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December 20th, 2023

U.S. Department of Education
Office of Civil Rights
400 Maryland Avenue, SW
Washington, DC 20202-1100
Ocr@ed.gov

Via email

Re: DDOE Discrimination Against Deaf and Hard of Hearing Students

Dear Department of Education, Office of Civil Rights,

The Delaware Department of Education (“DDOE”), the Delaware Department of Health and Social Services (“DHSS”), and Local Education Agencies (LEAs) are engaged in systemic patterns and practices that deny deaf and hard of hearing students in Delaware access to a Free and Equal Public Education (“FAPE”) as required by federal law. Specifically, information demonstrates that 1) DDOE, DHSS, and Delaware LEAs lack meaningful opportunities for time-sensitive, therapeutic interventions for birth-to-three students to build listening and speaking skills that cannot later be compensated when missed (i.e., Listening and Spoken Language services (“LSL”)), and 2) DDOE enables LEA referral of deaf and hard of hearing students to Delaware School for the Deaf (“DSD”) without consideration of other appropriate interventions and supports, thereby impermissibly denying students placement in their Least Restrictive Environments (“LRE”).

Therefore, ACLU-DE alleges that DDOE, DHSS, and LEAs, as recipients of federal education funds, enable and perpetuate systemic discrimination in state educational programs against deaf and hard of hearing youth in Delaware in violation of the ADA and Section 504. Specifically:

- DDOE, DHSS, and LEAs fail to maintain adequate resources and staff to provide deaf and hard of hearing children from birth to three early intervention therapy, namely LSL, as required by the IDEA, and therefore discriminate on the basis of disability.
- DDOE, DHSS, and LEAs' lack of consistent LSL programming creates undue delay in connecting children with appropriate services and deprives students of therapy time that cannot be compensated.
- DDOE, as a state supervisory agency and recipient of IDEA funds, enables a system-wide pattern of over-referral of hearing-impaired students to DSD where less restrictive environments would be appropriate.¹
- LEAs in Delaware over-refer hearing impaired students to DSD where less restrictive environments would be appropriate.²

Federal law recognizes that all students, regardless of disability, deserve a meaningful education, and that discrimination on the basis of disability is prohibited. The ACLU of Delaware urges the Department of Education Office of Civil Rights to investigate the Delaware Department of Education for system-wide violations of Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and the Americans with Disabilities Act (“ADA”).

1. Jurisdiction

Both early intervention for deaf and hard of hearing youth and statewide services for school-aged children with disabilities receive federal funding in Delaware. As a birth mandate state, children who are deaf or hard of hearing are eligible for state education services once identified, from birth onwards. These early interventions are overseen by DHSS and DDOE, Officer of Early Learning.³ Delaware’s state-run Birth to Three program also relies on IDEA Part C funding.⁴ Because Delaware opted into IDEA Part C Early Intervention funding, Delaware must provide a statewide system for early intervention that meets federally mandated

¹ ACLU-DE does not have access to information that would reveal which specific LEAs are responsible for the over-referral evidenced by statewide statistics. Despite multiple attempts to access such info, LEAs are not required to report information through FOIA about students where there are fewer than 15 students in a particular category. Upon information and belief, OCR can obtain information from either DDOE or DSD that will reveal the locus of over-referral and focus for investigation.

² *Id.*

³ 20 U.S.C. § 1431 et seq.; Del. Code Ann. tit. 16, § 803A; *see also* Educators (Birth-8 Years of Age): Early Childhood Special Education (ECSE), *Delaware Department of Education*, <https://www.doe.k12.de.us/Page/3624>;

⁴ Birth to Three Early Intervention Program Policies and Procedures Manual, *DHSS*, available at <https://dhss.delaware.gov/dhss/dph/birthtothree/files/2023BirthtoThreeEIPoliciesProceduresManual.pdf> (“The manual is based on the participation of Delaware in Part C of the Individuals with Disabilities Education Act (IDEA).”); Although SB136 established in 2021 that early intervention IDEA Part C programs should be housed within DDOE, rather than DHSS, there has been inexplicable delay in this transition, necessitating investigation of both recipients of federal IDEA funds.

