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The Honorable Johnny Collett
Assistant Secretary
Office of Special Education and Rehabilitative Services
U.S. Department of Education
By email: RethinkRDA@ed.gov

Dear Mr. Collett:

The Conference of Educational Administrators of Schools and Programs for the Deaf hereby submits comments on the initiative “Rethinking Results Driven Accountability.”

CEASD makes the following recommendations.

Part B

1. Eliminate Indicators 5 and 6

CEASD has long objected to including these indicators in an Individuals with Disabilities Education Act (IDEA) accountability plan. The indicators are included under the heading “Monitoring Priority: FAPE in the LRE.” But these indicators only show where a child is sitting: They do not reflect whether the child is receiving a Free Appropriate Public Education (FAPE), or whether the setting meets the child’s academic and functional needs pursuant to the Individualized Education Program (IEP) provisions of IDEA.¹

Counts in these areas reflect physical placement only, not whether the setting is effective in providing a FAPE and helping the child achieve Individualized Education Program goals. There is no evidence-based “right” number of children placed in any particular setting.

Recent experience serves as a cautionary tale against numbers-driven decision making. Taken to extremes, this way of thinking in Texas resulted in a statewide system that incentivized denying services to eligible students by placing a cap on numbers of students served in special education.

The IDEA statute and regulations go into great detail describing what constitutes FAPE² and what constitutes Least Restrictive Environment (LRE).³ They require states to provide a

¹ 34 C.F.R. § 300.320(a)(2)(i).

² 34 C.F.R. § 300.17.

³ 34 C.F.R. § 300.114.

continuum of alternative placements to meet the needs of children with disabilities for special education and related services.⁴ The continuum includes instruction in regular classes, *special classes*, *special schools*, home instruction, and instruction in hospitals and institutions (emphasis added).⁵

IDEA recognizes that not all students can be appropriately served in the general education environment, thus the need for the continuum. Nowhere does IDEA suggest that FAPE or LRE can be determined solely by the classroom where the child is spending time, upon which both indicators are based.

Further, IDEA regulations recognize that placement in the inappropriate environment can cause harm, thus they mandate “[i]n selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs . . .”⁶ As currently configured, Indicators 5 and 6 disregard the factors that are mandated to be considered and therefore are contradictory to the principles of FAPE.

In addition, for most state goals for these indicators, target numbers of students in settings outside the general classroom decrease each year. For example, Florida has dropped from a 2005 baseline of three percent of students in specialized settings to a goal of one percent in 2018.⁷ California dropped from a 2005 baseline of 4.3 percent of students in specialized settings to a goal of 3.8 percent in 2018.⁸

The Department encourages this: “[T]he downward slope represents positive progress...Data reported for...5C since 2011-2012 demonstrates the most change over the monitoring years.”⁹

The Department does not require the states to show evidence that decreasing these numbers actually improves provision of FAPE or results in higher student outcomes. These indicators are arbitrary at best and should be eliminated altogether.

Instead, the Department should actively support the requirement of states to have a continuum of alternative placements available¹⁰ and should monitor on appropriateness of placement along the continuum. While placement in the general education setting is appropriate for some students with disabilities, many deaf and hard of hearing students benefit from placement in a specialized setting, where:

- They are taught by teachers specially trained in the way deaf and hard of hearing students learn,
- Their families receive counseling and training¹¹ specifically designed to help them support their child’s language, communication, and academic development, and
- They are part of an entire school community that exists to support them.

As far back as 1992 the Department has stated:

⁴ 34 C.F.R. § 300.115.

⁵ 34 C.F.R. § 300.115(b)(1).

⁶ 34 C.F.R. § 300.116(d).

⁷ Grads 360, Florida, Indicator 5: Education Environments (children 6-21).

<https://osep.grads360.org/#report/apr/2014B/Indicator5/HistoricalData?state=FL&ispublic=true>

⁸ Grads 350, California, Indicator 5: Education Environments (children 6-21).

<https://osep.grads360.org/#report/apr/2014B/Indicator5/HistoricalData?state=CA&ispublic=true>

⁹ U.S. Department of Education, 2018 PART B FFY 2016 SPP/APR Indicator Analysis, p. 56.

<https://osep.grads360.org/services/PDCService.svc/GetPDCDocumentFile?fileId=33061>

¹⁰ 34 C.F.R. § 300.115.

¹¹ 34 C.F.R. § 300.34(c)(8)(i).

