



August 30, 2005

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RE: Comments on IDEA Proposed Regulations:

The American Academy of Audiology submits the following comments in response to the Notice of Proposed Rulemaking (NPRM) (70 Fed. Reg. 35781-35892, June 21, 2005) on the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004.

The Academy appreciates the Department of Education's dedication towards better outcomes for deaf and hard of hearing children and all children with disabilities.

The below comments focus on areas of particular interest to audiologists serving the needs of children with hearing loss. In these comments, the Academy provides supportive comments to specific sections of the proposed rule and recommends modifications to other sections.

§300.29 Native language.

(a) As used in this part, the term native language, if used with reference to an individual of limited English proficiency, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

Academy Comment: We are pleased that the Department has retained this language. Among other reasons, it is important to clarify that sign language is the native language of many children who are deaf.

§300.24 Related services.

(b) *Exception.* Related services do not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of that device.

Academy Comment and Recommendation: Per a separate Academy comment letter to the U.S. Department of Education, dated August 12, 2005, the Academy supports the language exempting surgically implanted medical devices, and specifically programming/mapping of cochlear implants, for children. However, we are concerned that misinterpretation is already occurring with regard to “optimization” of the device functioning and request that OSEP provide clarification that optimization only refers to the device functioning itself and not access to related services such as speech therapy, access to assistive technology such as an FM system, or monitoring and minor troubleshooting of the device function that is required under proper functioning of hearing aids (34 CFR 300.303)

§300.24 Related services.

(b)(1) **Audiology** includes-

- (i) Identification of children with hearing loss;
- (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- (iv) Creation and administration of programs for prevention of hearing loss;
- (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

Academy Recommendation: Add: “(vii) Determination of classroom and other building-based modifications to optimize acoustical environments to allow perception of verbal instruction and communication with peers and professionals in the classroom setting.”

Rationale: Acoustical access to information is supported by a national standard, ANSI/ASA S12.60-2002. With the development of this national standard defining appropriate classroom acoustics, the advent of greater numbers of children with hearing loss being included in the regular setting, and the continuing inability of hearing

technology to overcome inappropriate levels of background noise and reverberation in the classroom, it is critical that this provision be included in the definition of audiology. Appropriate acoustics are necessary for children with hearing loss to be able to access verbal instruction by means other than sign language.

§300.34 Related services.

(c)(4) Interpreting services, as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, and sign language interpreting services.

Academy Recommendation: Change to:

(c)(4) Interpreting services, as used with respect to children who are deaf or hard of hearing:

(i) means services provided by a qualified interpreter, one who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary; and

(ii) includes oral transliteration services, cued language transliteration services, American Sign Language interpreting services and sign language systems interpreting services and communication access real time translation (CART).

Rationale: This provides needed clarity for this new section and a uniform standard for the States. The term “qualified” interpreter has been defined by the U.S. Department of Justice with respect to the obligations of State and local governments under Title II of the ADA. That definition focuses on the ability of the interpreter in a particular interpreting context to ensure effective communication between the public entity and the individual with a disability. Interpreters are skilled professionals that must be able to communicate speech occurring in the educational setting in a means that meets a student’s communication mode and language level needs while being impartial both receptively and expressively so as not to provide personal bias or misinformation to the child’s educational experiences.

A similar definition is needed for the IDEA because effective communication is essential in the context of educating our children who are deaf or hard of hearing. Furthermore, the Commission on Education of the Deaf (COED), in its final report, *Toward Equality* (Government Printing Office, 1988), pointed out the many problems related to interpreting in PreK-12 settings. Few of those problems have been solved in the years since that landmark report was issued.

§300.104 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

Comment: We are pleased that the Department proposes to retain this language. It is important to clarify that parents cannot be held liable for costs if their child is placed in a residential setting.

§300.105 Assistive technology; proper functioning of hearing aids.

(a)(1) Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if requires as part of the child's—

- (i) special education under §300.36;
- (ii) related services under §300.34; or
- (iii) supplementary aids and services under §300.38 and §300.114 (a)(2)(ii).

(2) 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.

Academy Comment: We are pleased that the Department proposes to retain this section, as assistive technology is necessary for many children served by IDEA.

§300.105 Assistive technology; proper functioning of hearing aids.

(b) Each public agency must ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

Academy Recommendation: Change to:

(b) Each public agency must ensure that the hearing aids *and other hearing enhancement devices* worn in school by children with hearing impairments, including deafness, are functioning properly.