requirements including, but not limited to, a timely evaluation system and a state policy that “ensures appropriate early intervention services based on scientifically based research.”⁵

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. The regulation that implements Section 504, at 34 C.F.R. Part 104, prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance.⁶ Further, 34 C.F.R. § 104.34(a) provides in relevant part that a recipient shall educate each student with a disability with students who are not disabled to the maximum extent appropriate to the needs of the disabled student. A recipient shall place a student with a disability in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the disabled student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. The regulation that implements Title II, at 28 C.F.R. Part 35, prohibits discrimination on the basis of disability by designated public entities.⁷ DDOE and its LEAs receive federal financial assistance from this Department, are designated public entities and, therefore, are required to comply with these federal laws.

2. DDOE’s Failure to Provide LSL Therapy

Because our brains are “pre-wired” to learn spoken language by listening, there are a range of therapies that can help deaf and hard of hearing children access sound through hearing aids or cochlear implants and develop listening and talking skills. In Delaware, the only known type of this service offered has been LSL.⁸ LSL is a vitally important early intervention service that must be administered before the age of five, but ideally, before the age of three.⁹ The time-sensitive nature of LSL underscores Delaware’s critical obligation to make LSL accessible as part of its Birth-to-Three, IDEA Part C program, which predates the point at which a child’s IEP team comes into the picture, and covers the entire period when LSL is most effective.

Unfortunately, while Delaware claims to provide meaningful LSL services, the program has been largely inoperative since at least 2020, thereby depriving deaf and hard of hearing young people the provision of a FAPE under the birth mandate for deafness and hearing impairment. The lack of timely intervention can result in lifelong negative educational impacts for these children, denying them access to equal opportunities in plain violation of their civil rights under the ADA and Section 504.

While LSL was available to some Delaware families between 2013 and 2020, it was practically inaccessible to families living in Southern Delaware, due to its distance, and has not

⁵ 20 U.S.C.A. § 1435.

⁶ See Section 105, Case Processing Manual, *U.S. Department of Education Office for Civil Rights*, <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>; 29 U.S.C. § 794, 34 C.F.R. Part 104.

⁷ 42 U.S.C. §§ 12131 et seq., 28 C.F.R. Part 35.

⁸ What is LSL?, *Hearing First*, <https://www.hearingfirst.org/lsl/what-is-lsl>.

⁹ *Id.*, (“The first 3 ½ years of your baby’s life is a key time for learning language.”)

been facilitated by the Christina School District for DSD students since 2020, despite Christina's continued receipt of IDEA Part B funds and subgrant to fund the LSL teaching position.¹⁰

ACLU-DE has received several complaints from families of deaf and hard of hearing students regarding the lack of an operational LSL program in Delaware. To confirm these allegations, we submitted a FOIA request to DDOE seeking more information about Delaware's LSL programming. Although we repeatedly asked for any information confirming the current existence of an LSL program, DDOE continuously evaded responding directly and failed to provide any assurance that it is operating a functional LSL program.¹¹ While the Department confirmed that there is one certified LSL instructor statewide, that instructor has been on extended leave without any replacement instructor in place since 2020. This ongoing violation currently deprives eligible students of meaningful therapy time that cannot be recouped.

As just one example, a complainant sought LSL for her one-year-old daughter with hearing loss beginning in early June, 2023. After weeks of delay and her daughter missing critical therapy hours, DDOE finally outsourced the LSL programming to the Clarke School in Philadelphia. Over six months later, her daughter finally had LSL added to her IEP the week of December 11th, and is having her initial evaluation the week of December 18th. This immense delay demonstrates that Delaware presently lacks internal staffing to actively provide LSL services to any deaf and hard of hearing students within the state. Further, in an email exchange with Dale Matusevich, Director of DDOE's Exceptional Child Resources, DDOE *admitted* to maintaining an understaffed LSL program, and to lacking an active and effective plan for the provision of LSL services in the absence of their single instructor.¹² Any missed LSL therapy is detrimental to a child in the short window of optimal treatment age.

