

**NASDSE Deaf and Hard of Hearing Students
Educational Service Guidelines
IDEA Addendum
July, 2000**

In 1994, the National Association of State Directors of Special Education (NASDSE) published *Deaf and Hard of Hearing Students Educational Service Guidelines*.¹ The Guidelines have provided assistance to numerous education agencies, educators, service providers, and parents over the past five years.

In 1997, the Individuals with Disabilities Education Act (IDEA), the federal law that governs the education of students with disabilities, was reauthorized by the IDEA Amendments of 1997, Pub. L. 105-17 (IDEA '97), and many changes to the law were made. On March 12, 1999, the Department of Education published in the Federal Register final regulations to implement statutory changes made to Part B of IDEA by IDEA '97. This addendum is designed to make current those references to the IDEA and Department regulations that are found in the Guidelines. Not all changes to IDEA are included in this addendum. Similarly, with the exception of the reference to state and federal laws regarding newborn hearing screening and intervention, revisions to areas other than IDEA are not included in this addendum. Rather, this addendum focuses primarily on revisions to the sections of IDEA that are mentioned in the Guidelines.

Where appropriate, the addendum deletes single words or phrases and replaces them with other ones. In some cases, the addendum deletes full sections from the Guidelines, adds to them, and repeats them here. This was done to promote ease of reading.

Page Two

Issue I. Educators should be knowledgeable of the unique educational needs of students with hearing losses.

Second full paragraph, after “described more fully in *Issue III*” insert:

“Further, the IDEA Amendments of 1997 require that the IEP include a statement of the child’s present levels of educational performance, including how the child’s disability affects the child’s involvement and progress in the general curriculum, or for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities. (IDEA §614(d)(1)(A)(i)(I-II) and 34 CFR §300.347(a)(1)(i)-(ii). The IDEA regulations refer to the general

¹NASDSE, *Deaf and Hard of Hearing Students Educational Service Guidelines*, Alexandria, Va., 1994.

curriculum as 'the same curriculum as for nondisabled children' (34 CFR §300.347(a)(1)(i)).

Paragraph two, sentence three, change "the most appropriate education" to "an appropriate education".

Modify first sentence of subsequent paragraph to read, "Access to information . . ."

Paragraph two, last sentence after "Massachusetts Department of Education, 1989, p. 19), add "It is worth noting that the IDEA requires an appropriate education, not the most appropriate or best education."

Early Identification and Assessment

Replace "Public Law 102-119 (formerly P.L. 99-457), the 1990 amendments to IDEA," with "Public Law 105-17, the 1997 Amendments to IDEA" . . .

Third line after "critical years of early development." add "IDEA assists states in ensuring that appropriate early intervention services are available to all infants and toddlers with disabilities and their families." (IDEA §634 and 34 CFR §303.140)

Page Three

Prevalence of Hearing Loss in Children and Youth

Replace "P.L. 99-457, now included in P.L. 101-476." with "P.L. 105-17."

Next to last paragraph, sentence two, change "mainstreamed" to "educated".

Next to last paragraph, sentence three, delete sentence "Second, some states . . ."

End of next to last paragraph add with "However, by now States have had time to revise their statutes and regulations to be consistent with the new provisions of P.L. 105-17, therefore counts of infants, toddlers, and other individuals eligible for special education and related services under IDEA should be accurate."

Page Four

Last paragraph, first sentence, change "must understand" to "need to understand".

Page Five

Change definition of "Deaf" to: "Deafness by federal definition (34 CFR §300.7(c)(3)) means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance."

Change definition of "hard of hearing" to: "Hearing impairment by federal definition (34 CFR §300.7(c)(5)) means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in §300.7(c)(3)."

Page Six and Seven

Delete the section titled "Issue III. Educators should be knowledgeable about the United States Department of Education policy guidance on deaf students' education services" and replace with:

"Issue III. Educators should be knowledgeable about the "Special Factors" statutory and regulatory provisions of the IDEA which specifically pertain to development of IEPs for deaf and hard of hearing children, and United States Department of Education interpretation of these provisions, including Department of Education Policy Guidance on deaf students' education services, published at 57 Fed. Reg. 49274 (Oct. 30, 1992).