Rationale: The addition of “and other hearing enhancement devices” will also ensure the proper functioning of personal and classroom amplification systems in addition to hearing aids. Assuring proper functioning of both hearing aids and other hearing enhancement devices is critical to the speech, language, hearing development, and educational achievement under IDEA.

§300.115 Continuum of alternative placements.

(a) Each public agency must 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 § 300.38 (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.

Academy Comment: We are pleased that the Department proposes to retain this language. This is in accordance with the history of IDEA and Congressional intent around the passage of H.R. 1350.

§300.116 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-

(1) Is determined at least annually;

...

(3) Is as close as possible to the child's home, unless the parent agrees otherwise;

(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, unless the parent agrees otherwise;

Academy Comments: *Placement determined annually:* We are pleased that the Department proposes to retain this language. Notwithstanding that pilot programs may be established in a limited number of States to provide for the possibility that an IEP can remain unchanged for a period of three years, the placement of a child with a disability should be determined annually.

Unless parent agrees otherwise: We are pleased that the Department is proposing this new language. The Academy agrees with the Department's clarification that parents can

send their child to a charter school, magnet school, or other specialized school without causing a violation of the LRE mandate.

§300.118 Children in public or private institutions.

Except as provided in Sec. 300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), an SEA must ensure that Sec. 300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

Academy Comment: We are pleased that the Department proposes to retain this language. The continuum of alternative placements has been a long-standing and essential feature of IDEA.

§300.156 Personnel qualifications.

(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

Academy Recommendation: At the end of this section, add:

SEAs shall consult with LEAs, other State agencies, the disability community, and professional organizations to determine the appropriate qualifications for related services providers, including the use of consultative, supervisory, and collaborative models to ensure that students with disabilities receive the services described in their IEPs.

Rationale: Qualifications that are needed to provide the appropriate quality and quantity of services to students with disabilities have been well established by professional organizations, as well as other State agencies. Such standards are critical to State Education Agencies as they consider appropriate qualifications for related service providers. These qualifications should ensure that students with disabilities receive the quality and quantity of services necessary for involvement and progress in the general curriculum, especially the Adequate Yearly Progress criteria for No Child Left Behind.

Congress recognized the need for high standards, as stated in the preamble to the proposed regulations: “Conferees intended for SEAs to establish rigorous qualifications for related services providers to ensure that students with disabilities receive the appropriate quality and quantity of care. SEAs are encouraged to consult with LEAs, other State agencies, the disability community, and professional organizations to determine the appropriate qualifications for related services providers.”

Such consultation also promotes consistency within a state among certifications or licenses for different settings of practice and guards against the creation of a two-tiered system whereby children with disabilities in the schools receive services provided by personnel less qualified than those in settings such as hospitals and private clinics where higher standards are mandated.

§300.136 Personnel qualifications.

(2) Ensure that related services personnel who deliver services in their discipline or profession __

...

(ii) Have not had certification or licensure requirement waived on an emergency, temporary, or provisional basis; and

Academy Recommendation: Add new (iii) following the section above to read:

(iii) “Be supervised by qualified personnel to the extent necessary to ensure appropriate quality of service if certification or licensure requirements for individuals have been waived, and”

Re-number current (iii) to (iv).

Rationale: It is critical that State education agencies establish appropriate qualifications for related service providers; as such practice is in the best interest of the children in meeting educational goals. It is widely accepted that shortages occur in many related service fields. Insufficiency of the workload creates a reality in which LEAs are forced to hire professional not meeting existing State standards in order for services to be provided to students. Therefore, (iii) as stated above should be added to address the quality of services provided by professionals not meeting existing State standards.

§ 300.156 Personnel qualifications.

(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119 (a)(2) of the ESEA.

Academy Recommendation: Replace the following as (c) and re-letter current (c) and subsequent sections:

(c) Related services personnel will be considered to have met the qualifications in paragraph (b)(1) of this section if such personnel:

(1) Hold an academic degree consistent with their profession’s national certification or with their state’s license to practice their profession in non-educational settings;

- (2) *Demonstrate satisfactory progress toward full certification in the schools as prescribed by the State; and*
- (3) *Assume related services personnel functions for a specified period of time not to exceed three years.*

Rationale: Personnel qualifications provisions for related services personnel state that related services personnel must “have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis” (§300.156(b)(2)(ii)). However, there is no further explanation of the terms emergency, temporary, or provisional to guide State Education Agencies.