The Secretary is concerned that the least restrictive environment provisions of the IDEA and Section 504 are interpreted, incorrectly to require the placement of some

children who are deaf in programs that may not meet the individual student's educational needs. Meeting the unique communication and related needs of a student who is deaf is a fundamental part of providing a free appropriate public education (FAPE) to the child. Any setting, including a regular classroom, that prevents a child who is deaf from receiving an appropriate education that meets his or her needs including communication needs is not the LRE for that individual child.

Placement decisions must be based on the child's IEP. Thus, the consideration of LRE as part of the placement decision must always be in the context of the LRE in which appropriate services can be provided. Any setting which does not meet the communication and related needs of a child who is deaf, and therefore does not allow for the provision of FAPE, cannot be considered the LRE for that child. The provision of FAPE is paramount, and the individual placement determination about LRE is to be considered within the context of FAPE.

The Secretary is concerned that some public agencies have misapplied the LRE provision by presuming that placements in or closer to the regular classroom are required for children who are deaf, without taking into consideration the range of communication and related needs that must be addressed in order to provide appropriate services. The Secretary recognizes that the regular classroom is an appropriate placement for some children who are deaf, but for others it is not. The decision as to what placement will provide FAPE for an individual deaf child — which includes a determination as to the LRE in which appropriate services can be made available to the child — must be made only after a full and complete IEP has been developed that addresses the full range of the child's needs."¹²

This view has been reiterated in recent years in policy letters to stakeholders.^{13 14}

IDEA also specifically addresses the unique language and communication needs of deaf and hard of hearing students:

The IEP team must—

...

Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;¹⁵

The law and policy documents are clear about what constitutes FAPE and LRE for deaf and hard of hearing students. But Indicators 5 and 6 serve as deterrents to placing deaf and hard of hearing students in specialized settings, such as schools and

¹² Deaf Students Education Services: Policy Guidance; Notice, 57 Fed. Reg. 49274-49276, Friday, October 30, 1992, footnotes omitted. <https://www2.ed.gov/about/offices/list/ocr/docs/hq9806.html>

¹³ U.S. Department of Education, Letter to Bosso, August 23, 2010. <https://www2.ed.gov/policy/speced/guid/idea/letters/2011-3/stern093011re3q2011.pdf>

¹⁴ U.S. Department of Education, Letter to Stern, September 30, 2011. <https://www2.ed.gov/policy/speced/guid/idea/letters/2011-3/stern093011re3q2011.pdf>

¹⁵ 34 C.F.R. § 300.324(a)(2)(iv).

programs for the deaf, where their language and communication and full range of needs can be met in accordance with this provision.

We believe that with respect to language and communication, LRE is not defined by the percentage of time spent in any one place or classroom, but rather the accessibility of the language and communication environment for the individual deaf or hard of hearing child. Deaf and hard of hearing children — and all children with disabilities — should be placed in the setting where their academic and functional goals¹⁶ can be met, without predetermined preference to any particular physical location or setting. To this end, CEASD calls on the US Department of Education to return to the plain language of IDEA, to truly monitor States based on the “provision of a free appropriate public education in the least restrictive environment,”¹⁷ not to examine this priority on the basis of what essentially are arbitrary numerical targets in a physical location. Monitoring should thus address the extent to which student needs are being met, and in the case of deaf and hard of hearing children, especially their language and communication needs. In short, the child, not the place, should come first.

2. Encourage States to Disaggregate Data Based on Disability Category

Numbering 76,000¹⁸ out of 6.6 million,¹⁹ deaf and hard of hearing children comprise one percent of IDEA-served students, and 0.01 percent of general education students.²⁰ They are considered “low incidence.”²¹ At the same time they demonstrate a great deal of diversity in critical factors:

- *Age of identification.* Late identification results in delayed language development, with resulting learning gaps.
- *Presence of an additional disability.* An additional disability could impact the child’s ability to learn, especially if (s)he receives services from providers who are not skilled in the intersection of both disabilities.
- *Degree of language and communication support in the home and school.* Most children develop their language foundation in the home. If support is lacking the child may experience language and learning gaps and delays.
- *Presence of same-age peers from whom they can learn.* It is well-known that children learn from each other. Without direct communication with peers deaf or hard of hearing students miss out on this crucial incidental learning.

These factors make serving this population complex. As a result, states, school districts, and schools often struggle to provide appropriate and sufficient personnel and supports. However, states, school districts, and schools are accountable for helping them achieve the same academic goals as all children.²² Most states do not track deaf and hard of hearing students’ academic performance.²³ Yet without that data it is impossible for school systems to identify the right supports or demonstrate accountability for these students. Their outcomes are masked by

¹⁶ 34 C.F.R. § 300.320(a)(2)(i).

¹⁷ 20 U.S.C. § 1416(a)(3)(A).

¹⁸ National Center for Education Statistics, Fast Facts, Students with Disabilities.