"COED's major recommendations regarding elementary and secondary education were highlighted in this policy guidance, which underscored the importance of ensuring that students who are deaf are provided a free appropriate public education in settings where their unique communication and related needs can be appropriately addressed.

"The IDEA Amendments of 1997 included "special factors" provisions in IEP development, one of which focuses on the IEP team's responsibility to consider the communication needs of the child, and, in the case of children who are deaf or hard of hearing, consider the child's unique language and communication needs. This "special factors" provision incorporated into law one of the significant concerns identified in the Department's *Policy Guidance on Deaf Students Education Services*, issued on October 30, 1992 at 57 Fed. Reg. 49274 and

disseminated as an attachment to OSEP Memorandum 94-15 (Feb. 4, 1994). The new statutory provision and the *Policy Guidance* were designed to implement several COED recommendations regarding appropriate education for elementary and secondary students who are deaf. IDEA now states that:

“Consideration of special factors. -- The IEP Team shall--

- in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, and supports to address that behavior;
- consider the language needs of children with limited English proficiency as such needs relate to the child’s IEP;
- provide for instruction in Braille and the use of Braille for children who are blind or visually impaired, unless the IEP team determines, after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- 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;** and
- consider whether the child requires assistive technology devices and services.

“(IDEA §614(d)(3)(B)(i)-(v) and 34 CFR §300.346(a)(2)(i)-(v))”

“U.S. Department of Education interpretation of the ‘language and communication needs’ provision states that LEAs are ‘not relieved of their responsibilities to ensure that [this statutory provision] is implemented consistent with the published policy guidance on Deaf Students Education Services, and that the full range of communication and related needs of deaf and hard of hearing students are appropriately addressed in evaluation, IEP, and placement decisions under these regulations.’ The interpretation further states that this view is reinforced in the Senate and House Committee Reports on P.L. 105-17. The Department states that it ‘fully expects LEAs to ensure that [this

section of the] regulations is implemented consistent with these statements.’
Final Regulations, Assistance to States for the Education of Children with
Disabilities, Analysis of Comments and Changes, published as Attachment 1, 64
Fed. Reg. at 12590 (Mar. 12, 1999).

“The *Policy Guidance* stressed that:

- the disability of deafness often results in significant and unique educational needs for the child; and,
- the major barriers related to learning associated with deafness are related to language and communication, which, in turn, profoundly affect most aspects of the educational process. 57 Fed. Reg. 49274 (Oct. 30, 1992).

“Further, the *Policy Guidance* listed factors to be considered in developing an IEP. These are:

- communication needs and the child’s and family’s preferred mode of communication;
- linguistic needs;
- severity of hearing loss and potential for using residual hearing;
- academic level;
- social, emotional, and cultural needs, including opportunities for peer interactions and communication; and
- consideration of curriculum content and method of curriculum delivery. 57 Fed. Reg. 49275 (Oct. 30, 1992)

“The *Policy Guidance* specified that:

‘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 . . . Any setting which does not meet 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 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.’ (57 Fed. Reg. 49275)

“The position expressed above does not adopt the view that regular class placement is required for all children with disabilities, regardless of individual abilities and needs, but rather reinforces the importance of making individual determinations regarding the appropriate setting in which required services can be provided. The Department believes that for all disabled students, including students who are deaf or hard of hearing, placement in a regular classroom is appropriate for a child if the individual child’s IEP can be implemented satisfactorily in the regular classroom, with the use of appropriate supplementary aids and services. For many students who are deaf, however, regular class placement is not an appropriate placement option, because their IEPs cannot be satisfactorily implemented in that setting, even with appropriate supplementary aids and services. In determining the services that are appropriate for an individual child, care should be taken to ensure that the affective domain and the connotations for social-emotional development are considered as well as appropriate access to the general curriculum.