This same prohibition of emergency, temporary, or provisional certification or licensure was applied in an earlier section of the proposed regulations (§300.18(b)(1)(ii)) to requirements for a highly qualified special education teacher. However, the ensuing section (§300.18(b)(2)) clarifies the circumstances under which a special education teacher participating in an alternate route to certification program is considered to meet the standards of the previous section. The Academy believes that similar clarification, as indicated above, needs to be provided for the related services personnel section.

The Academy believes that Congress did not intend to exclude related services providers who met the core knowledge and skills of their profession but lacked certain coursework specific to the schools of a particular state. For example, *Alaska* requires for all its teaching and special services certificates three semester hours of approved Alaska studies and three semester hours of multicultural education or cross-cultural communications. *Connecticut* has a universal requirement of six semester hours in professional education courses such as curriculum development. The new section recommended above provides necessary clarification that is consistent with the treatment of highly qualified special education teacher in an earlier section.

§300.165 Public participation.

- (a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.
- (b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7).

Academy Recommendation: We do not agree with the removal of current §300.280-284 and recommend these provisions be retained:

§ 300.280 Public hearings before adopting State policies and procedures.

Prior to its adoption of State policies and procedures related to this part, the SEA shall--

- (a) Make the policies and procedures available to the general public;*
- (b) Hold public hearings; and*
- (c) Provide an opportunity for comment by the general public on the policies and procedures.*

§ 300.281 Notice.

- (a) The SEA shall provide adequate notice to the general public of the public hearings.*
- (b) The notice must be in sufficient detail to inform the general public about--*
 - (1) The purpose and scope of the State policies and procedures and their relation to Part B of the Act;*
 - (2) The availability of the State policies and procedures;*
 - (3) The date, time, and location of each public hearing;*
 - (4) The procedures for submitting written comments about the policies and procedures; and*
 - (5) The timetable for submitting the policies and procedures to the Secretary for approval.*
- (c) The notice must be published or announced--*
 - (1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and*
 - (2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.*

§ 300.282 Opportunity to participate; comment period.

- (a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.*
- (b) The policies and procedures must be available for comment for a period of at least 30 days following the date of the notice under Sec. 300.281.*

§ 300.283 Review of public comments before adopting policies and procedures.

Before adopting the policies and procedures, the SEA shall--

(a) Review and consider all public comments; and

(b) Make any necessary modifications in those policies and procedures.

§ 300.284 Publication and availability of approved policies and procedures.

After the Secretary approves a State's policies and procedures, the SEA shall give notice in newspapers or other media, or both, that the policies and procedures are approved. The notice must name places throughout the State where the policies and procedures are available for access by any interested person.

Rationale: Public input on all aspects of IDEA is critical in order to develop sound policy. Eliminating these requirements limits parents' and other stakeholders' rights to participate in the development of important public policy.

§ 300.226 Early intervening services.

(b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include--

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

Academy Recommendation: Change to:

(b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include--

(1) Professional development (which may be provided by entities other than LEAs) for teachers, *related service providers*, and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

Rationale: Related services providers, including speech-language pathologists, audiologists, and others, are the staff members referred to as "pupil services personnel" in the No Child Left Behind Act and are frequently called upon to work with at-risk students. They also provide consultation to teachers and other school staff on instructional and behavioral strategies to better serve students in need. Specifying related services personnel as providers of early intervening services clarifies that students in need of academic and behavioral services shall receive them from the expertise available in the school building, and further encourages collaboration between special and general education staff.

§300.320 Definition of individualized education program.

(a)(3)(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

Academy Recommendation: Retain language from current §300.347 (a)(7)(ii): “at least as often as parents are informed of their nondisabled children’s progress. . .”

Rationale: This will help parents track the progress of their child.

§300.320 Definition of individualized education program.

(a)(3)(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

Academy Recommendation: Retain language from current §300.347 (a)(7)(ii)(B): *[How the child’s parents will be regularly informed . . . of . . .] The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.*

Rationale: Parents need this information so that they can work with their child’s teachers throughout the year to help ensure that goals are reached by the end of the year.

§300.322 Parent participation.

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place.

Academy Recommendation: We object to the proposed elimination of the following italicized language from the provision and recommends that it be retained:

Current §300.345 (d): (d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. *In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as -*

- (1) Detailed records of telephone calls made or attempted and the results of those calls;*
- (2) Copies of correspondence sent to the parents and any responses received; and*
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.*

Rationale: Given the importance of parent attendance at IEP meetings, the burden on public agencies to record their attempts at contacting parents is minor.

§300.322, Current §300.345 (e): Use of interpreters or other action, as appropriate.

