index.html> (last visited Jan. 27, 2020).

³¹ *See* U.S. DEP'T OF EDUC., *Data, INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)*, <https://sites.ed.gov/idea/data/#Authorized-Data-Collections> (last visited Jan. 27, 2020).

characterized by the IEP team as an intervention. *See supra* ¶¶ 25-27.³² It would also be valuable for the state to look at educational environment data by disability category to determine if students with certain disabilities are segregated more than others. The state should also ensure LRE data are reported accurately for students on a shortened school day; for instance, it would be misrepresentative to report that students are in the general education setting for 80 percent or more of the day if they are actually in that setting for 80 percent of a shortened school day lasting only a few hours. Such a data reporting practice would critically undermine the state's ability to determine whether students who have shortened school days are receiving FAPE in the LRE.

57. Furthermore, to be *effective* in identifying systemic problems, it can be important for the state to consider and make public additional data beyond what the Section 618 Data Collection specifically requires. There is an old saying: "Sunshine is the best disinfectant." Transparency is critical because stakeholders must be involved in the state's monitoring activities and decision-making processes regarding compliance issues. To meaningfully involve stakeholders, states must ensure that all relevant data are collected and made publicly available.

58. While the Section 618 Data Collection does not specifically include data on shortened school days, one powerful incentive for school districts to reduce their use of this practice would be for the state to collect, validate, and publicly report data on the use of shortened school days. States should additionally consider the following indicators, among others, to determine whether there is a system-level failure to provide FAPE to students with disability-related behaviors: data from the administrative complaint system; logs of parent calls; reports from the state Protection and Advocacy organization and other stakeholders; surveys of

³² *See* NAT'L COUNCIL ON DISABILITY, *supra* note 8, at 23 (calling for a review of whether data collection systems indirectly encourage the use of shortened school days).

school personnel regarding training and professional development needs; insights from higher education experts in the state; and information about legal actions taken. These indicators could reveal a systemic problem regarding any of a number of issues that implicate FAPE for students with behavioral needs, including, among others, shortened school days.

59. Using the available data, states must make annual determinations about each district's compliance with the IDEA by comparing districts' performance to the state targets set forth in the State Performance Plan. While states have discretion in how they compare district performance to state targets, they must clearly articulate procedures for making the comparison and produce evidence in the Annual Performance Report of how they are using the data to inform decisions. Just as OSEP cannot make sound decisions about whether states meet the IDEA's requirements if the data it receives are not accurate, states cannot make sound decisions about whether districts meet the IDEA's requirements if they cannot verify that data from districts are adequate, sufficiently relevant to the identified areas of concern, accurate, and timely.

60. *Improvement, correction, incentives, and sanctions.* To monitor compliance with and enforce federal regulations, policies, and procedures as required by the IDEA, the state must have a graduated enforcement system with sanctions for individual and systemic noncompliance, guidelines for implementing those sanctions, and clear, written timelines on what happens when there is noncompliance. *See* 20 U.S.C. § 1232d(b)(3); NCSEAM, *supra* note 25, at 14-15. The guidelines should provide that the state will prepare a written report with evidence of correction. States must monitor whether the noncompliance has been timely remedied, and if the state's monitoring indicates that the district has made insufficient progress, the state must intervene, using sanctions, assistance, and rewards as needed. *See* NCSEAM, *supra* note 25, at 14.

61. *Effective dispute resolution.* States are required to have a formal process for resolving disputes over the educational programs of individual students in which they investigate allegations and issue findings. *See* NCSEAM, *supra* note 25, at 7-8.³³ When the state finds noncompliance, it must determine if there is a resolution that can correct the noncompliance, and its determination detailing the findings must include procedures for the district to effectively implement corrective actions. *See* 34 CFR §§ 300.152(b)(2)(iii), 300.149(a)(2)(ii), 300.600(e).

62. As OSEP explained in a 2013 Dear Colleague Letter, a state’s “general supervisory responsibility to monitor implementation of [the IDEA’s] requirements . . . applies to the monitoring of its public agencies’ compliance . . . with respect to both systemic and child-specific issues.”³⁴ This guidance instructs that if the state finds violations for any child specifically named in a complaint that also alleges violations for similarly-situated children, the state’s resolution “must include measures to ensure correction . . . for all children affected by the alleged systemic noncompliance;” the state would also need to “examine the systemic policies, procedures, and practices that may be causing the violations.”³⁵ To conform to this guidance, it is important that states keep a log of the allegations that they do not further investigate to determine if there are patterns showing possible systemic noncompliance. In addition, stakeholders should have access to that data, redacted as needed to protect student

³³ In some states, the IDEA complaint process is also used to resolve allegations of discrimination under Section 504 and the ADA, although states have more flexibility in how they structure their complaint processes under those laws. Some states direct parents and advocates to file ADA/504 complaints with the Office for Civil Rights at the U.S. Department of Education.