“Similarly, environmental access is not simply unidimensional but implies access to the whole range of activities encompassed in academic, extracurricular, and other nonacademic activities. In order to serve students who are deaf or hard of hearing appropriately, program administrators should have a clear understanding of the interplay between appropriately addressing the unique communication and related needs of deaf and hard of hearing students and the setting in which individual children can be appropriately serviced.

“IDEA does not use the terms ‘mainstreaming’ or ‘full inclusion.’ Nor does IDEA require that every disabled child, regardless of individual abilities and needs, be placed in a regular classroom. Thus, the IDEA regulations require public agencies to make available a continuum of alternative placements to meet the needs of children with disabilities, including students who are deaf or hearing impaired, for special education and related services. The options on this continuum include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. (34 CFR §300.551)

“IDEA ‘97 specifically requires that IEPs for students with all disabilities, including students who are deaf or hearing impaired, focus the IEP on facilitating the student’s meaningful involvement and progress in the general curriculum, that is, the same curriculum as for nondisabled students. Individual consideration of a child’s needs, whether they are for self-contained or regular classes, must be made on an individual basis.”

Page Eight

In 8) change "free, appropriate education" to "free appropriate public education (FAPE)".

In 9) change "full support services" to "appropriate support services" and "educational settings" to "appropriate settings".

In 10) change "full access to all programs" to "appropriate access to programs".

Page 12

Paragraph two, sentences two and three, change "must" to "should".

Delete section titled "Issue IX. Educators should be knowledgeable about the need for environmental access and access to technology." and replace with:

"Issue IX. Educators should be knowledgeable about the need for environmental access and access to assistive technology.

"To enable students who are deaf and hard of hearing to have appropriate access to communication and information within the school setting, appropriate classroom adaptations and use of assistive technology must be considered during the IEP process. The IDEA Amendments of 1997 recognize the importance of assistive technology devices and services for students with disabilities. Therefore, the special factors provision in the IEP section of the IDEA Amendments of 1997, described starting on page three of this document, require IEP teams to consider each disabled student's need for assistive technology devices and services in IEP development. (IDEA §614(d)(3)(B)(v) and 34 CFR §300.346(a)(2)(v))

"The IDEA regulations require that each public agency ensure that assistive technology devices and services are made available to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services. Further, on a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE. (34 CFR §300.308)

"Each public agency is required to ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (34 CFR §300.303)"

“Application and maintenance of assistive technology and assistive devices should be considered in at least the following areas:

- management of the visual environment and reduction of visual distractions
- control and reduction of reverberation and background noise
- amplification of speech
- enhancement of presentations of information

“Two elements play a decisive role in determining the success of a deaf or hearing impaired student’s accessibility to language and learning in an educational setting: design and optoacoustic technology, both assistive and instructional. These are discussed in greater detail in later chapters (Massachusetts Department of Education, 1989, p. 39).

Delete paragraph beginning “Issues of access to technology . . .” Department of Education interpretation of the Americans with Disabilities Act (42 U.S.C. §12101 *et seq.*) and of Section 504 of the Rehabilitation Act, as amended (29 U.S.C. §794) is currently under review as a result of recent Supreme Court case law.

Page 17

Issue II. The education agency should ensure that all education personnel have the knowledge necessary to fulfill their roles relative to students who are deaf or hard of hearing.

Second paragraph, replace “P.L. 101-476” with “P.L. 105-17.”

Second paragraph, third sentence, change "placement decisions be made based on the dictates of the IEP" to "placement decisions, among other factors, be made based on the child's IEP".