The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Academy Recommendation: We object to the proposed elimination of this section and recommend it be retained as 300.322 (e), and current (e) and subsequent sections renumbered.

Rationale: As recognized by the Department (Fed. Reg. 35783) IDEA §607 (b) states: “The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this title that . . . procedurally or substantively lessens the protections provided to children with disabilities under this title, as embodied in regulations in effect on July 20, 1983 . . . except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.”

The 1983 regulations include the interpreter provision. IDEA 2004’s legislative history does not indicate that Congress had a “clear and unequivocal intent” to “lessen the protection[s]” provided under this title by eliminating the requirement for interpreters. Although this clause refers to the protections provided to children, any diminution of parents’ rights is a diminution of children’s rights as well, since the parents’ ability to act on their child’s behalf is reduced.

§300.322 Parent participation.

(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including—

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place.

Academy Comment: We are pleased that the Department proposes to retain this language. Parent participation in IEP development is critical, and these provisions will facilitate parent participation.

§300.324 Development, review, and revision of IEP.

- (a)(1) In developing each child’s IEP, the IEP Team must consider—
- ...
- (iii) The results of the initial or most recent evaluation of the child;

Academy Recommendation: We object to the proposed elimination of current §300.346 (a)(1)(iii) and recommends that it be retained: *(iii) as appropriate, the results of the child's performance on any general State or district-wide assessment programs.*

Rationale: This is critical in light of the alignment of IDEA with No Child Left Behind (NCLB). Since all children are expected to become proficient as measured by NCLB assessments, the IEP Team must consider assessment results and provide special education and related services so that the child can become proficient.

§300.324 Development, review, and revision of IEP.

(a)(2)(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;

Academy Recommendation: Add:

(A) When considering the communication needs of a deaf or hard of hearing child the IEP Team shall ensure that:

(I) the child's language and communication skills are assessed;

(II) the child receives educational programming and services designed to develop the child's language (expressive and receptive) and other academic skills;

(III) the child receives language and communication access to educational information and interactions with peers and professional personnel, including direct communication; and

(IV) the child's social, emotional, and cultural needs are addressed.

(B) Consider the qualifications of the staff delivering the child's educational program. At a minimum staff delivering the child's educational program must have proficiency in, or be able to accommodate for, the child's language and communication mode.

Rationale: For (A): Language assessment, development, and access are among the most important components of an educational program for a deaf or hard of hearing child. (National Deaf Education Project, The Educational & Communication Needs of Deaf and Hard of Hearing Children: A Statement of Principle Regarding Fundamental Systemic Educational Changes, Gallaudet University, 2000.) Case law requires LEAs to provide communication in the child's communication mode. This regulation will help guide IEP Teams as to how best meet the educational needs of deaf and hard of hearing children. For (B): Staff must be able to communicate with the child.

§300.324 Development, review, and revision of IEP.

(a)(2)(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;

Academy Recommendation: We request that the Department provide guidance on the implementation of this section by stating “This section is to be implemented in a manner consistent with the policy guidance ‘Deaf Students Education Services’” (57 Red. Reg. 49274-49276, October 30, 1992).

Rationale: This policy guidance spells out specific needs of deaf students and how public agencies may be able to meet them.

§300.324, Current §300.346 Development, review, and revision of IEP.

...

Current §300.346 (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 [special] factors described in paragraph (a) of this section.

Academy Recommendation: We object to the proposed elimination of this section and recommend that it be retained.

Rationale: The Department asserts that IDEA 2004 does not retain the requirement for consideration of special factors in IEP review and revision. However, IDEA '97 §614(d)(4) Review and revision of IEP and IDEA 2004 §614(d)(4) Review and revision of IEP are virtually identical, and there is no evidence that Congress intended for the reauthorized statute to be interpreted differently. It is not plausible that consideration of special factors would be necessary in the development of the IEP but no longer relevant in IEP review and revision.

§300.324, Current §300.346 Development, review, and revision of IEP.

...

Current §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.

Academy Recommendation: We object to the proposed elimination of this section and

recommend that it be retained.

Rationale: The Department has not included this clause in the proposed regulations, asserting that this requirement is covered in proposed §300.320 (a)(4). However, proposed §300.320 (a)(4) is virtually identical to current §300.347 (a)(3), and current §300.347 (a)(3) is read with its complement, current 300.346 (c). Without any reason given, the Department eliminates what should be the complement to 300.320(a)(4). To illustrate:

Current

A. Current §300.347 (a)(3) A statement of the special education and related services and supplementary aids and services . . .