Delaware's failure to provide LSL in a timely and widely available manner results in a failure to provide a FAPE in Delaware for many students with deafness and hearing loss who use spoken language to communicate and receive equal educational opportunities.

3. Over-referral of Students to Delaware School for the Deaf

Children with hearing loss must be placed in an educational setting that is their least restrictive environment, per the IDEA, Section 504, and the ADA.¹³ The number of children enrolled at DSD is estimated at 40% of the total population of Delaware children birth-to-21 who

¹⁰ See attached Email from Dale Matusevich dated Oct. 3, 2023 [Exhibit 1]

¹¹ See attached Email thread with Alex Corbin, Deputy Attorney General [Exhibit 2]: In an email exchange dated 12/13/2023, ACLU-DE wrote "We are seeking information demonstrating that the program really is up and running in this moment, not just generally (I.e., that there are a certain number of students currently and regularly receiving a certain number of hours of LSL instruction provided by Delaware schools.)" In response, Corbin only provided general information about what the LSL program *would* look like if it were hypothetically being administered, and confirmed that the information provided is not specific to this year. His response did not answer our question.

¹² See Exhibit 1: In an email sent on October 3, 2023, from Dale Matusevich to the mother of a hard of hearing child, Mr. Matusevich wrote, "Currently, the teacher, [redacted], is on maternity leave so referrals for LSL services should go through Becky Ryan, Christina's Special Education Director... Another issue we face is that there are only approximately 800 LSL certified teachers in the world. We are fortunate to have one in Delaware but when she is out it does present some concerns in the delivery of services. We did discuss...one option for providing LSL services would be contracting with a tele-remote provider until [teacher] returns."

¹³ 20 U.S.C.A. § 1412(a)(5); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 599 (1999).

have deafness or hearing impairment.¹⁴ Comparatively, the nationwide placement of these children in similarly restrictive and segregated schools is only approximately 9%.¹⁵ DSD is a “D” setting, which refers to a separate, special education school, without attendance by any non-disabled students.¹⁶ Courses are taught in American Sign Language (“ASL”) in a restrictive setting.¹⁷ Test scores and outcomes from DSD are reportedly low, with just 5% of their students indicated as proficient at math and reading, respectively.¹⁸ Students should only attend DSD if it is determined that the restrictive environment of the school is a good fit for that specific student with hearing loss.¹⁹ That so many Delaware children with hearing loss are placed at DSD, the most restrictive setting, as compared to children with hearing loss nationwide, is compelling evidence demonstrating a systemic error in placing these students appropriately and indicates that many students are being wrongfully deprived of the provision of services in their least restrictive environments.

One primary driver of the over-identification and placement of students into this restrictive environment is the failure of many Local Educational Agencies (“LEAs”) to offer reasonable accommodations and specially designed instruction within the traditional classroom setting and/or within their home schools and districts. Where LEAs fail and DDOE neglects to correct system-wide harms, the State breaches its obligation under IDEA Part B to ensure that educational programs for children with disabilities are properly administered.²⁰ While outsourcing students with deafness or hearing impairment to DSD may pool resources for a

¹⁴ ED Facts Data Warehouse (EDW): “IDEA Part B Child Count and Educational Environments Collection,” *U.S. Department of Education*, 2020-21. Data extracted as of July 7, 2021 from file specifications 002 and 089. (Showing the number of hearing-impaired youth from birth to 21, broken down by state.); CCD Public School Data 2021-2022, 2022-2023 School Years, *National Center for Education Statistics*, accessed Dec. 18, 2023, https://nces.ed.gov/ccd/schoolsearch/school_list.asp?Search=1&InstName=&SchoolID=&Address=&City=&State=01&Zip=&Miles=&County=&PhoneAreaCode=&Phone=&DistrictName=&DistrictID=&SchoolType=2&SpecificSchoolTypes=all&IncGrade=-1&LoGrade=-1&HiGrade=-1. (Showing enrollment in schools for the deaf and similar segregated programs, broken down by state.); Note: these statistics refer to students with hearing impairment referenced as their primary classification, not all students with identified hearing loss.