³⁴ U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER ON DISPUTE RESOLUTION PROCEDURES UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 20 (2013), <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf> (emphasis added).

³⁵ *Id.* at 20.

confidentiality, in order to analyze its significance as part of the state's integrated monitoring activities.

63. When resolving disputes, states should be mindful of the fact that special education is a complex and often confusing area for parents, and that the dispute resolution system is heavily weighted towards school districts; research has found that a lack of knowledge, the unique jargon of special education, and an intimidating process can make it difficult for parents to effectively advocate for their children in these proceedings.³⁶ A study of the states that represent the majority of due process proceedings in the country found that parents' success rate in due process proceedings—even including parents who have an attorney—is generally half their success rate in state complaint proceedings, which are less burdensome and do not involve a hearing.³⁷ Federally-funded parent centers are available in each state to help parents understand their rights, but they are not able to offer legal advice and have very limited resources. To address this imbalance in resources, states should provide additional family supports, such as a well-designed facilitated IEP program, parent mentors, public service announcements, and other strategies that improve parents' ability to advocate for their children.

64. States must ensure that complaints are investigated thoroughly and objectively, even when the states themselves are the subjects of complaints. When the state is a party to a complaint, it can appoint someone internally or hire an outside investigator. Regardless of who conducts the investigation, the investigator must have the level of expertise, experience,

³⁶ See Meghan M. Burke et al., *Documenting the Experiences of Special Education Advocates*, 51 J. SPECIAL EDUC. 3, 3-4, 9 (2017), <https://doi.org/10.1177/0022466916643714>.

³⁷ Perry A. Zirkel, *The Complaint Procedures Avenue of the IDEA: Has the Road Less Traveled By Made All the Difference?*, 30 J. SPECIAL EDUC. LEADERSHIP 88, 91, 94 (2017), <https://perryzirkel.files.wordpress.com/2013/08/zirkel-article-re-sea-complaint-procedures.pdf>.

objectivity, and independence to investigate the complexities of such complaints. If the investigation finds any kind of noncompliance on the part of the state, the state must be willing and able to take whatever steps are necessary to remedy the denial of appropriate services—just as it would order a school district to take steps to remedy noncompliance. In addition, the state should make the complaint determinations public to provide parents and advocates with confidence that the state is properly investigating and resolving complaints.

65. To ensure that the system actually works to resolve disputes, states should analyze statistics and outcomes of their complaint processes, including the issues raised in complaints and how many complaints are filed, dismissed, appealed, resolved in favor of the parent, and resolved in favor of the district. States should then compare this data with the reports of the state advisory panel, parents, and other stakeholders to determine whether there is a particular issue that is the subject of more complaints than others, the effect of that issue on student outcomes, and whether it warrants prioritization at the state level.

66. *Targeted technical assistance and professional development.* States have a duty to provide school districts with technical assistance to correct noncompliance and to distribute promising and evidence-based practices. 20 U.S.C. §§ 1232d(b)(3)(B)-(D); *see* NCSEAM, *supra* note 25, at 13. It is not enough for a state to simply tell school districts that they are doing the wrong thing and to impose sanctions; it must provide supports that will help school districts take necessary *preventative* steps. Without appropriate assistance and supports, districts could conceivably make changes that result in rapid improvements in some metrics (e.g., discipline) without achieving authentic, positive change for students. Thus, to focus on improving results as

required, states should allocate sufficient funding for the express purpose of providing technical assistance³⁸ and professional development.³⁹

67. Effective technical assistance is targeted to address the specific needs identified by the state’s monitoring activities—particularly if the state determines that inadequate training is a reason for noncompliance—and the needs identified by districts themselves. By reviewing available data and surveying districts, teachers, administrators, paraprofessionals, and parents, the state can measure the effectiveness of policy implementation and determine the type and level of assistance that districts need in order to comply with the law. In order to assist school districts and teachers in the field effectively, states must have sufficient capacity and expertise among their own staff, which may require internal professional development and training. The state must ensure that the district and those responsible for implementation have the knowledge and expertise needed to support improvement and correction.

