



September 20, 2017

Hilary Malawer
400 Maryland Avenue SW
Room 6E231
Washington, DC 20202
www.regulations.gov

Docket ID: ED-2017-OS-0074

Dear Hilary Malawer:

The Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), National Association of the Deaf (NAD), and American Society for Deaf Children (ASDC) hereby comment on the above referenced docket. We make two main points:

1. The education-related laws and regulations that exist today came about in response to the lack of access to education programs for students with disabilities (as well as other categories of students), and the lack of access to necessary supports and services in those programs. The Individuals with Disabilities Education Act (IDEA), and the Americans with Disabilities Act (ADA), which applies in education settings, as well as other laws, protect students who in the past were overlooked. These laws and their regulations are significant and necessary.

The regulatory process as outlined by the Administrative Procedure Act¹ is detailed and thorough. It first relies on a law being passed by Congress and signed by the President. It includes proposals from the relevant Federal agency, review by the Office of Management and Budget, an opportunity for stakeholder input, and further review by the agency. A cost-benefit analysis is required, as well as other administrative steps that are designed to reduce the cost and administrative burden of the regulations. Significant thought and effort goes into the passing of regulations.

Therefore, any Administration effort to repeal, replace, or modify current regulations must be done so only with extreme caution, keeping in mind the reasons the regulations were passed in the first place. It is highly unusual for an agency to repeal, replace, or modify regulations simply for its own sake. And of course, just as any promulgation of regulations must comply with the Administrative Procedure Act, any proposed repeal, replacement, or modification must comply as well.

2. That said, we believe that there are situations where the U.S. Department of Education has issued policy guidance that, we believe, is unnecessary and goes beyond current law. We are referring to Department guidance around “inclusion.” Although the term “inclusion” does not appear in IDEA, the Department has issued guidance promoting it.

¹ 5 U.S.C. § 500 *et seq.*

Recent examples of Department of Education guidance on “inclusion” include:

- Updated Dear Colleague Letter on Least Restrictive Environments, January 9, 2017 <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/preschool-lre-dcl-1-10-17.pdf>.
- U.S. Department of Health and Human Services/Department of Education Policy Statement on Inclusion of Children with Disabilities In Early Childhood Programs, September 14, 2015 <https://www2.ed.gov/policy/speced/guid/earlylearning/joint-statement-full-text.pdf>. When the Departments posted its draft of this document on its blog, experts in the education of deaf and hard of hearing children, parents, and deaf and hard of hearing individuals objected vigorously to the Departments’ approach <https://sites.ed.gov/osers/2015/05/including-young-children-with-disabilities-in-high-quality-early-childhood-programs/#comments>. In fact, out of the 565 comments filed on the Department’s blog on this topic, 235 - 42 percent - came from this community. These commenters overwhelmingly disagreed with the Departments’ interpretation of law and practice and provided numerous accounts of the damage done by a “one size fits all” policy.
- OSEP Dear Colleague Letter on Preschool (LRE) February 9, 2012 <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/preschoollre22912.pdf>.

IDEA requires public agencies to place students in settings where their Individualized Education Programs (IEPs) can appropriately be implemented.² IDEA also requires a continuum of alternative placements to be made available for this purpose.³ We agree that in most cases appropriate placement of students with disabilities is in the local neighborhood school. However, students who require placement in specialized settings must have that setting protected. The Department has remained virtually silent on the need for specialized settings.

Through its overemphasis on “inclusion,” the Department has set up barriers to those placements. In addition to the above-mentioned policy documents, CEASD, NAD, and ASDC continue to be concerned about Part B State Performance Plan and Annual Performance Report Indicators 5 and 6 describing the type of class the student attends.⁴ While these indicators are intended by IDEA to measure compliance with fundamental elements of the law, in practice these indicators measure “seat time,” not Free Appropriate Public Education (FAPE) or Least Restrictive Environment (LRE). The only way to truly measure FAPE or LRE is by analyzing each Individualized Education Program (IEP) (or at least by analyzing a representative sample of IEPs from each disability category) and determining whether the IEP is adequately written, and if so, whether the services and setting(s) support the child’s goals. FAPE/LRE cannot be measured in a purely quantitative way. The current system of simply counting where students are placed and encouraging states to place them with nondisabled children, regardless of how that setting meets their needs, is not in keeping with the law.

For deaf and hard of hearing students one of the most important IDEA sections is the “special factors” provision that requires IEP teams to consider and address their language and communication needs.⁵ (There are also sections regarding the provision of Braille to students who are blind, and other factors.) Access to grade level general

² 34 C.F.R. § 300.116.

³ 34 C.F.R. § 300.115.

