

**Comments to the U.S. Department of Education
February 25, 2002**

Introduction

The undersigned organizations - American Society for Deaf Children, Conference of Educational Administrators of Schools and Programs for the Deaf, Convention of American Instructors of the Deaf, National Deaf Education Project, and TDI, Inc.¹ - hereby submit comments to the U.S. Department of Education in response to its *Notice of Request for Public Comment on the Individuals with Disabilities Education Act and its Implementation*. 67 Fed. Reg. 1411-1412 (January 10, 2002). We are parents, educators, consumers, and administrators with a deep and abiding interest in the education and well being of children who are deaf or hard of hearing. We thank the Department for considering our views.

A major theoretical and practical foundation for the recommendations we are making is "The Educational & Communication Needs of Deaf and Hard of Hearing Children: A Statement of Principle Regarding Fundamental Systemic Educational Changes" (hereinafter "Statement of Principle"), published by the National Deaf Education Project. The Statement of Principle asserts:

". . . [A]ll deaf and hard of hearing children are entitled to, and must have, a language-rich educational experience. They must have the opportunity to develop age-appropriate language skills, and to be in a classroom and school where communication is fully available, where there is a critical mass of communication peers, and where staff can communicate effectively and directly with them. In short, all deaf and hard of hearing children are entitled to an educational system that formally recognizes that communication is at the heart of human and academic growth."

Statement of Principle, p. i.

The National Deaf Education Project is a collaborative project of the American Society for Deaf Children, the Conference of Educational Administrators of Schools and Programs for the Deaf, the Convention of American Instructors of the Deaf, Gallaudet University, the National Association of the Deaf, and the National Technical Institute of the Deaf. A copy of the Statement of Principle is attached.

We further believe:

"All deaf and hard of hearing children deserve a quality, communication-driven program which is formally articulated in law and requires:

- "communication assessment of the child's communication language, mode, and skill level;

¹ Formerly Telecommunications for the Deaf, Inc.

- “communication development, including a fundamental and clear requirement that all programs assist the child in developing age-level language skills in the child's native language and corresponding skills in English;
- “communication access, including programs that provide a "critical mass" of communication, age, and cognitive peers; language-proficient teachers and staff who can communicate directly and at an adult level; administrators who understand the unique needs of deaf and hard of hearing children; deaf and hard of hearing role models; and access to extra curricular and other important school activities.”

Statement of Principle, p. 36.

To implement and support such a program, the system of administering educational services for deaf and hard of hearing children must change dramatically. Currently, in most states and localities the system is fragmented. In most cases there is no coordination of services specifically for these children at the federal, state, or district level. Children with hearing loss are greatly dispersed and isolated. For example:

“For the 1996-97 school year, of 500 California school districts, approximately 360 reported 10 or fewer deaf and hard of hearing children. Eighty per cent of those districts had 20 or fewer deaf and hard of hearing students. Of the 74 school districts or agencies reporting on deaf and hard of hearing students in New York, 35 reported 0-10 total students, while 52 had 50 or fewer. American Annals of the Deaf, April 1998, vol. 143, no. 2, pp. 137-139.

“In Alabama, 25 out of 35 school districts reporting deaf and hard of hearing children had ten or fewer students. Of the remaining ten districts, seven had between 11 and 30 students and the remaining three had respectively, 39, 65, 75, and 181. Annals, p. 122. Of the thirty educational units reporting deaf and hard of hearing students in Ohio, sixteen had 30 or fewer students. Annals, p. 140.

“Eleven years after the passage of IDEA, of those schools with deaf and hard of hearing children, 52% had one deaf or hard of hearing child, while 24% had two to three deaf or hard of hearing children. Between 1979 and 1986 the number of programs in which there was *one* deaf or hard of hearing student increased from 1,797 to 4,412. “Recent Changes in the Educational Placement of Deaf Students,” Arthur Schildroth, American Annals of the Deaf, April 1988, pp. 61-62.”

Statement of Principle, p. 16.