Page 21

Procedures for Early Identification of Hearing Loss

Before the first paragraph, insert:

“Identification of hearing loss by age six months, followed by appropriate intervention by age six months, is the most effective strategy for the normal development of language in deaf and hard of hearing infants and toddlers. (Arehart & Yoshinaga-Itano, 1999) This conclusion, combined with advances in newborn hearing screening technology, has intensified efforts to provide newborn and infant hearing screening. As a result, numerous states and localities have set up newborn hearing screening and intervention programs. In addition, in November 1999, a federal law, the Newborn and Infant Hearing Screening and Intervention Act, was passed. This law helps states voluntarily set up newborn hearing screening and intervention programs.”

Continue with “Johnson, Mauk, . . .”

Page 29

Delete section titled “Achievement of Outcomes” (on the grounds that the narrative does not reflect the general curriculum requirements of IDEA) and replace with:

“Achievement of Outcomes

“The expectations for outcomes should be the same for students who are deaf and hard of hearing as for all students.”

“The IDEA Amendments of 1997 expect students to be involved in and progress in the general curriculum (IDEA §614(d)(1)(A)(i)(I) and 34 CFR §300.347(a)(1)(i), which is described in the IDEA regulations as ‘the same curriculum as for nondisabled children.’ (34 CFR §300.347(a)(1)(i))

“The Amendments also expect preschool children to participate in appropriate activities. (IDEA §614(d)(1)(A)(i)(II) and 34 CFR §300.347(a)(1)(ii))

“IEPs must contain measurable annual goals related to meeting the child’s needs that result from the disability to enable the child to be involved in and progress in the general curriculum and related to meeting each of the child’s other educational needs that result from the child’s disability. (IDEA §614(d)(1)(A)(ii) and 34 CFR §300.347(a)(2)

“IEPs must also include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

- to advance appropriately toward attaining the annual goals,
- to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities, and
- to be educated and participate with other children with disabilities and nondisabled children in the general curriculum and in those activities.

(IDEA §614(d)(1)(A)(iii), 34 CFR §300.347(a)(3))

“Assessments to measure attainment of outcomes must be fair and unbiased in both content and administrative procedure. Tests and other assessment instruments should be tailored to measure the student’s attainment of outcomes. The method by which the assessment is conducted should fairly measure that attainment. For example, if determined appropriate for the student, instructions must be given in the student’s primary language or communication mode. In addition a student’s outcomes should be compared objectively to outcomes of both hearing and non-hearing peers.

“The IDEA Amendments of 1997 require that children with disabilities be included in general State and districtwide assessment programs, with appropriate accommodations and modifications in administration, if necessary. (IDEA §612(a)(17)(A) and 34 CFR §300.138(a)) The child’s IEP must include a statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment. If the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), the IEP must include a statement of why that assessment is not appropriate for the child and how the child will be assessed. (IDEA §614(d)(1)(A)(v) and 34 CFR §300.347(a)(5))”

Continue with “Follow-up Studies of Outcomes.”

Page 32

Second paragraph, sentences two to four: Delete "One area where education agencies often violate the intent of the law is in the use of inadequately skilled personnel during the assessment process. Another area is in the lack of constituting an appropriate multidisciplinary team. Committees and placement teams routinely fall into these and other common pitfalls."

Replace with: “Assessments conducted for the purpose of determining a child's initial eligibility for special education or continued eligibility for special

education services should be conducted by trained and knowledgeable professionals who meet appropriate State qualification standards.”

Page 34

First paragraph, sentence one: change "must be conducted" to "should be conducted".

First paragraph, sentence two, change "Evaluators must have experience" to "Evaluators should have experience".

First paragraph, sentence two, delete “or they may make serious errors in placement (See Placement chapter).” Evaluators don't determine placement, but are part of the team that makes the eligibility determination.

Second paragraph, sentence one, change "alternative forms of assessment" to "alternative forms of assessment, if appropriate".