B. Current §300.346 (c) Statement in IEP. If, in considering the special factors described . . .

Proposed

A. Proposed 300.320 (a)(4) A statement of the special education and related services and supplementary aids and services . . .

A. The Department says current 300.346 (c) is covered in proposed §300.320 (a)(4) A statement of the special education and related services and supplementary aids and services . . .

Current A goes with proposed A, and current B goes with . . . proposed A. The two sets of clauses are not parallel. The Department does not explain what is different about IDEA 2004 that would require eliminating §300.346 (c). This provision should be retained.

§300.501 Opportunity to examine records; parent participation in meetings.

(c)(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement

Academy Recommendation: We object to the proposal to eliminate the requirement of the public agency to have a record of the agency's attempt to ensure parent involvement and recommend it be retained:

§300.501 (c)(4) . . . 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 Sec. 300.345(d).

Rationale: Given the importance of parent involvement in placement decisions, the burden on public agencies to record their attempts at contacting parents is minor.

§300.501 Opportunity to examine records; parent participation in meetings.

Current (c)(5) The public agency shall 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.

Academy Recommendation: We object to the proposed elimination of this section and recommend that it be retained.

Rationale: The Department states that this section is unnecessarily duplicative and that the requirement that agencies make reasonable efforts to enable parents to understand and participate in discussions about placement of their child is inherent in the obligation in proposed §300.501 (b)(1). While it should be considered inherent, in fact, if public agencies consistently provided interpreters when they were needed, there would have been no need to require interpreters in the regulations in the first place. Removing the requirement for interpreters in this section may leave public agencies with the impression that interpreters are no longer required, a result that the Department surely does not want.

§300.600 State monitoring and enforcement.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in section 616(a)(3) of the Act, and the indicators established by the Secretary pursuant to State performance plans.

Academy Recommendation: The Department should clarify that the priority provision of a free appropriate public education in the least restrictive environment (§616(a)(3)(A)) should be based on the unique needs of the individual child.

Rationale: What constitutes a free appropriate public education in the least restrictive environment varies from child to child. Often the term LRE is used synonymously with the local neighborhood classroom, and some believe that the more children placed in the neighborhood school classroom, the better. However, for some children a specialized setting is the least restrictive environment, and there is no scientifically based quantifiable indicator describing the “right” number of children who should be served in the local neighborhood classroom or in a specialized setting. Congress expressed its support for the continuum, and appropriate placements along the continuum. ((H.R. 1350 Conference Report, Note 89)

§300.600 State monitoring and enforcement

(b)(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

Academy Recommendation: Modify to include Part C:

(b)(2) Ensuring that public agencies meet the program requirements under Part B *or Part C* of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

Rationale: Part C should be monitored to evaluate how well it serves children and families.

§300.601 State performance plans and data collection.

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

Academy Recommendation: Modify to include Part C:

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B *and Part C* of the Act, and describes how the State will improve such implementation.

Rationale: Part C should be monitored to evaluate how well it serves children and families.

§300.640 Annual report of children served – report requirement.

(d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

(1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category ``deaf-blindness."

(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category ``multiple disabilities."

Academy Recommendation: Modify as follows:

(d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

(1) If a child has both significant hearing and vision loss, whether or not other disabilities are present, that child must be reported under the category “deaf-blindness.”

(2) A child who has more than one disability but does not have both significant hearing and vision loss must be reported under the category “multiple disabilities.”

Rationale: Approximately 85% of the more than 10,000 children served by the federally funded State and Multi-state Deaf-Blind Projects have, in addition to their hearing and vision loss, additional disabilities including cognitive disabilities and physical/health impairments.

The proposed language is identical to the current language in the regulations that has resulted in a startling under-reporting of children who are deaf-blind. By following the current instructions, which require that children with other disabling conditions in addition to their combined hearing and vision loss be reported under the category multiple disabilities, the SEAs annually report approximately 1,500 children under the category Deaf-Blind. This under-reporting, by as much as 85%, impedes appropriate planning at the federal and state levels.

The American Academy of Audiology is the world's largest professional organization of audiologists representing over 9,700 audiologists joined together to provide the highest quality of hearing healthcare service to children and adults. The American Academy of Audiology promotes quality hearing and balance care by advancing the profession of audiology through leadership, advocacy, education, public awareness and support of research. We appreciate the opportunity to provide public comment to this proposed rulemaking.

Sincerely,



Gail Whitelaw, Ph.D.
President