<http://nces.ed.gov/fastfacts/display.asp?id=64>

¹⁹ *Id.*

²⁰ The number of students in elementary and secondary school is 56.6 million (Fast Facts, Back to School Statistics <https://nces.ed.gov/fastfacts/display.asp?id=372>). IDEA-served deaf and hard of hearing students number 76,000.

This constitutes 0.01 percent of the total population.

²¹ 20 U.S.C. § 662(c)(3)(A).

²² 20 U.S.C. § 6311(b)(1)(B)(ii).

²³ Some states cite privacy concerns as the reason why they don’t track data on deaf and hard of hearing students. However, while this could be a problem at a school or district level, “n” size at the state level is sufficient to protect student privacy.

the performance of students in larger disability categories. Interestingly, some states do collect and even publish achievement data of students attending schools for the deaf, but data on the achievement of deaf and hard of hearing students educated primarily in regular education settings is not available.

In order for states, school districts, and schools to be accountable for the outcomes of deaf and hard of hearing students they must have the capacity to report and track academic outcomes data on these students, regardless of where they attend school. Further, they must collect outcomes data on *all* students who are deaf or hard of hearing, including students who have another disability. The Department should encourage states to do so.

Part C

3. Eliminate Indicator 2.

CEASD continues to object to Indicator 2: “Percent of infants and toddlers with IFSPs who primarily receive early intervention services in the home or community-based settings.”

As is the case with Indicators 5 and 6 of Part B, this indicator addresses only physical location of service, not the quality of the services provided to the family and child. Long-established research shows that the deaf and hard of hearing infants and toddlers who demonstrate better language and related outcomes are the ones who are identified before age six months and immediately receive appropriate services from qualified providers.²⁴

Qualified providers, such as credentialed teachers of the deaf,²⁵ are more likely to be found in specialized or center-based programs, where young children can directly communicate with their same-age peers. While these programs also provide home visits, the provision of play groups and class environments is specifically designed to support the critical and unique language acquisition of deaf and hard of hearing children. In these settings, children and families have opportunities to interact with educational professionals, some of whom too are deaf or hard of hearing, who are trained in language development techniques. Moreover, in these particular settings, families of deaf children interact with each other, thereby are able to share experiences and support.

The Joint Committee on Infant Hearing (JCIH), which represents every major stakeholder organization with an interest in newborn infant hearing screening and early intervention for deaf and hard of hearing infants and toddlers, recommends that center based-programs should be made available to families of deaf and hard of hearing children. “In response to a previous emphasis on ‘natural environments,’ the JCIH recommends that both home-based and center-based intervention options be offered.”²⁶ We are concerned that the emphasis on percentage of infants and toddlers receiving services in any one type of setting is not only an inappropriate results indicator but may lead states to deny services being provided to deaf infants and toddlers in center-based programs even when the family requests and the IFSP team recommends services in those settings. This in turn may lead to services being provided in a manner that is not appropriate or effective for those children and may even be harmful.

²⁴ Yoshinaga-Itano et al., (1998). Language of Early- and Late-Identified Children with Hearing Loss. *Pediatrics* Vol. 102 No. 5 November 1, 1998 pp. 1161 -1171. <http://pediatrics.aappublications.org/content/102/5/1161.abstract>

²⁵ 34 C.F.R. § 303.13.

²⁶ Joint Committee on Infant Hearing. (2007). Year 2007 Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs, *Pediatrics*, Vol 120, Issue 4, October 2007. <http://pediatrics.aappublications.org/content/120/4/898>

Again, adequacy of services cannot be measured simply by targeting the place in which those services are provided. The current system of simply counting where babies and toddlers receive

services, regardless of how that setting supports the child's and family's needs, is not in keeping with the law. CEASD believes that language and communication measures for deaf and hard of hearing children are more meaningful than this current indicator. This is addressed in Indicator 3 B "Percent of children with IFSPs who demonstrate improvement in knowledge and skills (including language/communication)." We suggest that Indicator 3, which addresses substantive outcomes for infants and toddlers (and includes a focus on language and communication in B) should be the essence of monitoring, thus eliminating the need for Indicator 2.

Closing

Finally, we encourage the Department, as it moves forward, to ensure that any decisions that it makes take into account all the categories and diverse needs of students under the auspices of IDEA. The legal obligation to serve all 6.6 million students safeguarded by IDEA is not optional and not limited to certain populations. Special education and related services systems should be more appropriate and attuned to the law and student needs in order to be supportive and accountable for all students, including those with low-incidence disabilities and their families.

Thank you for the opportunity to comment.

Very truly yours,



Dr. David Geeslin