Page 35

Delete second full paragraph beginning with “If evaluators do not have . . .” and replace with:

“If evaluators do not have the skills listed previously or do not take into consideration the information above, then inaccurate, invalid, or incomplete information may result. IDEA states that each each public agency shall insure, at a minimum, that the following requirements are met:

- Tests and other evaluation materials used to assess a child under Part B of the Act-
 - are selected and administered so as not to be discriminatory on a racial or cultural basis.
 - are provided and administered in the child’s native language or other mode of communication, unless it is clearly not feasible to do so. (IDEA §614(b)(3)(A) and 34 CFR §300.532(a)(1)
 - include a variety of assessment tools and strategies used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate

activities) that may assist in determining whether the child is a child with a disability and what the child's IEP should contain. (IDEA §614(b)(3)(B)(i)-(iii) and 34 CFR §300.532(c)(1))

- Any standardized tests that are given to a child-
 - have been validated for the specific purpose for which they are used.
 - are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. (IDEA §614(b)(3)(B)(i)-(iii) and 34 CFR §300.532(c)(1))
- Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (34 CFR §300.532(d))
- Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). (34 CFR §300.532(e))
- No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. (IDEA §614(b)(2)(B) and 34 CFR §300.34, 34 CFR §300.532(f))
- The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (IDEA §614(b)(3)(C) and 34 CFR §300.532(g))
- The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (34 CFR §300.532(h))
- Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (34 CFR §300.532(i))

- Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the child. (IDEA §614(b)(3)(D) and 34 CFR §300.532(j))”

Continue with “Additionally, to accommodate a variety . . .”

Page 36

Second full paragraph, sentence one, change "examiners must possess" to "examiners should possess."

Second full paragraph, sentence three, delete "It is never appropriate . . ." and replace with "It is never appropriate to use any single test or procedure as the sole criterion for determining the appropriate educational program for a child."

Second full paragraph, last sentence, change "particularly by parents and teachers" to "particularly input from parents and teachers."

Issue III. Individuals involved in administering assessment tools to students who are deaf or hard of hearing need to be proficient in the student’s communication mode, style, or language.

Delete first sentence starting with “The 20 year precedent” and replace with:

“The 25 year precedent which PL 94-142 set, reinforced by PL 101-476 and later by PL 105-17, specify that a student has the right, as part of an evaluation, to tests and other evaluation materials provided and administered in the student’s native language or other mode of communication, unless clearly not feasible to do so. (IDEA §614(b)(3)(A)(ii) and CFR §300.532(a))”

Continue with “For hearing students . . .”

Page 38

Issue IV. Educators should assess the special language abilities and preferences of each student who has a hearing loss.

Paragraph two, sentence one, change "communication mode at all times," to "communication mode,".

Paragraph two, sentence three, change "evaluators of language

ability must assess:" to "evaluators of language ability need to assess:".

Page 43

Second full paragraph, sentence one, change "Education agencies must determine" to "Education agencies need to determine".

Second full paragraph, sentence two, change "is insufficient." to "may be insufficient."

Second full paragraph, last sentence, change "additional testing should be administered" to "additional testing or other assessments should be administered".

Fourth full paragraph, sentence two, change sentence "The local education agency is responsible . . . and should ensure" to "The educational agency is responsible for the education of all children with disabilities, regardless of the setting in which their IEPs are implemented, and must ensure" then continue with rest of sentence. 34 CFR §300.347(a)(5) and (a)(7)

Delete section starting: **“Issue VII. Administrators should ensure that individuals from multiple disciplines with specific expertise in the area of hearing loss are on the multidisciplinary team.”**

and replace with:

“Issue VII. Public agencies should ensure that included among the qualified professionals who evaluate and/or re-evaluate a child are individuals who are knowledgeable about the educational needs of children with hearing loss. Further, public agencies should ensure that the group that determines a child's placement includes individuals who are knowledgeable about the educational needs of children with hearing loss.

“The qualified professionals that evaluate or re-evaluate a child in accordance with 34 CFR §300.532-300.535 and 34 CFR §300.536 respectively should be knowledgeable about the educational needs of children with hearing loss. Such knowledge is essential to determine whether a child has a disability and is in need of special education and related services, and to determine the child’s educational needs. Additionally, the group that decides placement in accordance with 34 CFR §300.552 should include individuals who are knowledgeable about the educational needs of children with hearing loss.