Because a critical mass of age, cognitive, and language peers is fundamental to an effective educational system, the number of deaf and hard of hearing students and their geographic and age distribution have a fundamental impact on program quality and program availability. Nothing in the current law deals

effectively with this phenomenon. In fact, through its preference for placements closest to home², the law has caused the proliferation of “programs” that do not have the necessary resources to provide a quality education. To remedy this, we respectfully request that the Department adopt the principles and policy recommendations articulated in the Statement of Principle as well as the recommendations outlined below.

Part A

Sec. 602 (3) Child with a Disability

The current definition makes children eligible for services under IDEA if they fall into one of thirteen disability categories and because of that disability need special education and related services. We have received reports from parents that their child has been denied services under IDEA because the child has “too much hearing” or is doing “too well” academically. These children may be protected by Section 504, but 504 does not provide the educational services they may need. For example, a common misunderstanding is that a child who speaks well hears well. Such may not be the case. A child with even a moderate hearing loss may miss classroom conversation and key pieces of information. Care must be taken to ensure that the child not only has access to all classroom communication, but that academic deficits do not develop. Further, a child with a hearing loss will always have a hearing loss. The child will not “overcome it” through maturation or academic achievement. In many cases it is only because these children have received services in the past that they are doing as well as they are. We believe that the law should not require children to exhibit a certain level of hearing loss or academic lag or failure in order to be eligible for IDEA services. IDEA should provide a support for children to prevent them from falling behind. Deaf and hard of hearing children will always have language and communication needs that must be met. This section should be implemented in a way that makes that possible.

Sec. 602 (22) Definition of Related Service

Recommendation: Add “qualified, certified sign language interpreting”.

Rationale: This is an important related service that is offered but not mentioned either in the law or the regulations. Qualified sign language interpreters are essential for a significant number of deaf and hard of hearing children in mainstream environments. As a recent study confirmed, “students who are deaf or hard of hearing are regularly subjected to unqualified, noncertified interpreters.” “Characteristics and Practices of Sign Language Interpreters in Inclusive Education Programs,” *Exceptional Children*, Vol. 63, No. 2, pp. 257-268, 1997.

Sec. 602 (25) Definition of Special Education

Recommendation: There should be clarification within this definition or another section of IDEA that “education of children who are deaf or hard of hearing” is a

² 34 C.F.R. §300.552 Placements. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that-- . . . (b) The child's placement-- . . . (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled . . .

separate and distinct type of special education. Similarly, there should be clarification within this definition or another section of IDEA that “teachers of children who are deaf or hard of hearing” provide a separate and distinct type of education to children with hearing loss.

Rationale: This type of education is not generic special education, and these professionals are not generic special educators. These teachers are trained specifically to teach children with hearing loss. However, currently, this is not clear in the statute, and children with hearing loss often do not have access to the type of education and educator they require to be able to learn the general curriculum at the same rate as their hearing peers. Often they are placed in a program and with an educator who cannot meet their needs.

Part B

Sec. 611 (f)(3) Other State Level Activities, Sec. 612 State Eligibility Procedure

Recommendation: The Department should require States seeking IDEA funds to include the following as part of State level activities and/or as part of the State eligibility procedure.

“To establish or maintain a communication based service delivery system for children who are deaf or hard of hearing, the State must provide for:

“State oversight and responsibility;

“An area-wide approach to delivering communication –based educational programs;

“Other state oversight responsibilities such as developing program and accountability standards and monitoring systems;

“Area-wide programmatic components;

“A state advisory board;

“Early identification, early communication and an appropriate early intervention delivery system;

“Recognition of the value and role of the center schools for deaf and hard of hearing children.”

Statement of Principle, pp. 37-41.

Rationale: These are essential components in an effective educational system for deaf and hard of hearing children. As the National Association of State Directors of Special Education (NASDSE) notes, “[E]very State should establish a mechanism to ensure that [monitoring and evaluation of programs and delivery of services] takes place. Every state should have a unit whose primary responsibilities are to oversee and coordinate all programs and services to students who are deaf or hard of hearing.” “Deaf and Hard of Hearing Students

Educational Service Guidelines,” Alexandria, Va., NASDSE, 1994 (hereinafter NASDSE Guidelines).