68. The state can help school districts avoid the use of shortened school days—and prevent continued reliance on this practice—by supporting them in effectively implementing

³⁸ States can apply for Technical Assistance and Dissemination grants from OSEP in order to “bring information, knowledge, and support to those who need it, including State and local administrators, practitioners, parents and families, and policy makers.” OSEP, TECHNICAL ASSISTANCE AND DISSEMINATION, <https://osepideasthatwork.org/resources-grantees/program-areas/technical-assistance-and-dissemination> (last visited Jan. 27, 2020).

³⁹ States can apply for professional development grants from OSEP to ensure that the state has sufficient fully-qualified personnel to meet the level of need and that those personnel have the skills and knowledge they need to be successful in supporting students. *See* OSEP, PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES, <https://osepideasthatwork.org/resources-grantees/program-areas/personnel-development-improve-services-and-results-children-disabilities> (last visited Jan. 27, 2020); OSEP, STATE PERSONNEL DEVELOPMENT GRANT PROGRAM, <https://osepideasthatwork.org/resources-grantees/program-areas/state-personnel-development-grant-program> (last visited Jan. 27, 2020). Additional funding for professional development regarding PBIS and MTSS, *see supra* ¶¶ 28-29, is available through the Every Student Succeeds Act. *See* 20 U.S.C. § 7801(42)(B)(xii).

MTSS, guiding districts to collect relevant data and then analyzing that data, and using increasingly intensive interventions for those districts or schools most in need of improvement.

It is vital that states support districts prior to the decision to reduce students' school days.

69. States can also offer mini-grants to school districts that voluntarily agree to tackle this issue. But to encourage such a commitment, first the state would have to acknowledge the problem, signal that it is a priority, and give districts the tools they need to address the issue. The state can plan a “menu” of services that districts can take advantage of using the grants, with the district choosing and developing a plan at the local level that best meets their needs. In my experience in Mississippi, districts embrace this kind of assistance and support. For recalcitrant districts, the state must implement a graduated system of sanctions as authorized under federal regulations (e.g., corrective action plans, directed use of funds), *see* 34 C.F.R. §§ 300.600(a)(3), 300.604, 300.149(a), that makes it more advantageous for the districts to engage in improvement activities than to exclude students.

70. By contrast, financial reimbursements that reward districts for providing less instructional time would be a perverse incentive encouraging the use of shortened school days and a possible violation of the FAPE requirement. *See* 20 U.S.C. § 1412(a)(5)(B)(i) (“A State funding mechanism shall not result in placements that violate the [LRE] requirements . . . , and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a [FAPE] . . . ”). For instance, in Mississippi we changed the state’s education funding structure to one that allocated teacher units based on the actual amount of time students received services and supports, regardless of setting. The previous funding formula was based on the

number of children each teacher served in separate settings for children with disabilities, which created an incentive for IEP teams to place students in more restrictive settings than necessary.

71. Each of the above eight components is essential to ensuring that states improve student outcomes and effectively identify, correct, and prevent noncompliance by school districts. Without the effective use of these components, states place their students at significant risk of being denied FAPE in the LRE and discriminated against based on disability. With the effective use of these components, states can address both individual and systemic issues and practices that impede or threaten FAPE, including the unnecessary use of shortened school days.

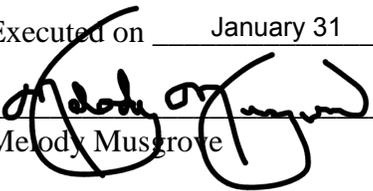
72. **Conclusion.** The fundamental goals of any state's special education system must be to protect the rights of children with disabilities and their families and to improve student outcomes through the delivery of special education and related services, with a focus on having high expectations for students with disabilities and meaningfully including them alongside their peers without disabilities. Practices that exclude students with disabilities from the classroom—like the unnecessary use of shortened school days—place those students at significant risk of being denied FAPE in the LRE and subjected to discrimination, and they do not improve the classroom environment.

73. Ultimately, the state's role is to provide leadership, collect and analyze data, engage stakeholders in planning for improvement, and ensure that federal and state law obligations are met through supporting change at the local level through training and implementation support, but also through enforcing compliance as necessary. Without appropriate supports and effective efforts from the state to hold school districts accountable in practice, change in the classroom will remain unlikely.