Special problems exist in association with public agencies or groups that do not include such individuals. Often, these groups include only one individual who has any knowledge of hearing loss, that is, either an audiologist or speech pathologist. Although other individuals are or may be involved, such as a regular education teacher or psychometrist, these individuals may not necessarily be skilled in dealing with the educational needs of children with hearing loss. Therefore, a public agency or group may lack a range of knowledge of the needs of these students. No assessment measures should be given, no results should be interpreted, and no programming decisions should be made by one individual alone. In order to ensure that all students with hearing losses receive appropriate evaluation, re-evaluation, and placement, the qualified professionals that evaluate and re-evaluate a child and the group that determines placement should include individuals with knowledge of the educational needs of children with hearing loss. 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.”

Page 49

Delete first three full paragraphs and replace with:

“The need to ensure the availability of a Free, Appropriate, Public Education (FAPE) for students who are deaf or hard of hearing in the Least Restrictive Environment (LRE) is acknowledged in the special factors section of the IEP provisions of IDEA ‘97 and is discussed in policy guidance developed by the Office of Special Education and Rehabilitative Services (OSERS), published at 57 Fed. Reg. 49274 (Oct. 30, 1992). This guidance was widely disseminated as an attachment to OSEP memorandum 94-15, issued February 4, 1994 to all chief state school officers by the Office of Special Education Programs.

“IDEA requires that the IEP Team, in developing an IEP for a student 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.

“This policy guidance is reflected in the IDEA Amendments of 1997 at §614(d)(3)(B)(iv) and 34 CFR §300.346(a)(2)(iv) (Mar. 12, 1999).

“The policy guidance further stated:

“In addition, the particular needs of an individual child may require the consideration of additional factors. For example, the nature and severity of some children’s needs will require the consideration of curriculum content and method of curriculum delivery in determining how those needs can be met. Including evaluators who are knowledgeable about these specific factors as part of the multidisciplinary team evaluating the student will help ensure that the deaf student’s needs are correctly identified.

“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. (57 Fed. Reg. at 49275)”

“It is important to point out that the IEP team may or may not determine placement. IDEA '97 specifies that the placement decision must be made by a group of persons, including the parent, and this group must be knowledgeable about the child, the meaning of evaluation data, and placement options. 34 CFR §300.552(a) and §300.501(c). As indicated in Appendix A, question 37, the IEP team also could function as the placement team, provided that the above requirements are met. According to question 37, a public agency may use the IEP team to make the placement decision for a child, so long as the group making the placement decision meets the requirements of §300.552 and §300.501(c), which requires that the placement decision 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. (64 Fed Reg. at 12479 (Mar. 12, 1999))”

Page 50

Delete section titled, “Issue II. Educators should consider the student’s and parents’ preference and choice in all aspects of program options, placement, and IEP development.” and replace with:

“Issue II. Educators should consider the student’s and parents’ preference and choice in development of the IEP, determining the instruction and services that are appropriate for a child, and in considering the setting in which the child’s IEP should be implemented.

“Educators should consider and support the placement preference of the student, if appropriate, and must consider input from the child’s parents who are members of the group that makes the placement decision. Parents, families, and involved professionals need to be partners in the development or selection of service elements and options. A knowledgeable and involved parent is essential to any child’s development. The IDEA Amendments of 1997 require public agencies to ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. (IDEA §614(f) and 34 CFR §300.501(c)(1) and 34 CFR §300.552(a)(1)) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. (34 CFR §300.503(c)(3))

“A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents’ participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of §300.345(d). (34 CFR §300.501(c)(4)) The public agency must make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English. (34 CFR §300.501(c)(5))