Sec. 612 (a)(5)(B) Least Restrictive Environment

Recommendation: That the continuum of alternative placements³ be placed in the statute at 612 (a)(5)(B), with the current (B) re-lettered as (C). The continuum should remain in the regulation as well. The continuum of alternative placements must continue to be made available in a strong and visible manner. Modification of this section would be a clear statement to that effect. Parents consistently report that either they are not provided information about the continuum of alternative placements for their deaf or hard of hearing child or that they are given information biased in favor of a particular placement. Often the school district’s interpretation of least restrictive environment means that the child is placed in the school closest to home regardless of whether that school is able to meet the child’s needs. Not all children are appropriately served in the general education environment, and other appropriate placements must be available.

Special education funding formulas should truly be “placement neutral,” as required by current law.⁴ They should be crafted in such a way that there is neither a financial incentive for a Local Education Authority (LEA) to place a child outside of the district when the child is being adequately served in the district, nor an incentive to keep the child in the district when an outside placement is appropriate. Currently some states have formulas that discourage Local Education Authorities (LEAs) from placing a child in a specialized program where the child’s language and communication needs can be met appropriately, even though the LEA does not have a program appropriate for the child. For example, the new reimbursement system for Massachusetts will reimburse the LEA at a higher rate for keeping the child at a school within the district than it does for allowing the child to attend a specialized school outside

³34 C.F.R. §300.551 Continuum of alternative placements.

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must-

(1) Include the alternative placements listed in the definition of special education under §300.26 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

⁴20 U.S.C. 1412 (a)(5) LEAST RESTRICTIVE ENVIRONMENT-

(A) IN GENERAL- To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) ADDITIONAL REQUIREMENT-

(i) IN GENERAL- If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).

(ii) ASSURANCE- If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

the district.⁵ In addition to tuition cost, the LEA must pay the full transportation costs, which are higher for out of district placements. This provides a disincentive for an LEA to place a child in a specialized program.

Ideally the state would pay the full cost of a child in a specialized program at no financial penalty to the LEA. This would ensure that the LEA's desire to limit costs would not result in any elimination of placement options for children requiring specialized settings. Some states that do have a more neutral funding formula regarding appropriate placements for deaf and hard of hearing children are Illinois, California, Ohio, Maryland, Arizona, Alabama, and Texas. For example, the Illinois School for the Deaf basically is supported by a general revenue appropriation from the state. Over 90% of its funds come from the State, and it receives some federal funds including IDEA and a few small grants. The LEAs are responsible for transportation only. However, it is important to note that in today's economy many states are experiencing severely declining revenues along with increased costs, and many budgets of State supported programs are being slashed.

Sec. 614 (d)(1)(B) Individualized Education Program Team

Recommendation: For children who are deaf or hard of hearing, this should be designated "Individualized Education Program/Communication Development Team."

Rationale: This would better define what the role of the Team should be for these children. As explained in the Statement of Principle:

"Team members would make a communication-based placement decision, with education and communication needs determining where the child is placed, including the appropriate option for providing communication access (critical mass of age, language, and cognitive peers) and communication development. The child's parent(s) or guardian(s) would determine program placement, provided that the parent or guardian choice was appropriate and could meet the child's needs. There would be no burden on the parent or IEP team to justify why a communication-driven class was more appropriate than any other placement option."

Statement of Principle, p. 43.

⁵ The formula is based upon the average "foundation budget" which is established annually. To illustrate, suppose that the foundation budget number is \$8,000 per student (the average statewide cost to educate a student). For a day school program--If the child is educated within the district the state reimburses the LEA at the rate of 80 percent of every dollar over three times foundation budget. So if the tuition costs \$40,000 the LEA would receive 80% of \$16,000, or \$12,800. (Foundation budget (\$8000) times three equals \$24,000. \$40,000 minus \$24,000 equals \$16,000. Eighty percent of \$16,000 equals \$12,800.)