74. States can achieve the overarching purpose of supporting improved outcomes at the local level by effectively implementing the essential components of a general supervision system, as detailed in this declaration. My decades of experience in this field—at the classroom, school, school district, state, and federal levels—have taught me that states that do so can effectively address noncompliance by school districts and safeguard students’ rights.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 31, 2020 in University, Mississippi.



Melody Musgrove

EXHIBIT 1

MELODY B. MUSGROVE
308 Guyton Hall
University of Mississippi
University, MS 38677
mbm@olemiss.edu

ACADEMIC PREPARATION:

Ed.D. University of Southern Mississippi, 1995
Major: Educational Administration
Dissertation: *The Relationship of Entrance Age and Other Variables to Student Achievement*
Dissertation Chairman: Dr. Edgar Bedenbaugh

The Principals' Center, Harvard Graduate School of Education, 1991

M.Ed. University of Southern Mississippi, 1988
Major: Special Education

B.S. Mississippi College, 1983
Major: Secondary Education

PROFESSIONAL EXPERIENCE:

Co-director, Graduate Center for the Study of Early Learning and Associate Professor of Special Education, The University of Mississippi, August 2016-Present
<http://gcsel.education.olemiss.edu>

Director, Office of Special Education Programs, U.S. Department of Education, August 2010 through December 2015, Washington, DC

National Director of Business Development, January 2007-July 2010
LRP Publications, Palm Beach Gardens, FL

State Director of Special Education, January 2002-January 2007
Mississippi Department of Education

Bureau Director (Interim State Director), Office of Special Education, 2001-2002
Mississippi Department of Education

Due Process Hearing Officer, 1999-2001
Mississippi Department of Education

Adjunct Instructor, 1996-1998
Department of Educational Leadership and Research, University of Southern Mississippi

Assistant Superintendent for Curriculum, Instruction, and Federal Programs, 1993-1998
Lawrence County School District (MS)

Assistant Principal and Special Education Lead, 1990-1993
Mullins Elementary, Brookhaven School District (MS)

Special Education Teacher, 1984-1990

SELECTED PROFESSIONAL ACCOMPLISHMENTS AND ACTIVITIES:

Director, Office of Special Education Programs (OSEP), U.S. Department of Education

- Revision of special education accountability system to focus on student outcomes, “Results-Driven Accountability;” full implementation in 2014
<http://www2.ed.gov/about/offices/list/osers/osep/rda/index.html>
- Oversaw distribution and management of \$13 billion in IDEA funds appropriated by Congress
- Publication of over 65 policy memos, “dear colleague” letters, and resource documents relative to critical policy areas <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html>
- Reauthorization of the Annual Performance Report/State Performance Plan which reduced state burden by 60%
- Technical assistance to members of Congress and their legislative staffs, as well as governors, state legislators, state chiefs, and other leaders
- Publication of final regulations for implementing Early Intervention for Infants and Toddlers (Part C of IDEA) <https://www.federalregister.gov/articles/2011/09/28/2011-22783/early-intervention-program-for-infants-and-toddlers-with-disabilities>
- Served on U. S. Department of Education Senior Leadership Team
- Creation of innovative national technical assistance centers as part of OSEP’s \$250 million annual discretionary program
- Development and implementation of a new web-based submission system for state Annual Performance Reports
- Developed and produced extensive, publicly available data displays for all states
<http://www2.ed.gov/fund/data/report/idea/partbspap/allyears.html>

State Director of Special Education, Mississippi Department of Education (MDE)

- Statewide self-assessment, priority-setting and improvement planning
- Multi-Tiered Instructional Model policy, in collaboration with the directors of Curriculum and Reading/Early Childhood, to ensure quality instruction for all students which was adopted by Mississippi State Board of Education
- Technical assistance to State Legislature and Governor’s Office
- New policy for allocating personnel resources to ensure equity and adequacy
- \$3,750,000 state professional development grant from U.S. Department of Education
- Negotiated modifications to the *Mattie T. Consent Decree* (1979) approved by federal court in December, 2003 which lead ultimately to the end of the consent decree in 2012
- Negotiated with the Office for Civil Rights to close a 10-year discrimination case
- Designed and implemented focused system of monitoring local districts
- Expanded data system to make data collection more accurate and efficient
- Published data profiles for all school districts specific to state goals and made publicly available
- Improved relationships with stakeholders through increased transparency and collaborative decision-making
- Revised state policies and procedures for special education to comply with 2004 federal regulations

