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Director of the Strategic Collections and Clearance
Governance and Strategy Division
U.S. Department of Education
400 Maryland Ave. SW
LBJ, Room 6W-208D
Washington, DC 20202-4537

Submitted at www.regulations.gov

Re: Docket ED-2020-SCC-0030

Dear Director:

The Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD) hereby writes regarding the above-captioned docket. We appreciate the opportunity to comment.

As we have done many times, we are writing to object to the way the U.S. Department of Education (“the Department”) interprets the phrase “Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE)” for purposes of meeting the requirement of IDEA Section 616(a)(3)(A)¹ as reflected in the State Performance Plan/Annual Performance Report (SPP/APR).

We respectfully disagree with the Department’s position that Indicators 5 and 6 of the SPP/APR reflect FAPE in the LRE. As we know, the determination of whether FAPE has been provided in the LRE must be based on children’s Individualized Education Programs (IEPs). True determination of FAPE in the LRE can only be achieved by, at a minimum, a thorough examination of each child’s IEP and a confirmation that the child was properly evaluated, present levels of performance suitably identified, goals appropriately written, the correct services identified and provided, and placement made based on these factors. Only then can one confirm that a child is receiving FAPE in the LRE. Indicators 5 and 6 are an insufficient

¹ (3) MONITORING PRIORITIES.—The Secretary shall monitor the States . . . using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

(A) Provision of a free appropriate public education in the least restrictive environment.

Deaf children will thrive!

proxy for this determination. Indicators 5 and 6 merely describe the place where the child attends school, not whether the setting complies with IDEA's requirements.

Despite this lack of evident connection between the child's setting and the special education and related services available, states are encouraged to increase the number of students in general education settings, and decrease the number in specialized settings. One can look at the targets of any state on these indicators and see that this is the case.² This is so even though the states are not required to show evidence that one placement or another is appropriate for a given child.

This approach is particularly damaging to deaf and hard of hearing students, who have unique communication needs that often cannot be met in the general education setting. As the Department has stated (emphasis added):

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."³

This view has been reiterated in recent years in policy letters to stakeholders.^{4 5}

² <https://osep.grads360.org/#program>

³ 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>

⁴ U.S. Department of Education, Letter to Bosso, August 23, 2010.

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-3/bosso082310lre3q2010.pdf>

⁵ U.S. Department of Education, Letter to Stern, September 30, 2011.

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

The IEP team shall—

. . .

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;⁶

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 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 goals⁷ can be met, without predetermined preference to any particular physical location or setting. To this end, CEASD calls on the U.S. 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,”⁸ 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.

Thank you for the opportunity to comment.

About CEASD: CEASD supports and promotes effective school leadership to advance education programs for deaf and hard of hearing children.

Very truly yours,



David Geeslin

<https://www2.ed.gov/policy/speced/guid/idea/letters/2011-3/stern093011re3q2011.pdf>

⁶ 20 U.S.C. § 1414(d)(3)(B)(iv).

⁷ 20 U.S.C. § 1414(d)(1)(A)(i)(II).

⁸ *Supra* note 1.