What Does the Law Say About Placement for Students Who are Deaf Who May Have Additional Disabilities?

Law: From OCR (Office of Civil Rights): “Any setting which does not meet the communication and related needs of a child who is deaf, and therefore does not allow for the provision of FAPE (free and appropriate public education), cannot be considered the LRE (least restrictive environment) for that child.”

Discussion: The setting must meet the student’s communication and language access needs to consider the placement as the LRE and meet the threshold for FAPE. This includes students with complex access needs and perceived additional disabilities. For example, if a Life Skills setting cannot meet the communication and language access needs of the student, it cannot be considered LRE.

Law: From OCR: “The COED's (Commission on Education of the Deaf) report and its primary finding reflects a fundamental concern within much of the deaf community that students who are deaf have significant obstacles to overcome in order to have access to a free appropriate public education that meets their unique educational needs, particularly their communication and related needs.”

Discussion: Students who are Deaf have significant obstacles to gaining access to FAPE, and those with additional disabilities, including perceived intellectual disabilities, appear to have even greater barriers to receiving FAPE. The National Association of the Deaf stated that consequences of language deprivation from birth to 5 years of age include delays in cognitive and social-emotional development, and school-readiness skills. It’s imperative that programs ensure language is fully accessible, and that any implications from earlier language deprivation are not used as further reason to deprive students of accessible language.

Law: TAC §29.302(a) “The legislature finds that it is essential for the well-being and growth of students who are deaf or hard of hearing that educational programs recognize the unique nature of deafness and the hard-of-hearing condition and ensure that all students who are deaf or hard of hearing have appropriate, ongoing, and fully accessible educational opportunities.”

Discussion: All students must have fully accessible educational opportunities, regardless of perceived additional disabilities. Students who have complex access needs that include being Deaf/hard of hearing must have fully accessible educational opportunities.

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Law: IDEA regulations, Appendix A, section I(1) under the subtitle of "Extent to which child will participate with nondisabled children": "In all cases, placement decisions must be individually determined on the basis of each child's abilities and needs, and not solely on factors such as category of disability, significance of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience."

Discussion: Students with intellectual disabilities, or any other disability, cannot be denied access to certain placement options, including within the RDSPDs (Regional Day School Program for the Deaf). The disability category or significance of the disability cannot be a reason to deny a placement. Current configurations of a service delivery system cannot deny a placement for students either. For example, students cannot be denied RDSPD placement simply because it does not have a dedicated classroom for students who are Deaf with additional disabilities.

Due Processing Hearing: DOCKET NO. 185-SE-0411 "Respondent (district name) presented persuasive evidence at the hearing that the student's placement was appropriate, the student did not require the method of communication chosen by the student's parent, and the student was successful in the student's current educational placement. But the language of the Texas Deaf Education Bill of Rights as read within the context of IDEA obviates any need for inquiry into the propriety of what educational placement the student has been provided. Instead, as Petitioner insists, the question of law is whether or not the district has deferred to the student's parents' selection of the preferred mode of communication. There is no factual dispute. ORDER Accordingly, IT IS HEREBY ORDERED that Petitioner's motion for summary judgment is GRANTED and the student's educational placement must conform with the wishes of the student's parents under Texas Education Code §29.301-315.

Discussion: Texas Education Code §29.302(b) affirms that all students who are DHH, regardless of additional disabilities, have a right to develop proficiency in English AND American Sign Language. If a family has requested a manual mode of communication for their child, the district must provide an education including it.

References

Code of Federal Regulations, 34 C.F.R. Part 300, Appendix A (2002). https://www.govinfo.gov/content/pkg/CFR-2002-title34-vol2/xml/CFR-2002-title34-vol2-part300-appA.xml

National Association of the Deaf. (2020). *Implications of language deprivation for young Deaf, DeafBlind, DeafDisabled, and hard of hearing children.* https://www.nad.org/implications-of-language-deprivation-for-young-deaf-deafblind-deafdisabled-and-hard-of-hearing-children/

Texas Education Code §29.302(a). (n.d.) *Programs for Exceptional Students.* https://statutes.capitol.texas.gov/Docs/ED/htm/ED.29.htm

U.S. Department of Education, Office of Civil Rights (OCR). (June 1998). *Deaf Students Education Services*. https://www.ed.gov/about/offices/list/ocr/docs/hq9806.html