TEACHING

EDEC 323: Early Childhood Special Education

PPL 492: Early Childhood Policy (Co-developed course with Dr. Melissa Bass and Dr. Cathy Grace)

EDSP 308: Introduction to Special Education

EDSP 327: Classroom Management

EDSP 407: Special Education Law and Procedures

EDA 605: Introduction to Instructional Leadership

EDA 691: Introduction to Statistics

EDA 630: Organization and Administration of the Elementary School

Trainer: Improving Outcomes for Students with Disabilities Principals' Module, National Institute for School Leadership (NISL), Washington, DC

PUBLICATIONS

- Musgrove, M. (Host). (2019, December 25) *EdsUp!* with Lindsay Jones [Audio Podcast] Retrieved from <https://podcasts.apple.com/us/podcast/edsup-lindsay-e-jones-episode-fifteen/id1441849372?i=1000460781789>
- Musgrove, M. (Host). (2019, October 19) *EdsUp!* with Dan Habib [Audio Podcast] Retrieved from <https://podcasts.apple.com/us/podcast/edsup-dan-habib-episode-twelve/id1441849372?i=1000453934382>
- Musgrove, M. (2019, July 17) Only a virtuous people... [Blog post] Retrieved from <http://gcsel.education.olemiss.edu/2019/07/17/only-a-virtuous-people/>
- Musgrove, M. (Host). (2019, July 12) *EdsUp!* with Ruby Payne [Audio Podcast] Retrieved from <https://podcasts.apple.com/us/podcast/edsup/id1441849372>
- Musgrove, M. (2019, June 24) Independence Day: Is This What the Founding Fathers Envisioned? [Blog post] Retrieved from <http://gcsel.education.olemiss.edu/2019/06/24/independence-day-is-this-what-the-founding-fathers-envisioned/>
- Musgrove, M. (Host). (2019, June 21) *EdsUp!* with Steven Hicks [Audio Podcast] Retrieved from <https://www.iheart.com/podcast/256-edsup-43094683/>
- Musgrove, M. (2019, April 6) Do Facts Still Matter? [Blog post] Retrieved from <http://gcsel.education.olemiss.edu/2019/04/06/do-facts-still-matter/>
- Musgrove, M. (2019, March 6) What Family Values? [Blog Post] Retrieved from <http://gcsel.education.olemiss.edu/2019/03/06/question/>
- Musgrove, M. (Host). (2019, February 18) *EdsUp!* with Dr. Bruce Perry [Audio Podcast] Retrieved from <https://www.iheart.com/podcast/256-edsup-43094683/>
- Turner, M., Kubatsky, L., & Jones, L. (2018). *Assessing ESSA: Missed Opportunities for Students with Disabilities*. (Musgrove, M., Expert Advisory Council) Washington, DC: National Center for Learning Disabilities. Retrieved from <https://www.nclld.org/assessing-every-student-succeeds-act-2018>
- Musgrove, M. (Co-host). (2018, December 17) *EdsUp!* with Dr. Tonja Rucker [Audio Podcast] Retrieved from <https://www.iheart.com/podcast/256-edsup-43094683/>
- Musgrove, M. (Co-host). (2018, December 8) *EdsUp!* with Dr. David Rose [Audio podcast] Retrieved from <https://www.iheart.com/podcast/256-edsup-43094683/>
- Musgrove, M. (Co-host). (2018, November 5) *EdsUp!* with author Sara Zaske [Audio podcast] Retrieved from <https://www.iheart.com/podcast/256-edsup-43094683/>
- Musgrove, M. (2018, May 9) Word of the Day: Agnotology [Blog post] Retrieved from <http://gcsel.education.olemiss.edu/2018/05/09/word-of-the-day-agnotology/>