If the LEA sends the child to a specialized program and that tuition is \$40,000, the LEA would receive 60 percent of everything over four times foundation (Four times \$8,000 equals \$32,000. \$40,000 minus \$32,000 equals \$8000. Sixty percent of \$8000 equals \$4800.) The LEA's choice is to keep the child in public school and get \$12,000 state funding or send him/her to a specialized program and receive only \$4,800. So the LEA pays \$27,200 to keep the child in the mainstream and \$35,200 to send the child to a specialized program.

Sec. 614(d)(1)(B)(iii) Individualized Education Program Team

Recommendation: Modify to say:

“At least one special education teacher, or where appropriate, at least one special education provider of such child, or for a child who is deaf or hard of hearing, a certified teacher of deaf and hard of hearing children;”

Rationale: As the Department Policy Guidance on Deaf Students Education Services states: “Including evaluators who are knowledgeable about these special factors as part of the [IEP] team . . . will help ensure that the deaf student’s needs are correctly identified” and addressed. 57 Fed. Reg. 49274 (October 30, 1992).

As explained in the NASDSE Guidelines:

“Special problems exist in association with a[n IEP] team in a public school setting regarding diagnosing problems and determining appropriate educational plans. Often [IEP] Teams in public schools, especially in rural settings, are comprised of only one individual who has any knowledge of deafness: that is, either an audiologist or a speech pathologist. Although other individuals may attend, such as a regular education teacher or psychometrist, these individuals may not necessarily be skilled in dealing with hearing losses. Therefore, the team which may be multidisciplinary in spirit may lack multidisciplinary knowledge of the needs of students with hearing losses. No assessment measures should be given, no results interpreted, and no programming decisions should be made by one individual alone. Although the school may meet the letter of the law by including more than one individual on the team, it may violate the intent of the law when only one individual on that team has any expertise in the area of deafness. In order to ensure that all deaf and hard of hearing students receive appropriate screening and placement, the [IEP] team must include more than one individual with expertise or appropriate knowledge in the area of hearing loss so that the team in fact represents multiple disciplines of expertise specifically in this field. If more than one individual does not exist within the local education agency, then the agency should contract with an outside individual or agency or should pool resources with other education agencies to ensure that team members represent adequate diversity.”

NASDSE Guidelines, pp. 43-44.

Sec. 614(d)(3)(B)(iv) Development of IEP

Recommendation: Modify to say:

“. . . in the case of a child who is deaf or hard of hearing, provide for:

~~“consider the child’s language and communication needs, ongoing language and communication assessment, development, and access, opportunities for direct communication with peers and professional personnel in the child’s language and communication mode (including spoken language, signed language including American Sign Language, and/or other modes of communication), instruction at the child’s academic level, and the child’s full range of needs, including opportunities for direct instruction in the child’s language and communication mode;”~~

Rationale: The 1997 IDEA Amendments were a breakthrough for deaf and hard of hearing children because that was the first time IDEA acknowledged that the language and communication needs of deaf and hard of hearing children were worthy of consideration. However, experience over these last few years has shown us that mere consideration is not enough. While consideration of these needs would imply that steps would be taken to meet them – and that is what the regulation envisions⁶ - calls and letters from parents nationwide inform us that that is not being done. Communication assessment, development, and access are the most critical aspects of education for a deaf or hard of hearing child. The IEP Team must be directed clearly that these services and opportunities must be provided.

A checklist of critical questions would guide IEP/Communication Development Teams in knowing exactly what to consider relevant to deaf and hard of hearing students. Critical questions may include:

Does amplification allow the student to understand most of what is spoken one on one, in a small group, in a classroom?

What communication strategy allows the child the best access to content knowledge?

What communication strategy allows the child the best access to social interactions?

Does the child possess a significant enough vocabulary and knowledge of American Sign Language features and grammar to effectively use an educational interpreter?