¹⁵ *Id.*

¹⁶ 14 Del. Admin. Code 925 Sec. 13.1.4.; Individualized Education Program (IEP) [Sample IEP](#), *Delaware Department of Education*, p. 12, (“D: Separate School: Student served in public or private separate day school facility for greater than 50% of the school day or a residential facility if student does not live at the facility.”); *see also* Residential Program, *Delaware School for the Deaf*, https://www.dsdeaf.org/apps/pages/index.jsp?uREC_ID=255529&type=d. (Some students also live at DSD, making it a type E Residential Facility.)

¹⁷ We have anecdotal evidence that, despite advertising a bilingual approach on their [website](#), DSD uses voice and ASL until age three, at which point students are told “voices off.”; 14 Del. Admin. Code 925 Sec. 13.1.4.

¹⁸ Delaware School for the Deaf, *U.S. World and News Report*, accessed Dec. 18, 2023, <https://www.usnews.com/education/k12/delaware/delaware-school-for-the-deaf-4602#:~:text=Test%20Scores%20at%20Delaware%20School%20for%20the%20Deaf&text=In%20Christina%20School%20District%2C%2039,above%20that%20level%20for%20math>.

¹⁹ *See* Deaf Students Education Services, *Office of Civil Rights Department of Education*, OCR-000012, Guidance, (Jun. 29, 2020) <https://www2.ed.gov/about/offices/list/ocr/docs/hq9806.html>, (“As in previous policy guidance, the Secretary emphasizes that placement decisions may not be based on category of disability, the configuration of the delivery system, the availability of educational or related services, availability of space, or administrative convenience.”)

²⁰ 34 C.F.R. § 300.149.

lower incidence population, automatic placement of these students in a completely segregated setting without individualized assessments and considerations of available and reasonable local interventions is a violation of their civil rights.²¹ Further, blanket referral of deaf and hard of hearing students to an entirely separate school without nuanced consideration of a student's needs amounts to impermissible segregation on the basis of disability.²² Indeed, LEAs must understand the programming needs of children with hearing loss and consider solutions available through Section 504 accommodations that can make sound accessible in a mainstream classroom.²³ Many students with hearing loss do not use ASL and placing them at DSD would therefore not meet their educational progress goals, as opposed to a mainstream setting with appropriate interventions and supports. "Administrative convenience" does not alleviate an LEA's obligation to place students in the least restrictive environment.²⁴

DDOE's systemic denial of LSL therapy and the over-placement of students with hearing loss at DSD are plainly discriminatory on the basis of disability and deny students access to equal educational opportunities. The ACLU-DE therefore requests that the Department of Education, Office for Civil Rights urgently investigate DDOE for violations of the Rehabilitation Act of 1973 and the ADA that deprive students with disabilities of meaningful educational opportunities.

Sincerely,

/s/ Dwayne J. Bensing
Dwayne Bensing
Legal Director
Dbensing@aclu-de.org

ACLU of Delaware
100 W. 10th St #706
Wilmington, DE 19801

/s/Casey L. Danoff*
Casey Danoff
Legal Fellow
Cdanoff@aclu-de.org

* *Under the direct supervision of Dwayne J. Bensing*
* *Not admitted to practice in Delaware*

²¹ *T.R. v. Sch. Dist. of Philadelphia*, 4 F.4th 179, 191 (3d Cir. 2021) ("Addressing the educational needs of children with disabilities requires individualized assessments and considerations of countless concerns.")

²² *Cooper v. Aaron*, 358 U.S. 1, 19 (1958) ("State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws."); *see also Milliken v. Bradley*, 433 U.S. 267, 283 (1977).

²³ 34 C.F.R. § 300.324(a)(2)(iv); *see also K.K. ex rel. L.K. v. Pittsburgh Pub. Sch.*, 590 F. App'x 148, 152 (3d Cir. 2014); *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001).

²⁴ *See F.C. v. N.Y.C. Dept. of Ed.*, 15 Civ. 6045 (PAE), 2016 WL 8716232 at *14 (S.D.N.Y. Aug. 5, 2016).