- Understood.org (2018). *Parent Toolkit: How to Ask for Schoolwide Teacher Training to Help Kids With Learning & Attention Issues*. (Musgrove, M., Contributor). New York, NY. Retrieved from <https://www.understood.org/~media/1cfab7f485044d4fb18981c796a0b203.pdf>
- National Center for Learning Disabilities (2018), *The State of LD*. (Musgrove, M., Contributor) Washington, DC. Retrieved from <https://www.nclld.org/about-this-report>
- Musgrove, M. (2018, February 14) Who knew what when? [Blog post] Retrieved from <http://gcseleducation.olemiss.edu/2018/02/14/743/>
- Musgrove, M. (2017). Education policy's critical role in improving the futures of individuals with disabilities. *Inclusion*, 3(2), 136-148. doi:10.1352/2326-6988-5.2.136
- Musgrove, M. (2017, October 9) We Reap What We Sow [Blog post] Retrieved from <http://gcseleducation.olemiss.edu/2017/10/09/we-reap-what-we-sow/>
- Musgrove, M. (2017, October 30) What are we teaching our children when we avoid those who are different? [Blog post] Retrieved from <http://gcseleducation.olemiss.edu/2017/10/30/what-are-we-teaching-our-children-when-we-avoid-those-who-are-different/>
- Musgrove, M. (2017) *Who Ensures Schools Follow Special Education Law?* Expert Q&A. New York, NY: Understood.org. Retrieved from <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/who-ensures-schools-follow-special-education-law>
- Musgrove, M. (2017) *Do IEPs Cover Extracurricular Activities?* Expert Q&A. New York, NY: Understood.org Retrieved from <https://www.understood.org/en/school-learning/special-services/ieps/do-ieps-cover-extracurricular-activities>
- Musgrove, M. (2017, November 18) We know what will work in JPS...but will we apply it? [Blog post] Retrieved from <http://gcseleducation.olemiss.edu/2017/11/08/we-know-what-will-work-in-jps-but-will-we-apply-it/>
- Musgrove, M. (2017) *Who Pays for Assistive Technology?* Expert Q&A. New York, NY: Understood.org Retrieved from <https://www.understood.org/en/school-learning/assistive-technology/assistive-technologies-basics/who-pays-for-assistive-technology-parents-or-schools>
- Brief for *Andrew F. v. Douglas County School District* as Amici Curiae in Support of Petitioners in the Supreme Court of the United States On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit (2016) (Musgrove, M. et al as Amici) (no. 15-827).
- Brief for *Fry v. Napoleon* as Amici Curiae in Support of Petitioners in the Supreme Court of the United States On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit (2016) (Musgrove, M. et al as Amici) (no. 15-497).

GRANTS

- W.K. Kellogg Foundation, Principal Investigator, *Building a High-Quality Early Childhood System of Leadership and Teaching Practice*, 12/1/2016-11/30/2022
- Foundation for Early Childhood, Principal Investigator, *Redesigning Early Childhood Education Teacher Preparation*, 5/1/2017-4/30/2019.

MEMBERSHIPS

Council for Exceptional Children (CEC)
Council of Administrators of Special Education (CASE)
Division for Early Childhood (DEC)
American Association for Individuals with Intellectual and Developmental Disabilities (AAIDD)
Association for Supervision and Curriculum Development (ASCD)
National Association for Multicultural Education (NAME)
Mississippi Early Childhood Association (MECA)

PRESENTATIONS

- 2019 Program Chair Invited Session. *Missed Opportunities in Policy & Practice: ESSA Planning & Strengths-Based IEPs*. Council for Exceptional Children Annual Convention, January 30, 2019, Indianapolis, IN.
- 2018 Release of *Assessing ESSA: Missed Opportunities for Students with Disabilities*. Speaker. National Press Club, Washington, DC.
- 2018 Advancing Mississippi Research Conference. Jackson, MS. Luncheon address: *The Economic Impact of Early Childhood Education*.
- 2018 All Born In Inclusion Conference. Portland, OR. Keynote address: *It's Never Too Early for Inclusion*. http://www.abicomunity.org/events/all_born_in_conference/
- 2018 Understood.org Expert Video. *What Special Ed Rights Does a Child in Private School Have?* <https://www.facebook.com/Understood/videos/2267538296605857/>
- 2017 Understood.org Expert Video. *What Are 504 Plans?* <https://www.facebook.com/Understood/videos/2175605512465803/>
- 2017 University of Mississippi Macedonia Rosenwald Symposium, Oxford, MS. Panel Discussion: *What is the State of Education for African American Children in MS 63 Years after Brown v. Board of Education?*
- 2017 Understood.org. Skype Chat. *IEP Goals: How to Support High Expectations*. https://www.understood.org/en/community-events/experts-live-chats-webinars/2017/june/13/iep-goals-how-to-support-high-expectations?utm_source=facebook&utm_medium=social&utm_campaign=understoodorg
- 2015 Learning Disabilities Association of America, 52nd International Conference; Chicago, IL. Presentation: *What Students with SLD/ADHD Need to Succeed in School and Life*
- 2015 Council for Exceptional Children Special Education Legislative Summit. Alexandria, VA. *OSEP Update*. <https://www.specialeducationlegislativesummit.org/wp-content/uploads/2015/04/SELS-Schedule-Official.pdf>
- 2015 Council for Exceptional Children Annual Convention; San Diego, CA. Presentation: *What's Happening in Washington*.