How does the child interact with the interpreter about his/her needs for clarification, interpreting preferences, and so forth?

⁶34 C.F.R. §300.346 (c) Statement in IEP. If, in considering the special factors described in paragraphs (a)(1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child’s IEP.

How effectively does the child interact with peers? Does the child use spoken language, speech reading, and residual hearing, interpreted communication, or direct signed communication with peers?

How effective are other communication strategies for the child (e.g., communication board, computer aided real time captioning (CART), computer-generated messages, TTY use, etc.)?

Sec. 614(f) Educational Placements

Recommendation: After "placement of their child." add: "The IEP Team, including the parents, shall consider the potential of various placements within the continuum of alternative placement options (as described in 34 C.F.R. §551), document the placement options that were considered, the reasons why the chosen option was selected, and the reasons why the others were rejected."

Rationale: According to the Department, "With respect to placement, if parents are to be meaningfully involved in the placement decision for their child it is necessary that they understand the various placement options. It is implicit in the requirement that parents be ensured the opportunity to be members of any group making the placement decision, that whatever placement options are available to a child will be fully discussed and analyzed at placement meetings, allowing input from all the participants." IDEA Regulation Attachment 1 - Analysis of Comments and Changes, 64 Fed. Reg. 12606-12607 (March 12, 1999).

Parents must be made aware of placement options, and the options should be presented to them in a neutral manner. Parents should be able to evaluate the potential of each placement for meeting their child's needs. This recommendation will help ensure that this intent is carried out.

Part C

We understand that the Department will consider all relevant comments received on the Notice of Proposed Rulemaking (NPRM) for the Part C program that was published on September 5, 2000. 65 Fed. Reg. 53808. Our organizations submitted comments in response to that NPRM. We urge the Department to include in the statute the regulatory recommendations made in those comments. We refer you to the comments submitted by:

American Society for Deaf Children
Conference of Educational Administrators of Schools and Programs for the Deaf
Council of Organizational Representatives on National Issues Concerning People Who are Deaf or Hard of Hearing
National Coalition on Early Development of Children who are Deaf or Hard of Hearing

We particularly wish to bring to your attention:

Center based programs: The need to support center based programs for infants and toddlers and their families. As the Department points out: "While some services for a given child may be appropriately provided in the child's home, other services may be more appropriate in a group setting (e.g., if a service is

designed to meet a socialization goal, the team may choose a child care, day care, or playgroup setting)." 65 Fed. Reg. 53810-53811 (September 5, 2000). Center based programs, which have specialized personnel fluent in American Sign Language and opportunities for families to meet and interact with deaf and hard of hearing adults, are an important option for families.

Language and communication: The need to provide for continuous and ongoing language and communication assessment, development, and access (parallel to our recommendation in Sec. 614(d)(3)(B)(iv)).

In addition, in Sec. 632 (4)(C)(iii) "communication development," we recommend "*language and communication development.*" This better describes the area to be developed.

Qualified personnel: "Teachers of infants and toddlers who are deaf or hard of hearing" should be added to Sec. 632 (4)(F). This will help States ensure there is a reliable supply of early interventionists for this population.

Also please see our comments on Part D below, and, for your information, we are attaching a copy of the Consumer Action Network's position paper on newborn hearing screening, assessment, and early intervention.

Other areas that we wish to bring to the Department's attention are:

Lack of Part C programs: In given geographic areas, there are no viable Part C programs available for deaf and hard of hearing children.

Although 41 states plus the District of Columbia now screen babies at birth for hearing loss, once babies with hearing loss are identified, families often enter a Part C program devoid of services (and their coordination) and expertise that can help the child acquire age appropriate language and communication skills. The professionals working in these programs do not have training and experience working with deaf and hard of hearing children and their families. They simply do not know how to meet the needs of the family. This should not come as a surprise. Up until recently the average age of identification of a child with hearing loss was two and a half. Therefore, early intervention programs were seeing few, if any babies with hearing loss, so an infrastructure to serve them or their families was not developed.

