



Our Mission: To advance access to the gift of hearing provided by cochlear implantation through research, advocacy and awareness.

February 28, 2024

The Honorable Catherine E. Lhamon
Assistant Secretary for Civil Rights
Office of Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: ACI Alliance Supports ACLU's Delaware Complaint Entitled, "DDOE Discrimination Against Deaf and Hard of Hearing Students"

Dear Assistant Secretary Lhamon:

The American Cochlear Implant Alliance ("ACI Alliance") is writing to express our strong and unsolicited support for the American Civil Liberties Union ("ACLU") of Delaware's December 20, 2023 complaint concerning the Delaware Department of Education ("DDOE"), the Delaware Department of Health and Social Services ("DHSS"), and Local Education Agencies ("LEAs") systematic patterns and practices that restrict deaf and hard of hearing children's right to a Free and Appropriate Public Education ("FAPE").¹ The ACI Alliance respectfully wishes to emphasize Delaware's lack of compliance with federal disability law, and the serious detrimental impact the state's inaction has on students with hearing loss and their families.

ACI Alliance is a non-profit 501(c)(3) organization whose membership includes parents, individuals with hearing impairments, clinicians, and researchers. Our mission is to advance the gift of hearing provided by cochlear implantation ("CI") and other implantable prosthetic hearing technology through research, advocacy, and awareness. Our mission is also to ensure that parents have early access to accurate and comprehensive information to facilitate fully informed participation in decisions impacting their children's learning and development.

The DDOE, DHHS, and LEAs' approach to educating its deaf and hard of hearing students violates key principles of federal disability law. Section 504 of the Rehabilitation Act and its implementing regulations prohibit programs and activities receiving federal financial assistance

¹ Complaint Letter from ACLU of Delaware, to U.S. Department of Education, Office of Civil Rights (Dec. 20, 2023), https://www.aclu-de.org/sites/default/files/field_documents/ddoe_ocr_complaint_12.20.23_0.pdf.

from discriminating on the basis of disability,² and the Individuals with Disabilities Education Act (“IDEA”) requires students with disabilities to learn in the “least restrictive environment,” alongside those without disabilities to the maximum extent possible.³ For children under three years of age, the IDEA requires a “multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs by qualified individuals.”⁴

The DDOE, DHSS, and LEAs have violated these federal protections by failing to provide Delaware’s deaf and hard of hearing children with sufficient access to Listening and Spoken Language (“LSL”) services and, instead, are disproportionately enrolling children in a *more* restrictive environment, namely, the Delaware School for the Deaf.⁵ Children who are deaf or hard of hearing are an incredibly diverse group, and placement in a segregated learning environment—especially when this placement is against their parents’ educational preferences for their children—is not appropriate for all, or even most, of these children.

Recently published data by the National Center for Hearing Assessment and Management (“NCHAM”) shows that the communication modality of young children who are deaf or hard of hearing is very diverse, with 49% of families choosing LSL without sign language; 17% using LSL supplemented by Cued Speech, American Sign Language (“ASL”), or other sign language; Cued Speech being used by 12%; and ASL being the primary mode of communication for only 6%.⁶ With these national datapoints in mind, it is alarming that 40 percent of deaf children in Delaware are enrolled in the Delaware School for the Deaf, which relies principally on American Sign Language as the primary method of communication.⁷ Parents must be supported to make the communication modality choices they feel are best for themselves and their child’s unique developmental needs. Delaware is failing to meet this standard.

Aside from the fact that an approach that prioritizes one communication option (ASL) over all others violates federal early intervention and education laws emphasizing that parents have options and may choose the course that is best for their family, there is no body of research that supports the contention that use of American Sign Language is the best approach for all children. Indeed, a great number of studies published in peer reviewed journals have found that the opposite is true—that is, children fit early with appropriate hearing technology and provided with a language-rich home environment are more likely to develop age-appropriate language and reach literacy milestones. Additionally, a great number of studies have found that deaf and hard

² 29 U.S.C. § 794; 34 C.F.R. Part 104.

³ 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 104.34(a).

⁴ 20 U.S.C. § 1436.

⁵ Complaint Letter from ACLU of Delaware, to U.S. Department of Education, Office of Civil Rights (Dec. 20, 2023), https://www.aclu-de.org/sites/default/files/field_documents/ddoe_ocr_complaint_12.20.23_0.pdf.

⁶ Nat’l Ctr. for Hearing Assessment and Mgmt., *Early intervention: Systematic nationwide analysis of programs’ strengths, hurdles, opportunities, and trends (EI SNAPSHOT)* (2018), <http://www.infantheating.org/eisnapshot/docs/ei-snapshot-final-report.pdf>

⁷ Complaint Letter from ACLU of Delaware, to U.S. Department of Education, Office of Civil Rights (Dec. 20, 2023), https://www.aclu-de.org/sites/default/files/field_documents/ddoe_ocr_complaint_12.20.23_0.pdf.

of hearing children who focus on listening and learned language (including reading) perform ahead of children who are using sign language only. Providing students with inadequate access to LSL ignores this data, at the expense of the development of deaf and hard of hearing children in Delaware.

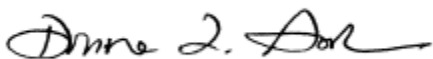
In many instances, when parents make decisions that can have life-long consequences for a child who is deaf or hard of hearing, they feel overwhelmed and rely on professionals and specialists to help make the decision that is right for their child and family. Delaware's failure to provide more robust access to LSL therapy and its heavy reliance on the Delaware School for the Deaf compromises this trust by making the decision for families without adequately considering what modality of communication and learning is best for that particular child.

Unless parents have the resources to research alternative learning options on their own, they are less likely to affirmatively choose a communication pathway other than what professionals and specialists have recommended. The need for adequate availability of LSL is particularly important considering over 90% of children born with hearing loss have two hearing parents and very few of them know American Sign Language, which is important in terms of solidifying what is learned in school when the child is at home. For many parents without ASL fluency, it is vital that they be fully informed and equipped with choices such as LSL that allow them to be more actively involved in their child's communication and development.

The ACI Alliance believes that Delaware's current programming for deaf and hard of hearing students violates key principles of federal disability law. We are concerned that by failing to provide adequate LSL options and ushering children into more restrictive learning environments than necessary, the DDOE, DHSS, and LEAs have eliminated the opportunity for Delaware families to identify the learning approach that is best for them and their child. There is great diversity in approaches to navigating life with a hearing difference, and states must acknowledge these differences by providing families with real choices in their education options so they can make truly informed decisions.

We appreciate your attention to this important matter. For questions, please contact me at Dsorkin@ACIAlliance.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna Sorkin". The signature is fluid and cursive, with the first name "Donna" and last name "Sorkin" clearly distinguishable.

Donna Sorkin
Executive Director
American Cochlear Implant Alliance

cc: ACLU of Delaware
Office of Special Education and Rehabilitative Services, Department of Education