- 2015 Lehigh University Special Education Law Symposium. Bethlehem, PA. Keynote Address: *The 40th Anniversary of the IDEA: Past is Prologue*. <https://preserve.lehigh.edu/edlaw/>
- 2015 National Association of State Directors of Special Education Annual Conference; Baltimore, MD. Keynote Address: *Results Driven Accountability*.
- 2014 LRP's 35th National Institute on Legal Issues in Educating Students with Disabilities. Orlando, FL. Keynote Address: *Balancing Results and Compliance in Special Education*.
- 2014 Council for Exceptional Children Annual Convention. Philadelphia, PA. Chairman's Invited Speaker: *What's Happening in Washington*.
- 2014 University of Arkansas School of Education and Health Professions, Fayetteville, AR. Commencement Address.
- 2014 Early Childhood Technical Assistance Center Improving Data, Improving Outcomes Conference. Greensboro, NC. Presentation: *Using Data to Improve the Outcomes of Children with Disabilities*.
- 2014 Association of University Centers on Disability Annual Meeting; Washington, DC. Panelist: *The Future of Education, Employment, and Community Living for People with Disabilities*
- 2014 North Dakota Department of Public Instruction Fall Conference; Bismark, ND. Keynote Address: *Leadership for Improving Results*.
- 2014 Lehigh University Special Education Law Symposium; Bethlehem, PA. *The IDEA and Section 504 Landscape: Inclusion, Equity, and Opportunity*. <http://lawprofessors.typepad.com/files/lehigh-sp-ed-law-symposium-2014.pdf>
- 2014 National Association of State Directors of Special Education Annual Conference; Denver, CO. Keynote Address: *Shifting to Results Driven Accountability*
- 2013 Council for Exceptional Children Annual Convention; Philadelphia, PA. Program Chair Featured Session: *Considerations from the Office of Special Education Programs*.
- 2013 Frank Porter Graham Child Development Institute, National Early Childhood Inclusion Institute. Chapel Hill, NC. Federal Panel: *Emerging Early Childhood Priorities, Policies and Resources*.
- 2013 Oklahoma Directors of Special Services Fall Conference, Norman, OK. Keynote address: *Leadership for Improved Results*
- 2013 Tennessee Special Education Directors Conference, Nashville, TN. Keynote Address: *Improving Results for Students with Disabilities*.
- 2013 Council for Administrators of Special Education Winter Conference; Deerfield Beach, FL. Moderated Discussion: *The Evolution of Special Education*
- 2012 Council for Exceptional Children Annual Convention; Denver, CO. Presentation: *OSEP Update-Getting to Results*.
- 2012 National Association of State Directors of Special Education Annual Conference; Atlanta, GA. Keynote Address: *OSEP Update*

- 2012 Ohio Special Education Leadership Conference, Columbus, OH. Keynote Address: *Improving Results for Students with Disabilities and Their Families*. <http://www.ercoinc.org/updates/August11Updates/8-15-11-WebsiteAgenda.pdf>
- 2012 Conference of Educational Administrators of Schools and Programs for the Deaf; Hartford, CT. Featured Presentation: *Supporting Improved Outcomes for Children Who Are Deaf*.
- 2011 National Association of State Directors of Special Education Annual Conference; Chicago, IL. Keynote Address: *Examining Results in Special Education*.
- 2011 Texas Council of Administrators of Special Education, Austin, Tx. Keynote Address.
- 2011 TASH Annual Conference, Atlanta, GA. Panel - Quality indicators of inclusive education: Policy and practice with D. Ryndak, C. Quirk, C. Jorgensen, J. Anderson
- 2011 National Association of School Psychologists Annual Convention; San Francisco, CA. Presentation: *The Critical Role of School Psychologists in Improving Results*
- 2010 ARC National Convention; Orlando, FL. Keynote Address: *Fulfilling the Promise of the IDEA*.
- 2010 National Association of State Directors of Special Education Annual Conference; Nashville, TN. Keynote Address: *A Blueprint for Working Together to Improve Results*