However, now that babies as young as a few weeks old are being identified, all Part C systems need specially trained professionals who have the experience and background to effectively serve this population. The Department should take a leadership role in training new teachers of the deaf and hard of hearing for this population and providing in-service training to personnel who are currently serving these families so that newborn hearing screening carry out its promise of improving outcomes for children with hearing loss. This can be done within the existing structure of Part D programs.

Failure to refer: In areas where viable Part C systems do exist, hospitals that screen and identify babies with hearing loss sometimes fail to refer them to these systems, in violation of Federal law governing the Comprehensive Child Find System.⁷ Instead, they refer families to their own system of services in a medical setting, serving as *de facto* early intervention providers. While it is well established that families may refuse services they do not wish to receive, still they should be made aware of the options available to them.

Part D

Part D programs are essential to support the activities required by Part B and Part C. The Department should maintain Part D programs, including:

Sec. 661 (i)(B) which addresses the post secondary, vocational, technical, continuing, and adult education needs of individuals with deafness;

Sec. 673 (b) which prepares personnel to work with students with low incidence disabilities;

Sec. 687 which provides for technology development, demonstration, and utilization, and media services.

We wish to note that there are personnel shortages in the area of early intervention, education for students age three to 21, and leadership in the education of children with hearing loss. For example, a recent study of 19 states implementing universal newborn hearing screening revealed that only 48% of the programs involved educators of the deaf in early intervention (Stredler-Brown & Arehart, 2000). Often services are provided by professionals who have no training or experience serving this population. Without effective early intervention, children with hearing loss are at risk of experiencing language delays and concomitant gaps in educational and social-emotional development. Because of the specialized knowledge and skills necessary to facilitate language and communication development, it is essential that properly trained and experienced professionals are available to work with them and their families. The same is true for children age three to 21.

In the leadership of schools for the deaf, there is a national shortage of post bachelor's degree level administrators, particularly those who are deaf and/or from multicultural backgrounds. Current programs in administration do not supply enough graduates to meet the demand for principals, special education directors, superintendents, and directors of agencies serving deaf persons. Further, while 44.5 percent of deaf youth are from multicultural backgrounds, less than 15 percent of deaf education administrators are. The need for deaf and hearing administrators from multicultural backgrounds is critical to provide multicultural awareness.

⁷ 34 C.F.R. §303.321(d)(2) The procedures required in . . . this section must . . . (ii) Ensure that referrals are made no more than two working days after a child has been identified;

Aside from educational leaders for deaf and hard of hearing students, general educators need training and background in this field in order to work effectively with children who are deaf or hard of hearing, their families, and specialized personnel. Pre-service and in-service training is essential for all groups so that they are prepared as they enter the field and that they keep up with new knowledge as they develop in their careers.

We ask the Department to continue to address the aforementioned personnel needs through funds granted under Sec. 673 (b). We recommend that the Department consider the role and value of center schools for the deaf in assisting with the provision of this training.

For further guidance on priority Part D areas identified by parents, deaf and hard of hearing consumers, educators, administrators, and researchers, please refer to "Education of Children and Youth Who are Deaf and Hard of Hearing: Past, Present and Future Federal Support" published by NASDSE. In 1998, educators, parents, researchers, deaf and hard of hearing consumers, and U.S. Department of Education staff were invited by the Department to participate in a two day policy forum hosted by the NASDSE. The purpose of the forum was to discuss and make recommendations pertaining to the federal role for support of research in the education of deaf and hard of hearing students. At the conclusion of the forum, this document was issued. It outlines recommendations in the areas of personnel preparation, early identification/early intervention, educational outcomes, language acquisition, literacy, communication, and transition. A copy of this document is enclosed. It is quite an ambitious research agenda – but one that we believe should be followed in order to create and disseminate knowledge that will lead to better outcomes. An additional document, "Language Development in Children Who are Deaf: A Research Synthesis," was prepared in conjunction with this forum. This document reviewed recent literature to form a succinct summary of "what we know." The executive summary of this synthesis is enclosed as well. The full paper can be downloaded from the NASDSE web site at <www.nasdse.org>. (Click on "Projects" then "Forum" then "Activities and Documents.")