“Parents may prefer to have their child enrolled in a residential program, a day program for children who are deaf or hard of hearing, a center or magnet school within a local or district school system, or in a neighborhood school. Even though parents are an essential part of the group that makes the placement decision, the public agency responsible for the student’s education is responsible for ensuring that the instruction and services determined appropriate for a child can be implemented satisfactorily in a particular setting. Regardless of the placement, parents need to understand and share in the plan to provide the out-of-school communication and activities that determine so much of what comprises natural childhood development. The opportunity to interact socially with similarly aged peers with whom a child can communicate, both freely and easily, is an important component of natural childhood development. Members of the IEP team need to be sensitive to the importance of these out-of-school hours when a child is arriving at or leaving school. The ability of a

program to provide physical (e.g., adjusted transportation schedules) and communication access (e.g., direct access to staff who communicate in the child's preferred language or mode of communication) is a crucial aspect parents and public agencies must consider."

Page 52

Issue V. Educators should be aware of the availability of interpreters and the need to monitor quality of the services they provide.

First paragraph, delete sentence "Educators should never mistake or misuse interpreters . . ." and insert "Even where a student who is deaf or hard of hearing is assigned an interpreter, the agency responsible for the student's education still must insure that the student receives required instruction and services from appropriately certified personnel. In some instances, if State standards so specify, the student would be required to receive required instruction and services from individuals certified in teaching deaf and hard of hearing students."

First paragraph, next to last sentence, change "presence of an interpreter never precludes" to "presence of an interpreter should not preclude".

Third paragraph, sentence one, change "presence of trained teachers of the children who are deaf does not preclude" to "presence of trained teachers of the children who are deaf should not preclude" and insert at end of sentence "if determined appropriate for the student by the IEP team."

Issue VI. Educators should understand the importance of social and emotional development of students who are deaf or hard of hearing.

Sentence one, delete "Children who are deaf or hard of hearing have a right to an education . . ." and replace with "IDEA '97 now makes explicit that IEP teams for deaf and hearing impaired students must address their unique communication and related needs."

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Issue VII. Educators should ensure the availability of age appropriate peers who are deaf or hard of hearing.

First paragraph, sentence two, change "Placement committees" to "The group that makes the placement decision".

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Issue XI. Educators should ensure appropriate access to support services for students who are deaf or hard of hearing.

First paragraph, sentence one, change "All students who are deaf or hard of hearing should have access" to "All students who are deaf or hard of hearing, depending on individual needs, should have access".

Issue XIII. Educators should ensure the availability of technology for students who are deaf or hard of hearing.

Modify to say:

“Issue XIII. Educators should ensure the availability of appropriate assistive technology for students who are deaf or hard of hearing.”

Before the first sentence starting “Students who are deaf or hard of hearing . . .” insert:

“As mentioned on page four of this Addendum, consideration of the assistive technology needs of the child in IEP development is required by the IDEA Amendments of 1997. IDEA states that, in the development of the IEP ‘ . . . the IEP Team . . . shall consider . . . whether the child requires assistive technology devices and services.’ (IDEA §614(d)(3)(B) and 34 CFR §300.346(a)(2))”

Continue with the first sentence, “Students who are deaf or hard of hearing . . .”

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Summary

First paragraph, sentence two, change "standard curriculum" to “general curriculum, that is, the same curriculum as for nondisabled students,”.

First paragraph, sentence three, change "a broad continuum" to “a continuum”.

First paragraph, sentence four, delete "These include residential and/or day placement . . ." and replace with:

“The continuum of alternative placements includes:

"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. (34 CFR §300.551)"

First paragraph, next to last sentence after "classrooms for students who are deaf or hard of hearing within a public school setting," modify next phrase to say "and placement in regular education classes with children who are hearing with or without provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement." Delete following sentence.

Second paragraph, sentence one, change "is to determine an appropriate placement setting for the student," to "is to determine the services that are appropriate for the student,".