[REDACTED]

[REDACTED]

On Oct 3, 2023, at 11:56 AM, Matusевич Dale
<dale.matusевич@doe.k12.de.us> wrote:

Good morning [REDACTED]

Your Family Service Coordinator reached out to me last week to receive a better understanding of LSL services. Cindy Brown, Director of Early Childhood Intervention, and I spoke with Alysia D'Ambrogi about LSL options. Our conversation with Alysia was an attempt to get everyone on the same page as we continue moving LSL services forward.

One of the areas of concern in providing services is the delivery of services through IDEA Part C or IDEA Part B. As I am sure you are aware, families qualifying for services under Part B have a choice to remain in Part C services until entering Kindergarten. Current LSL services are funded through Part B. If a family chooses to remain in Part C services, Part C would be the responsible party for providing/paying for services. With new leadership within Part C, Cindy Brown and I have recently had conversations with Nicole Topper from Part C to give some recommendations.

From our conversation with Alysia, our understanding is Part B services were declined and services would continue through Part C under an IFSP. With this decision, Part C would be providing/paying for the services. In our conversation with Alysia, our recommendation was to have both Christina and Capital representatives at the IFSP meeting to discuss all of the potential options and service delivery methods so an informed decision can be made.

We also explained the LSL Program is currently being administered by the Christina School District. Sort of the same way they are currently the administrator of Statewide Programs for Deaf and Hard of Hearing. It is not a "stand-alone" program. Exceptional Children Resources (ECR) has been providing Christina through IDEA Part B funds (for approximately the last 10 years) with a subgrant to fund the LSL teaching position. Christina was chosen to administer because at the time all of the requests for LSL services were coming from New Castle County families.

Currently, the teacher, [REDACTED], is on maternity leave so referrals for LSL services should go through Becky Ryan, Christina's Special Education Director. We anticipate [REDACTED]'s return in January. Another issue we face is there are only approximately 800 LSL certified teachers in the world. We are fortunate to have one in Delaware but when she is out it does present some concerns in the delivery of services. We did discuss with Alysia and Nicole, one option for providing LSL services would be contracting with a tele-remote provider until [REDACTED] returns.

DDOE (ECR) is currently reaching out to the Clarke School (Philadelphia) in an attempt to gauge interest in providing LSL professional learning opportunities to audiologists, speech language pathologists, and teachers of the deaf in an effort to expand services through Part B.

I have availability Thursday, October 5 from 8:30 – 10:00 and 11:30 – 2:30, or Friday, October 6 from 8:30 – 10:30 and 1:30 – 4:30 to meet with you.

Please let me know if you have any additional questions. This issue can be very confusing with the ages of children whose families are requesting LSL services.

Dale

From: [REDACTED]
Sent: Tuesday, October 3, 2023 9:17 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Letter re: Education of Deaf and Hard of Hearing Students in DE**Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>**

Mon 12/18/2023 3:49 PM

To: Casey Danoff <cdanoff@aclu-de.org>

Cc: Dwayne Bensing <dbensing@aclu-de.org>; McAndrews, Caitlin <Cmcanrews@mcandrewslaw.com>; Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>; Matusevich, Dale (K12) <dale.matusevich@doe.k12.de.us>

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Hi Casey,

I hope all is well. My understanding is that LSL is currently available. Christina School District is administering the program.

As for other options for Delaware students, LSL is a treatment that focuses on meaningful communication through listening and speaking and is but one approach. The IEP team may think that Cued Speech and Language; Auditory Therapy; Speech Therapy; Augmentative and Alternative Communication; Total Communication; or American Sign Language may be appropriate, or it may be a combination. As the DDOE is not part of any IEP team, the Department cannot speak to each team's decision as to what may be appropriate for a given student's communication needs, which would include the availability of any provider. Simply because Delaware has a possible support option does not mean that LEAs are restricted to that option. Any LEA is free to contract with an appropriate service provider to ensure a student receives FAPE.

I hope this helps.