We urge the Department to use these documents, which were produced at the Department's request, in planning Part D grant making on behalf of children who are deaf or hard of hearing and their families.

Areas for Comment Raised by the Department

Accountability

The areas potentially impacted most by hearing loss are a child's language and communication development and ability, which subsequently affect the child's cognitive development and academic outcomes. To fully develop his/her language and communication abilities, a child must have sufficient opportunities to acquire and develop language in its natural form and to communicate freely with others. Therefore, accountability measures for systems serving children who are deaf or hard of hearing must first take into consideration a child's language and communication access in all of the child's past and present school environment and its effect on language and communication ability. Then

measures must take into account actual student outcomes. For all measures, the results of children who are deaf or hard of hearing should be aggregated with the results of hearing children and should be disaggregated as well. (The same may be true for children with other low incidence disabilities, or with other disabilities generally.) The purpose of accountability instruments must be to prompt systematic changes designed to define and eliminate weaknesses in the educational system in order to promote educational success for deaf and hard of hearing students on par with hearing peers. System-wide accountability measures should not be used for high stakes purposes, such as promotion or graduation.

The first part of the accountability measure, language and communication access, should be built in to the system of the delivery of services to children and should be examined as an integral part of the monitoring process. Language and communication access could be measured by evaluating the following criteria:

- The extent to which the child's educational placement provides for the child's direct and uninhibited access to language and communication, including direct communication with his or her teachers, professional staff, and peers;
- The extent to which the system employs a research based reading program which meets the literacy needs of deaf and hard of hearing students;
- The extent to which a child who uses sign language as a primary mode of communication has opportunities to interact directly with fluent age level peers, teachers, and other language models;
- The extent to which a child who uses speech and residual hearing with technology as a primary mode of communication has access to appropriate assistive technology;
- The extent to which a child who uses an oral or sign language interpreter has access to a qualified, certified interpreter;
- The extent to which a child who uses (CART) has access to a qualified transcriber;
- The extent to which a child with hearing loss has access to auditorally-delivered information in a visual format, such as captioned videos and computer programs.
- The extent to which parents have access to parent counseling and training,⁸ particularly training related to their child's mode of communication.

⁸ 34 C.F.R. §300.24 (b)(7) Parent counseling and training means-
(i) Assisting parents in understanding the special needs of their child;
(ii) Providing parents with information about child development; and
(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

A second part of the accountability measure could take into account actual student outcomes such as:

- For children exiting an early intervention program before or at age three: outcomes for language, communication and social/emotional development and the child's ability to participate in appropriate activities. (Prior to age three, IDEA requires the child's language and communication development to be reviewed during each six month review of the Individualized Family Services Plan.⁹
- For children exiting a preschool program before or at age six: outcomes on language and communication and social/emotional development and the child's ability to participate in appropriate activities, including pre-reading or reading.

For children age six and above: outcomes on state and district-wide assessments and on ESEA mandated tests. Testing should provide for accommodations when appropriate and follow established fair testing guidelines, such as those articulated in U.S. Department of Education Office for Civil Rights report, "The Use of Tests as Part of High-Stakes Decision-Making for students: A Resource Guide for Educators and Policy-Makers" (December, 2000) and the American Educational Research Association, American Psychological Association, and National Council on Measurement in Education report, "Standards for Educational and Psychological Testing" (1999).

Benchmarks should be put into place for these children as a group. For example, a benchmark for deaf and hard of hearing children at any age should be language and communication levels commensurate with those of their hearing peers.¹⁰ Similarly benchmarks for academic achievement should be the same as those for hearing children.

