



**UNITED STATES DEPARTMENT OF EDUCATION**  
**OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES**

September 30, 2011

Dr. Ronald Stern, President  
Conference of Educational Administrators  
of Schools and Programs for the Deaf, Inc.  
New Mexico School for the Deaf  
1060 Cerrillos Road  
Santa Fe, New Mexico 87505

Dear Dr. Stern:

This is in response to your January 25, 2011 letter to Dr. Alexa Posny, Assistant Secretary for the Office of Special Education and Rehabilitative Services at the U.S. Department of Education (Department). Your letter was forwarded to my office for response and I apologize for the delay. You indicate that the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD) is concerned that the data reporting requirements for Indicators B5, B6 and C2 of the State Performance Plans and Annual Performance Reports (SPPs/APRs) submitted under Parts B and C of the Individuals with Disabilities Education Act (IDEA) operate as a mandate to increase the number of students in the "regular class" and "natural environment" regardless of whether that setting is appropriate for each child. You provide an analysis in support of this concern, and request that we consider the points made in your analysis in establishing future monitoring requirements and during the reauthorization of the IDEA.

Least Restrictive Environment and Natural Environments Requirements

The Department previously provided its views on the factors to be considered in making placement decisions under Part B of the IDEA (Part B) for school-aged children who are deaf in an August 23, 2010 letter to Edward Bosso, former president of CEASD (copy enclosed). Our discussion in that letter regarding the intersection of Part B's least restrictive environment (LRE) and free appropriate public education (FAPE) requirements is particularly relevant to the issues you address in your analysis. In interpreting Part B's LRE requirements as applied to children who are deaf, we addressed the relevant requirements in 34 CFR §§300.114 through 300.117 and explained: "Any setting that does not meet the communication and related needs of a child who is deaf does not allow for the provision of FAPE and cannot be considered the LRE for that child. Just as the IDEA requires placement in the regular educational setting when it is appropriate for the unique needs of a child who is deaf, it also requires placement outside of the regular educational setting when the child's needs cannot be met in that setting."

Similarly, for infants and toddlers with disabilities receiving early intervention services (EIS) under Part C of IDEA, to the maximum extent appropriate, EIS must be provided in natural

environments, unless the individualized family services plan (IFSP) team, which includes the parent(s), determines that early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment, consistent with 20 U.S.C. 1435(a)(16) and 1436(d)(5), and 34 CFR §§303.344(d), 303.12(b), and 303.18. If a determination is made by the IFSP Team that, based on a review of all relevant information regarding the unique needs of a particular infant or toddler, the child cannot satisfactorily achieve identified early intervention outcomes in natural environments, the IFSP must include a justification for providing services outside of a natural environment.

Thus, the requirements under both Part B and Part C allow States and local educational agencies and early intervention programs to consider the unique needs of a child who is deaf in determining an appropriate placement.

#### State-established Targets for SPP/APR Indicators

The data that States are required to include in their SPPs/APRs reflect State performance on specific indicators based on State-established targets for the State as a whole. Under IDEA sections 616(b) and 642, each State is required to collect valid and reliable data as needed to report annually to the Secretary on each of the SPP/APR indicators. States must establish measurable and rigorous targets for the indicators for the priority areas described in section 616(a)(3) of the IDEA. Each State uses its own targets in the SPP/APR in the priority areas to analyze the performance of each local educational agency/early intervention program in that State in implementing Part B and Part C of the IDEA.

Your specific concern is that numerical targets for reporting data for Part B Indicators 5 and 6 (data on placements for school aged children and data on LRE for preschool aged children, respectively) and Part C Indicator 2 (data on natural environments for infants and toddlers with disabilities) imply that there are “right” numbers of students and infants and toddlers in a given State or school who should be served in particular settings. You also are concerned that these data do not reflect whether State and local educational agencies and Part C lead agencies and early intervention programs are meeting their obligations to provide a FAPE under Part B to children with disabilities who are deaf and appropriate early intervention services under Part C to infants and toddlers with disabilities who are deaf and their families.

The data reporting requirements associated with these indicators are not intended to mandate particular placements for individual infants and toddlers and children with disabilities. Further, these data reporting requirements represent only one part of a State’s monitoring responsibilities under the IDEA<sup>1</sup>.

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<sup>1</sup> States are required to monitor the compliance-related requirements underlying each SPP/APR indicator, including the compliance-related requirements for LRE and natural environments. These requirements can be found in the related requirements document for Part B, at <http://www2.ed.gov/policy/speced/guid/idea/bapr/index.html> and in the related requirements document for Part C, at <http://www2.ed.gov/policy/speced/guid/idea/capr/index.html>

The IDEA's Part B and Part C SPPs/APRs include both compliance and results indicators<sup>2</sup>. SPP/APR Part B Indicators B5 and B6 and Part C Indicator C2 are results indicators. Unlike compliance indicators, for which States must establish 100 percent compliance targets, the results indicators are intended to support States in improving outcomes in specific areas that relate to State identified targets and technical assistance activities. The Department encourages States to use the data collected under the SPP/APR indicators, in addition to other State and national data, to identify areas in need of more targeted assistance, areas where State and local resources may be more efficiently utilized, and areas that are evidencing continuous improvements in child outcomes. However, there is no requirement, for example, that a State place a certain percentage of children in one educational environment as opposed to another, nor is there a specific regulatory requirement specifying a State's SPP/APR target for the percentage of children in the regular classroom environment. Note also that in establishing targets for Part B Indicators 5 and 6 and for Part C Indicator 2, States set targets for the State as a whole based on the needs of all infants and toddlers and children with disabilities in the State, not only for infants and toddlers and children who are deaf, and States consider input from their stakeholders in developing these targets.