Sincerely,
Alex

Alexander T. Corbin
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904

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From: Casey Danoff <cdanoff@aclu-de.org>
Sent: Wednesday, December 13, 2023 3:24 PM
To: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Cc: Dwayne Bensing <dbensing@aclu-de.org>; McAndrews, Caitlin

<Cmcandrews@mcandrewslaw.com>; Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>;
Matusevich, Dale (K12) <dale.matusevich@doe.k12.de.us>

Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

Hi Alex,

To further clarify my request - I asked for information "demonstrating that the program is really up and running in this moment, not just generally," which may be shown by the number of *current* LSL instructors and hours of instruction provided. I understand from your response that, instead, you provided general information about the typical structure of the program, rather than information about the current state of the LSL therapy provided. **Please confirm whether you have information that demonstrates that LSL is currently and regularly being provided by Delaware providers to eligible students for this current school year (or date of the most recent year it was provided).**

Additionally, you mentioned that LSL need not be provided to satisfy the IDEA if there are alternatives. Please identify what DE considers to be viable alternatives to LSL that are currently being provided.

Thanks again,
Casey

From: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Date: Wednesday, December 13, 2023 at 1:34 PM
To: Casey Danoff <cdanoff@aclu-de.org>
Cc: Dwayne Bensing <dbensing@aclu-de.org>, McAndrews, Caitlin <Cmcandrews@mcandrewslaw.com>, Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>, Matusevich, Dale (K12) <dale.matusevich@doe.k12.de.us>
Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

Hi Casey,

This is more general. For a specific academic year, the DOE would need more time to do a deep dive into the students' IEPs to determine the exact amount of time for a given year. Is there a specific school year you are looking for?

Thanks,
Alex

Alexander T. Corbin
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904

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From: Casey Danoff <cdanoff@aclu-de.org>
Sent: Wednesday, December 13, 2023 1:21 PM

To: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Cc: Dwayne Bensing <dbensing@aclu-de.org>; McAndrews, Caitlin <Cmcandrews@mcandrewslaw.com>; Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>; Matusевич, Dale (K12) <dale.matusевич@doe.k12.de.us>
Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

Hi Alex,

Thank you for sending this. Since we've been going back and forth, I want to make sure I am understanding this crystal clear. What is the timeframe for the info you provided? I know you said "per academic year"—does this info correspond with this past academic year (say, the past 12 months) in terms of hours and sessions provided? Or are these numbers more generally to the point of "if there is a program, here is how it looks"?

Thanks again for your continued cooperation.

Best,
Casey

From: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Date: Wednesday, December 13, 2023 at 9:04 AM
To: Casey Danoff <cdanoff@aclu-de.org>
Cc: Dwayne Bensing <dbensing@aclu-de.org>, McAndrews, Caitlin <Cmcandrews@mcandrewslaw.com>, Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>, Matusевич, Dale (K12) <dale.matusевич@doe.k12.de.us>
Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

Hello,

I hope all is well. I have some additional information.

Hours LSL is provided through Christina School District: This depends on the student. With the classroom model, the LSL teacher provides a full day of instruction both in a separate setting and then in the more general classroom. That would be a total of 6 hours of instruction. In a model where the LSL teacher is pushing in to consult or work on specific skills, that would be more closely aligned to a related service-type situation so maybe a 30min/session, 3 sessions per week, or something similar.

Total number of hours that LSL has provided therapy per academic year: About 1,002 hours per academic year.

Please let me know if there is anything else. I would like to point out that LSL is but one language therapy for deaf or hard-of-hearing students in Delaware. IDEA does not entitle a student to one specific evidence-based program but for them to have appropriate support to make reasonable progress. There would not be an IDEA violation so long as a reasonable alternative that allowed the student to make that progress was used if LSL was unavailable or ineffective. This decision would fall to the specific IEP team for the given student.

