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The Honorable Connie M. Leyva
The Honorable Rosilicie Ochoa Bogh
The Honorable Dave Cortese
The Honorable Brian Dahle
The Honorable Steven M. Glazer
The Honorable Mike McGuire
The Honorable Richard Pan
Senate Education Committee
California State Senate

Submitted online

Dear Chair Leyva, Senator Cortese, and Members of the Education Committee:

On behalf of the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), I write in opposition to SB 692, which would amend the California Education Code in regard to the definition of and reporting on Least Restrictive Environment (LRE).

CEASD opposes the bill because it gives a new, incorrect definition to the term “LRE” and the bill would harm children in need of specialized settings, particularly deaf and hard of hearing children.

SB 692 would measure LRE by a certain percentage of students served in a regular classroom 80 percent or more of the day:

(9) Least restrictive environment, as measured by the percentage of pupils with individualized education programs who are 6 to 21 years of age, inclusive, and served inside a regular classroom 80 percent or more of the day.¹

This proposal stands in conflict with the Individuals with Disabilities Education Act (IDEA).²

¹ SB 692, page 9, line 10.

² 20 U.S.C. § 1400 *et seq.*

LRE is one of the key principals of IDEA. It is used to describe the setting where children are served, and it cannot be separated from other key parts of IDEA, such as Free Appropriate Public Education and Individualized Education Program (IEP). It cannot be boiled down to a number.

IDEA mandates that IDEA-served students be educated with nondisabled children “to the maximum extent *appropriate*”³ (emphasis added) and requires States to offer a “continuum of alternative placements,” including instruction in regular classes, special classes, special schools . . .⁴

In its commentary on the most recent iteration of the IDEA regulations the U.S. Department of Education explained “The LRE requirements . . . express a strong preference, not a mandate, for educating children with disabilities in regular classes alongside their peers without disabilities . . .”⁵ It went on to clarify “The LRE provisions are intended to ensure that a child with a disability is served in a setting where the child can be educated successfully and that placement decisions are individually determined based on each child’s abilities and needs.”⁶

The Department further stated:

[IDEA 2004] does not require that every child with a disability be placed in the regular classroom regardless of individual abilities and needs. This recognition that regular class placement may not be appropriate for every child with a disability is reflected in the requirement that LEAs make available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs of children with disabilities. This requirement for the continuum reinforces the importance of the individualized inquiry, not a “one size fits all” approach, in determining what placement is the LRE for each child with a disability. The options on this continuum must include the alternative placements listed in the definition of special education . . . (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). These options must be available to the extent necessary to implement the IEP of each child with a disability. The group determining the placement must select the placement option on the continuum in which it determines that the child’s IEP can be implemented in the LRE.⁷

The Department has long recognized that for deaf students, language and communication factors help determine LRE. As far back as 1992 it provided guidance stating:

The Secretary is concerned that the least restrictive environment provisions of the IDEA and Section 504 are interpreted, incorrectly to require the placement of

³ 20 U.S.C. § 1412(a)(5)).

⁴ 34 C.F.R. § 300.115.

⁵ 71 Fed. Reg. 46585.

⁶ 71 Fed. Reg. 46731.

⁷ 71 Fed. Reg. 46587.

some children who are deaf in programs that may not meet the individual student's educational needs. 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.*⁸ (emphasis added)

The Department later reiterated this stance in policy letters to stakeholders.⁹

A subsequent reauthorization of IDEA included “special factors” that must be considered in developing a deaf or hard of hearing child’s IEP, on which LRE is based:

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 mode¹⁰

These principles are reflected in best practices guidance issued by the National Association of State Directors of Special Education (NASDSE) in its document “Optimizing Outcomes for Students who are Deaf or Hard of Hearing: Educational Service Guidelines.” In it, NASDSE states that an LRE for a deaf or hard of hearing student is one that, among other things:

- ensures full development of language for the child;
- enhances the child’s cognitive, social, and emotional development;
- is based on the language abilities of the child;
- offers direct language and communication access to teachers and other professionals;
- has a sufficient number of age-appropriate and level-appropriate peers who share the child’s language and communication preferences.¹¹

Attempts to force children into one setting or another based on numerical goals are misguided. Any discussion of LRE must address each principle of IDEA and must acknowledge the individualized nature of IDEA decision-making. CEASD urges you to withdraw this bill and work with stakeholders to ensure that all IDEA-eligible students in California are placed in the setting that meets their needs, whether that is a local neighborhood classroom, a specialized school, or another alternative. CEASD stands ready to work with you to achieve this goal.

Thank you for your consideration.

Respectfully,



Barbara Raimondo

⁸ 57 Fed. Reg. 49274.

⁹ Letter to Bosso, August 23, 2010, Letter to Stern, September 30, 2011.

¹⁰ 20 U.S.C. § 1414(d)(3)(B)(iv)).

¹¹ NASDSE, 2018.