⁴ U.S. Department of Education, State Performance Plan (SPP) and Annual Performance Report (APR) Forms, and Supporting Documents, <https://www2.ed.gov/fund/data/report/idea/sppapr.html>.

⁵ 34 C.F.R. § 300.324(a)(2)(iv).

education curriculum cannot happen unless the child attains grade level (age appropriate) language and communication development. Supporting the child's language and communication development, whether signed, spoken, or both, is key to the child's academic success. CEASD, NAD, and ASDC believe that language and communication development measures for deaf and hard of hearing children are more meaningful than the current indicator purporting to monitor FAPE and LRE.

We also continue to be concerned about Part C Indicator 2,⁶ "Percent of infants and toddlers with IFSPs who primarily receive early intervention services in the home or community-based settings."

This indicator addresses only physical location of service, not the quality of the services provided to the family and child. 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 receive appropriate services from qualified providers.⁷

Qualified providers, such as teachers of the deaf,⁸ are more likely to be found in specialized or center based programs. While these programs also provide home visits, the provision of play groups and class environments specifically designed to support deaf and hard of hearing children's language acquisition is critical and unique. In these settings, children and families have opportunities to interact with deaf and hard of hearing professionals who are trained in language development techniques. Young children can interact with peers with whom they can directly communicate. And families meet other families of deaf and hard of hearing children, thereby being able to share experiences and support.

The only way to measure whether early intervention services are appropriately provided is by analyzing each Individualized Family Service Plan (IFSP) (or at least by analyzing a representative sample of IFSPs from each disability category) and determining whether the IFSP is adequately written, and if so, whether the services and setting(s) support the child's goals. Adequacy of services cannot be measured simply by 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, NAD, and ASDC believe that language and communication measures for deaf and hard of hearing children are more meaningful than this current indicator.

Students who are deaf or hard of hearing constitute one percent of the IDEA population and .001 percent of the general education population.⁹ Many of these students require teachers who are skilled in specific teaching techniques, fluent in American Sign Language, and are knowledgeable about the unique language and communication needs of deaf and hard of

⁶ U.S. Department of Education, State Performance Plan (SPP) and Annual Performance Report (APR) Forms, and Supporting Documents, <https://www2.ed.gov/fund/data/report/idea/sppapr.html>.

⁷ Yoshinaga-Itano et al., 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>.

⁸ 34 C.F.R. § 303.13.

⁹ Percentages based on data reported in Fast Facts: Students with disabilities, <https://nces.ed.gov/FastFacts/display.asp?id=64>, Digest of Education Statistics: Enrollment in public elementary and secondary schools, by level and grade https://nces.ed.gov/programs/digest/d16/tables/dt16_203.10.asp, National Center for Education Statistics.

hearing students.¹⁰ They need an environment that places their needs first, rather than an environment that must be modified once they arrive. The Department's emphasis on "inclusion" – rather than on appropriate placement – is misleading and harmful to students requiring a specialized setting.

Secretary DeVos has correctly stated, "No educational program, public or private, is ideal for all students, especially students with disabilities. Even today, there are public school districts that do not have the services to meet the needs of all students with disabilities . . ." ¹¹

The Department should carefully examine its policies around the placement of students with disabilities and ensure that any policy complies with Federal law and is not based on terminology or preference outside of the law.


Thank you for your consideration.

Founded in 1868, CEASD is committed to the promotion of excellence within a continuum of equitable educational opportunities for all children and adults who are deaf or hard of hearing. CEASD advocates on behalf of individuals who are deaf or hard of hearing and supports the efficient and effective management of schools, programs, program service centers, and governmental units offering educational and related programs and services.

The National Association of the Deaf (NAD), founded in 1880, is the oldest national civil rights organization in the United States, and is the country's premier organization of, by and for deaf and hard of hearing individuals. The mission of the NAD is to preserve, protect, and promote the civil, human, and linguistic rights of 48 million deaf and hard of hearing individuals in the country. The NAD endeavors to achieve true equality for its constituents through systemic change in all aspects of society including advancement of optimal education for all deaf and hard of hearing students.

ASDC was founded in 1967 as a parent-helping-parent organization, originally called The International Association of Parents of Deaf Children. The organization changed its name to American Society for Deaf Children in 1985. ASDC is the oldest national organization founded by and governed by parents of deaf children.

Very truly yours,



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Avonne Brooker-Rutowski, Ed.S.
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¹⁰ National Association of State Directors of Special Education. (2006). Meeting the Needs of Students Who are Deaf or Hard of Hearing: Educational Services Guidelines.

¹¹ Answers to Ranking Member Murray, Senate HELP Committee, question 104 <http://blogs.edweek.org/edweek/campaign-k-12/Murray%27s%20QFRs%20%28003%29.pdf>.