Thanks,
Alex

Alexander T. Corbin
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904

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From: Casey Danoff <cdanoff@aclu-de.org>
Sent: Wednesday, November 29, 2023 9:59 AM
To: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Cc: Dwayne Bensing <dbensing@aclu-de.org>; McAndrews, Caitlin <Cmcanrews@mcandrewslaw.com>; Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>; Matusevich, Dale (K12) <dale.matusevich@doe.k12.de.us>
Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

Hi Alex,

Thanks for your response. I just wanted to clarify on the "personnel records" point- we are not in any way seeking the identity or personnel info of LSL instructors. The number of LSL teachers and hours of LSL instruction would be totally sufficient- we are really just seeking to confirm that these teachers and hours exist, not who or when they are.

Best,
Casey

From: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Sent: Wednesday, November 29, 2023 9:34 AM
To: Casey Danoff <cdanoff@aclu-de.org>
Cc: Dwayne Bensing <dbensing@aclu-de.org>; McAndrews, Caitlin <Cmcanrews@mcandrewslaw.com>; Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>; Matusevich, Dale (K12) <dale.matusevich@doe.k12.de.us>
Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

Hi Casey,

Thanks for the email. I will work with the Department to get the information.

As for the new request, I completely understand where you are coming from and will try to get some information that can be provided. I think we can answer the outsourcing question but the other question regarding the LSL teacher cannot be disclosed even with a FOIA request because it would be disclosing personnel files that are not deemed public records. If you disagree, a formal FOIA request is required for that point. I should be able to get an answer to the outsourcing question when I follow up with more info in the coming weeks.

Thanks,
Alex

Alexander T. Corbin
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904

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From: Casey Danoff <cdanoff@aclu-de.org>
Sent: Tuesday, November 28, 2023 3:47 PM
To: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Cc: Dwayne Bensing <dbensing@aclu-de.org>; McAndrews, Caitlin <Cmcanrews@mcandrewslaw.com>; Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>; Matusevich, Dale (K12) <dale.matusevich@doe.k12.de.us>
Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

Hi Alex,

I hope you had a nice and restful Thanksgiving week. Thank you so much for getting back to us and working to provide us with data. 12/18 works fine for a return date.

In the interest of collaboration, we hope that you may be able to provide us with information sufficient to allay our concerns. Specifically, we have reason to believe that the LSL program in Delaware is either extremely limited (meaning that there is just one instructor who has been on a many-month leave), or non-existent. We also have reason to believe that Delaware might lack an LSL program of its own, and may instead be outsourcing LSL to out-of-state providers. We are seeking information demonstrating that the program really is up and running in this moment, not just generally (i.e., that there are a certain number of students currently and regularly receiving a certain number of hours of LSL instruction provided by Delaware schools). We are not interested in identifying the individual students receiving those services and appreciate the Department's care to not divulge any PII.

We have some thoughts on additional FOIA requests we could submit that would better target these questions, but to the extent that you could affirmatively provide data/info on these questions, the lower the administrative burden would be on all parties.

Again, thank you for your continued cooperation, and we look forward to working with you to figure out these questions. Please let me know if any clarification would be helpful.

Best,
Casey

From: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Sent: Tuesday, November 21, 2023 1:56 PM
To: Casey Danoff <cdanoff@aclu-de.org>
Cc: Dwayne Bensing <dbensing@aclu-de.org>; McAndrews, Caitlin <Cmcanrews@mcandrewslaw.com>; Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>; Matusevich, Dale (K12) <dale.matusevich@doe.k12.de.us>
Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

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Hello,

I wanted to provide an update. I spoke with the Department and they do not regularly keep the amount of hours per day or per week for the LSL teacher. FOIA does not require the creation of a record that is not already kept. However, the Department is planning on gathering that information and providing either the hours per day or hours per week for the LSL teacher. Due to the holiday and because this is not a record already kept, the Department requires more time to gather this information. The Department will not be able to provide this by 11/29/23. The Department will be able to get this information to you by 12/18/23 at the latest. We will make every effort to get it to you sooner.

Please let me know if this new date is agreeable.