Second paragraph, sentence three, change "placement and programming" to "the services". After sentence three add "Placements are determined based on the needs of individual children as identified on their IEPs (CFR §300.552(b)(2)), and the IDEA Amendments of 1997 provide that parents of children with disabilities are members of any group that makes decisions on the educational placement of their child. (IDEA §614(f) and 34 CFR §300.501(c)) Parents should become aware of the existence of the full range of placement options so that they may play a more active role in decision making on behalf of their child." Continue with rest of paragraph.

Page 78

Definition of "Deaf," delete first sentence and replace with "Deafness: a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance. (34 CFR §300.7(c)(3)) "

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Definition of “Hard of hearing,” delete first sentence and replace with “an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in §300.7(c)(3). (34 CFR §300.7(c)(5))”

Definition of “Hearing impaired,” delete first sentence and replace with “Hearing impairment: an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in §300.7(c)(3). (34 CFR §300.7(c)(5))”

Page 80

Definition of “individualized education program (IEP),” change to "A written statement for a child with a disability that is developed, reviewed and revised in a meeting in accordance with 34 CFR §§300.341-300.350 of the regulations for Part B of IDEA."

Definition of “individualized family service plan (IFSP),” change to "A written plan for providing early intervention services to a child eligible under Part C of IDEA and the child's family."

Page 81

Definition of “least restrictive environment,” change "P.L. 101-476 (IDEA)" to "P.L. 105-17 (IDEA) and the predecessor laws." Add at end of definition "IDEA '97 adds an additional requirement at §612(a)(5)(B) as follows: 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 LRE requirement described above."

Delete definition of “mainstreaming.” Mainstreaming is not a term used under Federal law and is not synonymous with the Federal LRE provision.

Delete definition of “Native Language” and replace with “for an individual with deafness, the mode of communication that is normally used by the individual, such as sign language or oral communication. (34 CFR §300.19(b))

Reference

Arehart, K. and Yoshinaga-Itano, C. (1999). The Role of Educators of the Deaf in the Early Identification of Hearing Loss. *American Annals of the Deaf*, 144(1), 19-23.

Appendix Addendum
IDEA Regulations for §614(d)(3)

Sec. 300.346 Development, review, and revision of IEP.

(a) Development of IEP. (1) General. In developing each child's IEP, the IEP team, shall consider--

(i) The strengths of the child and the concerns of the parents for enhancing the education of their child;

(ii) The results of the initial or most recent evaluation of the child; and

(iii) As appropriate, the results of the child's performance on any general State or district-wide assessment programs.

(2) Consideration of special factors. The IEP team also shall--

(i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) 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; and

(v) Consider whether the child requires assistive technology devices and services.

(b) Review and Revision of IEP. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in paragraph (a) of this section.

(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.

(d) Requirement with respect to regular education teacher. The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of--

(1) Appropriate positive behavioral interventions and strategies for the child; and

(2) Supplementary aids and services, program modifications or supports for school personnel that will be provided for the child, consistent with Sec. 300.347(a)(3).

(e) Construction. Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

(Authority: 20 U.S.C. 1414 (d)(3) and (4)(B) and (e))

IDEA Regulations Attachment 1 - Analysis of Comments and Changes:

(Referring to the interpretation of §300.346 (a)(2)(iv)):

“ . . . LEAs are not relieved of their responsibilities to ensure that paragraph (a)(2)(iv) of this section is implemented consistent with the published policy guidance on Deaf Students Education Services, and that the full range of communication and related needs of deaf and hard of hearing students are appropriately addressed in evaluation, IEP, and placement decisions under these regulations.

“The Senate and House Committee Reports on Pub. L. 105-17 reinforce this principle in their statements that “the IEP team should implement the [new statutory] provision in a manner consistent with the policy guidance entitled “Deaf Students Education Services” published in the Federal Register (57 FR 49274, October 30, 1992) by the Department.” S. Rep. No. 105-17, p. 25., H.R. Rep. No. 105-95, p. 104 (1997). The Department fully expects LEAs to ensure that Sec. 300.346(a)(2)(iv) of these regulations is implemented consistent with these statements.”

64 Fed. Reg. 12590 (Mar. 12, 1999)