Dr. Posny and I appreciate the effort undertaken in preparing CEASD's analysis, as well as the information it presents. It is our intention, through the data collection and reporting process, to obtain a clearer picture of placement decisions across the country and to encourage States to analyze placement data as one factor in reviewing outcomes for children with disabilities. These data constitute a place to begin such an analysis; they do not constitute a determination of compliance or noncompliance with applicable IDEA requirements governing placement in the least restrictive environment or the natural environment.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We thank you for your thorough analysis of this issue and for sharing your concerns with us. We will consider these points in our future monitoring activities, and when we begin working on IDEA reauthorization. Please do not hesitate to contact this office if you have additional concerns or if we can be of assistance.

Sincerely,

/s/

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Melody Musgrove, Ed.D.  
Director  
Office of Special Education Programs

Enclosure

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<sup>2</sup> The IDEA Part B indicators include twenty indicators: ten compliance and ten results indicators. The IDEA Part C indicators include fourteen indicators: seven compliance indicators and seven results indicators.



August 23, 2010

Mr. Edward H. Bosso, Jr.  
President, Conference of Educational Administrators  
of Schools and Programs for the Deaf, Inc.  
Laurent Clerc National Deaf Education Center  
Gallaudet University  
800 Florida Avenue, NE  
Washington, DC 20002

Dear Mr. Bosso:

Thank you for your May 7, 2010, letter, in which you refer to Secretary Arne Duncan's April 21, 2010, comments made at the Council for Exceptional Children (CEC) conference. Your letter was referred to the Office of Special Education and Rehabilitative Services for a response so that we may provide information addressing your concerns and be available to follow up with you should you have additional questions. Specifically, you expressed concern with the comments regarding the education of students with disabilities in specialized educational settings under the Individuals with Disabilities Education Act (IDEA). Additionally, you provided information regarding the problem of unqualified sign language interpreters in general education settings and the benefits of schools for the deaf.

As you know, the requirements for determining the placement of a child with a disability are included in the IDEA Part B regulations at 34 CFR §300.116. This regulation requires that placement decisions be made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. This decision must be made in conformity with the least restrictive environment (LRE) provisions, including §§300.114 through 300.118. Additionally, a child's placement must be determined at least annually, be based on the child's individualized education program (IEP), and be as close as possible to the child's home. These provisions are consistent with section 612(a)(5) of IDEA, which indicates that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who are not disabled.

Placement decisions must be determined on an individual, case-by-case basis, depending on each child's unique needs and circumstances, and be based on the child's IEP. The IDEA specifically requires that in developing the IEP, the team:

. . . [c]onsider 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. . .

34 CFR §300.324(a)(2)(iv). Any setting that does not meet the communication and related needs of a child who is deaf does not allow for the provision of a free appropriate public education (FAPE) and cannot be considered the LRE for that child. Just as the IDEA requires placement in the regular educational setting when it is appropriate for the unique needs of a child who is deaf, it also requires placement outside of the regular educational setting when the child's needs cannot be met in that setting.

The Secretary and I share your concern about the need for students with disabilities to receive appropriate interpreting services from qualified personnel. The IDEA requires that personnel providing special education and related services to children with disabilities be appropriately and adequately prepared and trained. The responsibility for ensuring sign language interpreters are qualified rests with the State educational agency. Under the IDEA's regulations, sign language interpreter services are considered related services. 34 CFR §300.34(c)(4). The IDEA regulations, at 34 CFR §300.156, specify that the State educational agency is responsible for establishing and maintaining qualifications to ensure that personnel necessary to make FAPE available are appropriately and adequately prepared and trained consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing related services.

The Department provides Federal funds to support States in these efforts. Under the State Personnel Development Grants Program (SPDG), authorized by sections 651 through 655 of the IDEA, States receive Federal support for reforming and improving their systems for personnel preparation and professional development in early intervention, education, and transition services to improve results for children with disabilities. Under the SPDG program, a State may utilize a portion of its grant to fund interpreter training programs. Also, under the Personnel Preparation Program, which is authorized by section 662 of the IDEA, the Department funds competitive grants to institutions of higher education that may support interpreter training programs.

While speaking at the CEC conference, the Secretary noted that the vast majority of students with disabilities attend a neighborhood school. He also stated that students should not be sent to a separate school *solely* because they have a disability. The Department understands that for some students with hearing impairments a specialized school placement may be the appropriate way to address the child's language and communication needs as identified in the IEP. However, for other students with disabilities, attending their home school with appropriate supports, including qualified related services personnel, would be the appropriate placement.

I hope that you find the responses to your concerns helpful. We continually evaluate the need for further guidance and clarification, and appreciate receiving your input on this matter. If you need further assistance, please feel free to contact my office.

Sincerely,

A handwritten signature in black ink, reading "Alexa Posny". The signature is written in a cursive, flowing style. The first name "Alexa" is written with a large, looped 'A' and the last name "Posny" follows in a similar cursive script.

Alexa Posny, Ph.D.