Thanks,
Alex

Alexander T. Corbin
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904

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From: Casey Danoff <cdanoff@aclu-de.org>
Sent: Tuesday, November 21, 2023 8:01 AM
To: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Cc: Dwayne Bensing <dbensing@aclu-de.org>; McAndrews, Caitlin <Cmcanrews@mcandrewslaw.com>; Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>; Matusevich, Dale (K12) <dale.matusevich@doe.k12.de.us>
Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

Dear Alex,

Thank you for your response. Unfortunately, we do not think that your letter is entirely responsive to our initial request. We can appeal your response to the AG pursuant to the FOIA statute, but we would rather work through our request together, if possible. Please respond to the following clarifications by November 29, 2023:

For Q1, please confirm that the number of young people receiving LSL through a Christina School District certified provider is, in fact, between 1 and 15. If there are 0 young people receiving LSL, there is no risk of PII, and we do not see how such an admission would fall within the ambit of disclosure rules. Therefore, please let us know if there are zero individuals receiving LSL through Christina.

Additionally, please disclose the total number of hours per day that LSL therapy is provided through Christina School District. We understand that disaggregation may not be possible when there are fewer than 15 recipients, so please disclose the total hour count. Again, if the total number is 0, please include that.

For Q3, if disaggregation risks FERPA violations, please disclose the total number of hours that the certified LSL teacher has provided therapy each day this academic year, or the total number of hours that the LSL teacher has provided therapy each week this academic year- whichever is a value you can disclose. If the number is 0, please disclose that too.

Again, we appreciate your cooperation as we attempt to collect important public information, and we hope to resolve this matter without turning to official FOIA appeal proceedings.

Thank you.

Best,
Casey

From: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Date: Friday, November 17, 2023 at 8:49 AM
To: Casey Danoff <cdanoff@aclu-de.org>
Cc: Dwayne Bensing <dbensing@aclu-de.org>, McAndrews, Caitlin <Cmcanrews@mcandrewslaw.com>, Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>, Matusевич, Dale (K12) <dale.matusевич@doe.k12.de.us>
Subject: Re: Letter re: Education of Deaf and Hard of Hearing Students in DE

Hi Casey,

I hope all is well. Please see attached.

Thanks,
Alex

Alexander T. Corbin
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904

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From: Casey Danoff <cdanoff@aclu-de.org>
Sent: Monday, September 11, 2023 11:40 AM
To: Corbin, Alexander (DOJ) <Alexander.Corbin@delaware.gov>
Cc: Dwayne Bensing <dbensing@aclu-de.org>; McAndrews, Caitlin <Cmcanrews@mcandrewslaw.com>; Seitz, Meredith (K12) <meredith.seitz@doe.k12.de.us>; Draper, Beth (K12) <beth.draper@doe.k12.de.us>
Subject: Letter re: Education of Deaf and Hard of Hearing Students in DE

Dear Mr. Corbin:

Please see the attached correspondence. We look forward to your response.

Thank you!

Best,
Casey

--

Casey Danoff • she/her

Catalyst Legal Fellow

American Civil Liberties Union of Delaware

cdanoff@aclu-de.org

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Without your support, none of our vital work would be possible.

 [Image removed by sender.](#)

From: Draper Beth <beth.draper@doe.k12.de.us> **On Behalf Of** Matusevich Dale

Sent: Wednesday, August 23, 2023 3:23 PM

To: dbensing@aclu-de.org; cmcandrews@mcandrewslaw.com

Cc: Corbin, Alexander <alexander.corbin@delaware.gov>; Seitz Meredith <Meredith.Seitz@doe.k12.de.us>

Subject: ACLU Response

Good afternoon,

Attached please find the Delaware Department of Education (DDOE), Exceptional Children Resources response to your letter dated July 26, 2023.

Please do not hesitate to reach out with any additional questions or concerns. You can contact Alex Corbin, the Deputy Attorney General who represents the Exceptional Children department of the DDOE, via email alexander.corbin@delaware.gov.

Thank you,
Dale

<image001.png>

Dale Matusevich

Director

Exceptional Children Resources

401 Federal Street, Suite 2 | Dover, DE 19901

(302) 735-4210 (T) (302) 739-2388 (F)

[Delaware Department of Education](#)

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<ACLU Hearing Impaired Letter.pdf>