If a child or children in a given system are not acquiring language and communication skills and academic competence on par with their hearing peers, the educational system must take action. Members of the IEP/Communication Development Team and program administrators should examine and address the factors in the first part of this proposed accountability system, including placement. Members of the IEP/Communication Development Team and program administrators should change aspects of the educational program when necessary, such as adding qualified personnel or changing placement(s). Failure to achieve age appropriate outcomes should require action to prevent continuing delays or failure for any child.

⁹Sec. 636 (b) PERIODIC REVIEW- The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

¹⁰ Unfortunately, we are not aware of validated instruments that can measure the language development of deaf children using American Sign Language. We respectfully request that the Department put resources into the development of such a tool.

Personnel Issues

Please see above references to Sec. 602 (25), Part C, and Part D.

Parent Involvement

One of the barriers to parents' meaningful participation in their child's education is the fact that the current IDEA system is premised on the idea that parents have the knowledge and assertiveness needed to participate on an equal basis with other members of the IEP Team. Ninety percent of deaf children have hearing parents, most of whom have had little or no contact with other deaf or hard of hearing individuals. Parents are not sure what the potential impact of unaddressed hearing loss is on their child's language, communication, and cognitive development. They are not sure what goals are reasonable for their child's IFSP or IEP. They don't know their rights. They often believe the professionals on the IEP Team are "the experts" and look to them for guidance. This conflicts with the equal participant role¹¹ accorded them by IDEA.

If the parent is not fluent in English the difficulties are increased.

Parents who have educated themselves in these areas and who can assert themselves may face a school district without professionals trained in teaching deaf or hard of hearing children or the other resources necessary to meet the child's needs, such as training in sign language for personnel or assistive listening systems. A school district representative may be unwilling to include parents' goals on the IEP simply because the representative fears that the school does not have what it needs to meet them.

Another barrier is lack of awareness. A school district representative may hold a particular personal view about the "right" way to educate a deaf or hard of hearing child. Without a better awareness of the needs of these children, that representative may make recommendations that are not necessarily appropriate for the child.

Parents need greater opportunities for education about hearing loss and language and communication development, and greater access to parent and consumer organizations that inform and support parents. The Department can facilitate this by providing stronger support and guidance to States and LEAs regarding IDEA's parent training and counseling provisions.¹² Parents also need access to enforcement mechanisms that are enforced by the education system, not the parents. In other words, the burden should not be on the parent to "force" the school system to appropriately educate their child. Appropriately educating all children should be the responsibility of the school system, regardless of the parent's ability or desire to follow up with mediation or due process procedures. As the law now stands, many parents do not have meaningful recourse when their or their child's rights are denied.

Transition to Post-School Endeavors.

We are not commenting on this section.

¹¹"The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child." Notice of Interpretation, Individuals with Disabilities Act Regulation, 64 Fed. Reg. 12473, (March 12, 1999).

¹² 34 C.F.R. §300.24 (7).

Excessive Paperwork.

The paperwork burden on administrators is too high, often requiring the hiring of additional personnel for this purpose. The level of paperwork does not necessarily correlate with the outcome levels for children. In other words, more paperwork does not necessarily lead to higher achievement. Further, parents do not necessarily understand all aspects of the IEP paperwork process.

Local School Districts--20 Percent Funds.

We are not commenting on this section.

Use of Insurance under Part C.

Any proposals in this area should be carefully examined to ensure that parents are not discouraged for financial reasons from seeking or receiving services. In addition, the Department should work with States and insurance companies to encourage them to pay for hearing aids for children. The majority of children with hearing loss can benefit from hearing aids, yet very few insurance plans or Part C programs pay for them. This leaves a high financial burden – often \$3000 or more – on families.

Conclusion

We urge the Department to amend IDEA in the ways outlined above. We are pleased to offer our assistance in this endeavor. Thank you for your efforts on behalf of deaf and hard of hearing children and their families.

Respectfully submitted,

American Society for Deaf Children

Conference of Educational Administrators of Schools and Programs for the Deaf

Convention of American Instructors of the Deaf

National Deaf Education Project

TDI, Inc.